

Bath & North East Somerset Council

MEETING: **Development Control Committee**

MEETING DATE: **14th March 2012**

AGENDA
ITEM
NUMBER

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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

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.

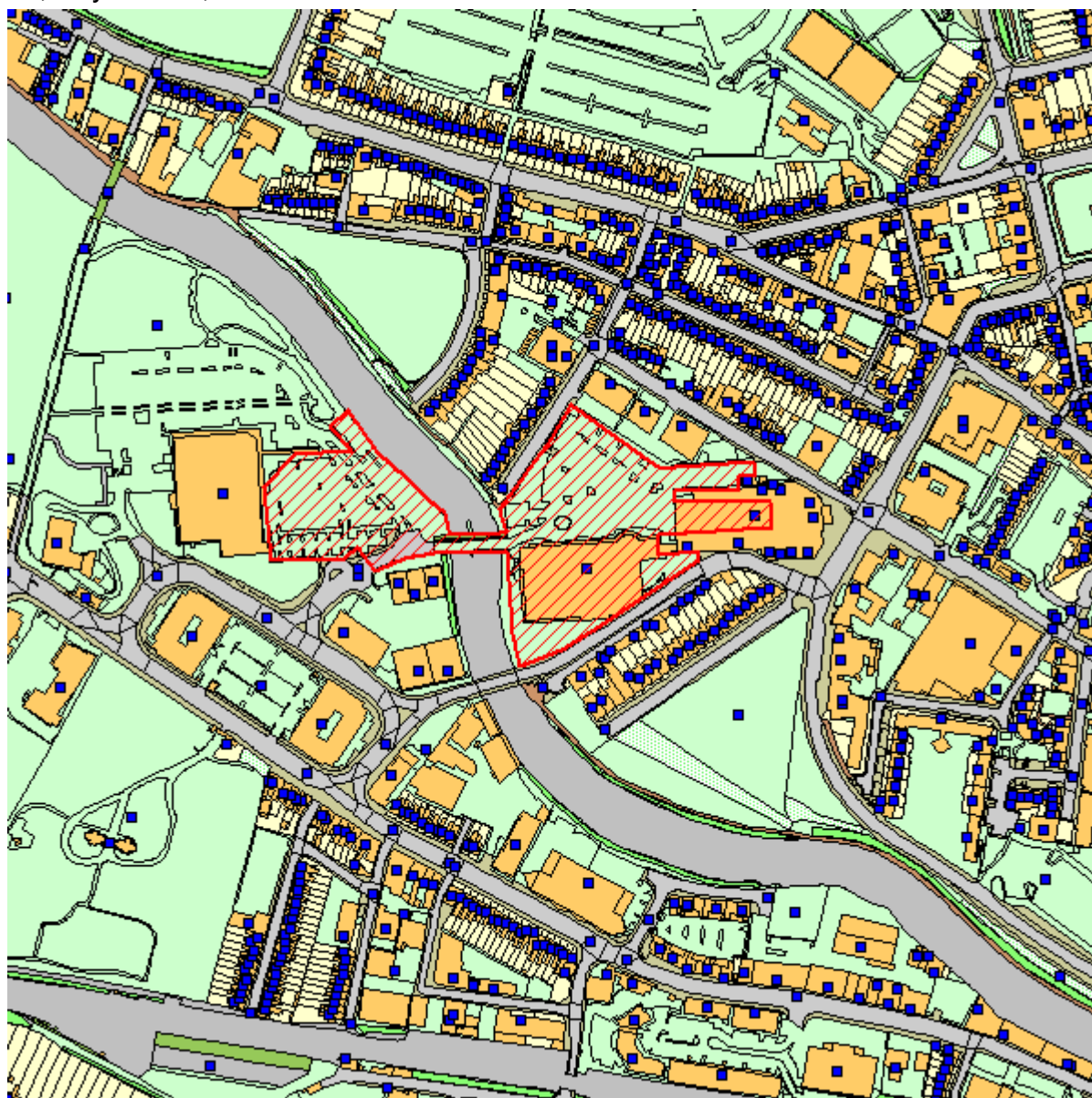
- [2] The papers identified or referred to in this List of Background Papers will only include letters, plans and other documents relating to applications/proposals referred to in the report if they have been relied on to a material extent in producing the report.
- [3] Although not necessary for meeting 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.

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02	10/03380/EFUL 9 December 2010	St James's Investments Limited & Tesco Stores Limited The Bath Press, Lower Bristol Road, Westmoreland, Bath, Bath And North East Somerset Mixed-use redevelopment comprising 6,300sqm of retail (Class A1), 4,580sqm of creative work space (Class B1), 2,610sqm of offices (Class B1), 220sqm of community space (Class D1/D2), 10 residential houses, car park, landscape and access (including realignment of Brook Road)	Westmoreland	Sarah James	REFUSE
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04	10/01175/FUL 26 May 2010	Mr M Pearce Lady Farm Cottage, Lady Farm Cottage Road, Chelwood, Bristol, Bath And North East Somerset Erection of new dwelling to regularise part built works (retrospective)	Clutton	Victoria Griffin	PERMIT

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10	11/05423/LBA 14 February 2012	Mr & Mrs Mike & Elizabeth Curnow 8A Cavendish Crescent, Lansdown, Bath, Bath And North East Somerset, BA1 2UG Internal and external alterations (Part Regularisation)	Lansdown	Adrian Neilson	CONSENT

Item No: 01
Application No: 10/04475/FUL
Site Location: Sainsburys Supermarkets Limited Green Park Station, Green Park Road, City Centre, Bath



Ward: Kingsmead **Parish:** N/A **LB Grade:** N/A
Ward Members: Councillor Douglas Nicol Councillor A J Furse
Application Type: Full Application
Proposal: Erection of extension to foodstore to provide additional retail floorspace and warehouse floorspace. Alterations to car park layout and engineering works to the southern bank of the River Avon to provide flood storage compensation.
Constraints: Agric Land Class 3b,4,5, Article 4, British Waterways, Conservation Area, Cycle Route, Floodplain Protection, Flood Zone 2, Flood Zone 3, Flood Zone 3, Forest of Avon, General Development Site,

	Hotspring Protection, Listed Building, Sites of Nature Conservation Imp (SN), Sustainable Transport, World Heritage Site,
Applicant:	Sainsbury's Supermarket Ltd
Expiry Date:	4th February 2011
Case Officer:	Geoff Webber

REPORT

REASON FOR REPORTING APPLICATION TO COMMITTEE:

This application and the as yet undetermined proposals for a mixed use development incorporating a substantial retail store on the former Bath Press site share the Council's current and emerging retail strategy as a material consideration and it is important that each proposal is assessed and determined with appropriate regard to the other.

With this in mind, Members have had an opportunity to visit both sites prior to the meeting, and to view the locations of the two proposed developments in the contexts of their relationships with their respective surrounding areas.

DESCRIPTION OF SITE AND APPLICATION:

The application proposes an extension to the existing Sainsbury's store adjoining Green Park Station, and the site is located within the Bath World Heritage Site and the Conservation Area immediately to the west of Midland Bridge Road and (for the most part) north of the River Avon. Whilst the former railway station is a Listed Building, the existing Sainsbury's store has remained physically separate from the station structure and so Listed Building Consent issues do not apply to the current proposal.

The existing retail store is on two levels, with its main entrance and retail floorspace at the upper level, accessed from the car parking area to the west of the store. On the eastern side, the store adjoins Midland Bridge Road, but has no public access on that elevation. The road is set at a lower level, and provides access to the store's service yard and deliveries area, which is at a lower ground floor level, with service areas, storage, etc. being located within the existing building but underneath the retail floorspace. In this way, the store optimises the potential of its site, allowing a substantial floorspace to be accommodated within a relatively restricted site.

The existing store was constructed during the 1980's and its design and materials are very much a product of their time, using a panelised approach that is unlike the other, traditionally constructed buildings in this part of the Conservation Area. The appearance of the existing store does little or nothing to generate a sense of place in this prominent location within central Bath. The store has been extended in the past, but the extensions have tended to maintain the character and appearance of the originally constructed building, using materials that are a close match to the original. The character of the store building is less significant when viewed from the west, largely because the ground here is at the higher level and as a result the store is seen as a single storey building that is subservient to the immediately adjoining larger Listed former railway station. The roof of the original Sainsbury's store is of an unusual (and undesirably prominent) conical design, and this is the most conspicuous feature in views from the west. From Midland Bridge Road to the east, however, the full two storey height, together with the prominent roof, produces an unrelenting and almost featureless structure, where the building has little

detailing, and its horizontal nature dominates and significantly detracts from the character of the street scene.

Midland Bridge Road is set at an angle to the side wall of the store, and this provides for a triangle of land to remain undeveloped between the store and the road, immediately to the north-east of the Midland Bridge across the River Avon, and set about two metres below the level of the road. This triangle of land is grassed and contains a number of trees which have the effect of softening the relationship of the retail store building with Midland Bridge Road, but not to the extent that it diminishes its dominance in the character of this section of the road. This view from the east is also that which is seen from the rear windows of the tall terrace of residential properties on the western side of Green Park, the rear elevations of which overlook the Sainsbury's site across the top of the line of smaller commercial premises along Green Park Mews.

Whilst the trees in the undeveloped area are clearly visible from the surrounding area, the grass itself remains largely invisible in public views, except from the immediately adjacent section of the footway along the western side of the road, from where it can be seen over the relatively low roadside wall. To the north, the store comes right up to the back of the footway alongside Midland Bridge Road, and this close relationship is continued by the former railway station which adjoins the road right up to its junction with Green Park Road.

Between the existing store and the river is an unattractive and unhelpfully enclosed section of river bank and towpath, which provides a route for part of the Bath to Bristol strategic cycle route and a pedestrian route along the northern river bank. This section of the towpath lies between Midland Bridge and a second bridge about 50 metres to the west, which provides vehicular access from Pinesway into the Sainsbury and Green Park Station customer parking area. The towpath passes beneath both the bridges, with very poor access up to the higher developed area immediately to the north. The enclosure of this section of river bank, sandwiched as it is between the river and the two storey retail store, and by the two bridges, creates a section of the riverside towpath that is not well overlooked, and where the existing overhanging trees and riverside vegetation combine to give the area an unkempt and inhospitable character, not assisted by the presence of the closed rear elevations of commercial premises immediately opposite on the southern river bank. The riverside towpath and the immediately adjoining strip of mostly open grassed land is owned by British Waterways, and is separated from the Sainsbury's site by a stone wall that is proposed to be demolished as part of the current proposals. The Sainsbury's site in this section contains a mix of untidy shrub planting and a range of external ancillary areas immediately adjoining the store building.

As mentioned above, the main store car park is at the higher level to the west of the store, along the line of the former railway, and the access bridge from Pinesway is also along that alignment. On the southern side of the river, but off to the western side of the access route, is the existing Homebase store, which also has a substantial car parking area. Part of the Homebase parking area has in the past been acquired by Sainsbury's, and is formally included within Sainsbury's operational site (and also the site edged in red in the current Planning application). The Sainsbury's store currently benefits from 458 parking spaces, of which 165 are provided within the Homebase parking area. Whilst the existing parking areas are not directly affected by the proposed extension, the proposal incorporates a redesign of the parking layout that is aimed at repositioning disabled and parent/child parking spaces more conveniently, closer to the store main entrance. This

redesign will result in the total car parking capacity being reduced to 429 (that is an overall reduction of 29 spaces, but incorporating an increase of 9 in the number of disabled spaces).

The Proposed Extension

The extension the subject of the current application is proposed to be sited utilising the triangular undeveloped area between the existing store and Midland Bridge Road. The existing store has a gross internal floorspace of 6,335 sq. metres (over the two floors combined), and the extension will increase this by 1,693 (27%) to a new total of 8,028 sq. metres, again over the two floor levels combined.

The net retail trading area as existing is 3,057 sq. metres, and the extension will increase this by 963 (32%) to a new figure of 4,020 sq. metres, all of which is on the upper floor level within the building.

These figures are all taken from Sainsbury's submitted documents, and demonstrate that the extension will facilitate a proportionally larger increase in net retail floorspace, by allowing some of the existing 'back of house' areas at the rear of the existing upper floor level to be relocated to the lower ground floor level within the extension.

The application does not propose changes to the existing store's opening hours, but the supporting documents explain that the proposed extension has been designed to maximise the retail floorspace on this site, and is aimed at addressing the fact that the store has for some years been 'over-trading' by comparison with typical trading figures from stores of a similar size. The Applicant's documents indicate that the operator has struggled to keep the display shelves replenished, because there is comparatively insufficient storage space provided by the limited on-site warehousing and by the constrained shelf space within the retail area. The increased storage and support space within the lower floor area of the extension is as important in this regard as the increased net retail floorspace on the upper level.

The proposed extension will facilitate the holding of larger stocks on the site, and whilst there will be an expansion in the number of lines to be offered, the main target is to achieve a higher level of customer satisfaction and to eliminate shortages of stock as far as possible. The opening of the Sainsbury's store at Odd Down during 2011 has inevitably reduced the number of customers (and the turnover) at Green Park. However, the Applicants forecast that the proposed extension will not increase the number of customers above that which existed prior to the Odd Down opening, but will mean that a similar number of customers can be served more effectively, with bigger average spends. It is on this basis that the Applicants have argued that the existing car parking provision (see above) will remain adequate to meet the needs of the enlarged store.

Other Elements of the Proposed Development

The scale and location of the proposed extension have not changed since the current application was submitted in November 2010. Since that time, however, there have been significant amendments to the detailing of the scheme in terms of the external appearance of the store, and of the layout and detailing of its curtilage. Some of these changes have been secured through negotiations between your Officers and the Applicants, but others have emerged from discussions between the Applicants and the Environment Agency. The amendments are incorporated into the description that follows, but many of these

changes are best shown with the aid of the submitted plans, and will be explained to Members during the Officer presentation at the meeting.

The amended application now incorporates a number of additional elements that have been designed to enhance the site in the short term, whilst not prejudicing the future regeneration of the wider Green Park site as part of any larger scheme that may come forward in the future. The scope of the proposals is set out in an updated and reworked Design and Access Statement submitted by the Applicants.

The current proposals now include significant alterations to the existing store building, in terms of the re-cladding of the visible elevations to the south-west (towards the river), the south-east (towards Midland Bridge Road), and part of the north-eastern elevation which faces Green Park Station, but which is partially visible from Midland Bridge Road. These elevational changes were not part of the application as originally submitted, and have been designed to improve the character of the building's more prominent elevations, thereby benefitting the surrounding area, and providing a more fitting neighbour to the Listed former railway station. In effect, the proposed extension is being used to 'seed' an improvement to the overall appearance of the store, rather than following the originally-proposed approach of mimicking the design and appearance of the existing building. The elevations of the existing store and of the extension will be given new glazed elements, and will be broken into a series of Bath stone coloured rendered panels, separated by metal pilasters, with a new metal-clad fascia above. The panels in these elevations have been designed to give references to the similar sectional appearance of the former Green Park Station, where the structural metalwork of the station building is highlighted externally by the use of prominent downpipes and other features that serve to break up what would otherwise be an extremely large and featureless elevation. The roof of the Sainsbury's store is not intended to be changed as part of this proposal.

A further enhancement of the existing retail store building comes in its elevation facing towards the river, where glazed sections are proposed to the new stairwell linking the two floors, and also at the western end of the elevation at upper floor level, adjoining the checkouts internally. At the lower level, new windows are to be inserted, in order to provide greater overlooking and therefore supervision of the towpath where it passes the store. Associated with this, the area between the store and the towpath is to be remodelled and replanted in order to improve its appearance and attractiveness to users, and in recent discussions with your Officers British Waterways have already agreed in principle to co-operate in order to take this element of the scheme forward.

The access arrangements between the store car park and entrance area (at the upper floor level) and the towpath are also to be improved. The application includes a proposed improved link from the car park and from Norfolk Buildings to the towpath just west of the bridge accessing the store car park, and also enhanced access allowing customers (including cyclists) to gain access between the towpath and the store adjacent to the store building itself. For the first time, cycle parking facilities will be provided at towpath level, alongside the store, and there will also be 'cycle gulleys' alongside the sets of new steps providing better access up to the store entrance level, to Midland Bridge Road and (if possible) to Norfolk Buildings. A small landscaped and tree-planted area will be retained by virtue of a chamfered south-eastern corner to the proposed extension immediately adjacent to Midland Bridge. In this area the new extension will link visually to the towpath, and the scheme will also facilitate the provision of better pedestrian access in the form of

a new stepped access between the western side of Midland Bridge Road and the towpath, whereas at present the only access between the towpath and Midland Bridge Road is to the east, away from the store.

The store's existing service yard area adjacent to Midland Bridge Road will not be altered, but between the yard entrance and Midland Bridge the existing stone roadside boundary wall will be extended. This has been designed to enhance the character of the street scene, and to promote a perception of the extended store building being set behind and below the roadside wall, rather than extending right up to the footway.

Finally, the proposed development includes alterations to the southern bank of the river to the west of the access bridge from Pinesway. These alterations are not cosmetic they involve the excavation of additional flood storage capacity in order to address the loss of capacity associated with the construction of the proposed extension. The details of this element of the proposals have only recently been finalised following prolonged negotiations between the Applicants' Agents and the Environment Agency, but the engineering works provide an opportunity for enhancing the planting and thereby the appearance of this section of river bank which is prominent in views from the bridge and which is also accessible to the public from the Homebase car park area.

The southern river bank between the two bridges and opposite the Sainsbury's store building is not part of the application site, and no alterations are proposed in that area.

Sustainability

Although the current proposal is principally an extension to the existing store, the Applicants have indicated that the construction of the extension will allow the energy usage of the entire store to be reviewed and minimised through the application of new lighting wherever possible (including LED lighting), more efficient refrigeration and re-use of chilled air for cooling elsewhere in the building, and the introduction of a full-store Building Management System. Rainwater will be harvested for use in public and staff toilets, and on-site recycling bank facilities will be maintained. The store's own waste is already managed and handled through Sainsbury's national adoption of waste reduction and recycling initiatives. A more wide-ranging sustainability review can only realistically be adopted as part of any longer term proposals for the site.

Applicant's Supporting Documents

The Applicant's Agents have submitted a range of detailed supporting documents, including a Design and Access Statement that reflects the amended proposals described above, and a Planning Statement (with subsequent correspondence) which sets out their assessment of the Green Park site as an edge-of-centre site in contrast with the current proposals for the Bath Press site, which is argued to be out-of-centre. The submitted Transport case seeks to demonstrate that the existing car park arrangements are adequate in size to cater for the enlarged store. In addition, the Applicants have submitted a range of documents during the life of this application that are aimed at promoting this site as a suitable Edge of Centre location for an expansion of their existing retail floorspace. Much of these submissions is also focussed on the concurrent Tesco retail proposals for the former Bath Press Site, and these points are addressed (where appropriate) in the Officer reports associated with that other scheme.

SUMMARY OF CONSULTATIONS/REPRESENTATIONS

PLANNING POLICY: Discussions have taken place with the Council's Planning Policy Team, and these have concluded that as the application proposes an extension to an existing retail store in an edge-of-centre location, it raises no specific Policy considerations other than a requirement for an assessment in terms of the Council's Retail policies and the provisions of Government policy. These issues have been addressed by GVA Grimley, who have been instructed by Officers to provide a retail assessment of the current proposals for this site and for the former Bath Press site, and their assessment is summarised later in this report. The officer presentation at the meeting will explain the Council's adopted retail locational strategy to Members with reference to plans taken from the Council's policy documents.

The Planning Policy Team have, however, recommended the continuation of the 80% / 20% split between the floor areas used for food goods and non-food goods (controlled by a Condition attached to the 1997 planning permission for the previous extension to the store), in order to limit any adverse effect upon the vitality and viability of the city centre in terms of Comparison Goods trading.

HIGHWAY DEVELOPMENT OFFICER: Following receipt of this application in late 2010, the Highway Development Officer objected on the grounds that inadequate supporting information had initially been submitted to enable a proper assessment to be made of the highway impacts of the proposed development.

However, since that time there have been further submissions and prolonged negotiations.

The Highway Development Officer has very recently confirmed that following assessment of the additional clarification and data provided by the Applicants he is satisfied that the level of parking proposed is adequate to cater for the customer demand generated by the extended store. A developer contribution has been agreed, in line with the Council's SPD, to mitigate the effect of the proposed development with regards to the demands on the public highway, and Conditions are needed requiring the submission of a Construction Management Plan and a Travel Plan to address staff journeys to and from the site. In addition, a further Condition is needed to ensure that the proposed enhanced pedestrian access routes and cycle facilities are provided.

The Highway Development Officer also comments that 'the proposed development, with amendments to the existing car parking, whilst doing nothing to accommodate the Council's wishes to extend the proposed public transport route crossing the Western Riverside site to enable it to connect to James St West in the vicinity of Green Park Station, does nothing to further prejudice such future provision when compared to the existing development on the site.'

ENVIRONMENT AGENCY: The Environment Agency has confirmed that acceptable alternative flood storage provision has been designed in discussion with them and has been incorporated into the proposed development. Accordingly they have No Objections, subject to appropriate conditions, provided that the LPA is satisfied that a Sequential Test required by PPS25 has been undertaken. Details of the required Conditions are the

subject of on-going discussions and any further comments or advice will be reported at the meeting.

ECOLOGY: The Council's Ecologist has not formally objected but has recommended that the scheme should be revised to enable retention and creation of green space and trees; to prevent loss of habitat and provide net ecological gain. Of particular concern is the loss of trees and the effects upon the river corridor. The revised plans have provided some limited enhancement but have not materially addressed the underlying concerns. The retention of the trees and planting within the area between the existing store and Midland Bridge Road is wholly incompatible with the current development proposals.

CONSERVATION OFFICER: Comments that 'this is perhaps one of those cases where some form of development could help make more efficient use of the land but in order to be successful I would recommend that attention is given to restoring an improved sense of place. I feel that this could be achieved by greater use of locally distinctive external materials and by providing the south elevation of the structure with greater articulation. In particular I would suggest that there is a physical separation between the extension and the existing skew wall of the supermarket fronting the highway, and by recessing the acute corner of the extension where it would be closest to the river corridor and Midland Road Bridge.' These comments have in part been addressed in the amended plans.

ENGLISH HERITAGE: Indicate that in terms of the proposals as originally submitted they could not advocate approval, but they have not formally objected. Their comments encourage the redesign of the scheme to retain trees because of their screening value, and to improve the overall relationship of the proposed development with its prominent roadside historic setting at an important entrance into central Bath. These comments have been addressed in the amended plans, and any further comments received will be reported at the meeting.

ARBORICULTURAL OFFICER: Objected to the scheme as originally submitted because of the undesirable loss of trees. The amended proposals, incorporating the final results of negotiations with the Environment Agency regarding the southern river bank provide enhancements to planting that in part take account of the comments made, and the Arboricultural Officer has made further comments expressing satisfaction about elements of the amended scheme, in respect of the areas away from the proposed extension, but maintaining an objection to the extension itself because of the loss of the roadside trees.

ENVIRONMENTAL HEALTH OFFICER: No Objections, subject to the imposition of appropriate Conditions to control nuisance during the construction works.

CONTAMINATED LAND OFFICER: There are no land contamination objections to the scheme, however, standard conditions will be required to investigate and assess risk.

BRITISH WATERWAYS: No comments made initially, but in response to the more recent reconsultation regarding the amended plans, British Waterways have now indicated a desire to enter into discussions with your Officers and with Sainsbury's aimed at agreeing details of a landscaping and maintenance regime in respect of the riverside area between the store and the northern towpath.

ARCHEOLOGICAL OFFICER: No Objections subject to appropriate Conditions.

ECONOMIC DEVELOPMENT OFFICER: no comments received.

URBAN DESIGNER: The Council's Urban Design Officer raised significant objections to the scheme as originally submitted, on the basis that a more comprehensive design approach was needed in order to take the opportunity presented by this application for significant improvements to the existing poor quality and appearance of the store, and of its relationship with its setting. The prominent elevations should be reworked so that the extension does not perpetuate the existing problem, but rather becomes the means of improving the store's sense of place.

Following receipt of these comments and in the light of complementary comments received from other consultees, the Urban Designer was involved in detailed negotiation with the Agents. As a result the significant enhancements set out earlier in this report were agreed in principle and subsequently submitted. The Urban Designer has advised that whilst he still has concerns regarding the quality of the store as a whole, he does not now object to the amended Extension proposals, which in his view do just enough to address the previous concerns.

The Urban Design Officer has commented that the proposals are 'not really looking to future proof the building for the next phase of its life as the only central Sainsbury store', but that 'the list of improvements are possibly proportionate to the scale and impact of the extension'. The Agents have accordingly been advised that significant environmental enhancements are likely to be sought in respect of any further scheme for developing or redeveloping the Green Park site.

OTHER REPRESENTATIONS /THIRD PARTIES

The following representations have been received:

BATH PRESERVATION TRUST: Two separate submissions have been made, the first of which appears to relate erroneously to the Sainsbury's store at Odd Down, and this has been disregarded. The second Objects to the current proposal on the grounds that it does not preserve or enhance the character or appearance of the Conservation Area, and is detrimental to the street scene in Midland Bridge Road, particularly through the loss of the triangular landscaped area on which the extension would stand. The proposal does not complement its surroundings or contribute to local distinctiveness, and is therefore contrary to Local Plan policies.

A further comment has been received as a result of the more recent reconsultation, in which the Trust indicate some satisfaction regarding the improvements to the appearance of the store and of its setting. However, the concern regarding the loss of the trees adjoining Midland Bridge Road remains.

BATH HERITAGE WATCHDOG: Objects on similar grounds to the Bath Preservation Trust. Additional procedural matters are raised, but also the view is expressed that this is a short-term approach to design that falls short of what might be expected. The materials and design perpetuate the character of the existing building. The proposal does not adequately address Flood Risk issues.

Further comments have been received in response to the more recent reconsultation, and the organisation maintains its overall Objection whilst acknowledging that efforts have been made to improve the appearance and design of the buildings.

THE BATH SOCIETY: Comments that the proposal will result in the loss of the triangular landscaped area.

TESCO STORES / ST JAMES' INVESTMENTS are the intending developers of the former Bath Press site in Lower Bristol Road. Their proposals for that site are reported elsewhere in the papers for the meeting, but they have submitted a detailed critique of the conclusions reached by the Council's specialist retail consultants (details of GVA's advice to the Council is summarised later in this report) in respect of both their own proposals and the current (Sainsbury's) application. In particular, Tesco / St James Investments argue that the Green Park site should be regarded as out-of-centre, but that in any case the proposed Tesco store and the proposed Sainsbury's extension are very different in character and should not be compared against one another on a like-for-like basis.

Just before the February meeting of the Committee, a further submission was received from the Agents for the former Bath Press site scheme, in terms of a review of the Council's retail analysis regarding the Tesco and Sainsbury's schemes. In essence, the submission challenged the conclusions drawn by the Council's specialist retail consultant, suggesting that a more recent shopper survey undertaken by Sainsbury's own consultants should have been used as a basis for assessing retail capacity and sequential issues. Sainsbury's own Agents have submitted comments in response to that document, but those relate more specifically to the proposals for the former Bath Press site.

6 INDIVIDUAL RESIDENTS Object or Comment on the following grounds:

- Noise, dust, vibration and environmental damage, especially during construction, but also from delivery vehicles.
- Additional traffic generation.
- Loss of landscaped area.
- Unsatisfactory treatment of river corridor, adjoining planted area and appearance of the Midland Bridge Road frontage
- Design and Materials should be of a higher quality than proposed.
- Delivery Management Plan needed to address operational effects of Service Access.
- Sainsbury's should take some responsibility for the towpath adjoining the store and also provide better access from the towpath to the site. The proposed car park and internal pedestrian access arrangement is an improvement, but lighting should be installed alongside pedestrian routes.
- Enlarged store may be used to provide a wider range of non-food goods and services, which are not necessarily acceptable in this location.

POLICIES/LEGISLATION

RELEVANT PLANNING HISTORY:

The site is the subject of existing controls by virtue of Conditions and Agreements associated with the previous Planning permissions for the development of the site. These need to be safeguarded in any new permission that may be granted. The proposed

development will not prejudice the operation of the existing S106 Agreement relating to the site, but a Condition is necessary in connection with the comments made by the Planning Policy Team (see above).

POLICY CONTEXT:

REGIONAL PLANNING GUIDANCE

Policy EC6 Town Centres and Retailing

JOINT REPLACEMENT STRUCTURE PLAN 2002 - saved policies

- 1 Sustainable Development
- 2 Locational Strategy
- 6 Bath
- 30 Employment sites
- 38 Town centres and shopping
- 40 New Retail
- 41 Local shopping
- 54 Car parking
- 58 Transport

ADOPTED LOCAL PLAN

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

- IMP.1 Planning obligations
- NE. 11 Species and Habitats
- NE.14 Flooding
- D.2 General Design and public realm considerations
- D.4 Townscape considerations
- ES.1 Renewable energy
- ES.2 Energy Use Reduction
- ES.5 Foul and surface water drainage
- ES.9 Pollution and Nuisance
- ES.10 Air Pollution
- ES.12 Amenity
- T.1 Travel and transport
- T.3 Pedestrians
- T.5 Cyclists
- T.6 Cycle Parking
- T.16 Transport infrastructure
- T.24 General Development control and access policy
- T.25 Transport assessments
- T.26 On-site parking and servicing provision
- BH.1 World Heritage Site
- BH.6 Development within or affecting conservation areas
- BH.12 Archaeology
- BH.22 External lighting
- S.1 Retail Hierarchy
- S.4 Retail Development outside Shopping Centres
- GDS1/B1 Bath Western Riverside

SUPPLEMENTARY PLANNING DOCUMENTS:

S106 Planning Obligations
Bath Western Riverside

BATH AND NORTH EAST SOMERSET DRAFT CORE STRATEGY (May 2011):

This is currently subject to Examination and the Hearings are due to take place in January 2012. Therefore it can only be given limited weight for development management purposes. The following policies should be considered

CP2: Sustainable construction
CP3: Renewable Energy
CP4: Flood Risk Management
CP5: Environmental Quality
CP12: Centres and Retailing
CP13: Infrastructure provision
DW1: District-wide spatial Strategy
B1: Bath Spatial strategy
B4: The World Heritage Site and its setting

NATIONAL POLICY

PPS1: Delivering Sustainable Development
PPS 4: Planning for Sustainable Economic Growth
PPS.5: Planning For the Historic Environment
PPS9: Biodiversity and Geological Conservation
PPG13: Transport
PPS25: Development and Flood Risk

DRAFT NATIONAL PLANNING POLICY FRAMEWORK

This is undergoing a consultation exercise and should only therefore be afforded limited weight at present.

OFFICER ASSESSMENT

PLANNING CONSIDERATIONS:

Members may be aware from Press reports in recent months that Sainsbury's have embarked upon a programme of public engagement in respect of an emerging proposal for a large-scale redevelopment of the existing Homebase site to provide a new Sainsbury's store and associated commercial, residential and retail proposals. Members should note that no Planning application has yet been submitted for any such scheme, and that the application the subject of this Report must be determined on its own Planning merits, with no consideration whatsoever being given to the perceived merits of an (as yet) unsubmitted scheme.

Members may also be aware that the Council has an ownership interest in the Green Park site including the existing Sainsbury's store. The Council's ownership interest is also not a material consideration in the determination of the current application, and again the current application must be determined on its own Planning merits, with no consideration whatsoever being given to the Council's other interests.

RETAIL - THE SEQUENTIAL APPROACH

Both national and local Planning policies seek to reinforce the vitality and viability of existing town centres and other identified retail centres by directing new retail proposals to sites that are selected on a sequential basis. Town centre locations are given the highest priority, followed by edge-of-centre locations, and then out-of-centre locations. The policy provisions take into account the greater sustainability of central locations, and the desirability of maximising the opportunity for customers to access retail sites using public transport or other non-car modes.

In accordance with PPS4 a sequential approach to site selection should be followed. Adopting a sequential approach to selecting sites means wherever possible seeking to focus new development within existing defined centres, or failing that on well-located sites on the edge of existing defined centres. Only if town centre or edge-of-centre-sites are not available will out-of-centre locations be likely to be appropriate in policy terms, provided that they are well served by alternative means of transport, and are acceptable in all other respects including impact. In considering the sequential approach to site selection a number of factors have been looked at (in accordance with the guidance within PPS4 including site availability and suitability, and the full and detailed assessment of all the relevant considerations is available within the retail consultant's report on the Council's web site.

It is of relevance to this consideration to note that the Sainsbury's site does not lie within a defined centre. The closest defined centre is the city centre which lies to the east of the site. The walking distance between the eastern edge of the Sainsbury's car park and the edge of the Primary Shopping Area ('PSA') is around 250 metres and the distance between the Sainsbury's store and the PSA is around 300 metres. On this basis your Officers are satisfied that the existing Sainsbury's store is in an edge-of-centre location.

PPS4 requires that as part of the Sequential Test, all reasonably available city centre sites must be assessed first. However, a feature of Bath is that very few city centre development opportunities come forward, largely as a result of the very compact nature of the city centre and its historic character, which together militate against the availability of sites suitable for large floorplate retail units, and sites that may in theory have potential are typically already in use for another purpose. Analysis of potential sites has been undertaken as part of GVA's assessment and your Officers are satisfied that there are no reasonably available city centre sites that could accommodate the proposed development.

Members are advised that walking distances from the existing city centre are incorporated within PPS4 on an advisory basis only, and that conclusions regarding the nature of any site's location must ultimately be reached having regard to local factors. In the case of Green Park Station and the existing Sainsbury's store, and notwithstanding the contrary argument put forward by the Agents for Tesco / St James Investments, your Officers are satisfied that these function as edge-of-centre facilities.

In Bath, the Council's strategic approach to retail location is set out in the Local Plan and also in other associated documents such as the Bath Western Riverside SPD. More recently, the Council has published its Draft Core Strategy which is currently the subject of the EIP and which can be expected to be formally adopted in the coming months. Whilst only limited weight can be given to the Draft Core Strategy at present, it is the most up to date statement of the Council's approach, and when taken together with the Local Plan

and BWR SPD demonstrates a well-established and consistent approach towards the location of significant retail developments. Members will be shown extracts from the documents mentioned above during the Officer presentation at the meeting, but in essence, the Council's policy provisions are based upon a conclusion that Green Park Road, immediately to the east of the current application site, represents the existing western edge of the city centre.

Accordingly, the existing Sainsbury's store (and by association the location of the currently proposed extension) is seen as an edge-of-centre location in terms of the Council's published policy documents. Furthermore, the BWR SPD and the Draft Core Strategy both identify a clear aspiration over the period up to 2026 for the existing city centre to be encouraged to extend in a south-westerly direction along James Street West, and on (through the Green Park Station site and across the River Avon) to include the eastern end of Bath Western Riverside. The proposed Sainsbury's store extension is broadly compliant with that strategy, but must also be seen as consolidating the configuration of the site as existing, rather than promoting the larger-scale regeneration anticipated by the BWR SPD.

In the light of the above, some assessment must be made of the significance of such consolidation, as the longer-term ability of the Green Park Station to contribute to any strategic regeneration programme is dependent to a degree upon the securing of as much flexibility as possible on this site. Your Officers have explored that point in discussion with the Applicants in this case, and have been advised that the proposed extension is financially viable even if its life is limited to only 3 - 4 years. On this basis, given that it is (if anything) the significantly larger existing store that may act as an impediment to the regeneration of the site, and having regard to the peripheral location of the proposed extension at the rear of the existing store and on the very edge of the identified regeneration area, your Officers are satisfied that the proposed extension to the existing store will not materially affect the regeneration prospects of the wider area.

In conclusion on this point, Officers are satisfied that this is an edge-of-centre location where the proposed extension to the existing store is not in conflict with either national policy or the Council's broad strategies as set out in published Planning policy documents.

SPECIALIST RETAIL ADVICE

The Local Planning Authority commissioned a retail specialist, GVA, to update its Retail Floorspace Quantitative Need Assessment in 2011. That update is publicised on the Council's website and will be 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. The data is the most up to date retail information for the District that is now used to inform Development Management planning application decisions.

The Applicants have submitted a retail assessment in support of their application that in broad terms seeks to demonstrate that the proposed extension is acceptable within the terms of local and national retail policies, including Policies EC10 and EC16 of PPS4 (which bring together a range of assessment criteria including physical, economic and environmental considerations). This has been assessed by GVA, along with all other material information, in order to provide comprehensive retail advice to assist in the determination of the current proposals.

Convenience Goods

Following the grant of planning permission for a new Sainsbury's store at Odd Down (and its recent opening), along with a certificate of lawfulness which will facilitate a significant expansion of the Waitrose store in the city centre and a resolution to grant planning permission for a Lidl foodstore on Lower Bristol Road (this is delegated to permit and awaiting completion of a s106 planning obligation), there is limited current quantitative capacity to support new convenience goods floorspace in Bath.

Forecasts suggest that in the short to medium term, the area is capable of supporting only a modest sized foodstore or extensions to existing facilities by 2016. In this context the proposed Sainsbury extension can properly be regarded as a modest extension to an existing store. Larger levels of capacity only arise from 2021 onwards but even then, a large new foodstore would be likely to have some adverse impacts on existing facilities and the impact of proposed development would need to be assessed carefully at the time.

Comparison Goods

The evidence confirms that the Southgate development has soaked up previously identified capacity for additional comparison goods floorspace in Bath and part of the expenditure growth between 2011 and 2016. Given the scale of the Southgate development, the new retailers which it has attracted to the City, and churn effect (i.e. this is the natural and ongoing in and out migration of occupiers of existing sites which release those sites for new occupiers to enter) it will cause on existing property across the City there is no need to plan for any significant new comparison goods floorspace in Bath until after 2016. Additional capacity could be required in the future and this potential is being appropriately planned for within the Core Strategy via small to medium sized retail development (as referred to in policy B1).

This retail development would need to be accommodated in accordance with the sequential approach, and it is anticipated that sites will be considered and allocated for further comparison retail development through the Placemaking Plan.

GVA were instructed to advise regarding the impacts of the both the current Sainsbury's and Tesco proposals. The following more detailed paragraphs are also included in the Officer report regarding the Tesco proposal, and are set out here in order to ensure consistency in the way that these matters are considered in the determination of each application.

The Impact of the Proposed Extension on Moorland Road District Centre

The Sainsbury's store at Green Park is in reasonably close proximity to the Moorland Road District Centre and this is likely to result in a small financial impact upon the district centre. Whilst these financial impacts are a negative aspect of the Sainsbury's extension proposal they are not considered significant enough to cause concerns over the future trading performance of stores on Moorland Road. In particular, the role and function of the Co-op store is unlikely to be affected. In terms of the other aspects of the extension's impact on the health of Moorland Road, it is not considered that footfall in the centre would be substantially affected, nor investment in the centre and vacancy levels. Overall, whilst the Sainsbury's store is also unlikely to provide any positive impacts upon Moorland Road district centre, the assessment of the wider impacts associated with the Sainsbury's

extension indicates that the vitality and viability of the centre would not be affected to any significant extent.

Cumulative Retail Impact

The retail analysis carried out by the appointed consultant takes into account any current retail commitments i.e. developments that either have planning permission or a resolution to grant. In light of the parallel Tesco and Sainsbury's proposals it was felt appropriate to commission a further piece of work from the Council's retail consultants in order to understand the cumulative retail impact of both the proposed Sainsbury's extension and the proposed Tesco store were they both to be permitted and this is discussed below.

Cumulative City Centre Impact

The conclusions of that additional analysis are that both proposals would have a comparatively low impact upon the city centre, with an overall impact of 2% for Sainsbury's and 4% for Tesco. The differences between the two schemes becomes more noticeable when the impact is based upon convenience goods expenditure alone, with the proposed Tesco store having an 18% impact upon the city centre and the Sainsbury's extension having a smaller 8% impact. For both schemes the cumulative impact is lower than the impacts directly associated with each scheme due to the commitment for an extended Waitrose store which will boost city centre turnover.

Cumulative Moorland Road Impact

There is a clear difference between the two proposals in terms of their individual impacts on Moorland Road, with the Tesco store being identified as having a significant adverse impact upon the viability of the Moorland Road shopping centre, in contrast to the much lower levels of trade diversion associated with the Sainsbury's extension. The cumulative impact of the Tesco proposal and the Sainsbury's extension would be greater than either proposal alone, thus reinforcing concerns over the future health of the District centre.

Planned Investment

Neither the Tesco or Sainsbury proposal has been proven to have a direct impact upon planned investment in the city centre or Moorland Road district centre although the higher financial impacts associated with the Tesco scheme may make investment in convenience goods floorspace in the city centre, such as the Waitrose extension, more marginal and also have the potential to influence future investment plans in Moorland Road.

Cumulative Retail Impact Conclusion

As a consequence of the above, it is not considered that there are grounds to resist the grant of permission for either or both of the Tesco and Sainsbury's proposals based upon the level of impact on Bath City Centre. However, given that there are significant concerns over the impact of the Tesco store alone on the health of Moorland Road District Centre, approval of both schemes would exacerbate this impact even further. This is supported by the lack of available quantitative expenditure capacity to support both stores. The Tesco store would be unacceptable in terms of its impact irrespective of whether the Sainsbury store extension was permitted.

Summary of Retail Advice

The specialist independent advice secured by the Council does not support some of the methodology and details conclusions put forward by the Applicants' Agents, but does conclude that the proposed development can be supported in Retail Policy terms, as long

as the LPA is satisfied that the Green Park site is broadly a suitable location in other Planning respects for the consolidation of larger-scale retail uses. In summary, the Council's advisors draw the following conclusions:

- a. The store is in an edge-of-centre location;
- b. There is no evidence that the Sainsbury's extension proposal will fundamentally affect investment in the city centre or any other defined centre in the Bath urban area;
- c. Implementation of the Sainsbury's store extension proposal will not have a detrimental impact upon the delivery of any other allocated sites in the development plan;
- d. The proposed extension is predicted to have a 2% impact upon the overall convenience retail turnover of the city centre and a 4% impact upon Moorland Road;
- e. These commercial impacts are negative factors to be taken into account in balancing the Planning merits of the proposal.

Overall, the advice from the Council's specialist consultants is summarised in their Conclusions as follows:

"Having regard to both the sequential approach to site selection and retail impact issues, we recommend that the Sainsbury's application receives the support of the local planning authority from a retail planning policy perspective. However, given that Sainsbury's proposal also has the potential to have a negative financial impact upon the city centre (albeit considerably smaller than the Tesco scheme) we consider that the local planning authority should seek to secure a series of planning obligations which seek to improve accessibility between the Sainsbury's store and the city centre and mitigate against the financial impact of the proposal. Assuming such obligations are secured, we would conclude that the Sainsbury's extension proposal meets the provisions of Policy S4 in the Local Plan, Policy 40 in the Joint Replacement Structure Plan, Policy EC6 in RPG10 and does not conflict with policies EC14-17 in PPS4."

Mention has been made above to a submission made by Agents acting in connection with the proposed mixed use development on the former Bath Press site in Lower Bristol Road. That submission argued that a more up-to-date survey base should have been used by the Council's consultants in connection with their analysis of retail capacity and sequential location issues.

Accordingly the Council's consultants have undertaken a further review of the position, based now upon the most recent survey results produced by WYG acting for Sainsbury's. Their subsequent updated advice is summarised as follows:

"The October 2011 household survey is the only available survey which includes the trading performance of the new Sainsbury's store at Odd Down, it is useful for this survey to be used to update the Council's own analysis of retail floorspace capacity and financial impact for both the Tesco and Sainsbury's extension proposals. We have therefore prepared a new assessment of capacity ...

The latest predicted impacts associated with the Tesco and Sainsbury's scheme are relatively similar to the previous estimates. Having considered the impacts in detail, including the impacts associated with the commitments (Waitrose and Lidl), the Sainsbury's at Odd Down, plus the impacts associated with the proposals themselves, we

see no reason to change our advice to the Council in relation to the impacts of each scheme on the city centre and Moorland Road.

The impacts associated with both schemes [ie Tesco and the Sainsbury's extension] on the city centre are not serious enough to warrant a reason for refusal. A similar conclusion is reached in relation to the small impact of the Sainsburys extension on Moorland Road."

PPS4 Policy EC16 requires an Impact Test to be undertaken and it for this reason that GVA's report and advice includes considerable detail regarding the points summarised in the preceding paragraphs. Your Officers have considered the approach taken by GVA and the robustness of the conclusions that they have reached in advising the Council, and Members are advised that Officers are satisfied that the work undertaken addresses the requirement for the proposed development to be assessed against PPS4 Policy EC16.

The Planning Policy Team have commented regarding the proportion of the proposed extended store that should be permitted to be used for the sale of non-food goods. This is principally a concern associated with the potential for significant non-food sales to have an adverse effect upon the vitality and viability of the city centre from the point of view of Comparison Goods shopping. The existing planning permission for the Sainsbury's store includes a Condition limiting non-food sales to a maximum of 80% of the total net retail floorspace, and it is considered that this control should be extended to include the currently-proposed extension.

HIGHWAYS: A Transport Assessment has been submitted. The Council's Highway Development Officer's conclusions have been summarised above, and these are that he is satisfied that the level of parking proposed is adequate to cater for the customer demand generated by the extended store. A developer contribution has now been agreed, in line with the Council's SPD, to mitigate the effect of the proposed development with regards to the demands on the public highway, and Conditions are needed requiring the submission of a Construction Management Plan and a Travel Plan to address staff journeys to and from the site. In addition, a further Condition is needed to ensure that the proposed enhanced pedestrian access routes and cycle facilities are provided.

AIR QUALITY: There is an air quality concern in this part of the city, but your Officers are satisfied that this proposed extension will not materially affect the existing position. The Highway Development Officer has advised (see above) that the existing car parking provision is adequate, and that the proposed development will not increase usage of the site beyond its previous levels. Furthermore, a Travel Plan aimed at reducing staff journeys to and from the store by car is to be required by Condition.

In these circumstances, no specific provision is necessary in connection with the current proposal. Of course, future regeneration proposals will present an opportunity for a much broader strategic approach to air quality management. In the meantime, this location offers the continued opportunity for linked trips with the city centre and is therefore sustainably located.

DRAINAGE AND FLOOD RISK: A flood risk assessment document has been submitted and this identifies that whilst the Sainsbury's site is generally within an area where there is no significant risk of flooding, parts of the site adjoining Midland Bridge Road are in Flood

Zones 2/3 where flooding is more likely. PPS25 sets out methodology to address this, and developers are required to undertake a Sequential test to identify whether the proposed development could be better-located on a site less prone to flooding. In this case, however, the Applicant's consultant concludes that no Sequential Test is necessary, because the extension can only be located adjacent to the exiting premises.

Your Officers have given consideration to this point, and it is of significance that the "public" area of the store is (and will remain) at the higher floor level, with only the storage and delivery and staff areas located on the lower floor level, generally as existing. It is clear from the Retail Sequential Tests set out above that the opportunities for larger-scale retail development in central Bath are extremely limited, and apart from sites that are already developed or committed, there are no other locations that would be acceptable from a retail policy perspective to which the existing Sainsbury's store could be readily located. There are certainly no other locations where the extension currently proposed could be constructed, as it is not a standalone proposal.

On this basis, whilst the Applicants' supporting documents explicitly state that there has been no formal PPS25 Sequential Test, Members are advised that your Officers are satisfied that such a test would simply confirm what is already clear, that the proposed store extension can only reasonably be expected to be located as proposed. Subsequent discussions with the Environment Agency have addressed the on-site flood storage issues through the additional proposal to provide new flood storage capacity on the southern bank of the river, and this has the effect of enabling the proposed development to proceed without any adverse off-site flooding impact.

ECOLOGY: It has been suggested by the Council's ecologist that the scheme could do more to provide ecological enhancements. However, that would not warrant rejection of the scheme. The proposals can be implemented in such a way as to avoid significant harm to any ecological interests, subject to the imposition of suitable planning conditions. Based upon the current evidence of ecology known to be on the site a licence from English Nature would not be required and there would be no significant effect on any European Site or local site of nature conservation importance.

DESIGN AND LANDSCAPE: The proposed extension has been redesigned following discussions with your Officers, in order to address the concerns raised by the Urban Design Officer, along with English Heritage and others, to the effect that the proposal should be used as an opportunity to secure enhancements to the appearance of the existing store, which is generally acknowledged to be constructed using materials and a design that is not sufficiently in keeping with its sensitive and historically significant setting.

The amended proposals provide significant enhancements that will benefit the area surrounding the site, and which will provide a more appropriate character for the store in views from the river and from Midland Bridge Road in particular. The other enhancements, especially those to accessibility for pedestrians and cyclists cumulatively tip the scales in favour of the proposed development. The loss of the trees within the site of the proposed extension is regrettable, but the overall package of proposals provides opportunities for other planting which must be taken into account.

Officers are satisfied that, on balance, the amended proposals will marginally enhance the character and appearance of the surrounding part of the Conservation Area, and will not harm the universal values of the World Heritage Site.

ARCHAEOLOGY: There are no archaeological objections to the scheme; however, conditions to monitor development will be required.

ECONOMIC DEVELOPMENT: Whilst there have been no formal Economic Development comments, it is self-evident that any development will provide employment during the construction stage, and the Applicants' supporting documents indicate that the proposed store extension will also create between 20 and 30 full-time-equivalent new retail sector jobs. It is likely that these will be represented by a larger number of part-time opportunities.

LAND CONTAMINATION: There are no land contamination objections to the scheme, however, standard conditions will be required to investigate and assess risk.

ADJOINING RESIDENTS: The site in its current condition makes little positive contribution to the locality and the proposed extension does not materially change this. However, the design improvements set out above will also benefit local residents, and will marginally improve the outlook from properties in Green Park to the east. The granting of permission would also provide an opportunity to use Conditions to secure a Servicing Management Plan, in order to address concerns regarding the potential for additional delivery vehicles waiting in Midland Bridge Road, especially at unsocial hours. Local residents will also benefit from the pedestrian access improvements that are now incorporated into the scheme.

CONCLUSIONS

It is essential that this application is determined solely on the basis of the Planning merits of the scheme that is detailed in the submitted plans and documents. As advised above, Members should have no regard to other proposals that the Applicant may bring forward in due course, or to the Council's ownership interest in this site.

Your Officers have considered this proposal in the light of all material considerations, including the detailed arguments submitted on behalf of the Applicants and of Tesco / St James Investments in respect of the interpretation of retail policy considerations. Whilst the scheme has some accepted negative environmental impacts particularly associated with the loss of trees within the part of the site to be occupied by the extension the amendments that are now incorporated into the scheme secure valuable improvements to the relationship of the existing store with its sensitive and historically important surroundings, and to its accessibility for pedestrians and cyclists.

Your Officers conclude that this proposed extension to an existing retail store in an edge-of-centre location is not prejudicial to the Council's retail and other policies for this part of Bath, that the parking facilities are adequate and that the proposed extension can be supported, subject to appropriate Conditions and a S106 Agreement as detailed above.

RECOMMENDATION

(A): Authorise the Planning and Environmental Law Manager to secure an agreement under S106 of the Town and Country Planning Act 1990 to secure a strategic transport contribution of £302,721.00.

(B): 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 No development shall commence until additional drawings at a scale of not less than 1:50 showing details (including sections) of the external walls and fenestration of the proposed extension and of the alterations to the elevations of the existing building 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 part of the Conservation Area and World Heritage Site.

3 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 of buildings, 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 part of the Conservation Area and World Heritage Site.

4 No development, including site preparation work, shall commence until a Construction Management Plan including but not limited to details of working methods and hours, deliveries (including storage arrangements and timings), contractor parking and traffic management has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved Construction Management Plan.

Reason: To safeguard the amenities of adjoining residential properties and ensure the safe operation of the highway.

5 Notwithstanding the information submitted as part of the application, no development shall be commenced until a detailed 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 Notwithstanding the information submitted with the application, no development shall take place until an Arboricultural Method Statement with a tree protection plan identifying measures to protect the trees to be retained has been submitted to and approved in writing by the Local Planning Authority. The statement shall include proposed tree protection measures during site preparation, construction and landscaping operations. The statement should also include the control of potentially harmful operations such as the position of service runs and soakaways, storage, handling and mixing of materials on site, location of compound and movement of people and machinery.

Reason: To ensure that no excavation, tipping, burning, storing of materials or any other activity takes place which would adversely affect trees to be retained on the site.

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

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

9 No development shall 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 watching brief during ground works within the previously undeveloped areas of the site, with provision for excavation of any significant deposits or features encountered.

Reason: The site is within an area of potential archaeological interest and the Council will wish to examine and record items of interest discovered.

10 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.

11 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.

12 An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,
 - archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposed preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

13 A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

14 The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

15 In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 12, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 13, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 14.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

16 A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the Local Planning Authority. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the Local Planning Authority. This must be conducted in accordance with DEFRA and the

Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

17 The development hereby permitted shall not be constructed other than in accordance with a Construction Management Plan, including management of development traffic, deliveries, parking of associated contractors vehicles and travel of contractors personnel to and from the site, That shall first have been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety and operation.

18 The development hereby permitted shall not be occupied or used until a Servicing Management Plan, including management of delivery vehicles visiting the store has been submitted to and approved in writing by the Local Planning Authority. The store shall thereafter not be serviced other than in accordance with the approved Servicing Management Plan unless otherwise agreed in writing by the local planning authority.

Reason: In the interests of highway safety and operation and of the amenities of nearby residents.

19 The development hereby permitted shall not be occupied until a Staff Travel Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the site shall not be occupied other than in accordance with the provisions of the approved Travel Plan.

Reason: In the interests of sustainable travel and the operation of the public highway.

20 The development hereby permitted shall not be occupied until improved access has been afforded between the site and the existing riverside cycle path, and safe, secure cycle parking facilities are available for use by staff and customers, in order to encourage increased travel to and from the site by sustainable means. Notwithstanding the information shown on the plans submitted as part of the application, no work shall commence on site until further detailed plans of the new cycle and pedestrian facilities, to include appropriate measures to provide safety for pedestrians and cyclists using the riverside cycle path, have been submitted to and approved in writing by the local planning authority.

Reason: In the interests of sustainable travel and the operation of the public highway, to ensure the safety of cyclists and pedestrians having regard to the proximity of the development to the river, and to ensure that the details of the proposed works are satisfactory.

21 The proposed extension shall not be brought into use until the car parking facilities for the store have been provided in accordance with the approved plans.

Reason: In order to ensure that adequate parking provision is retained in connection with the proposed extended store.

22 There shall be no more than 4,020 sq. metres of net sales area within the extended food store at any time and no more than 20% of the total net sales area shall be used for the sale of non-food goods.

Reason: To safeguard the vitality and viability of existing retail centres in accordance with Policy S4 of the Bath and North East Somerset Local Plan.

23 Further Conditions as may be required by the Environment Agency in connection with Flood Protection matters.

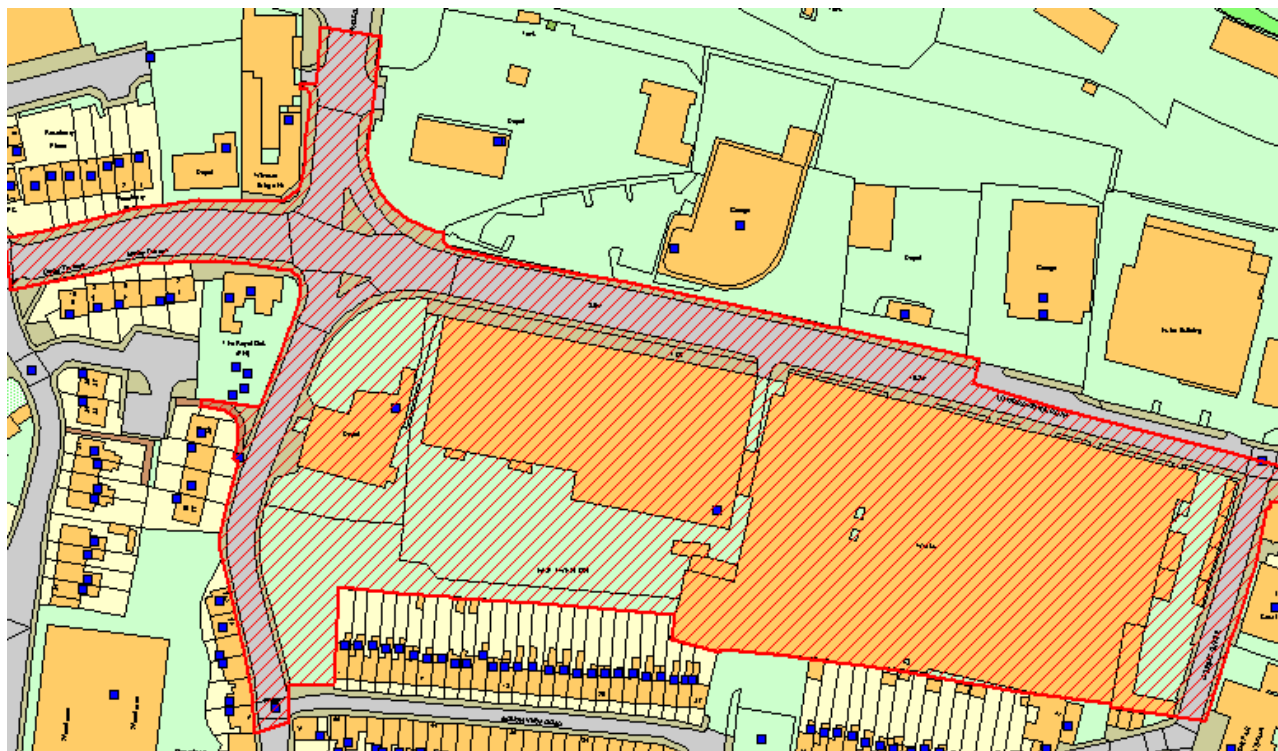
24 The Plans List and Reasons for Granting Permission will be finalised at the time of issue of the decision notice.

PLANS LIST:

Informatives:

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

Item No: 02
Application No: 10/03380/EFUL
Site Location: The Bath Press, Lower Bristol Road, Westmoreland, Bath



Ward: Westmoreland **Parish:** N/A **LB Grade:** N/A
Ward Members: Councillor S Ball Councillor June Player
Application Type: Full Application with an EIA attached
Proposal: Mixed-use redevelopment comprising 6,300sqm of retail (Class A1), 4,580sqm of creative work space (Class B1), 2,610sqm of offices (Class B1), 220sqm of community space (Class D1/D2), 10 residential houses, car park, landscape and access (including realignment of Brook Road)
Constraints: Agric Land Class 3b,4,5, British Waterways, Flood Zone 2, Forest of Avon, Hazards & Pipelines, Hotspring Protection, Tree Preservation Order, World Heritage Site,
Applicant: St James's Investments Limited & Tesco Stores Limited
Expiry Date: 9th December 2010
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 and has complex planning considerations. The Development Manager therefore has requested that the application be determined by the Development Control Committee in line with the provisions of the Council's scheme of delegation.

Members will note that the application was placed upon the planning agenda in February 2012 but was withdrawn from consideration following significant and new submissions made by the Applicant in order that this information could be properly considered. The information related to highway and retail matters and responses are made to that information within the relevant report Sections. Officers are also able to now respond to the additional public safety report submitted by the applicant in respect of the site's proximity to the Windsor House Gasholder Station.

DESCRIPTION OF SITE AND APPLICATION:

The site is located approximately 1 km to the west of Bath City Centre within the area of East Twerton. It covers an area of approx 3 hectares. The site is bounded to the north by Lower Bristol Road (A36), by residential properties to the south and the residential streets of Brook Road and Dorset Close to the west and east respectively. The site is within the City of Bath World Heritage Site.

Opposite the site, on the northern side of Lower Bristol Road, is a series of garages, beyond which is the former gas works site and the River Avon. The former gas works and adjacent developed and undeveloped land north of Lower Bristol Road form the area of the proposed Bath Western Riverside development. There are existing residential properties to the south of the site which have frontages onto South View Road and Denmark Road. Oldfield Park Infant School is located along Dorset Close to the east of the site. The site is bound on its west side by Brook Road. Residential properties and the Royal Oak public house front onto Brook Road.

The last use of the majority of the site was as a print works (Bath Press), which ceased operations in 2007. On the western half of the site there are two warehouse buildings associated with the former printing activities, and a tyre depot on the corner of Lower Bristol Road and Brook Road. Located on the eastern half of the site is the main former Bath Press building.

It is proposed to demolish the existing buildings on-site whilst retaining the historic print works facade fronting Lower Bristol Road. The facade would be retained by a steel frame, and would in part be tied back to the new buildings. The existing fenestration would be partially removed and replaced with new infills. The existing factory chimney would also be retained. The building would be developed with a mix of uses comprising of retail floor space, creative work units, Offices (B1) 10 houses and a small museum.

The Proposed Retail Store

The proposed retail store would be located within the central part of the site facing the Lower Bristol Road. It would have 6,300 m² (gross internal area) floorspace. The application states that there would be a net sales floorspace of 3,383 m² (excluding checkouts, lobby areas, customer toilets and other space not accessible to the customer) to be used for food (2,414 sq.m) and (969m² sq.m) non-food sales (based upon the

Competition Commission method of classifying net retail sales area). A café would be located in the north east corner of the store and staff rooms canteens offices and general storage located in the southern end of the building. Warehouse and refrigeration areas would be located to the west and to the west of this would be an external enclosed loading bay. This would receive all store deliveries with access from Brook Road. Pedestrian access would be from the Lower Bristol Road to the north and a pedestrianised space to the east. A travelator adjacent to these entrances would provide access to a basement car park located below the store. A separate staff entrance would be located in the south western corner of the building leading out onto Brook Road.

It is proposed that the store would be open from 06:00 to midnight Monday to Saturday and 10:00 to 16:00 on Sundays (outside of these hours there would be staff working within the building). It is estimated by the applicant that the retail store would create 350 full time (equivalent) posts.

The building would be single storey and have a low pitch roof. It would be approx 7.5 metres high with ventilation additions to the roof that would reach a maximum approximate height of 11 metres. The building would be located behind the existing Bath Press façade which would be retained. There would be a pedestrian walkway between the retained facade and the new building. The new building would be clad in Bath stone, with glazing around the main entrance onto Lower Bristol Road.

Creative work units

An L-shaped building containing work units within B1 of the Use Classes Order is proposed to wrap around the north west corner of the store so as to address the Lower Bristol Road and Brook Road and the prominent junction. The building would be three storey facing onto the north western corner of the site. A two storey terrace would be located to the east of the store. The total proposed B1 work unit floorspace would be 4,580 m².

The three storey unit is designed as a series of vertical Bath stone columns which span two storeys. Above the columns a horizontal Bath stone beam would align with the retained façade. At second floor level the building would be set back and made up of lightweight glass and steel reducing the dominance of this upper storey. The two storey terraced building is designed with gable fronted units to accord with the design of the dwelling terrace and the building would overlook an area of public space. The facades comprise of a combination of brick and glass.

Offices

2610m² of office space is proposed in a part 2 and part 3 storey block at the eastern end of the site. It would have a maximum building height of 10 metres. The office building facing the Lower Bristol Road would comprise Bath stone and vertical glazing in keeping with the treatment of the retained façade. Along its eastern and western edge a more industrial treatment has been adopted comprising primarily red brick.

Museum and Community Space

A one storey museum and two storey community hall are proposed in the east of the site integral to the office block. One person is likely to be employed in the museum.

Residential

Ten two-storey houses are proposed in the south east of the site along the south boundary. The residential dwellings would be traditional in appearance similar to dwellings in Denmark Road to the south. They would be faced in Bath stone with red brick to the rear façade. The dwellings would have pitched roofs and be approximately 9 metres from ground to ridge. They would have small south facing gardens and front courtyards. The houses would have solar panels on the roofs.

Highways and access

The main pedestrian access onto the site is proposed from the Lower Bristol Road utilising the walkway provided behind the retained façade. A further pedestrian route is proposed from Lower Bristol Road to Dorset Close.

A new principal vehicular access is proposed off a realigned Brook Road in the west of the site. This would provide the main service access into the retail store service yard. Deliveries for other uses would be via a lay by in Dorset Close or via the basement car park.

Parking

The basement car park would be excavated to a depth of approximately 4 m below ground level. The proposed basement car park would be 13,330 m² and would accommodate 425 car parking spaces, including 399 spaces for the store and 26 spaces for the offices and work units. The basement car park would be protected by a flood gate at the entrance.

Some existing residential parking use of the former Bath Press Yard would be re-provided and this would be accessed from Brook Road. 9 spaces for the new residential units and one car club space would be provided at street level adjacent to Dorset Close and 7 spaces would be provided in the service yard for staff at the retail store. 29 spaces would be provided for existing local residents in the south west of the site. Cycle parking would comprise of 24 stands to serve the food store, 10 stands for the offices and work units and one cycle parking space per dwelling. Six of the 24 store stands would be allocated for staff use.

Landscape works

A new square of public open space would be created between the office building and the supermarket. Stone paving is proposed to reflect the materials within the retained facade and new buildings with some block paving. Street tree planting would be introduced around the square with planters along some site boundaries such as the edge of the front gardens of the proposed dwellings. An existing red brick retaining wall along the south east of the site, bordering the rear gardens of properties on Denmark Road, would be retained. A landscaped boundary fence would be provided in the south west of the site, to the north of the existing residents' parking area, to provide an acoustic and visual barrier to the proposed car park ramp and service yard.

Sustainability

A range of technologies have been employed within the scheme including sustainable ventilation, roof lights, solar panels, air source heat pump, and a combined heat and power unit. The office buildings are specified to reach beyond the requirements of Building Regulations Part L and the residential units have been designed to achieve code level 3 for Sustainable Homes.

The application is accompanied by an Environmental Impact Assessment with the following Technical Appendices submitted - Scoping, Air Quality, Site Description, Cultural Heritage, Landscape and Townscape Visual Assessment, Traffic and Transport, Ground Conditions, Natural Heritage, Noise and Vibration, Water Environment. As Environmental statement Addendum has also been submitted. The following additional documents accompanied the application - Environmental Assessment (non-technical summary) Planning Statement, Design and Access Statement and Addendum, Bat Survey, Sustainability and Energy Statement, Retail Assessment, Historic Appraisal, Statement of Community Involvement, Building Condition and repair Survey, Utility Report, Flood Risk Assessment, Topographical Drawings, Outline Travel plan, Buchanan Technical Notes and supporting highways information, Regeneration Statement, Gas holder Decommissioning Statement, Proposals to address HSE Objection.

An application to extend the existing Sainsbury store at Green Park is currently under consideration. It is relevant to the consideration of this application and that relevance is addressed in this report. The application is under Planning Reference 10/04475/FUL for Erection of extension to foodstore to provide additional retail floorspace and warehouse floorspace and alterations to car park layout. The proposals comprise of 1,448sq m of shop floor area and 963sqm of additional net retail sales floorspace, split between additional convenience (food) and comparison (non-food) goods sales.

Officer Assessment:

PLANNING CONSIDERATIONS:

APPEAL APPLICATION: Application 11/02674/EFUL is subject to an appeal for non-determination. In January 2012 the Development control committee resolved that had it had an opportunity to determine the application it would have refused the development on 5 grounds relating to gas risk, retail impact, sequential approach to development and highway impact.

The application the subject of this report includes 220sqm of community/museum space (Class D1/D2) in place of that same amount of office space whereas the appeal development proposals did not. The application the subject of this report has included within it documents that make proposals to decommission the Gas Tanks. At the time the appeal was made it did not include those proposals however measures to address gas risk were submitted to the Inspector in connection with the appeal.

DEPARTURE: The proposal includes retail development in a location that is 'out of centre' and is not in accordance with Development Plan for the area and exceeds the 5,000 square metres floorspace referred to in relevant guidelines. Consequently if Members were minded to approve the application 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.

LOSS OF EXISTING USE: The Local Plan forecasts the need for a managed reduction of industrial-type floorspace (B1c/B2/B8), which is incorporated into Policy ET.1 as indicative guidance on the scale of change appropriate. Policy ET.1 indicates a net reduction in Bath of 17,500sqm from 2001 to 2011.

Broadly speaking, during the Local Plan period there has been a net reduction in industrial floorspace within Bath of about 15,000 sq.m against the indicative managed reduction limit of 17,500 sq.m. Policy ET.3 states that the loss of land and floorspace for non-office development will be judged against the extent of positive or negative progress being made in achieving the managed net reduction set out above, and also against the following criteria: whether the site is capable of continuing to offer adequate accommodation for potential business or other similar employment uses; or whether continued use of the site for business or other similar employment uses would perpetuate unacceptable environmental or traffic problems; or whether an alternative use or mix of uses offers community benefit outweighing the economic or employment advantages of retaining the site in business or other similar employment uses.

Policy B1 (2e) of the Core Strategy continues the theme of a managed reduction of industrial floorspace. Broadly speaking the loss of 40,000 sq.m industrial floor space will be required in order to deliver the regeneration objectives for the River Avon Corridor. Policy B3(4aiii) requires that proposals for the loss of industrial land and floorspace at Twerton Riverside be assessed against evidence of current and future demand, the availability of suitable alternative provision within Bath for displaced occupiers and the benefits of the alternative uses being proposed. Policy B3(4aiii) serves as a check/balance to ensure proper consideration of industrial losses at any point in relation to actual evidence on the ground and/or unforeseen or changing circumstances.

The loss of industrial floorspace on this site would mean that the total managed loss referred to in policy ET.1 is exceeded but this is considered to be acceptable due to the proposed new employment uses (B1 and offices) that form part of the proposal and the current evidence in relation to demand. After considering the Local Plan and the Employment land and site specific policies of the Submission Core Strategy policy for the Twerton Riverside it is considered that the loss of the existing employment use is acceptable in principle.

HOUSING: Housing is in principle acceptable within the City limits subject to other policies of the development plan. The application proposes a small amount of housing (10 units) and this is acceptable in principle. This would be located near the school and other residential housing, is set back from the road and is in keeping with the locality in respect of its appearance. The design and location of the housing is considered therefore to be acceptable.

OFFICE: The site is located so as to be associated with the central area of Bath and it is also located on a key transport route into and out of the city. The principle of new office uses are therefore acceptable under the terms of Policy ET.2. The B1 use is acceptable to be located alongside residential uses as has been proposed and the office proposals are also acceptable in principle.

RETAIL: The Local Planning Authority commissioned a retail specialist to update its Retail Floorspace Quantitative Need Assessment in 2011. That update is publicised on the Council's website and will be 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. The data is the most up to date retail

information for the District that is now used to inform Development Management planning application decisions.

The applicant has submitted a retail assessment in support of their application that in broad terms suggests that the proposed store will provide needed competition, reduce shopping leakage out of Bath, will not have any significant harmful retail impact and would provide a number of benefits cited to be sustainability benefits that will reduce travel.

However the independent evidence base prepared on behalf of Bath and North East Somerset Council does not agree with the applicant's submission. The analysis carried out for the Council concludes as follows:-

Sequential Approach

Site Location

Within the Local Plan, the Tesco application site is not allocated for any specific land uses and lies outside of any defined centre. The nearest centres are located along Lower Bristol Road (to the east) and Moorland Road district centre (to the south). Both of these centres are beyond 300 metres walking distance and therefore, under PPS4 guidance, the Tesco site can be classified as an out of centre site.

It is of relevance to this consideration to note that the Sainsburys site does not lie within a defined centre. The closest defined centre is the city centre which lies to the east of the site. The walking distance between the eastern edge of the Sainsburys car park and the edge of the Primary Shopping Area ('PSA') is around 250 metres and the distance between the Sainsburys store and the PSA is around 300 metres. On this basis the Sainsburys store is an edge of centre location.

In accordance with PPS4 a sequential approach to site selection should be followed. Adopting a sequential approach to selecting sites means wherever possible seeking to focus new development within existing defined centres, or failing that on well located sites on the edge of existing defined centres. Only if town centre or edge of centre sites are not available will out of centre locations be likely to be appropriate in policy terms, provided that they are well served by alternative means of transport, and are acceptable in all other respects including impact. In considering the sequential approach to site selection a number of factors have been looked at (in accordance with the guidance within PPS4) including site availability and suitability, and the full and detailed assessment of all the relevant considerations is available within the retail consultants' report on the Councils web site.

In conclusion if the Green Park area is a suitable location for additional supermarket retail development then the Tesco proposal does not demonstrate compliance with the sequential approach to site selection. Beyond the expansion of the Waitrose store, the Green Park area (and the Sainsburys site in particular) is the next best 'in principle' alternative to accommodate new supermarket development and meet the identified need. Even if the Green Park / Sainsburys area were to be discounted then the Tesco proposal would still conflict with the sequential approach given the potential of the Western Riverside East area to accommodate new retail development in a location which is closer to the city centre.

Therefore, the Tesco proposal fails to comply with the sequential approach in PPS4 because there are up to two sequentially preferable locations where the need for additional retail floorspace which the proposal seeks to address could be met.

Convenience Goods

Following the grant of planning permission for a new Sainsburys store at Odd Down (and its recent opening), along with a certificate of lawfulness which will enable a significant expansion of the Waitrose store in the city centre and a resolution to grant planning permission for a Lidl foodstore on Lower Bristol Road (this is delegated to permit and awaiting completion of a s106 planning obligation), there is limited current quantitative capacity to support new convenience goods floorspace in Bath. Forecasts suggest that in the short to medium term, the area is capable of supporting only a modest sized foodstore or extensions to existing facilities by 2016. To put this into context the proposed Sainsbury extension could be regarded as a modest sized extension whereas the Tesco proposal would far exceed the retail capacity available. Larger levels of capacity only arise from 2021 onwards but even then, a large new foodstore would be likely to have some adverse impacts on existing facilities and the impact of proposed development would need to be assessed carefully. These impacts would be greater if a large new store was opened at an earlier date. Based upon the available data there is insufficient quantitative capacity to accommodate the proposed Tesco store in addition to those for which planning permission has been granted or resolved to be granted.

Comparison Goods

The evidence confirms that the Southgate development has soaked up previously identified capacity for additional comparison goods floorspace in Bath and part of the expenditure growth between 2011 and 2016. Given the scale of the Southgate development, the new retailers which it has attracted to the City, and churn effect (i.e. this is the natural and ongoing in and out migration of occupiers of existing sites which release those sites for new occupiers to enter) it will cause on existing property across the City there is no need to plan for any significant new comparison goods floorspace in Bath until after 2016. Additional capacity could be required in the future and this potential is being appropriately planned for within the Core Strategy via small to medium sized retail development (as referred to in policy B1). This retail development would need to be accommodated in accordance with the sequential approach, where first priority is given to sites within the city centre, followed by edge-of-centre sites. The current Tesco application is in an out-of-centre location. It is anticipated that sites will be considered and allocated for further comparison retail development through the Placemaking Plan.

Convenience Goods Impact

The District Centre of Moorland Road is located approximately 400 metres south of the current application site. If permitted the Tesco store would have a significant adverse impact upon the vitality and viability of the Moorland Road District Centre due to the lack of quantitative capacity to sustain the additional retail store in this location. It is indicated (based upon the Consultants' report for BANES) that the proposed Tesco store would have a significant financial impact upon the Co-op store with £2.4m diverted from that store. In addition, £0.2m would be diverted from the Sainsburys Local and £0.1m from other convenience stores in the centre. This diversion alone would reduce the Co-op's turnover by one quarter although when assessed alongside other commitments the Co-op would stand to lose almost 40% of its turnover. These estimates of impact are based upon a higher turnover level for the Co-op than given in the assessments supporting the Tesco

and Sainsburys applications and therefore could be seen as an optimistic view of the likely impact upon this store. If the alternative turnover levels for the Co-op are adopted then the store could stand to lose as much as 50% of its total turnover. Faced with such a large financial impact, and a residual turnover level which could be well below the average Co-op company performance, it is likely that the future of the Co-op will be uncertain. Indeed, closure of this store, given the scale of reduction in its turnover and ongoing competition from the nearby Tesco, is a very real possibility. The closure of the Co-op would lead to the significant adverse impact upon the health of Moorland Road district centre. As the centre's anchor store, it attracts a significant amount of shopping trips to the centre, and these would be lost. In addition to the impact on the Co-op, other parts of Moorland Road's convenience goods retail sector would see a reduction in their turnover levels. Whilst not as severe as the Co-op impact, the Sainsburys Local would experience a 19% impact and other smaller convenience goods stores would lose 8% of their 2016 turnover. Broadly half of this impact is attributable to the proposed Tesco store alone. Indeed, whilst the scale of financial impact upon these other stores is lower than the Co-op, store closures cannot be ruled out due to the proximity and trading strength of the proposed Tesco store, which stores in Moorland Road would find hard to compete with. The consequential effect of the impact of the Tesco on Moorland Road would be to reduce choice and competition in the district centre and the range of goods which it is able to offer to visitors.

It has also been considered whether there could be any positive benefits associated with the Tesco proposal in terms of linked trips with Moorland Road district centre which could mitigate the direct financial impact suffered by existing stores. Taking into account the distance between the Tesco site and Moorland Road, the intervisibility between the two locations, the barriers to movement and the attractiveness of the route it is unlikely that there would be any significant linked trips between these two locations. The length and character of the route which shoppers would have to negotiate would not be attractive and it is very likely that shoppers visiting the Tesco store would simply use it as a stand-alone shopping destination.

This is contrary to policy S4 of the Adopted Local Plan and national policy set out in PPS4. It would also be detrimental to the retail strategy/hierarchy of centres serving Bath as this vibrant District centre plays an important role in that hierarchy.

Consideration of the impact of the proposed Sainsburys Extension on Moorland Road District centre.

Whilst the Sainsbury application will need to be assessed on its own merits, it is of relevance to this application and can be afforded some weight since it has also been assessed in light of the updated Retail Floorspace Quantitative Need Assessment 2011.

In this regard, the Sainsburys store at Green Park is in reasonably close proximity to the District Centre and this is likely to result in a small financial impact upon the district centre. Whilst these financial impacts are a negative aspect of the Sainsburys extension proposal they are not considered significant enough to cause concerns over the future trading performance of stores on Moorland Road. In particular, the role and function of the Co-op store is unlikely to be affected. In terms of the other aspects of the extension's impact on the health of Moorland Road, it is not considered that footfall in the centre would be substantially affected, nor investment in the centre and vacancy levels. Overall, whilst the

Sainsburys store is also unlikely to provide any positive impacts upon Moorland Road district centre, the assessment of the wider impacts associated with the Sainsburys extension indicates that the vitality and viability of the centre would not be affected to any significant extent.

Cumulative Retail Impact.

The retail analysis carried out by the appointed consultant takes into account any current retail commitments i.e. developments that either have planning permission or a resolution to grant. Account also needs to be taken of the current application for a proposed extension to the Sainsbury store, as mentioned above. In light of the Sainsburys proposal it was felt appropriate to commission a further piece of work from the Council's retail consultants in order to understand the cumulative retail impact of both the proposed Sainsburys and Tesco stores were they both to be permitted and this is discussed below.

Cumulative City Centre Impact

The conclusions of that additional analysis are that both proposals would have a comparatively low impact upon the city centre, with an overall impact of 2% for Sainsburys and 4% for Tesco. The differences between the two schemes becomes more noticeable when the impact is based upon convenience goods expenditure alone, with the Tesco store having an 18% impact upon the city centre and the Sainsburys extension having a smaller 8% impact. For both schemes the cumulative impact is lower than the impacts directly associated with each scheme due to the commitment for an extended Waitrose store which will boost city centre turnover.

Cumulative Moorland Road Impact

There is a clear difference between the two proposals in terms of their individual impacts on Moorland Road, with the Tesco store being identified as having a significant adverse impact upon the viability of the Moorland Road shopping centre, in contrast to the much lower levels of trade diversion associated with the Sainsburys extension. The cumulative impact of the Tesco proposal and the Sainsburys extension would be greater than either proposal alone, thus reinforcing concerns over the future health of the District centre.

Planned Investment

Neither the Tesco or Sainsbury proposal has been proven to have a direct impact upon planned investment in the city centre or Moorland Road district centre although the higher financial impacts associated with the Tesco scheme may make investment in convenience goods floorspace in the city centre, such as the Waitrose extension, more marginal and also have the potential to influence future investment plans in Moorland Road.

Cumulative Retail Impact Conclusion

As a consequence of the above, it is not considered that there are grounds to resist the grant of permission for either or both of the Tesco and Sainsburys proposals based upon the level of impact on Bath City Centre. However, given that there are significant concerns over the impact of the Tesco store alone on the health of Moorland Road District Centre, approval of both schemes would exacerbate this impact even further. This is supported by the lack of available quantitative expenditure capacity to support both stores. The Tesco store would be unacceptable in terms of its impact irrespective of whether the Sainsbury store was permitted.

New Retail Analysis Submission

The applicant has recently (February 2012) submitted a further retail analysis. The Local Planning Authority has made an assessment of that recent submission and reconsidered the applicants retail proposals in light of a 2011 household survey that is now relied upon by the applicant in support of their case and the findings are set out below.

Impact

The latest submission by the applicant (prepared by NLP) utilises the results of a survey of household shopping patterns conducted in October 2011. This survey was commissioned by White Young Green who are Sainsburys' retail planning consultant. The NLP work does not provide a detailed updated retail capacity and financial impact analysis for the proposed Tesco store. However, with the October 2011 household survey the only available survey which includes the trading performance of the new Sainsburys store at Odd Down, it is useful for this survey to be used to update the Council's own analysis of retail floorspace capacity and financial impact for both the Tesco and Sainsburys extension proposals. We have therefore prepared a new assessment of capacity and impact and the results are summarised below.

The latest predicted impacts associated with the Tesco and Sainsburys scheme are relatively similar to the previous estimates. Having considered the impacts in detail, including the impacts associated with the commitments (Waitrose and Lidl), the Sainsburys at Odd Down, plus the impacts associated with the proposals themselves, we consider that the new results do not revise the Councils position on retail impact.

In other words, the impacts associated with both schemes on the city centre are not serious enough to warrant a reason for refusal. A similar conclusion is reached in relation to the small impact of the Sainsburys extension on Moorland Road.

In contrast, it remains the case that the impact of the proposed Tesco on Moorland Road is a significant adverse impact. The individual impact of the Tesco store on the district centre as a whole is large (circa 20%) and when combined with recently opened and committed floorspace the district centre could lose around one third of its turnover. Moreover, the cumulative impact of the Tesco on the Co-op store remains very similar to previously estimated (by GVA) at 44%. We remain of the opinion that closure of the Co-op is a very real possibility.

Retail Floorspace Capacity

Turning to the assessment of retail capacity for food floorspace in Bath, it is useful to repeat the findings of our previous analysis in 2011 whereby it was concluded following detailed analysis that the only way of fully accommodating the Tesco proposal (alongside the Sainsburys Green Park extension) within the previous (2011) analysis was at 2026.

Using the October 2011 household survey, a new retail floorspace capacity analysis has been undertaken. This new analysis shows that surplus retail expenditure to support new convenience (food) retail floorspace at 2012, 2017, 2021 and 2026 has risen slightly over previous levels. It is to be noted that a higher level of surplus expenditure is also predicted by NLP (on behalf of Tesco/St James) although, very importantly, the NLP analysis is not comprehensive (as it doesn't include all food retail floorspace in Bath).

Based on the surplus expenditure capacity levels shown below, the small increase in surplus expenditure means that the Tesco could now be accommodated by 2021, but only if the Sainsburys Green Park extension is resisted. Therefore, it remains the case that the only way of accommodating both current proposals will be at 2026.

It is usual for capacity assessments to be restricted to the next five years (i.e. up to 2017) (specific reference is made to this in EC16.1d of PPS4) and on this basis 80% of the Tesco turnover could be accommodated by 2017 (without the Green Park extension) and only 58% of the Tesco turnover (if the Green Park extension is taken into account).

The lack of available surplus expenditure is not a reason in itself to resist an application. However, it remains a contributor to the assessment of the sequential test and impact and, in this case, is a contributory factor to the conclusion that the Tesco store will lead to significant adverse impacts (because there is a lack of surplus expenditure to accommodate existing and both proposals).

COMMUNITY USE: The provision of community space/museum space is regarded as an overall benefit within the scheme subject to it being appropriately managed and controlled. Policy CF.1 of the Local Plan allows for new community facilities to be located within or well related to settlements. In this case the application site is located within Bath. Taking into account that the proposal to introduce community facilities would accord with a saved Development Plan policy there is not a requirement to consider the suitability of the use against PPS 4 policies. If the overall development were to be acceptable further details of that management and control might be appropriately sought.

Waste

Further details on waste storage could be subject to a condition if the development were to be approved.

PUBLIC SAFETY: The Health and Safety Executive (HSE) is a statutory consultee for certain developments within the Consultation Zones around Major Hazard Sites and pipelines. The application site falls within the HSE Consultation Zones around the Windsor Bridge Gasholder Station, and the application has consequently been considered using the PADHI+ planning advice software tool provided by the HSE for assessing gas generated risk. The advice of the HSE is that there are sufficient reasons, on safety grounds, for advising against the granting of planning permission in this case. Whilst it is recognised that the likelihood of a major accident occurring is small, the possibility remains that a major accident could occur at the installation and that this could have serious consequences for people in the vicinity. In particular with regard to the proposals there would be significant numbers of visitors and workers present within the development that could be at risk. In the event that this application is proposed to be permitted contrary to the advice of the HSE, they must be provided with 21 days notice to consider whether to request that the application is called in for determination by the Secretary of State.

In order to overcome the objection to the application that has been made by the HSE, the applicant has submitted supporting documentation and has proposed Heads of Terms for a legal agreement and a Grampian condition with a view to ensuring that the risks associated with the existing Windsor Gas Holder Station a short distance to the north of the appeal site are appropriately managed. The HSE themselves raised the possibility of using a Grampian condition in their original letter of objection, on the basis that a similar

approach had been adopted in late 2010 in the determination of the proposals for the regeneration of Bath Western Riverside.

A Grampian condition is a negatively worded condition which prevents the development (or its occupation) from taking place until a specified action has been taken: for example, such a condition might prevent the commencement or occupation of a development until certain off-site roadworks have been carried out, or until a particular highway has been stopped up. They are generally used in relation to works that need to be carried out on land outside of the applicant's control, and can allow planning permission to be granted for development which would otherwise be unacceptable. The nature of this approach means that care must be taken to ensure that any Grampian condition actually secures what is necessary, and it is important that such conditions are drafted on a case-by-case basis.

In the present case, the primary purpose of a Grampian condition and/or planning obligation would be to prevent the occupation of the proposed Tesco store, and other elements of the development, until the Gas Holder Station has been decommissioned.

It is the Secretary of State's policy, as set out in paragraphs 39-41 of Circular 11/95 relating to Planning Conditions, that there should be a reasonable prospect of the action required by any such condition being undertaken within the lifetime of the permission. The converse is that, if there is no reasonable prospect of the condition being fulfilled within that timeframe, then (whilst it would not be unlawful to grant permission subject to such a condition) the condition should not be imposed and the planning application should be refused.

Similar considerations would in the view of officers apply regarding the provisions of any S106 obligation which sought to achieve the same objective. The principal underlying purpose of the Secretary of State's policy is to avoid the accumulation of unimplemented planning permissions, so it would be reasonable for members to consider whether there is a reasonable prospect of the Gas Holder Station being decommissioned within the lifetime of the permission both in the context of a proposed planning condition and a proposed planning obligation.

The Grampian Condition initially proposed by the Applicants is: 'St James Investments and Tesco Stores limited will not commence development of the Bath Press Site until it has entered into a binding contract with Crest Nicholson/ Wales and West Limited to give effect to the decommissioning works to the Windsor Bridge gas tanks holders'.

The Heads of Terms initially suggested by the Applicants propose that:

1. 'Tesco stores and St James Investments will not commence work on the Bath Press Site until they have entered into a binding contract with Crest Nicholson to pay for the Decommissioning Works with a view to bringing forward the redevelopment of the gas holder site and any other Bath Western Riverside redevelopment sites and such contract has become unconditional.'; and
2. 'Tesco stores will not open for trade until the gas holder is lowered to the ground, purged of gas, and the gas delivery pipe is removed for a length of at least 1 metre'.

As previously mentioned, the HSE have also said that a Grampian condition could be acceptable to them, and they suggested the following condition: 'No occupation of any habitable development, or development of any permanent building designed for

occupation shall take place within the Inner or Middle Consultation Zones shown on the attached plan provided by the Health and Safety Executive entitled 'Windsor House Holder Station reference HSE HID C15 Ref: H 1596' until Windsor Gas Holder Station has been permanently decommissioned to the satisfaction of the local planning authority and the hazardous substances consent applicable to the three gas holders has been removed.

The HSE indicated that the imposition of this condition could meet the HSE's public safety concerns, implying that their objection could be withdrawn..

The above condition is based very closely upon the Grampian condition agreed with the HSE and imposed by this Council in respect of the Bath Western Riverside development.

The key considerations in relation to the above are whether either the Grampian conditions and/or the Heads of Terms suggested by the applicant, taking in to account any other supporting documentation the applicant has in addition submitted, are sufficient in this case to ensure the decommissioning of the Gas Holder Station prior to the occupation of the scheme. The Applicants' proposed Heads of Terms relate only to the non-occupation of the retail store, and it is not yet clear whether the HSE would be prepared to agree to other parts of the scheme (e.g. the residential units) being occupied in advance of the decommissioning of the Gas Holder Station. Further discussions will be needed with the HSE in order to clarify their approach to this mixed use development in this regard.

The wording of the Heads of Terms and Condition initially proposed by the applicants' team is flawed and fails to meet the relevant tests. Firstly it only relates to named companies (Tesco stores and St James Investments), and would not seem to prevent occupation by anyone else. Secondly, the trigger proposed is inadequate as it only requires a contract to have been entered into for the decommissioning works, and that contract might (for instance) specify a date for the decommissioning of the Gas Holder Station that is so far in the future that the development will already be occupied before it happens. The second of the Heads of Terms quoted above goes further in that regard as it refers to the store not opening for trade. Thirdly it would appear that there is land owned by other third parties that would be required in order to secure the decommissioning of the Gas Holder Station, and the planning implications of any such involvement remain unknown. Fourthly it is not certain that there are no other potential developers who may in due course be capable of bringing forward the decommissioning benefit. These latter two points are considered further below.

The Grampian condition suggested by the HSE

The Condition suggested by the HSE is an improved version to that proposed by the Applicants' as it refers to "No Occupation" which is considered to be the correct trigger in this case. As indicated above, it is a similar condition to that used in respect of the Bath Western Riverside Development. However Members are advised that the wording of the Condition on its own in this case would not bring about the same level of certainty and it is in this regard relevant that the Gas Holder Station (unlike with Bath Western Riverside) is outside the current application site. In the present case, if the development were ready for occupation and the decommissioning had not taken place, there could be considerable pressure on the Council to agree to a relaxation of the relevant condition/obligation, especially if any perceived delay in the decommissioning is outside the Applicants' control. The risk of this happening would be mitigated to a degree by the first of the obligations

proposed by the Applicants, but again it should be noted that the applicants' Heads of Terms relate only to a specific named occupier (Tesco stores), and would not appear to cover occupation by any other organisation.

The precise wording of any planning condition(s) and/or planning obligations is not however a critical consideration, since this may prove capable of resolution in discussions between the Appellants, the HSE and the Council. . Indeed, recent discussions between your Officers and the Applicants' Agents, and then subsequently with the HSE, lead your Officers to the conclusion that it is highly likely that a form of words for the combination of Conditions and S106 Terms can be found that will result in the HSE withdrawing their formal objection to the scheme. Your Officers are now satisfied on the basis of these discussions that there is a reasonable prospect of the Gas Holder Station being decommissioned before the expiry of any planning permission that may be granted for the currently proposed development, subject of course to any permission incorporating the necessary Conditions and S106 provisions.

Of greater significance is the broader question of what weight should be given to the applicants' offer in part to fund the decommissioning through an agreement between themselves, Wales and West Utilities (the gas supply company) and Crest Nicholson (the developers of BWR).

Little information was provided by the applicants to assist the Local Planning Authority with making this judgment. The limited information provided by the applicant rendered it impossible to be clear as to exactly what works might be required or what consents might be needed (and from whom) for those works to take place.

As to (ii), the applicants position is that, without their proposed contribution to the costs of the decommissioning works and the provision of the necessary new infrastructure, the decommissioning works are unlikely to take place for the foreseeable future. However, again, the Council was provided with little information on the basis of which an informed judgment can be made. In these circumstances, it is difficult to give significant weight to the Applicants' argument in deciding whether or not to grant planning permission.

Officers have recently met with the applicant, and representatives from key parties with an interest in the gas risk site i.e Wales and West and Crest Nicholson. That meeting provided significant clarification as to the works that need to be carried out by whom, the timing for those works and the cost implications. In addition a further report has been submitted by the applicant at the time of writing this report.

Officers are now able to respond to that additional information and to advise Members as to how this matter should be addressed.

In essence, the Applicants are arguing that by entering into a contractual relationship with Wales and West Utilities and with (BWR Developer) Crest Nicholson, to contribute a significant sum towards the overall cost of decommissioning the Gas Holder Station, they are bringing forward the implementation of a substantial western portion of the BWR regeneration scheme. This, it is argued, is a significant community benefit, in that it would enable the Council's flagship housing allocation to proceed without (or with a smaller) delay, thereby meeting the delivery trajectory set out in the SHLAA, and reducing the

potential for other less acceptable sites to be brought forward by developers in order to attempt to take advantage of any perceived failure to meet the SHLAA's aims.

Correspondence has also been received from Crest Nicholson indicating that they too see the potential of an injection of Tesco / St James Investments' funds as being a significant delivery benefit for BWR.

Of particular significance is the formal position taken by the Council on this point in presenting its Draft Core Strategy for consideration by the Inspector in the recent EIP. Various parties had challenged the Council's proposals on the basis that they were over-optimistic in respect of the SHLAA delivery trajectory, and BWR came under particular scrutiny, not only because its continued implementation is undeniably dependent upon the decommissioning of the Windsor Gas Holder Station, but also because it represents a very large proportion of the SHLAA provision for Bath (and for the District as a whole).

In the EIP, the Council sought to reassure the Inspector that he could be confident that BWR can indeed be delivered. This was done in verbal submissions and in an associated Issues Statement, and the Council indicated that the delivery of BWR is not dependent upon the implementation of any particular development proposals (such as the current application), but that there is a range of funding sources, and that these are backed up by public sector initiatives aimed at underwriting any financial shortfall. The level of certainty in this regard is enhanced by the existence of a formal agreement between Crest Nicholson and the Council which is targeted at the staged implementation of the entire BWR development.

In this context, the Council has based its SHLAA strategy upon BWR delivery within the Core Strategy period without funds from Tesco / St James Investments, and indeed it would have been wholly inappropriate for any part of the Core Strategy proposals to have been in any way dependent upon the approval of a scheme that is contrary to both national and local published Planning policies. Accordingly, whilst the offer to fund the decommissioning of the gas holder station is a material consideration it can only be afforded very little weight since it would not substantially improve the likelihood of BWR being completed or significantly bring forward the timetable for that implementation.

In conclusion, your Officers conclude that the Applicant has not put forward a sufficiently compelling argument to justify attaching significant Planning weight to the alleged community benefits that would be associated with the decommissioning of the Gas Holder Station. To attach significant Planning weight to the argument put forward by the Applicants would undermine the credibility of the Council's arguments in the Core Strategy EIP, which could have a negative impact upon the Council's strategies and policies.

Members are therefore advised that whilst it is likely that the HSE's objection can be overcome through the use of appropriate Conditions and a S106 Agreement, on the basis of the current information the resultant decommissioning of the Gas Holder Station cannot be given significant weight in balancing the Planning merits of the current proposals. The potential for the decommissioning of the Gas Holder Site is not a consideration that can reasonably be used as an argument to overcome or outweigh the serious retail and highway objections to the development that are set out in this Report.

HIGHWAYS: A Transport Assessment has been submitted. The Council's Traffic Signals Engineers are of the opinion that the proposed development will be detrimental to the operation of the Lower Bristol Road/Windsor Bridge Road/Brook Road junction, one of the most critical on the local network, exacerbating problems of capacity by increasing the level of overall saturation that would otherwise have occurred without both the development and the proposed mitigation works.

There are also safety issues associated with the proposed road layout. These are set out within the Highway Development Officer's consultation response in further detail. Taking account of the information submitted it is considered that the overall impact on the capacity of the junctions and the adverse impact on highway safety as a consequence of this development would be unacceptable.

It is material that in recognition of the current congestion difficulties that will worsen once the Bath Western Riverside development is complete. The Council has sought funding for junction improvements to be made. That funding was secured as part of the Bath Transportation Package in December 2011. This means that funding will be committed subject to conditions, including any statutory procedures. It is advised by highway colleagues that following full approval, anticipated to be obtained in July 2012, the works would take place during 2013. Additional land is required in order to carry out those improvements and that land is currently in the control of third parties. It is of significance that the applicants proposal is considered to be in conflict with the Councils own committed scheme for junction improvements as it seeks to address the traffic associated with the proposed development which has different priorities.

As can be seen from the series of highway comments reported above in this report there has been significant dialogue with the applicant on highway issues during the course of the current application. Officers have since the previous committee continued to meet with the applicant and discuss highway issues. In this regard the applicant has now made further highway submissions in respect of plans to amend layout and a further highway review of these submissions have been made. Whilst some improvements to the scheme layout have been achieved the substantive issue relating to the impact upon the operation of the junction has not been overcome.

AIR QUALITY: There is an air quality concern due to the significant increases in nitrogen dioxide that would arise in the vicinity of the development. Whilst it is not considered appropriate to refuse the application on this basis it is considered that the issue is symptomatic of development that would not provide for efficient and sustainable transport. As already discussed within the report the development is out of centre, has limited opportunity for linked trips, is likely to be used as a stand-alone destination and the levels of parking provision demonstrate that many of these trips will be by car rather than more sustainable travel modes. This issue is exacerbated by the difficulties associated with the poor operation of the junction discussed above. In contrast the Sequentially preferable sites (such as the site of the Sainsburys proposal) offer much better potential to encourage linked trips with the city centre and are more sustainably located.

DRAINAGE: A satisfactory flood risk assessment has been submitted and there are considered to be no flood risk or drainage issues arising from the development that cannot be appropriately and acceptably addressed through planning conditions in accordance with the advice of the Environment Agency and Highways Drainage Officer.

ECOLOGY: It has been suggested by the Council's ecologist that the scheme could do more to provide ecological enhancements. However, that would not warrant rejection of the scheme. The proposals are agreed not to harm any ecological interests, subject to the imposition of suitable planning conditions. Based upon the current evidence of ecology known to be on the site a licence from English Nature would not be required and there would be no significant effect on any European Site or local site of nature conservation importance.

DESIGN AND LANDSCAPE: The application has taken the approach of retaining and integrating the existing façade and chimney whilst demolishing the rest of the building. There are competing views on whether the design approach is appropriate particularly with regard to how much, if any, of the building should be retained. Design is a subjective matter and in this case the applicant has made a satisfactory case for the approach taken. However it would be appropriate, if the application were to be approved, that the repair and retention of the façade is secured within a section 106 planning obligation. The applicant has amended the design in response to concerns from Officers and on balance it is considered that in design terms the scheme is acceptable in terms of the design approach. Landscape opportunities within the site are limited. It is acknowledged that all trees within the site would be lost and that there are limited planting opportunities. However, this is an urban location and it is considered that, on balance, the development is acceptable and where opportunities for planting within the site exist this new planting can be conditioned and a scheme agreed to respond appropriately to the site and its context. It is considered that carriageway widening works outside of the site to the public highway would be visually detrimental in townscape terms as the highway would become more visually dominant, and this is to be regretted. However, it is considered that taking account of the extent of the changes and the fact that highway works and improvements could take place outside of the scope of planning and in connection with any number of proposals for development these impacts do not provide the basis for a reason for refusal.

CRIME PREVENTION: The applicant has advised that the security strategy adopted is based on the principle of casual supervision. It is agreed that the arrangement of the mix of uses is generally helpful in securing natural surveillance and that there will be good permeability through the site. There will be some CCTV on site and particularly in basement areas this is considered appropriate. Whilst security measures have not been addressed in great detail in the submission it is considered that it would not be appropriate to refuse the application on these grounds. A condition requiring security details could be attached to any decision.

EDUCATION: If the application were to be found acceptable a sum by way of an education contribution would need to be agreed with the applicant in accordance with the Council's adopted Supplementary Planning Document. The absence of such a contribution would justify refusal. Notwithstanding the sum identified in September 2010 it is necessary to review figures periodically to take account of changes over time and in this case if the application were to be acceptable an updated figure should be sought.

AFFORDABLE HOUSING: The site would generate an affordable housing requirement in accordance with Policy HG8 of the adopted Local Plan. This has not been agreed with the applicant and no Heads of Terms have been provided. Therefore, if the application were to be found acceptable provision for affordable housing would need to be agreed with the

applicant in accordance with the Council's adopted Supplementary Planning Document. The absence of such provision would justify refusal.

ARCHEALOGY: There are no archaeological objections to the scheme, however, conditions to monitor development would be required.

LAND CONTAMINATION: There are no land contamination objections to the scheme, however, conditions would be required to investigate and assess risk.

NOISE: The applicants have not submitted a noise assessment that predicts the Noise level categories that the development would fall within. The applicant has advised that whilst the residential element of the scheme did not receive specific consideration within the Environmental Statement, the baseline noise survey does contain a measurement at a location near to their proposed location, off Dorset Close. This places the location on the boundary of NEC A and NEC B. Taking account of the fact that no new residential properties are proposed in the vicinity of Brook Road but only in the area off Dorset Close, and the fact that the new residential dwellings are set back into the site and partially screened from major roads by other buildings, the residential element of the scheme would not be subject to noise levels so significant so as to warrant refusal of permission.

ADJOINING RESIDENTS: The site in its current condition makes no contribution to the locality and its redevelopment would improve overall residential amenities. The proposed mix of uses is appropriate to the locality and overall it is considered that the proposal would improve the amenity of local residents. It would remove unsightly vacant buildings and bring forward uses onto the site that would generate less noise than the extant use might generate and be more compatible with the local residential area and the adjacent school.

OTHER MATTERS: Concern has been raised with regard to seagull nuisance and if the scheme were to be permitted a condition could be attached to the decision to install necessary preventative measures. The applicant has confirmed this would be acceptable.

JOB CREATION: Based upon the figure stated on the application form the proposed development would create 643 jobs of which over half would be in the retail store. Whilst it is acknowledged that the proposal would have the potential to create new jobs for the local population (in retail and office development as well as during construction) it is also to be noted that job opportunities could be lost from other stores in Bath as a result of the diversion of trade to the new Tesco store. For example, significant amounts of trade would be diverted from the two Sainsburys stores, the Morrisons, the Waitrose in the city centre and the Co-op on Moorland Road. Whilst consideration has been given to job creation and some benefits are acknowledged it is considered that the benefits arising from this specific development are not so great so as to warrant significant positive weight being given to this aspect of the proposals so as to override other harmful impacts that would arise.

ASSESSMENT OF ANY BENEFITS ASSOCIATED WITH THE DEVELOPMENT:

The applicant has made a number of statements outlining what they regard to be the benefits of this proposal. In summary as set out within their planning statement the applicant is suggesting that the development will provide retail choice to the community, modern employment space generating jobs, and new community and residential accommodation.

Officers having carefully weighted up all of the information provided are of the view that whilst there may be some benefits associated with the development and these are discussed within the report it is the weight to be given to those benefits compared to what Officers consider to be the other very substantial adverse impact that is a key consideration. Officers are of the view that in this case the benefits would not outweigh the very significant level of harm caused in terms of the retail impact, highway impact and gas risk, that would arise if the development were to be permitted.

ONGOING NEGOTIATIONS

Officers have held meetings with the applicant to consider if areas of outstanding concern can be eliminated or overcome. There have been discussions held relating to highway matters and gas risk and following up on those discussions further information on highway matters and gas risk have been submitted and in addition new retail reports have been provided. These have now been fully assessed and are reported upon within the main agenda report. Further consultations with the contributors to the application have also been carried out and it is to be noted that final expiry dates are on the date of the committee. Therefore any representations received up until the expiry date would need to be taken into account prior to a decision being issued.

SUMMARY OF CONSULTATIONS/REPRESENTATIONS

PLANNING POLICY - Comments made 25th May 2011 and 31st January 2012 confirm that there is no objection in principle to the loss of the primary use of the Bath Press site as a place of industrial enterprise. However based on the evidence, planning policy objects to the retail elements of the application on the basis of lack of capacity to support the proposal, the proposal is not compliant with the sequential approach to site selection and the serious harmful impact on the Moorland Road shopping area, .

HEALTH AND SAFETY EXECUTIVE - Comments generated through PADHI +, HSE's planning advice software tool 24th August 2010 - The assessment indicates that the risk of harm to people at the proposed development is such that the Health and Safety Executive's advice is that there are sufficient reasons, on safety grounds, for advising against the granting of planning permission in this case.

Comments made 17th January 2012 discuss the potential to overcome gas risk matters through the imposition of a suitably worded Grampian condition. A condition proposed by the applicant is confirmed to be unacceptable to meet the objectives of the HSE and they have proposed an alternative form of wording.

HIGHWAY DEVELOPMENT OFFICER - Comments made 20th September 2010 Object to the scheme on the basis of its impact on highway safety and the operation of and capacity on the public highway.

Further comments 29th March 2011- acknowledge some improvements and advise that further comments are sought from the signal engineers in respect of the junction.

Further comments made 1st April 2011 - We cannot accept the Lower Bristol Road/Brook Road/Windsor Bridge Road junction design, as the signal assessment has not been carried out correctly and we are not satisfied that this junction has adequate capacity.

Further comments made 6th April 2011 additional comments made by the Transportation Planning and Highway Electrical Teams identify a number of issues that would as a

consequence have an unacceptable impact on both capacity and safety on the highway network

Further comments made August 2011 Request additional information that will be necessary to properly assess revised proposals that have been submitted.

Further comments made 22nd November 2011 Highway signal engineers have assessed submitted Technical files that are an improvement on previous assessments but still show a junction well over capacity on all approaches. In particular the improvement upon previously suggested performance has been achieved primarily by the staging structure adopted. Whilst the additional right turn lane exiting Brook Road offers extra capacity benefit, this is significantly reduced by the increased length of pedestrian crossing across it. The associated intergreen timings to and from it are very long also, which therefore reduces junction performance. The staging structure is one which we cannot support in this location.

Further comments made 23rd November 2011 confirm that having assessed the Transport Assessment and revised plans serious concerns about the proposed development and a highway objection remain. For the following reasons

- 1) The A36 Lower Bristol Road/A3064 Windsor Bridge Road/Brook Road junction is still shown to operate well over capacity on all approaches with the proposed development.
- 2) The proposed traffic signal staging structure adopted is unacceptable at this location, on highway safety grounds
- 3) Provision for westbound cyclists on A36 Lower Bristol Rd is unacceptable and a danger to cyclists
- 4) The Council does not control the land required to implement the necessary carriageway widening at the north west corner of the junction, as shown on the submitted plans. The applicant has not provided any evidence to indicate that they are able to acquire this land.
- 5) Given the proximity of the store access junction and the A36 Lower Bristol Rd/Windsor Bridge Rd junction, together with the likely queuing on Brook Rd, the operation of these junctions must be analysed as a complex junction. The necessary assessment has not been provided.
- 6) There will be a substantial generation of new trips and turning movements at the A36 Lower Bristol Rd/Windsor Bridge Rd junction, which has inadequate capacity to accommodate these traffic movements
- 7) Inadequate provision has been made for taxi pick up and drop off, within the development.
- 8) The delivery area for the workshops creates additional junctions in close proximity to the proposed access junction. This creates an unnecessary highway safety hazard for pedestrians and other road users.
- 9) No swept path analysis has been provided for servicing access to the Royal Oak Public House. Given the substantial increase in traffic flow in the vicinity of the access, as a result of the development, there will be increased conflict between vehicles serving the public house and other vehicles on the highway, to the detriment of highway.

Further comments made 25th November 2011 The submitted information lacks clarity however based on the information the proposals remain unacceptable.

Further comments made 21st December 2011 - 1) A36 Lower Bristol Rd/Windsor Bridge Rd junction

1a) Junction Capacity the Council proposes to improve the capacity of the A36 Lower Bristol Rd/Windsor Bridge Rd junction as part of the Bath Transportation Package, which achieved programme entry status on 14/12/11. The future base case (without development) is therefore no longer valid, since capacity improvements will be achieved without the proposed development.

1b) Traffic Signal Staging My concerns regarding item 1b above (21/11/11) remains. Whilst the proposed signal staging structure is used elsewhere in the UK, local circumstances, predicted traffic flows, turning movements and queues render it unsuitable at this location for the reason given previously. There is a particular concern that the proposal will increase the level of eastbound queuing on the A36 Lower Bristol Road, east of the junction, which will cause right turning traffic from Brook Road to block the junction.

1c) Cycle facilities on A36 Lower Bristol Road.

It is accepted that the safety of cycles traveling westbound can be improved by additional cycle markings to be agreed by way of a planning condition.

1d) Land at north-west corner of A36 Lower Bristol Rd/Windsor Bridge Rd junction.

The existing geometry at this junction does not provide sufficient width on Lower Bristol Road to provide three entry lanes (3m minimum) for eastbound traffic together with a 2m footway. In addition, it appears that the applicant has used Ordnance Survey (OS) data, rather than a topographical survey to indicate the proposed layout. The OS data does not show the correct position of existing kerb lines, so I cannot be confident that an acceptable geometric design can be achieved within the highway boundary and on land owned by the applicant.

1e) Junction Operation

I am satisfied that, at peak times, the proposed development provides sufficient queuing capacity within the site boundary.

2) Trip Generation I am satisfied that the trip generation estimates provide a sound basis for assessing the effect of the development.

3) Taxi Pick Up/Drop Off The applicant has provided a drawing to show a taxi pick up/drop off area within the basement car park area. This will provide an acceptable facility for taxis.

4) Workshop Delivery Area

The applicant has estimated that 15 light goods vehicles per day would use the proposed workshop delivery area, with access restricted by controlled bollards. The applicant has also confirmed that larger servicing vehicles would be able to use the foodstore service yard by prior arrangement. I have reviewed my earlier objection to this layout but remain convinced that it would create an unacceptable highway safety hazard, for the reasons given previously (12/11/11).

5) Servicing Royal Oak Public House The applicant has provided a swept path analysis for vehicles servicing the Royal Oak public house. Given that servicing is currently undertaken by light goods vehicles, I am satisfied that the proposed layout does not create a highway safety hazard.

6) Right Turn from Brook Road The applicant has confirmed that vehicles will be able to turn right from Brook Road into the proposed development and this can be accommodated within the proposed scheme.

Further comments made 23rd December confirm no comments to make to the EA Addendum and Gas Holder remediation proposals. The Highway position remains one of Objection.

Further comments made 1st March 2012. 1) A36 Lower Bristol Road/Windsor Bridge Road/Brook Road Junction

The applicant has produced numerous iterations for the highway design and signalling arrangements for this junction. The Council has considered each of these and provided feedback to the applicant. A key concern for the Council is to ensure that the junction can operate safely and efficiently. This has been challenging for the applicant since the proposed development, together with the committed Bath Western Riverside scheme and

background traffic growth, is predicted to increase peak hour flows from 2010 levels by up to 41% in the PM peak hour by 2020. By comparison, Bath Western Riverside and background traffic growth alone is predicted to increase traffic by up to 19% in the same peak hour. The Council intends to accommodate the committed growth by improving the junction as part of the Bath Transportation Package. This includes widening the A36 Lower Bristol Road on the eastbound approach to provide 3 full lanes at the junction. This will result in a reduction in queues and delays on the A36 National Primary Route, which is also a showcase bus route in the Bath Transportation Package.

The highway layout for the proposed development is incompatible with the Council's proposed scheme since it give more highway space and priority to traffic turning in and out of Brook Road. The anticipated reductions in queues and delays delivered by the Council's improvement scheme, including benefits to the showcase bus route, are therefore negated by the proposed development.

The junction layout proposed by the applicant does provide additional capacity improvements. However, this has been achieved by compromising highway safety, in terms of the signal staging and highway layout as set out below. These safety concerns apply to the junction operation at all times of day and not just during the peak hours.

Signal Staging

- a. With the level of movements from both side roads there would be an unacceptably high level of conflicting movements in the centre of the junction and merging in;
- b. Right turning traffic would not clear quickly from the side roads (queuing) as impeded by other movements and drivers could therefore risk more dangerous manoeuvres;
- c. Visibility of signal heads could be obscured;
- d. Visibility (seeing around) opposing waiting vehicles whilst wanting to turn would be difficult; and
- e. There is an added risk that if the junction became 'exit blocked' that waiting right turning vehicles could get trapped in the path of oncoming main road traffic once the following signal stage began.

Highway Layout

- a. There are too many conflicts at the centre of the junction, with road marking essential for the side road right turn movements being constantly overrun by A36 main road traffic. These include hatched areas and arrows which is unusual and could confuse drivers and cyclists moving ahead on A36 Lower Bristol Road.
- b. Geometrically, none of the entry lanes line up with the exit lanes. This is particularly evident from Brook Road moving ahead, which angles towards the right turn lane. Vehicles could drive out of lane if not paying attention or driving too quickly.
- c. Westbound cyclists on A36 Lower Bristol Road heading towards the opposing kerb face risk being squeezed by vehicular traffic. It was previously considered that this may be resolved by way of a condition, but this may not be possible.
- d. Vehicles travelling eastbound on A36 Lower Bristol Road waiting to turn right into Brook Road are not protected from ahead A36 Lower Bristol Road westbound

traffic and Windsor Bridge right turning vehicles. This is a particular concern for cyclists waiting in the advance cycle area. An island in the carriageway would provide adequate protection, but there is insufficient carriageway space for this facility.

Workshop Delivery Area

We are pleased to see the removal of the workshop servicing area on Brook Road and relocation of this facility to the underground car park and Tesco service yard for larger vehicles.

Footway Widths

The revised plans show acceptable footway widths.

Cycle & Motorcycle Parking

The provision and location of cycle parking has been improved, but not fully resolved. The provision of motorcycle parking is also unclear. However, these issues could be dealt with by way of condition.

Review of transport assessment by WSP consultants

The applicant appointed WSP to undertake a review of the transport assessment and associated material prepared by SKM Colin Buchanan. Two letters from WSP dated 3/2/12 and 10/2/12 provide a review of the documents and methodology adopted. These letters do not provide any new material information relevant to our comments on the application.

In summary the application remains unacceptable on highway grounds however some accepted revisions have been made to the workshop servicing arrangements and these are reflected in reasons for refusal as now proposed.

AIR QUALITY MONITORING OFFICER - comments made 15th December refer to comments made in respect of application 11/02674/EFUL as still being applicable. Those comments refer to errors within the report submitted and subsequently object over the effects of the development on air quality levels, particularly on Brook Road and South View Road where large increases in nitrogen dioxide concentrations are shown.

ENVIRONMENT AGENCY - Comments made 14th September 2010 Objection to the scheme -on the basis that the Flood Risk assessment submitted does not adequately address flood risk .

Further comments made 23rd June 2011 Based upon the additional flood risk information from Jubb Consulting Limited (FRA report ref; P9281/G202/F) no objection subject to conditions.

Further comments made 15th November 2011 and 21st December 2011 confirm no change to comments made in June 2011.

WESSEX WATER - Comments made 2nd September 2010 - Advise that public apparatus may be affected by the development and diversion or protections works may be required and are to be agreed and implemented before building works are started. A contribution to the cost of uprating the sewerage system may be required (if flows are increased). The

developer will need to agree drainage matters further with Wessex Water and there have been discussions which are being considered.

Further comments made 16th November 2011 confirm no change to comments made in September 2011.

ECOLOGY - Comments made 15th March 2011 - Ecological surveys have been undertaken including full bat surveys. No significant habitats or issues were identified on the site, although the site was found to be used by foraging pipistrelle and noctule bats, and the existing buildings and vegetation offer some nesting and roosting habitats & opportunities. Equivalent and enhanced habitat replacement (roosting, nesting and foraging) should be incorporated into the new scheme. The lack of incorporation of green space, green roofs and other planting, and the lack of creation of opportunities for this within the scheme, is disappointing and could be improved for the benefit of both people and wildlife. In addition, all the recommendations of the Ecological reports need to be implemented. This can be secured by condition.

Further comments 2nd November 2011 confirm no change to comments made in March 2011.

NATURAL ENGLAND - Comments made 12th October 2010 - Bat Survey Report (dated September 2010) contains recommendations for enhancing the conditions on-site for bats. A condition requiring the preparation of an Environmental Management Scheme should be subject to the planning authority's approval and this approval must be obtained prior to commencement of development.

Further comments 16th December 2011 23rd Feb 2012 confirm no change to comments made in October 2010.

URBAN DESIGNER - Comments made 9th December 2010 - the scheme is considered to be unsatisfactory in design terms. It demonstrate poor integration with the surrounding neighbourhood; a poor response to level changes (which has the consequence of creating a physical and psychological separation between the external and internal public realm, and a barrier to pedestrian and cyclist movement through the site as well as working against providing a fully accessible environment); There is very limited permeability through the site; There is a dominance of blank frontages and lack of external facing entrances to all sides, including to Lower Bristol Road, which creates an unacceptable and negative response to the public realm; There is inadequate direct pedestrian access to the main use from the south and west; The proposed residential terrace lacks a positive relationship to the Plaza.

LANDSCAPE ARCHITECT - Comments made 9th December 2010- The retention of the façade is welcomed but it would be preferred if more of the building were retained. The proposals fail to maximise the opportunity for a strong appealing public realm and fail to provide sufficient space for trees to grow to a large size to contribute significantly to the wider area.

Further comments made March 29th 2011. Changes have been proposed which resolve some of the public realm concerns.

CONSERVATION OFFICER - Comments made 28th September 2010 - the Bath Press buildings are clearly of local historical and sentimental significance. The exclusion of the site from the Conservation Area however means there is no straightforward means of resisting the demolition of the buildings. The preliminary proposals offer up a compromise in the form of retention of the façade of the main buildings and the stone boiler chimney. Facadism is rarely an appropriate means of conservation and the wall and chimney might appear visually incongruous being divorced from the host building. Ideally a better balance would be struck between preservation and the extent of new development. Considerable importance is attached to ensuring that the façade and chimney are retained and repaired and it is recommended that a formal agreement is needed to guarantee the desired outcome. The layout, massing and height of the new buildings appear reasonable but the architectural treatment is monolithic and dull. The road layout immediately surrounding the site is disjointed, and has the potential to appear as an unattractive, traffic dominated environment.

ENGLISH HERITAGE - comments made 8th September 2010 30th November 2011 and 27th Feb 2012 confirm it is not necessary to consult English Heritage on the application.

COMMISSION FOR ARCHITECTURE AND THE BUILT ENVIRONMENT (CABE) - Comments made 21st March 2011 and 1st November 2011 due to resources CABE are unable to review the scheme.

ARBORICULTURAL OFFICER - Comments made 31st August 2010 - The current proposal results in a net loss of trees and general green infrastructure which currently contribute towards the public domain in this prominent location. The proposed indicative planting shown on the Proposed Site Plan does not appear to be planned or integrated. Space should be provided for large, long lived, land mark trees.

CRIME PREVENTION OFFICER - Comments made 1st October 2010 An objection is raised. A range of issues are identified including the design of the underground parking and access ramp, parking for disabled, cyclists and the proposed housing and some design features of the terrace housing and street furniture as they consider they could be used for purposes other than those for which they were designed.

ENVIRONMENTAL HEALTH OFFICER - Comments made 19th November 2010 - The applicant has carried out noise monitoring and should use this data to predict the likely noise exposure category (NEC) in accordance with Planning Policy Guidance note 24 (PPG 24) If the assessment shows that the site falls into NEC C or D then refusal of the application would be recommended. Conditions are suggested should the development be permitted.

CONTAMINATED LAND OFFICER - Comments made 15th July 2011 No Objection but conditions are recommended to carry out a site investigation and risk assessment.

BRITISH WATERWAYS - Comments made 13th September 2010 ,3rd November 2011 and 22nd Feb 2012 No Objection subject to a condition to ensure that trolleys cannot be taken beyond the site where they may be discarded into the waterway.

ARCHEOLOGICAL OFFICER - Comments made 22nd October 2010 A desk based archaeological assessment of the site, has been submitted and approved and no objections are raised subject to conditions.

Further comments made 27th April and 2nd November 2011 confirm no change to comments previously made.

EDUCATION OFFICER - Comments made 3rd September 2010 - Sought a total contribution of £13,575.25 toward youth provision and school places.

Further comments made November 2011 seek a contribution totalling £29,449.77 toward Early Years provision, school places and Youth provision

ECONOMIC DEVELOPMENT OFFICER - no comments made.

STRATEGIC HOUSING SERVICES - Comments made 11th January 2012 advise that they cannot support this application as it fails to address B&NES adopted Planning Policy HG.8 in terms of the lack of provision of affordable housing.

WASTE SERVICES comments made 9th November 2011 request additional information for the waste storage.

OTHER REPRESENTATIONS / THIRD PARTIES

The following Objections have been received:

Co- operative Group: There is no quantative or qualatative need for the development and it is not sequentially an acceptable site. We have significant concern over the considerable impact that the proposed Tesco store will have upon the Co-operative store at Moorland Road.

Sainsburys Supermarket: The proposal fails the Sequential Test, would impact harmfully on Moorland Road, will divert expenditure from Central areas, and will jeopardize the regeneration of BWR and Green Park Station.

Royal United Hospital: The RUH appointed consultants to assess the impact on the hospital and it has been concluded that the traffic created would have an unacceptable impact on hospital traffic particularly emergency vehicles.

Bath Heritage Watchdog: There are a number of concerns raised with regard to the detailed design and the proposals for the retention and integration of the façade which do not go far enough. The proposals do not reflect the truly Important Local Building. The impact of traffic on historic buildings and structures is a concern.

Bath Preservation Trust: The Trust welcomes the intention to redevelop this important site for mixed uses but raise objection on various aspects relating to the design approach. It shares widespread concerns with regard to traffic impact.

Vineyard Residents Association: Object to this application due to the impact the development would have on traffic on the Lower Bristol Road (A36) (congestion and poor air quality raised as a concern), Windsor Bridge and the Upper Bristol Road on the other side of that bridge, on traffic in the city more generally, and so on residential amenity.

Federation of Bath Residents Associations (FoBRA) comments made raise serious concerns about the volume of traffic, its management at the crossroads with Windsor Bridge, and severe congestion along the Lower Bristol Road (A36), Windsor Bridge Road and the Upper Bristol Road on the other side of the bridge.

SAVE object on the basis that the retention of the façade as proposed is a clumsy and unsatisfactory solution

A 40 page petition with in the region of 900 signatures have been submitted with an objection to the proposal on the grounds of the development would bring about the demise of Moorland Road adversely affecting the community, there would be traffic chaos and pollution, and anti-social behaviour problems.

131 Residents have objected on the following grounds (note some residents have written more than one letter in response to the various amendments to the plans):

Tesco dominate the market

Impact on highway

Impact on hospital traffic impeding it/emergency vehicles

Impact on Moorland Road shopping area (business and social)

The location of the entrance and delivery yard will create traffic noise and disturbance to the detriment of residents nearby.

Road widening and roundabout

Proximity to other supermarkets

Seagull nuisance

There are existing empty facilities new ones aren't needed.

Noise and disturbance locally (during and after construction)

Affect on house prices

Wrong location

Traffic impact

Dull architecture

Loss of existing industrial fabric

Poor design approach

Inadequate residential provision

Poorly sized workshop units

Adverse impact on health and safety

Inadequate provision for pedestrians and cyclists

Poor air quality /pollution

Lack of demand

Highway safety impact

Overdevelopment

Inadequate parking

Impact on the structural integrity of bridges

Impact on local school children

Not sustainable as will encourage car use over sustainable transport

Inadequate details on drawings

Impact on residents due amenity, light, security and privacy

Inadequate provision for public transport

Inadequate detail of waste proposals

Recycling has not been sufficiently addressed
Opening hours will create traffic later in the evening when the area would usually become quieter
The community hall should be separated from the offices so it does not become part of that use
Unattractive affecting tourism
Concerns of combined effect with BWR development
Retail store is too big
The following support has been received.
Lack of green planting
Poor access
Loss of jobs
Consultation exercise carried out was flawed
Loss of local distinctiveness
Impact on the World Heritage Site caused by pollution
Safety and security issues
A further supermarket is not needed.

Bath Chamber of Commerce Support the application on the basis that notwithstanding the impact of the traffic on balance the scheme would bring benefits to the area.

Crest Nicholson Support the application and comment that the HSE restriction constitutes a real threat to both the ongoing delivery on the initial stages of development and to the regeneration of the wider area. It considers the Tesco scheme has potential to free up the site due to its potential to contribute funding toward the removal of the gas tanks.

97 Residents have written to support the application on the following grounds

Regeneration benefits
Retention of the façade
Mix of uses
Need a supermarket
Less travel to supermarkets out of Bath
Job creation
Re use of derelict site
Choice and competition is required

The following have made general comments:

Oldfield Park School Chair of Governors comments that we are keen to see the Bath Press site developed, as the buildings and hoardings are deteriorating rapidly and are an eyesore both for us and for visitors to our school via Dorset Close. We would reiterate the need for consideration of the proximity of the school to the site and the effect this may have on our children's safety, noise levels and access to the school.

South West Transport Network have commented to say that the site should have less cars, more houses and jobs. Suggestions are made for contributions including public transport subsidies. They subsequently confirm their support more generally for regeneration of Lower Bristol Road.

8 Residents have commented as follows

The development would remove an eyesore but access noise and privacy issues must be addressed

The site will attract seagull nuisance which is a consideration to address

Question should the Tesco be built so near to a Tesco Express

Concern is expressed about fume pollution

Benefits and disbenefits are noted

Construction and delivery noise are a concern

The development and its traffic would adversely affect residents

Query if the site is too near Sainsbury.

RELEVANT PLANNING HISTORY:

11/02674/EFUL - Mixed-use redevelopment comprising 6,300sqm of retail (Class A1), 4,580sqm of creative work space (Class B1), 2,830sqm of offices (Class B1), 10 residential houses, car park, landscape and access (including realignment of Brook Road). Appeal lodged against non-determination

POLICIES/LEGISLATION

POLICY CONTEXT:

REGIONAL PLANNING GUIDANCE

Policy EC6 Town Centres and Retailing

JOINT REPLACEMENT STRUCTURE PLAN 2002 - saved policies

- 1 - Sustainable Development
- 2 - Locational Strategy
- 4 - Transport strategy
- 6 - Bath
- 30 - Employment sites
- 33 - Level and distribution of housing
- 38 - Town centres and shopping
- 40 - New Retail
- 41 - Local shopping
- 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
- NE.11 Species and Habitats
- NE13A Bath Hot Springs Protection Area
- NE.14 Flooding

HG..1 Meeting the District's housing need;
 HG.4 Housing Development
 HG7 Housing Density
 HG.8 Affordable housing
 D.2 General Design and public realm considerations
 D.4 Townscape considerations
 ES.1 Renewable energy Generation
 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.13 Hazardous Substances
 ES.15 Contaminated land
 T.1 Travel and transport
 T.3 Pedestrians
 T.5 Cyclists
 T.6 Cycle Parking
 T.16 Transport infrastructure
 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
 ET.2 Office Development B1a and B)
 ET.3 Non Office Business Development
 BH.1 World Heritage Site
 BH.5 Local List of Buildings
 BH.12 Archaeology
 BH.22 External lighting
 CF.2 Community facilities
 SR.3 Provision of recreational facilities to meet the needs of new development
 S.1 Retail Hierarchy
 S.4 Retail Development outside Shopping Centres

Supplementary Planning Document Planning Obligations

Bath and North East Somerset Submission Core Strategy (May 2011) is currently subject to Examination and the Hearings are due to take place in January 2012. 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
 CP10: Housing Mix
 CP12: Centres and Retailing
 CP13: Infrastructure provision

DW1: District-wide spatial Strategy
B1: Bath Spatial strategy
B3: Twerton and Newbridge Riverside Strategic Policy
B4: The World Heritage Site and its setting

NATIONAL POLICY

PPS1 Delivering Sustainable Development
PPS3 Housing
PPS 4: Planning for Sustainable Economic Growth
PPS.5 - Planning For the Historic Environment
PPS9 Biodiversity and Geological Conservation
PPG13 Transport
PPS25 Development and Flood Risk

DRAFT NATIONAL PLANNING POLICY FRAMEWORK (undergoing a consultation exercise and should only therefore be afforded limited weight)

OFFICER ASSESSMENT

Whilst the scheme has some accepted benefits there are very significant concerns raised from a Health and Safety, Highway and Retail impact perspective. It is considered that the harmful impacts identified clearly outweigh any benefits and refusal is recommended on these grounds.

Recommendation

Delegate to refuse following the expiry of the contributor representations (subject to no new substantive issues being raised). Those consultations were sent to three contributors i.e. Co-Operative Society, Sainsbury and the RUH and the consultations expire on the date of the committee.

RECOMMENDATION

REFUSE

REASON(S) FOR REFUSAL

1 The proposed development would give rise to a potential danger to human lives by virtue of its proximity to the nearby operational gasholder site contrary to planning policy ES9 and ES13 of the adopted Bath and North East Somerset Local Plan and contrary to the advice of the Health and Safety Executive.

2 The proposed development would give rise to unacceptable highway safety hazards by virtue of the unacceptable highway layout and proposed traffic signal phasing, contrary to Policies T24 and T26 of the adopted Bath and North East Somerset Local Plan.

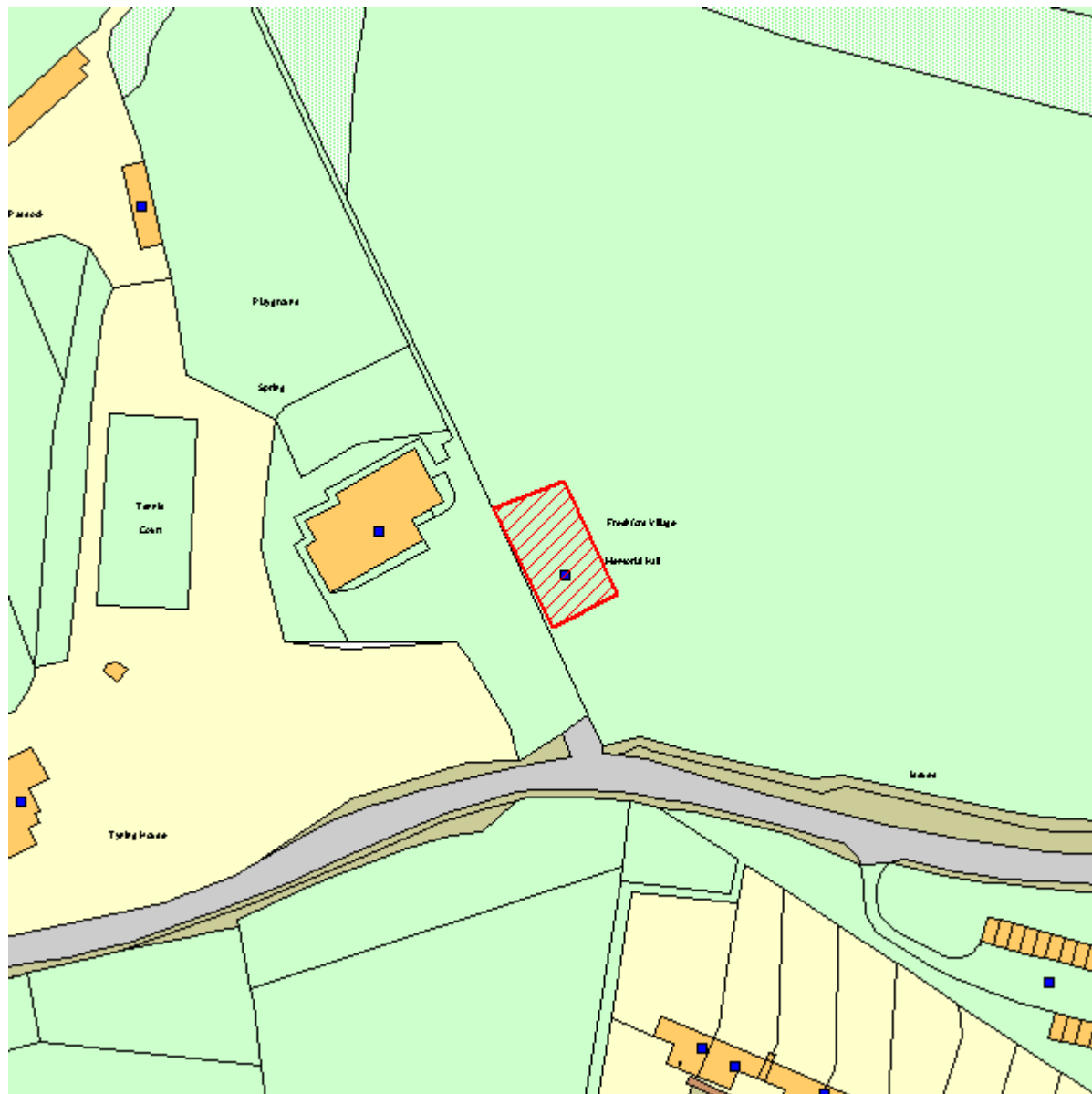
3 The proposed development would result in an increased use of the A36 Lower Bristol Road/Windsor Bridge Road/Brook Road junction, where insufficient capacity exists to accommodate the increased use adversely affecting the efficient functioning of the road network contrary to Policies T1, T3, T5, T16 and T24 of the adopted Bath and North East Somerset Local Plan and having regard to additional developments already committed in this part of Bath.

4 The proposed development is not in accordance with the requirements of the sequential approach to development contrary to EC15 of PPS4, Bath and North East Somerset adopted Local Plan Policy S4, Joint Replacement Structure Plan Policy 40 and Regional Planning Guidance Policy EC6. This would generate unsustainable travel patterns and be harmful to the Councils retail strategy.

5 The proposed development would give rise to an unacceptable and harmful impact on the vitality and viability of the Moorland Road District Shopping Centre contrary to Policies EC17.1 of PPS4, S1 and S4, of the adopted Bath and North East Somerset Local Plan, Joint Replacement Structure Plan Policies 40 and 41 and Regional Planning Guidance Policy EC6.

PLANS LIST: Due to ongoing submissions of Plans the final Plans list is not included.

Item No: 03
Application No: 12/00207/FUL
Site Location: The Galleries Shop, Freshford Lane, Freshford, Bath



Ward: Bathavon South

Parish: Freshford

LB Grade: N/A

Ward Members: Councillor Neil Butters

Application Type: Full Application

Proposal: Erection of extension to Freshford Shop to increase cafe area and decking

Constraints: Agric Land Class 1,2,3a, Agric Land Class 3b,4,5, Area of Outstanding Natural Beauty, Greenbelt, Public Right of Way,

Applicant: Galleries Ltd

Expiry Date: 12th March 2012

Case Officer: Tessa Hampden

REPORT

REASON FOR REFERING APPLICATION TO COMMITTEE:

Freshford Parish Council has supported the planning application and the officer recommendation is to refuse this application. Cllr Butters has also requested that this application is heard at Committee.

DESCRIPTION OF SITE AND APPLICATION:

The application relates to the Galleries Shop which is a community shop built in 2009. The site is located off Freshford Lane, adjacent to the Village Hall but outside of the defined Freshford settlement boundary. The Site is located within the designated Green Belt and the Cotswold Area of Outstanding Natural Beauty.

The application seeks planning permission for the erection of an extension to increase the cafe and decking area. The cafe extension is 22sqm which is sized to accommodate 4 café tables to provide seating for an additional 16 customers. The new deck is 44sqm and the overall space can be separated from the shop area with double doors when required.

RELEVANT PLANNING HISTORY:

DC - 07/03529/OUT - Approve - 21 May 2008 - Erection of new timber building for use as a community shop

DC - 08/02993/RES - Permit - 11 November 2008 - Erection of new timber building for use as a community shop (Reserved matters for outline application 07/03529/OUT)

SUMMARY OF CONSULTATIONS/REPRESENTATIONS

HIGHWAY DEVELOPMENT - The relatively modest extension would give rise to an increase of 3 spaces in the parking requirement. However having observed the operations in busy periods, the various community uses were accommodated successfully with room to spare. There are therefore no highway objections to the development.

Cllr Butters - requests that the application is heard at Committee if the application is to be refused

FRESHFORD PARISH COUNCIL: supports the planning application for the following reasons.

A greater proportion of the building can be given over to A3 (café) use;
Since the shop and café has opened the community benefit of both has been enormous;
The primary reasons for supporting the original application for the shop were those relating to the very special circumstances associated with community benefit;
The development will enable the community benefit to be considerably enhanced whilst the main use of the development will continue to remain as a shop

REPRESENTATIONS:

1 third party comment has been received. The comment can be summarised as follows:

- Further build would mean additional use of Green Belt land
- Visual outlook from neighbouring property would be impaired
- Overlooking issues from new building and decking

- Consideration of new planting if consent is granted

POLICIES/LEGISLATION

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

D2 - Design and public realm

D4 - Townscape

SC1 - Settlement classification

ET7 – Non-agricultural development on agricultural land

S4 Retail development outside of the identified shopping centres

S9 - Retention of local needs shops outside the identified centres and development of new small scale local shops

GB1 - Control of development in the Green Belt

GB2 - Visual amenities of the Green Belt

NE1 - Landscape character

NE2 - Areas of outstanding natural beauty

NE5 - Forest of Avon

NE16 - Protection of best and most versatile agricultural land

BH6 - Development within or affecting Conservation Areas

T1 - Overarching access policy

T24 - General development control and access policy

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. The following policies should be considered D2, D4, T1, T24, CP8, GB2, SC1, ET7, S4, S9, NE1, NE2, NE16, BH6

OFFICER ASSESSMENT

PRINCIPLE OF DEVELOPMENT:

GREEN BELT: This site and all of the surrounding land is located within the Bath/Bristol Green Belt where strict controls over development exist. Development is only acceptable if it falls into specified categories of 'appropriate development' or if very special circumstances exist to allow a departure from the usual policies of restraint. Appropriate forms of development include the construction of new buildings required for agriculture or forestry, essential facilities for outdoor sport, recreation, cemeteries, certain types of residential development, limited infilling or redevelopment of identified major existing developed sites and for other uses of land which preserve the openness of the Green Belt and which do not conflict with the purposes of including land in it. In this case it is not considered that the development would fall into one of these classes of appropriate development.

Planning Policy Guidance 2 advises that openness is the most important attribute of Green Belts. The extension of the village shop and the increased decking area in particular, which is built up from natural ground level and sited on previously undeveloped land would result in a loss of openness of the Green Belt. Given the above, the development is therefore considered to be inappropriate development within the Green Belt.

Although the Design and Access Statement cites that the development will allow for additional seating to meet the growing demand for this social space, these are not considered to be very special circumstances to allow for a departure from the usual policies of constraint. No further very special circumstances have been put forward by the applicant/agent.

EXTENSION TO RETAIL UNIT: Policy S4 of the Local Plan deals with retail development outside of the shopping centres identified in Policy S1 of the Local Plan. The criteria of this policy is subject to Policy S9 of the Local Plan. Policy S9 deals with the development of new small scale shops outside of the identified centres but a requisite of this policy is that the development must be within the settlements as defined in policy SC1. The settlement boundary of Freshford is located a considerable distance to the east of the application site. The site itself does not therefore form part of the identified settlement of Freshford. The extension of this retail unit, away from the settlement of Freshford would not therefore accord with Policy S4 or S9 of the Local Plan.

There are also concerns with regards to the ancillary nature of the cafe element of the overall planning unit. The extension (including the terrace area) would offer space for the development to be able to function independently of the shop unit. It has been stated by the applicant that this area can be separated off from the main shop area if required. The creation of a separate cafe area is considered to be unacceptable in this location, outside of any defined development boundary.

CHARACTER AND APPEARANCE: The building is located in a prominent location, readily visible from Freshford Lane and the surrounding area. The extension, due to its appropriate design and scale will appear as a subservient addition to the host building. It will be built in materials to match the existing building which will ensure that the development integrate successfully with this existing development. The extension to the decking area, due to the topography of the site is built up above natural ground level. This results in the decking area having a relatively bulky appearance and increases the prominence of the development particularly from Freshford Lane. However, on balance, given the fact that the decking area will be viewed in context of the main building, it is not considered to result in harm to a level as to warrant a refusal.

On balance therefore there is not considered to be any significant harm to the character of the building, the immediate area or the Area of Outstanding Natural Beauty in which the site is set.

HIGHWAY SAFETY: The parking needs of the shop and adjacent village hall are met by the shared car park which has space to accommodate approximately 30 cars. During most normal store opening hours, adequate space is available to users. At the beginning and end of the school day additional use is made of the store and car park as parents take and collect their children to/from the village school. Use of the car park is encouraged by the school governors as a means of easing congestion in the centre of the village. The operation of the car park at those periods has been observed and it is recognised that the various uses were accommodated successfully with room to spare. There is therefore no highway objection to this development.

RESIDENTIAL AMENITY: The site is set a sufficient distance away from any neighbouring properties to ensure that the development will not have an adverse impact upon the residential amenity of these occupiers.

OTHER ISSUES/CONCLUSION

The development would form inappropriate development in the Green Belt, and no very special circumstances have been demonstrated that outweigh the identified harm and warrant overturning established policy. Further, the extension of the shop which is situated outside of an identified settlement is contrary to Policy S4 and S9 of the Local Plan. The development is therefore considered to be unacceptable in principle.

No other issues significant issues have arisen as a result of this planning application. but for the reasons stated above, this application is recommended for refusal.

RECOMMENDATION

REFUSE

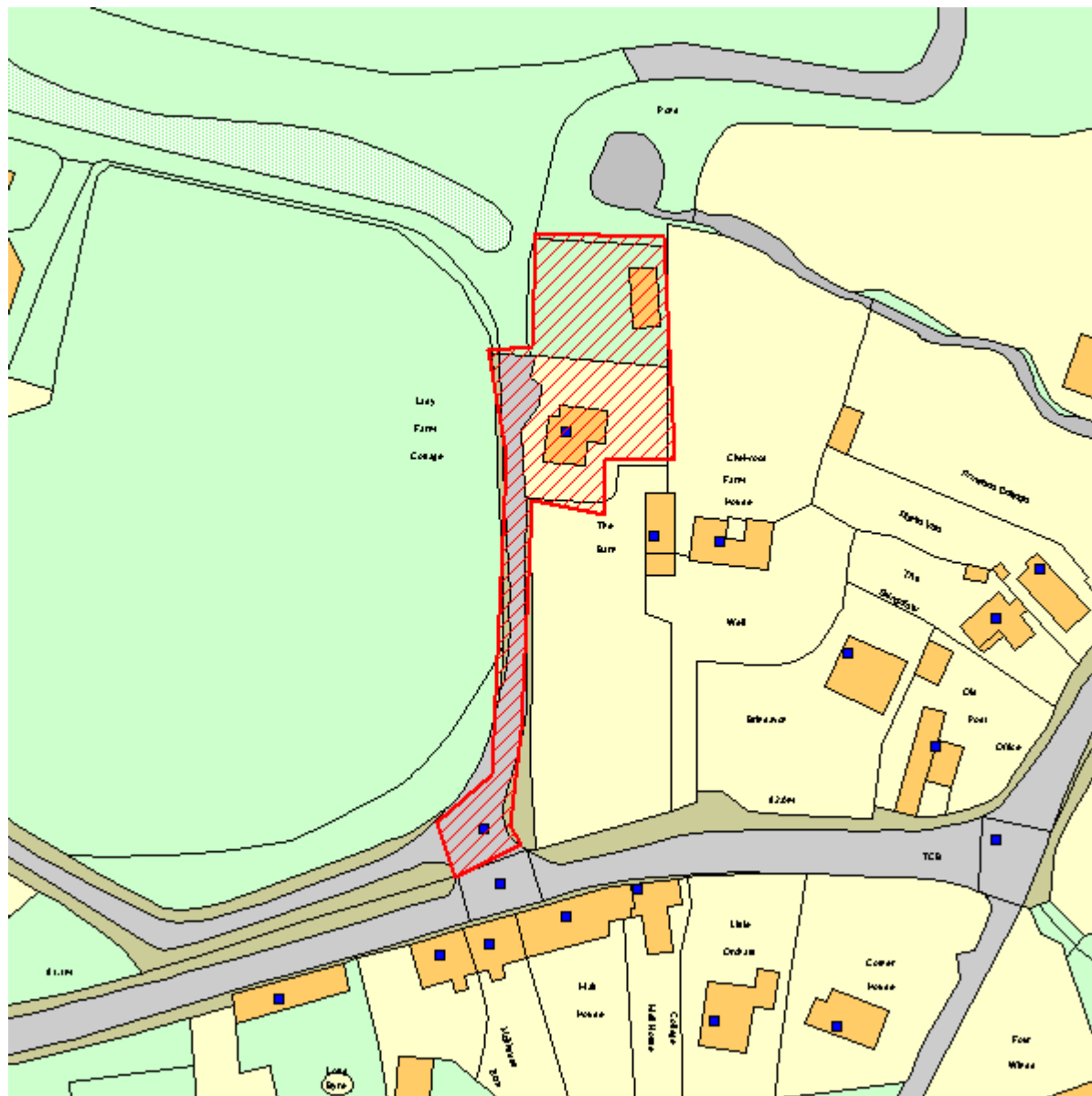
REASON(S) FOR REFUSAL

1 The proposed extension to the shop and decking area represents inappropriate development in the Green Belt, and in the absence of any 'very special circumstances' applying to the proposal, it is contrary to Policy GB1 of the Bath and North East Somerset Local Plan (including minerals and waste policies) 2007.

2 The extension of a retail unit outside of any defined development boundary as identified under Policy SC1 of the Local Plan, is contrary to policy S4 and S9 of the Bath and North East Somerset Local Plan (including minerals and waste) adopted October 2007

PLANS LIST: 426/S/01-05 and 426/P/01-04 date stamped 16th January 2012

Item No: 04
Application No: 10/01175/FUL
Site Location: Lady Farm Cottage, Lady Farm Cottage Road, Chelwood, Bristol



Ward: Clutton	Parish: Chelwood	LB Grade: N/A
Ward Members:	Councillor Jeremy Sparks	
Application Type:	Full Application	
Proposal:	Erection of new dwelling to regularise part built works (retrospective)	
Constraints:	Agric Land Class 1,2,3a, Coal fields, Forest of Avon, Greenbelt,	
Applicant:	Mr M Pearce	
Expiry Date:	26th May 2010	
Case Officer:	Victoria Griffin	

REPORT

REASON FOR REPORTING APPLICATION TO COMMITTEE: This application was delegated to officers to PERMIT at the meeting of the Committee on 16th February 2011 following the resolution by the Committee that:

- The fall-back position and the applicant's stated intention to implement the approved development if permission was refused coupled with the fact that the dwelling permitted did not differ materially from the dwelling which had been built, together represented very special circumstances which clearly outweighed the harm to the Green Belt and any other harm;
- Taking into account the fall-back position, the proposal would not result in increased harm to the openness and rural character of the Green Belt, and would conserve the character of the area and not be visually detrimental;
- Any harm to the neighbouring property by virtue of overlooking and loss of privacy could be overcome by design changes;
- The delegation to permit was conditional upon satisfactory agricultural information being provided to officers.

Design changes have been received from the applicant that overcome the issue of overlooking and loss of privacy. Information has also been submitted by the applicant in support of the claim that the dwelling is required for an agricultural worker. These details are now being presented back to the Committee for consideration. Officers' have also reflected upon the information received and the Committee resolution following receipt of appropriate legal advice. The officer report has been updated accordingly.

DESCRIPTION OF SITE AND APPLICATION:

The application site is located within the open countryside within the Bristol/Bath Green Belt. The current application seeks to obtain retrospective permission for a dwelling on the site.

There is an extant planning permission for a replacement dwelling granted at outline (07/03148/OUT) and reserved matters (08/02688/RES) on this site however the new dwelling is materially different from the approved scheme.

The focus of the current application should fall on the assessment of the proposal against the relevant development plan and national policies, taking into account a potential fall-back position and the planning history.

In assessing the "fall-back" position at the last Committee Members accepted a very special circumstances case (presented on behalf of the applicant) and that there was a firm intention by the applicant to implement the extant permission if Members refused the proposal. Members therefore resolved to grant permission subject to the satisfactory submission by the applicant of an agricultural appraisal and amendments to window designs to address overlooking to the rear.

Following the last Committee meeting on 16 February 2012 the agent submitted revised window details and an agricultural assessment. The agricultural assessment has been independently appraised on behalf of the Council.

POSITION OF THE DWELLING: Following the submission of the application in March 2010, revised drawings were received to address inaccuracies on the drawings. This clarified that the drawings originally submitted with the proposal have shown incorrectly the position of the house in relation to the boundaries with neighbouring properties Chelwood Farm House and The Barn.

The agent has clarified that the inaccuracy with the position of the house is due to an inaccurate survey of the site due to a misinterpretation of the boundary line. This is in relation to a mature hedgerow, which has now been removed and is understood to have concealed the correct location of the boundary. This is shown on drawing no's 4472W-19 to 4472W-22 (received May 2010) and is outlined in a letter dated 19th May 2010 from db + Paul Chartered Building Surveyors (agent).

The implication of the re-positioning of the house has meant that the dwelling under consideration here is closer to the boundary with Chelwood Farm House than approved in 2008. It is now approx. 3m from the boundary on its far eastern side and approx. 4.4m on its south-eastern end. Under the approved 2008 reserved matters permission (08/02688/RES) the dwelling was approx. 6m away from the boundary on the far eastern side and approx. 7.6m from the south-eastern end (measured off drawing no. 4472W-06A date stamped 21st July 2008).

The dwelling is therefore between approx. 3m - 3.2m closer to the boundary on either end of the eastern elevation as it is situated at an angle to the boundary with Chelwood Farm House. This is shown on the revised site plan drawing no. 4472W-25A. The dwelling as built is approximately 12 metres from the closest property, The Barn situated to the south of the building.

OTHER CHANGES FROM PERMISSION 08/02688/RES: In addition to the repositioning of the dwelling, the dwellinghouse under consideration includes a number of other alterations.

On the ground floor east elevation (rear) facing the boundary and the rear amenity areas of Chelwood Farm House a patio doorway has been replaced with a window opening.

On the west elevation (front) the porch has been adapted to a pitched roof design and three windows have been introduced facing onto the front garden areas and access.

On the south elevation (side) two further windows are proposed on the ground floor and the removal of a chimney stack.

On the north elevation (side) a chimney stack has been introduced that serves a sitting room.

On the east elevation (rear) the introduction of an external store on the ground floor.

The adaptation of windows to doors on the west elevation (front) at ground and first floor.

In comparison with the previously approved drawing no.4472W-06A (08/02668/RES) and the revised drawing 4472W-16C showing elevation details, changes have also been made to the height and width of the dwelling. This proposal (measured off plan) includes:

- an increase in the height of the building by approx. 0.2m (west - east elevation)
- an increase in width of approx. 0.5m and an increase of height of approx. 0.4m (north - south elevation)

CONSULTATIONS AND REPRESENTATIONS:

A summary of the consultations and representations received are attached to this report (see appendix 1) and are available to view on the public file and on-line. The agricultural assessments received are also available on the public file and to view on-line.

PLANNING ISSUES

RELEVANT PLANNING HISTORY:

1868 - Erection of two bungalows to house agricultural workers at plot 2200, Lady Farm, Chelwood - Refused 08/09/75

1868/B - Appeal against non-determination to erect a 3 bedroom, 2-storey house to accommodate an essential farm worker - Appeal allowed 02/05/77

Condition no.3 states; the occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971, or in forestry (including any dependents of such a person residing with him), or a widow or widower of such a person.

1868/D - Site adjacent to Lady Farm Cottage - Erection of one dwellinghouse for Farm Manager in full-time agricultural employment on part of Lady Farm - Refused 22/04/81

1868/F - Single storey extension to provide garage, utility, WC and dining area for residential use in existing farm workers cottage - Permission 24/03/82

1868/I - Removal of condition limiting occupation of the dwelling to a person solely or mainly employed or last employed in the locality in agriculture at The Cottage, Lady Farm, Chelwood, Bristol - Refused 14/04/87

1868/K - Conservatory and storm cover to existing dwelling - Permission 02/12/88

07/03148/OUT - Erection of new dwelling after demolition of existing dwelling
Permission - 05/12/07

This related to the granting of outline consent for the erection of a replacement dwelling following the demolition of the existing dwelling. The existing dwelling was an agriculturally tied dwelling. This outline application reserved all matters for subsequent approval.

An informative was attached to this decision which stated that "the applicant is advised that upon the submission of the reserved matters the replacement dwelling should not be materially larger than that which it replaces".

08/02688/RES - Erection of new dwelling after demolition of existing dwelling. (pursuant to outline 07/03148/OUT) - Permission 23/09/08

This application determined all matters for approval including siting, design, external appearance, means of access and landscaping. The replacement dwelling at reserved matters stage was 240% larger than the dwelling it sought to replace.

SUMMARY OF CONSULTATIONS/REPRESENTATIONS

Please see Appendix 1 attached.

POLICIES/LEGISLATION

POLICY CONTEXT:

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

D.2 - Considers design issues and residential amenity (summarised) - the context of this policy relates to the impact of development on the public realm in terms of how they connect with existing development and how the layout of the built form, influenced by design, can impact upon the public realm. Part f) states that development will only be permitted if the proposed development will not cause significant harm to the amenities of existing or proposed occupiers of, or visitors to, residential or other sensitive premises by reason of loss of light, or increased overlooking, noise, smell, traffic or other disturbance.

D.4 - Considers townscape considerations (summarised) - which relate more to the visual aspects of development rather than the more functional public realm issues. This seeks to consider the wider context and immediate setting; pattern of streets, buildings and spaces in terms of form and structure considering scale, height and massing.

GB.1 - Control of development in the Green Belt (summarised) - permission will not be given except in very special circumstances, for development other than:

The construction of new buildings for the following (summarised):

- agriculture or forestry
- essential facilities for outdoor sport and recreation for cemeteries and for other uses of lands which preserve the openness of the Green Belt and do not conflict with the purposes of including land within it
- limited extensions, alterations or replacement of an existing dwelling provided it is in accordance with policies HG.14 and HG.15
- infilling in accordance with HG.6
- affordable housing to meet local needs in accordance with policy HG.9
- limited infilling or redevelopment of the major existing developed sites identified in GB.3
- The re-use of existing buildings in accordance with policy ET.9

- Other development and material changes of use of land which maintain the openness of the Green Belt and do not conflict with the purposes of including land in it
- Park and Ride development

GB.2 - Visual amenities of the Green Belt (summarised) permission will not be granted for development within or visible from the Green Belt which would be visually detrimental to the Green Belt by reason of its siting, design or materials used for its construction

HG.10 - Housing outside settlements (agricultural and other essential dwellings) - a new dwelling essential to support existing well established agricultural or forestry enterprises will only be permitted where:

- there is a clearly established existing functional need and financial justification for a worker to live on the holding
- the need is for accommodation for a full time worker
- the functional need could not be fulfilled by another existing dwelling in the holding, or other accommodation in the area which is suitable and available for occupation, or through re-use of an existing building on the holding subject to the requirements of ET.9
- it is sited (a) within a hamlet or existing group of dwellings or buildings or (b) elsewhere in the countryside only when (a) is not feasible
- it is restricted in size commensurate with the functional requirements of the agricultural or forestry enterprise and
- occupancy is restricted to agricultural or forestry workers

HG.14 - Replacement dwellings - Outside the scope of Policies HG.4 and 6 permission will only be given for:

- the rebuilding or replacement of existing dwellings, where the replacement or reconstructed dwelling and ancillary buildings would not be materially larger than, and would not have a materially greater impact on the countryside or openness of the Green Belt, than that to be replaced; and
- the creation or extension of any residential curtilage would not detract from rural character nor conflict with the purposes of the Green Belt

Planning Policy Statement 2 - Green Belts - Advice is reflected in policies GB.1, GB.2 and HG.14. Paragraph 3.2 of PPG:2 states that inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

Planning Policy Statement 7 - Rural Areas - Advice set out in Annex A for permanent agricultural workers dwellings is reflected in policy HG.10

It is necessary for the application to meet the requirements of Green Belt policy as well as the policy tests of PPS:7.

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

The following policies of the draft Core Strategy should however be noted:

CP6 - Environmental quality

CP8 - Green Belt

DW1- District-wide spatial Strategy

Due consideration is given to the Draft National Planning Policy Framework, July 2011, however at present this carries little weight and in this respect it proposes little change to the aspects of local and national policy that are relevant to this decision at this time.

OFFICER ASSESSMENT

Following the last Committee officers have reflected on the information received and have sought appropriate legal advice on the application. The officer report and subsequent recommendation has been updated to reflect this advice.

THE PLANNING STATUS OF THE DWELLING ON THE SITE: Following the grant of the 2008 permission the dwelling constructed does not fall within the terms of the planning permission and is materially different (as set out above).

In March 2010 the applicant made a full application for retrospective planning permission for the dwellinghouse as erected and now the subject of this application. Therefore, the building constructed on the Application site does not have the benefit of planning permission.

THE PLANNING STATUS OF THE PREVIOUS PLANNING PERMISSIONS: Reference has been made to the status of the previous planning decisions which have been considered as part of this assessment. Officers are of the opinion that the outline permission is still extant (expiry 5th December 2012) and that contrary to the views of the objector, it is capable of implementation subject to compliance with the pre-commencement conditions.

Planning permission was first granted on appeal for a dwelling to be erected on the Application site on 18th April 1978, subject to a number of conditions including an agricultural occupancy condition.

Outline planning permission was granted on 5th December 2007 for the "erection of new dwelling after demolition of existing dwelling", subject to conditions. Condition 1 required that a reserved matters application be made within three years of the date of the permission. Condition 3 tied the occupation of the dwelling to an agricultural worker. Condition 2 provided as follows:

"The development hereby approved shall be begun either before the expiration of five 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."

The footnotes on the planning permission identified the drawings to which the decision related as 4472W-03 and 4472W-01. There was in addition an advice note on the planning permission advising the applicant that "upon submission of the reserved matters the replacement dwelling should not be materially larger than that which it replaced".

A reserved matters application was registered on 21st July 2008 including drawings 4472W-03 rev B and 4472W-06A. This was granted on 23rd September 2008 subject to one condition, which required approval of materials and finishes.

The reason for granting approval within the decision notice stated:

"The proposed development is not considered to be harmful to residential amenity and whilst it will be materially larger than the dwelling it replaces, the agricultural need for this dwelling represents very special circumstances and outweighs the harm caused to the Green Belt."

The approval of reserved matters was not challenged by way of judicial review. Applying the implementation condition on the outline planning permission of 5th December 2007, the planning permission must be implemented before 5th December 2012. It therefore remains capable of implementation, subject to compliance with the pre-commencement conditions.

THE FALL-BACK POSITION: The fact that the 2008 permission remains capable of implementation gives rise to a legal entitlement to construct that dwelling, subject to compliance with all the conditions. This entitlement gives rise to a potential fall-back position. It is well recognised that a fall-back position is capable of being a material consideration. In considering whether to give weight to this as a material consideration the Committee must decide whether there is a real prospect, as opposed to a theoretical one, that the fall-back permission will be implemented. If so, then the fall-back may be taken into account as a material consideration. The weight to be given to this matter is for members to decide taking into account the prospect of it occurring and the relative impacts of the fall-back position and the dwelling for which this application seeks planning permission.

At the Committee of 16th February 2011 the Applicant presented a statement of intention to implement the 2008 permission if retrospective permission was refused.

Members accepted that the fall-back position and the applicant's stated intention to implement the approved development if permission was refused, coupled with the fact that the dwelling permitted did not differ materially from the dwelling which had been built, together represented very special circumstances which clearly outweighed the harm to the Green Belt and any other harm identified. In the assessment of this proposal Members should be clear as to the weight placed on this material consideration in the judgment of the proposal applying Green belt and Countryside policy below.

THE POLICY POSITION:

GREEN BELT POLICY: The proposal seeks the regularisation of a dwelling that has now been completed. The relevant tests for new dwellings in the Green Belt include Planning Policy Guidance:2 Green Belts and Local Plan policy HG.14.

Paragraph 3.2 of PPG. 2 states that inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. It goes on to state in paragraph 3.4 that the construction of new buildings inside a Green Belt is inappropriate other than in certain circumstances, including the replacement of existing dwellings.

Paragraph 3.6 (PPG:2) refers to the replacement of existing dwellings and states that they need not be inappropriate, providing the new dwelling is not materially larger than the dwelling it replaces. Development plans should make clear the approach local planning authorities will take, including the circumstances (if any) under which replacement dwellings are acceptable. This is in line with Local Plan policy HG.14.

Applying both PPG2 and HG 14 it is clear that a replacement dwelling in the Green Belt need not be inappropriate in Green Belt policy terms but a replacement dwelling that is "materially" larger would be inappropriate development. The wording of the policy HG14 equally applies to replacement dwellings in the countryside. Therefore a replacement dwelling is only appropriate in the Green Belt if the new dwelling is not materially larger than the dwelling it replaces.

PPG2 requires there to be an existing dwelling on the land in order for a new dwelling to be a "replacement". The re-building of a building destroyed at the time of the application will not therefore be the "replacement of existing dwellings" within the meaning of paragraph 3.4 of PPG2. However, the previous existence of a dwelling on the land is a material consideration and may be capable of amounting to very special circumstances within the discretion of the Local Planning Authority.

In the present case officers consider that the application proposal does amount to inappropriate development for two reasons. Firstly, because there is no lawful existing dwelling on the site which the application proposal can be considered to be a replacement of. Secondly, and in any event, the proposed dwelling is materially larger than any dwelling which has previously existed on the site. The existing dwelling on the site represents a c.240% increase in volume than the building it replaced. Therefore, the proposal should be considered as inappropriate. The guidance at paragraph 3.2 of PPG2 therefore applies (set out above).

In the present case, officers consider it relevant for members to consider the planning history of the site and the potential fall-back position and consider whether there are very special circumstances that clearly outweigh the harm caused by inappropriateness and any other harm applying PPG2 paragraph 3.2 above.

In relation to the planning history it is relevant that the previous planning permission permits the construction of a similar development on the site. Planning permission was granted for this because Members of the Committee considered that as the house would only be used by an agricultural worker, this amounted to very special circumstances. Planning permission was accordingly granted subject to an agricultural occupancy condition.

The Committee is not bound to follow previous decisions. However, it should take them into account as material considerations where they raise substantially similar issues. If, having taken a like case into account the Committee wishes to reach a different conclusion, it should give reasons for doing so.

In considering the fall back position, if members consider there is a real prospect of it occurring, they should consider the relative merits of the fall back and the application development in considering the weight to be given to the fall-back in support of the application.

In addition to harm by way of inappropriateness Members will need to weigh any other harm in the balance as set out below.

VERY SPECIAL CIRCUMSTANCES / OTHER MATERIAL CONSIDERATIONS: At the Committee of 16th February 2011 Members considered that significant weight should be given to the fall-back position of the extant planning permission particularly as the applicant had made a statement to the effect that he would implement this permission. Members considered that this coupled with the fact that the dwelling permitted did not differ materially from the dwelling which had been built, together represented very special circumstances which is considered to clearly outweigh the harm to the Green Belt and any other harm.

Members are asked to reconsider this issue taking into account all of the matters raised in this report. Having reconsidered the case in light of the applicant's stated intentions it is your officers' view that there exists a real prospect that the 2008 permission would be implemented. Furthermore the changes that have arisen as a result of the current application have not resulted in increased harm to the openness and rural character of the Green Belt when compared to the 2008 permission, and would conserve the character of the area and not be visually detrimental.

Any harm to the neighbouring property by virtue of overlooking and loss of privacy is considered to have been overcome by design changes to the first floor rear windows as shown on drawing no. 4472W-16C this is discussed below.

Furthermore, a significant material consideration is that the proposal specifically relates to a site where a previous dwelling existed, that was originally tied by an agricultural occupancy condition. It is also considered material that planning permission was granted for a similarly sized dwelling in 2008.

COUNTRYSIDE POLICY: Local Plan policy HG.14 allows for the replacement of dwellings in the countryside, including the Green Belt provided they are not materially larger than the dwelling they are to replace. In relation to this policy the Committee gave permission for a materially larger dwelling under the 2008 permission (08/02688/RES). Whilst your officers were of the view that the proposal failed to comply with policy HG.14 because of the size of the proposed development, Members granted permission for a materially larger dwelling when considering the proposal against the policy tests of HG.14. As a result there is an extant planning permission for a replacement dwelling as set out above.

At the Committee in February 2011 Members resolved to grant permission for the dwelling which is the subject of the current proposal subject to an agricultural tie which is also relevant to the policy tests of policy HG.10. The advice within this policy reflects the advice set out in Planning Policy Statement: 7, Annex A. Policy HG.10 of the Local Plan is directed at new dwellings in the countryside and raises a presumption against such development. By contrast, the Local Plan is permissive of replacement dwellings (HG.14) as an exception to policy HG.10.

It was resolved to authorise the Development Manager to grant permission subject to the submission of a satisfactory agricultural assessment that addresses policy HG.10. Following independent appraisal it is not considered that the statements submitted by the applicant demonstrate that the functional and financial tests of the policy have been met. The Council's independent assessor concluded that in its current form the operations associated with breeding heifers (referred to in the applicant's statement) is done away from the farming unit. The policy tests of PPS:7, Annex A specifically directs to an "existing" functional need and not a proposed need. In relation to the proposed operations the evidence submitted also failed to provide current or historic viability data to satisfy the financial tests (the independent report is attached to this report).

Therefore, officers consider that the applicant has not demonstrated compliance with the functional and financial tests applicable under PPS7 and HG10 that would be necessary to justify a new dwelling in the countryside.

It is therefore necessary for Members to reconsider the proposal against the relevant planning policy framework. Green Belt policy has been referred to above. There is also an overlap with countryside policy given the provisions of HG.14. As noted above, a replacement dwelling in the countryside may be acceptable where the replacement is of an existing dwelling and is not materially larger. Officers do not consider that the proposal complies with Policy HG.14, for the reasons set out above under Green Belt policy.

In this respect the additional harm caused by non-compliance with these policies must be weighed applying section 38(6) of the Planning and Compulsory Purchase Act 2004, and must be considered alongside the need to justify the development as inappropriate development in Green Belt terms. Section 38(6) states that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Members must therefore consider whether the considerations in favour of the development i.e. the fall-back position, the stated intentions of the applicant and the extant planning permission (set out above) are sufficient to outweigh the harm to justify the grant of planning permission.

In considering the planning history, the fall-back position, and the previous existence of a dwelling on the site, officers consider it relevant to also consider that previous permissions have been granted subject to an agricultural occupancy tie. Therefore, if the fall-back permission were to be implemented, the condition would be in force. In order for the fall-back to be considered with the current proposal on a like for like basis an agricultural tie would be required to ensure that their impacts are substantially the same.

ASSESSMENT AGAINST COUNTRYSIDE POLICY: As set out above, the proposals do not comply with policy HG.14 and do not meet the relevant tests of PPS:7 Annex A or policy HG.10. It follows that to be permitted the proposed development will have to be justified as a breach of the development plan.

The additional harm caused by non-compliance with these policies must be weighed applying section 38(6), and must be considered alongside the need to justify the development as inappropriate development in Green Belt terms.

The dwelling permitted under 08/02688/RES is considered to be similar in terms of impact in Green Belt terms to that which has been constructed on site. As a result, it is not considered that the development represents increased harm to the openness and rural character of the Green Belt.

The amended window details (set out below) have sufficiently addressed the concerns raised in respect of overlooking to Chelwood Farm House.

The original dwelling that existed on the site had an agricultural tie which was included in the 2007 outline consent that remains an extant permission which could reasonably be implemented. Furthermore, the applicant has presented a statement of intention to implement the extant permission if retrospective permission is not obtained for this development. The weight given to this is considered to be a realistic one which would have a similar impact as the unauthorised house if constructed.

The fact the extant permission relates to the replacement of an agricultural workers dwelling and not a new dwelling, which is reflected above, would deem it essential for an agricultural tie to remain on the dwelling.

As this proposal is virtually the same as the extant permission as outlined above your officers' recommend that for consistency permission is granted for this proposal.

To that end, it is considered that this proposal does not represent a significant change from the 2008 permission to justify a refusal of the proposal. All of these elements taken together are considered to be significant material considerations weighted in support of the proposal and against the harm caused by non-compliance with policies HG10 and HG14.

RESIDENTIAL AMENITY: At the meeting of the Committee on 16th February 2011 it was reported that the current development must be considered on its own merits, officers therefore reassessed the impact of the new dwellinghouse on adjacent occupiers.

Previously greater weight had been given to the fall-back position therefore it looked at the current relationship of windows with the extant planning permission. When considered afresh and at the Members' request a revised window detail has been submitted. This includes an oriel window design that allows the outlook from first floor rear windows to be at an oblique angle, preventing overlooking towards Chelwood Farm House.

Local Plan policy D.2, part f) states that development will only be permitted if the proposed development will not cause significant harm to the amenities of existing or proposed

occupiers of, or visitors to, residential or other sensitive premises by reason of loss of light, or increased overlooking, noise, smell, traffic or other disturbance.

The main dwelling of Chelwood Farm House is situated approx. 15m to the south-east of Lady Farm Cottage (the unauthorised dwelling) and has a rear patio area and grassed areas with mature planting to the north and eastern boundaries. The side elevation of Lady Farm Cottage would be viewed from the rear windows of Chelwood Farm House and during the use of the rear amenity areas.

The nearest property is known as The Barn which is orientated with its side gable facing directly on to the site. The Barn is approx. 12m to the south of Lady Farm Cottage. The re-positioning of the dwelling between 3m - 3.2m closer to the boundary and the relationship with neighbouring properties is a material consideration and has been considered in respect of the potential to cause increased harm to residential amenity. The original dwelling that stood on the site had a single first floor window facing towards the rear garden and was further away from the boundary with Chelwood Farm House. The site has also been excavated which has positioned the house lower into the site to lessen the impact of the dwelling and a retaining wall with screening has been constructed. In addition planting has been installed along the boundary with Chelwood Farm House.

The revisions that have been sought incorporate a box window design which in effect blocks the view to Chelwood Farm House and provides an oblique view out of the window to the rear of Lady Farm Cottage. Your officers are of the opinion that the window redesign has satisfactorily addressed any loss of amenity to the residents of Chelwood Farm House. This would not cause significant harm by way of overlooking and would not warrant a reason for refusal.

IMPACT ON A LISTED BUILDING: A representation has been received that refers to the siting of the replacement dwelling adjacent to a Listed Building, Chelwood Farmhouse. Planning records have been checked and no record of the building's listing can be located. In this regard the proposal is not considered to impact upon the setting of a Listed Building.

REFERRAL TO THE SECRETARY OF STATE: For clarification the application has been advertised as a departure from the Development Plan. In respect of this application it is not considered to fall into the criteria for referral to the Secretary of State as set out in Town and Country Planning (Consultation) England) Directions 2009.

OTHER MATTERS: A number of conditions that formed part of the previous permission (planning ref. 07/03148/OUT and 08/02688/RES) have not been discharged. The current application seeks to cover the outstanding conditions from the previous outline permission in relation to the submission of details of materials and landscaping as detailed in the Design & Access Statement submitted with the current application.

Roof coverings include clay double roman tiles and main elevation walls (N, S and W elevations) finished in local natural stonework. Eastern elevation is rendered. All joinery work is being constructed in oak.

Details of landscaping have also been submitted in respect of condition no.5 of 07/03148/OUT.

It is considered that the proposed materials and landscaping are acceptable.

A soil investigation report has been submitted in respect of concerns raised in the outline application by Environmental Protection concerning an unbunded oil storage tank and the possibility of leakages or spillages. A subsequent condition (no.8) was attached to the reserved matters decision for the submission of a report. A consultation response has been received in this regard and is confirmed as acceptable.

CONCLUSION:

Officers consider that the application proposal should be considered as inappropriate development in the Green Belt. Further, an agricultural justification has not been demonstrated to comply with policy HG10 and so justify the dwelling as a new agricultural dwelling. Accordingly, there is a presumption against the development unless the harm caused by reason of inappropriateness and any other harm is clearly outweighed by other considerations. The harm by way of inappropriateness should be given substantial weight.

Officers are of the view that the planning history of the site and the fall-back position through the 2008 permission are significant material considerations in relation to the consideration of this application. The Committee concluded that there was a real prospect of the 2008 permission being implemented and placed significant weight on it as a fall-back position. Officers agree that this is a material consideration. Furthermore, the dwelling as built is not materially different to that which has already been approved on the site in terms of its size and impact upon the openness and rural character of the Green Belt. Officers accord weight to the previous decision as a similar decision applying the principle of consistency. The planning history is also relevant in that prior to its demolition in order to build the application proposal there was previously an agricultural workers' cottage on the site. Balancing all of these factors, it is officers' view that the considerations, taken together, represent very special circumstances and significant material considerations to outweigh the harm to the Green Belt and to justify the granting of a replacement dwelling in the countryside. However, it is necessary that an agricultural occupancy condition is imposed in order to control the development in like terms to the fall-back position and the previously existing dwelling.

RECOMMENDATION

PERMIT with condition(s)

CONDITIONS

1 The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependants.

Reason: To accord with the policies in the Development Plan and to ensure an adequate availability of dwellings to meet agricultural or forestry needs in the locality.

2 The development shall be implemented in accordance with the details submitted for external materials, including roofs. The development shall thereafter be retained in accordance with the approved details.

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

3 The existing hard and soft landscaping shall be retained in accordance with the approved details as shown on plan no. 4472W-23A. Any retained tree or hedge which within five years of the date of this permission, dies, is removed or becomes seriously damaged or diseased shall be replaced by a similar species.

Reason: To safeguard the appearance of the development and the surrounding area.

4 Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995, as amended, or any order revoking or re-enacting that Order with or without modification, no development falling within Schedule 2, Part 1, Classes A-E of the order shall be carried out at the dwelling hereby permitted.

Reason: The implementation of permitted development rights may harm the openness of the green belt and the appearance of the area and residential amenity.

5 Within three months of the date of this permission a completion report which confirms that all the necessary remediation works have been carried out as specified in the approved remediation strategy shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To safeguard public and environmental health.

6 Within three months of the date of this permission, the revised window design shall be installed in accordance with drawing no. 4472W-30. The windows shall be retained thereafter.

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

7 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:

4472-16C, 4472W-23A to 24A, Further information date received 13/01/11 and Alternative Window Design 4472W-30

REASONS FOR GRANTING APPROVAL

1. The decision to grant approval has taken account of the Development Plan, the emerging Core Strategy, national planning policies and approved Supplementary Planning Guidance. This is in accordance with the policies set out below at A.

2. The proposed development is contrary to the policies set out below at B and to that extent represents a departure from the Development Plan. However, the relevant publicity

and referrals have taken place, and the planning merits of the proposed development outweigh the conflict with these policies.

3. 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.

4. In this case very special circumstances exist which clearly outweigh the harm identified. These include the existence of an extant permission on the site for a similar development which would have the same impact on the openness and rural character of the Green Belt, together with the applicant's stated intention to implement the extant permission were this application to be refused. It is considered that this fall back position represents very special circumstances which clearly outweighs the harm to the Green Belt and any other harm. To that extent the proposal complies with policies GB.1 and GB.2 of the Local Plan and PPG.2. Those same factors are also considered to be material considerations which outweigh the conflict with policies HG.10 and HG.14. The original dwelling that existed on the site was subject to an agricultural occupancy condition and it is considered appropriate, in the interests of consistency, to impose a similar condition in this permission.

5. By reason of the amended first floor window design and screening, the rear windows will not cause significant harm to the residential amenity of adjoining residents, in accordance with policies D2 and D4 of the Local Plan 6. The materials are considered acceptable and will not adversely impact on the street scene or wider public realm, in accordance with policies D.2 and D.4 of the Local Plan

A.

The development complies with the following policies:

Bath & North East Somerset Local Plan Including Minerals and Waste Policies Adopted October 2007:

D.2 - General Design and Public Realm Consideration

D.4 - Townscape Consideration

GB.1 - Control of Development in the Green Belt

GB.2 - Visual Amenities of the Green Belt

The Bath and North East Somerset Submission Core Strategy (May 2011) is out at inspection stage and therefore may only be given limited weight for development management purposes. However the proposal is also considered to comply with the following policies:

CP6 - Environmental quality

CP8 - Green Belt

DW1- District-wide spatial Strategy

National Policy:

PPG.2 - Green Belts

B.

The development conflicts with the following policies:

Bath & North East Somerset Local Plan Including Minerals and Waste Policies Adopted October 2007

HG.10 - Housing outside settlements (agricultural and other essential dwellings)

HG.14 - Replacement dwellings

PPS:7 - Rural Areas

Due consideration has been given to the Draft National Planning Policy Framework, July 2011, however at present this carries little weight and in this respect it proposes little change to the aspects of local and national policy that are relevant to this decision at this time.

2 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

Appendix 1.

Summary of Consultations and Representations

CONSULTATIONS AND REPRESENTATIONS:

Internal consultees:

Building Control: No comment received

Highways (dated 09/04/10): A dwelling has previously been accepted, in highway terms, on the basis of it replacing a former dwelling on the site.

Whilst the current submission alters the design of the building, it does not have any adverse highway implications, and therefore recommend that no highway objection is raised.

Environmental Protection (dated 12/07/10): Details submitted are acceptable, a condition is recommended to ensure that the development shall not be occupied until a completion report which confirms that all the necessary remediation works have been carried out as specified in the approved remediation strategy has been submitted to and approved in writing by the Local Planning Authority.

External consultees:

Chelwood Parish Council (dated 21/04/10): Support the proposal pursuant to policies GB.1(c) and GB.2.

Representations provided by applicant:

Further details on the proposal have been submitted to address paragraph 3.2 of PPG:2 on Green Belts in order to demonstrate why permission should be granted. This justification includes (summarised):

- A building survey established the poor condition of the (now demolished) existing building
- Committee support for the proposal justified an agricultural workers dwelling on the site, this planning approval is still current
- The development is in accordance with policies HG.10, HG.14, GB.1, GB.2, NE.1 and T.24
- One of the objectives of PPG:2 relates to the retention of land for agricultural uses
- The new house is more in keeping with the surroundings than the original basic cottage with the use of natural stone and clay tiles with oak woodwork
- The house also sits lower into the landscape and is therefore not considered to be inappropriate or harmful
- Planning Policy Statement:7 on Rural Areas (PPS:7) states that isolated residential development may be justified when accommodation is required to enable agricultural workers to live at, or in the immediate vicinity of their place of work

- PPS:7 states that development should raise design standards in rural areas. The property does achieve this and the scale of the property is suitable in its location
- Within the countryside help should be given to those who earn a living from and help to maintain and manage the countryside.

Existing functional need

- The agricultural enterprise associated with Lady Farm is well-established over 30 years and has increased its farming activity tenfold over this period
- The house is needed for a full-time manager to run the enterprise who will be the only full-time worker on the farm
- There is no other suitable dwelling on the unit and nothing has been sold off within the last few years that would have been suitable
- The proposal is not for a new dwelling but a replacement that was too small and inadequate for current day use
- The access is good and no changes are proposed
- The impact on the countryside will be reduced due to the more appropriate design and natural materials
- The manager will need to be available day and night to deal with any emergencies in respect of livestock or potential loss of crops
- The building is well sited for security to the farm

Financial test - Details of the Herd list dated (28/06/10) has been submitted containing confidential information concerning the farming enterprise of Lordswood Farms. This includes details of an Agricultural Mortgage for the property which has been provided under strict lending criteria related to the viability of the enterprise and its on-going commitment to their farming enterprise. Other points made by the agent include;

- The size of the house should be commensurate with the established functional requirements of the holding. We have demonstrated that the size of the enterprise can sustain in the long term a house of this size
- A house of this size is required to attract a manager of the experience and age to run an enterprise such as this and that it should be able to accommodate their family
- The size of the house has been agreed as part of the reserved matters decision
- If the application is viewed as a new application then there is no stated size for an agriculturally tied house in the BANES area
- Many similar houses have been approved in the BANES area within the last few years
- Reference is made to other large extensions to existing dwellings in the Green Belt

Further Correspondence From Applicant Dated 05/08/11, Accompanied By An Agricultural Assessment (Summarised):

- With the 2007 application a full appraisal was not required because the existing dwelling had an agricultural tie, that need for Lady Farm and the locality remains
- The property is to provide a family house and is large enough to avoid the need for a later extension
- The reasons for granting approval said that it was larger than the dwelling it replaced but that the house was justified by agricultural need
- The house under consideration is essentially the same size as the house approved in 2008

- Details have been provided to the Council to explain the specific role of the Farm Manager
- The Committee had not previously requested this information
- The recommendation to refuse was rejected by the Committee
- The minutes of the meeting refer to a comment by the Senior Professional Major Development officer concerning advice provided to the Members on the information required to demonstrate the agricultural need. It was suggested that the applicant be asked to provide evidence of this. We do not believe this was said and have no evidence of it in our notes from the meeting.
- The officers' report misled committee in to seeking agricultural information as satisfactory information were provided previously
- The report outlines the embryo transplant enterprise, it evidences that there is a need for an experienced farm manager on site.
- It has not been possible to recruit a manager during this period of uncertainty; the house has therefore been occupied by a family friend who has a temporary need for accommodation. They are due to leave in September 2011
- This is a successful, established farming enterprise whose needs are evolving. The Council previously accepted the agricultural need for the larger dwelling.
- No need for case to be returned to Committee and permission should be issued

Agricultural Appraisal Submitted By Cooper & Tanner on Behalf of the Applicant Dated August 2011 (Summarised):

- The report has concluded that the holding is a long established business that is progressing to a global business with the embryo transplant enterprise as well as continuing with the core dairy farming activities
- A house already existed on the site which had been tied with an agricultural condition since 1977
- The evidence in the appraisal satisfies one of the requirements of the Committee report
- The functional need for a farm manager has been met due to the proposed transplant facility and increased numbers and type of livestock on site. The full time manager will be required to run both the heifer rearing enterprise and the embryo transplant facility
- The projected returns of the enterprise make the proposal viable
- The functional need cannot be met by another dwelling on the holding as no dwellings are available

Comments Submitted On Behalf Of the Applicant in Response to the Council's Independent Agricultural Assessment Dated 08/11/11:

- A number of inaccuracies including reference to embryo transplant activity which is yet to commence, it will not commence until the planning issues are resolved
- Current labour requirements exist on the site with heifers calved on the site
- The existing property is now occupied by someone who is employed to carry out calving and rearing duties
- The fact that heifers are calved on the holding and the numbers will continue to increase, coupled with the fact that calves will be reared on site represents a functional need

- The farm has operated as Lordswood Farm for a long time which meets the financial test

Enclosed within the letter are a number of attachments which refer to orders related to operations on the farm.

Comments From Applicant In Response To Agricultural Appraisal Dated 08/11/11 (Summarised):

- The present position is that the property is occupied by an agricultural worker who has farmed for over 30 years and is engaged in the calving of heifers and the rearing of calves
- Ability to manage the holding solely is restricted due to the applicant's age
- This is not a new agricultural dwelling in the countryside and is a replacement; there is no need for the functional and financial tests when planning policy is supportive of replacement dwellings
- When determining the 2007 and 2008 applications the Council accepted the agricultural need, this should have been settled by the fall-back position
- The draft NPPF has a positive approach to replacement dwellings required for agriculture
- The Council has enough information to support this application and issue the decision

Independent Agricultural Assessor's Report commissioned on behalf of the Council dated 23/09/11(summarised):

- The overall farming business is run as a specialist dairy enterprise.
- At present the unit is run by the applicant's farm manager. The manager lives away from the site in a dwelling near Frome. The intention is for the manager to occupy the subject dwelling, should planning permission be granted.
- The applicant states that the expansion of the unit is dependent on occupation of the dwelling (subject of the planning application). In the event that planning permission is granted then the applicant plans to expand the batches of heifers to some 50 head.
- Based on standard labour data there is a requirement for just under one unit of labour for the present scale of operation.
- The expansion of the unit would see a rise in labour requirement to one unit full time with part time assistance.
- Annex A of PPS7 expressly refers to "the existing functional need". In the assessor's opinion the functional need associated with breeding heifers is the requirement around calving. By definition, first calving heifers do not have any experience of calving and can become nervous and distressed. Complications can also arise with calving that necessitates rapid intervention. In their opinion calving at the proposed 150 per year, across the year, will result in the functional test being met.
- The functional need will therefore be met at the proposed level of operation. However, Annex A, paragraph 3 (i) specifically directs us to 'existing' functional need. In that context, the existing functional need does not arise as, at present, all the heifers are calved away from the unit. Thus there is not, in their opinion, an 'existing' functional need. The anomaly arises as a result of the planning situation.

Functional Test:

- In the event that the functional test is considered to be met then it is necessary to determine how it is satisfied. Annex A directs us to determine the suitability and availability of a dwelling for the worker concerned. In this case the worker concerned is the applicant's farm manager. Aside from the subject dwelling, there is another dwelling on the holding. The second dwelling is owned and occupied by Mr Pearce (the applicant). I understand that Mr Pearce has been involved in the current management of the holding, but does not have capacity to run the unit at the level intended, due to his other business commitments; it is therefore necessary to employ a full time farm manager. Mr Pearce's dwelling is not available to the farm manager. In the assessor's opinion the accommodation that is suitable and potentially available (subject to planning permission) is the proposed dwelling.

Financial Test:

- At present no calvings take place on the unit and thus there are no sales from the unit with heifers with calves at foot. The unit is unlikely to be viable in its current form. On the assumption that the business is expanded in the manner proposed then it is the assessor's opinion that it is likely to become viable. In this context it must be recognised that the financial test applies to current and historic performance and not to future proposals

Conclusion:

- In its current form the business meets neither the functional nor the financial tests. Its proposed form indicates that both tests will be met. The tests are scoped for a permanent dwelling and therefore are dependent on both current and historic performance. In this case neither the current nor the historic form of the business at Lady Farm is sufficient to meet the tests.

Representations:

Objections received following submission of the application (summarised):

- Issues with the decision on 08/02688/RES - contrary to officer's recommendation on 08/02688/RES a dwelling that is significantly materially larger than the dwelling it was to replace was approved. Its legal position and compliance with Section 38(6) of the 2004 Act and paragraph 3.6 of PPG2 is unlawful and cannot be relied upon as a precedent for the current application

- Position of the dwelling erected. It has not been built in accordance with the approved plans and cannot be said to be the development which was authorised by the original Outline permission (07/03148/OUT) or by the Reserved matters (08/02688/RES)

- A detailed survey has been commissioned that has confirmed the extent to which the new dwelling differs from the location originally approved under 08/02688/RES and is not in accordance with the plans submitted with the current application 10/01175/FUL

- The new dwelling has been shifted 3m closer to the rear garden of Chelwood Farmhouse than was given consent under 08/02688/RES. The site has been moved sideways towards the boundary contrary to the details submitted by the agent
- Detrimental effect on residential amenity of the occupants of Chelwood Farmhouse is unacceptable. This is caused by the scale of the proposal in comparison with the building it replaces and the roof and ridge heights which has resulted in a large, prominent and imposing structure.
- Out of character with the low scale development of the immediate surrounding area
- Overbearing effect caused by the bulk and massing of this large building in relation to the garden of Chelwood Farmhouse
- Overlooking of rear garden from the windows on the relevant side of the dwelling that it faces and loss of privacy
- Loss of a substantial boundary hedge which has been replaced by a close boarded fence which is on a different alignment
- Encroachment onto the land of Chelwood Farmhouse caused by alignment of boundary fence
- Seek to quash the decision at the High Court if planning permission issued
- The Council should refuse permission and the reasons for refusal are recommended to relate to the size, bulk and mass being materially larger, impact on the openness of the Green Belt and rural character and overlooking caused by East elevation windows in the dwelling resulting in loss of privacy
- Urge the Council to issue an Enforcement Notice requiring the demolition of the unauthorised building and to issue a temporary stop notice pending the Enforcement Notice
- Attached to this letter is a surveyed plan showing the alleged unauthorised plan of 08/02688/RES and the inaccuracies of the plan submitted in the current application

The objectors have submitted a drawing (marked 'Plan A') showing:

- the position of the house granted under 08/02688/RES
- the position of the house in drawing no.4472W-17 in support of 10/01175/FUL which differs from the building that has been erected on site
- the line of the boundary fence that has been erected and
- the line of the boundary taken from the HM Land Registry Title Plan

Status of Existing Planning Permission:

- The submissions referring to the planning history of the site give an incorrect impression, the outline permission granted related to a significantly different development in a different location. It is precisely because the development which has taken place is

not the development which was authorised under the 2007 permission that it has been necessary for the current application to be made for retrospective permission

- The 2007 permission is no longer capable of being implemented and must be deemed to have lapsed
- The consent in 2008 was wholly outside the scope of the outline permission to which it related to by reason of the size of the dwelling.

Fall-back Position:

- If the 2007 permission was extant it is well settled law that where a 'fall-back' position is claimed in respect of an alternative permission which remains extant, it can only be taken into account if there is a realistic prospect that the 'alternative' development would in practice be carried out in the absence of a permission being granted for a later application. It would also have to be shown that the alternative permission would result in a development which would have an impact in planning terms at least as great as or even greater than that which is now proposed, in view of the significantly different location of the house this clearly is not the case here. The previous permission is therefore not capable of being a material consideration in the determination of the current application

Local Plan Policies:

- Failure to comply with policy D2 part f)
- Failure to comply with policy D4
- Failure to comply with policy HG.10
- Failure to comply with policy HG.14 - replacement dwellings should not be materially larger and should not have a materially greater impact than that to be replaced. It is beyond dispute that by reason of it being 240% larger than the original dwelling the new dwelling cannot fall within this policy. Furthermore the outline consent was clear that the replacement was to be no larger than the existing dwelling
- Failure to comply with GB.1, GB.2 and PPG.2 - there are no very special circumstances, it therefore conflicts with GB.1, HG.10 and HG.14, the development is visually detrimental and is also in breach of GB.2
- Failure to comply with NE.1 - it is development which neither conserves nor enhances the character and local distinctiveness of the landscape

Planning Policy Statement:7 - Rural Areas

- The applicant needs to satisfy the Council that the alleged functional need could not be fulfilled by another existing dwelling on the holding or other accommodation, there is undoubtedly other residential accommodation within the area which could be made available to a manager of the holding

- The size of the property should be restricted in size, the dwelling is far larger than could reasonably be required to house an agricultural worker, even a farm manager

Planning Policy Statement:2 - Green Belts

- The reference to new buildings for the purposes of agriculture or forestry does not include dwellings. It follows that even a new agricultural dwelling is by definition inappropriate development in the Green Belt and must satisfy the very special circumstances test. The Council clearly accept this and has accordingly advertised the development as a departure from the Development Plan as required by paragraph 3.3.
- Clearly the new dwelling which has been erected does not qualify as a replacement dwelling within paragraph 3.6 because it is materially larger than the dwelling it was intended to replace
- Chelwood is not listed as a designated village in Policy SC.1 and is thus one of those areas to which the advice in paragraph 2.1 of PPG.2 applies in that the Green Belt notation is carried across (washed over) it which allows no new buildings beyond the replacement of existing dwellings. It has not been suggested that the development represents limited infilling in an existing village.
- Inappropriate development must not only be justified by very special circumstances, but these must clearly outweigh the harm caused by reason of the inappropriateness of that development and any other harm. The courts have emphasised this on more than one occasion that the circumstances must indeed be 'very special' as opposed to common or garden planning considerations. Not merely special in the sense of unusual or exceptional but very special. In particular, it has been established that the absence of harm will rarely be sufficient. The fact that the harm caused is slight is not enough to constitute very special circumstances. None of the arguments put forward come anywhere near to establishing the existence of very special circumstances which would clearly outweigh the harm by reason of inappropriateness and any other harm. In particular, the purported agricultural justification under PPS7 is insufficient in itself to amount to very special circumstances.

Residential Amenity:

- Residential amenity - a recent independent survey of Chelwood Farmhouse confirms that three windows directly overlook this house and gardens. It seems rather surprising that the LPA would give consent for these windows to overlook.
- Clear glass windows overlook from the East facing windows, and windows with a southerly aspect
- Significant impact on Chelwood Farmhouse as the garden is no longer private, the rear garden is now directly overlooked
- Windows overlook the back of Chelwood Farmhouse severely impacting upon privacy which prior to its construction had a large private garden

- The new house shades the western side of the site and as a result the garden will be shaded by the new house in the evenings
- Loss of view - previously Chelwood Farmhouse had an open aspect towards the rear, now it overlooks a large expanse of rendered walls and tiles roof removing the open aspect. We understand that there is no right to a view but point out the loss of an existing view or open aspect is a factor that is liable to detract from the residential amenity and is therefore a material planning consideration in planning terms. This is a serious breach of policy D2.

Setting of a Listed Building:

- Previously we omitted to raise that Chelwood Farmhouse is a listed building. The new dwelling has an overbearing impact and has a seriously deleterious effect on the setting of this listed building and this must be a further reason for refusal

Representations from objector following Committee 16/02/11 (summarised):

- Insist on being kept informed of all further communications passing in either direction on this matter
- Elected members have put the Council in an impossible position
- Considerable doubt over the 'legality' of the decision which was reached
- Lack of an agricultural assessment suggests there did not exist sufficient information to authorise officers' to approve
- Unclear what power has been delegated to officers
- It appears to us that planning permission cannot be lawfully granted with regard to the definition of 'inappropriate development' set out in PPG2
- Failure by officers' to explain to members the differences in the reports and the legal position which led to confusion. This led to the decision that was made.
- Continued inaction may necessitate an application to the High Court
- Concerns raised over lack of enforcement action

Objections to Agricultural Assessment:

- The report fails to make the case
- The report has not been prepared by specialist agricultural consultants
- The contents of the report are bland and superficial
- It fails to demonstrate an existing need to address the policy tests of Annex A of PPS7
- A financial test is required and evidence that the size of the holding can sustain this
- The report relates only to the future occupancy of an agricultural worker
- No substantiated case that the farm worker must be accommodated in this location, opportunities for other properties have not been covered
- The proviso to delegate to permit subject to a satisfactory agricultural appraisal has not been met, the application needs to be referred back to Committee
- Absence of very special circumstances, therefore a grant of planning permission in these circumstances would, in our submission, be bound to be quashed in the event of an application being made to the High Court under CPR Part 54.

Further objections following correspondence from Applicant and their Assessor Dated 22/11/11:

- The whole basis of this application was the need for a dwelling for the prospective accommodation of a farm manager who has not yet been appointed, in connection with the future development of the artificial insemination programme at Lady Farm.
- The applicant's agents provide a frank and open admission that the functional requirement for a farm manager to oversee the prospective future development of this new venture has not yet arisen.
- They go on to state that only one batch of 20 artificially inseminated heifers has calved at Lady Farm so far. It is clear that the expected increase in the numbers of heifers calving at Lady Farm still lies in the future, and that the requirement in paragraph 3(iii) in Annex A to PPS7 that the unit and the agricultural activity concerned have been established for at least three years, have been profitable for at least one of them, are currently financially sound, and have a clear prospect of remaining so has not been met. This alone confirms that the applicant cannot meet the functional need test in PPS7.
- It is clear from their comment on paragraph 6.3 of the Council's expert report that the agent still does not understand the distinction between the detailed criteria of the actual functional requirement laid down by paragraph 3(iii) in Annex A to PPS7 and the limited scope so far of the particular agricultural activity which the applicant seeks to develop.
- The fact that the new house the subject of the pending application "is now occupied by a farm manager who is employed to carry out the calving and rearing duties" is irrelevant in light of the very recent commencement of the relevant activity on the adjoining holding at Lady Farm, and the inability of the applicant to show that the relevant criteria in paragraph 3(iii) in Annex A to PPS7 have been met.
- The size of the house was justified by reason of the need to provide accommodation for someone of sufficient seniority to manage the artificial insemination and breeding enterprise in its entirety. It is clear that the current occupation of the house by the applicant's daughter is simply a matter of convenience and that it bears no relation to any functional need.
- The applicant argues in this letter that "this is not a new agricultural dwelling in the countryside. It is a replacement of an existing agricultural dwelling." This is a fundamental misunderstanding of the present position. We appreciate that the point is well understood by the officers, but it is important that the elected members, to whom this application is now to be referred once again, should not be under any misapprehension in this regard.
- There is a requirement to show a functional need for this large new house in this location. Whatever agricultural need there may have been for a much more modest replacement of the previous agricultural dwelling elsewhere on the site, the current house has to be considered entirely afresh.
- We have previously drawn attention to the fall-back position which cannot be relied upon
- We expect the officers to recommend accordingly, and in view of the failure of elected members to pay proper attention to the officers' previous report or to understand the reasons which led the officers to recommend refusal on the last occasion when this application was reported to the committee for determination, it is particularly important that the officers should ensure that, both in their written report and in their oral presentation at the committee meeting, they spell out to members in very clear terms the reasons why planning permission cannot be granted in this case. We repeat that in light of such a clear

case, a grant of planning permission would be bound to be quashed by the High Court on an application for judicial review, and the elected members should clearly understand this.

A number of further points have been re-iterated concerning the legal position and the threat of a legal challenge concerning the grant of permission.

Item No: 05
Application No: 12/00389/TEL
Site Location: Fountain Buildings, City Centre, Bath



Ward: Abbey **Parish:** N/A **LB Grade:** N/A
Ward Members: Councillor B J Webber Councillor Manda Rigby
Application Type: Telecommunications Application

Proposal:	Installation of Superfast fibre optic broadband cabinet (PCP 012) at Fountain Buildings, S/O 1 Alfred Street
Constraints:	Agric Land Class 3b,4,5, Article 4, Conservation Area, Forest of Avon, Hotspring Protection, World Heritage Site,
Applicant:	Openreach
Expiry Date:	21st March 2012
Case Officer:	Victoria Griffin

REPORT

REASON FOR REPORTING APPLICATION TO COMMITTEE: This application has been referred to Committee at the request of the Development Manager so that Members can consider the recommended refusal of this application.

DESCRIPTION OF SITE AND APPLICATION:

The application seeks prior approval for the installation of 1 no. DSLAM Broadband cabinet to the side of no.1 Alfred Street which forms part of an 18th century terrace in a classical style that is a grade II listed building. The cabinet is proposed to be situated up against the flank wall of no. 1 which has a prominent position on the junction with Lansdown Road and Alfred Street that is currently uninterrupted by street furniture. The flank wall contains detailing including 'faux' windows and is in an area with a restricted clean palette of materials dominated by Bath stone that gives it strong harmony and character.

The cabinet measures approximately 1.6m in height, 1.2m in width and 0.4m in depth and will be green painted steel. It would be separated from the road by existing iron railings that border the road. In this part of the street the footpath measures approx. 2.9m in width and narrows to 1.8m close to the junction with Alfred Street. An existing BT cabinet is sited on the opposite side of the junction.

This is the third application for this proposal. Previous applications have been refused as the cabinet is considered to be harmful to the character and setting of adjacent listed buildings and the wider Conservation Area. The cabinet forms part of a wider programme for high speed broadband coverage across the country and will provide Super Fast broadband connectivity to the local businesses and private properties.

The site falls within the Bath Conservation Area, World Heritage Site and a Hotspring Protection zone.

PLANNING HISTORY:

DC - 11/01055/TEL - Refused - 21 April 2011 - Installation of 1no DSLAM Superfast Broadband Cabinet (PCP 012) at Fountain Buildings, to the side of 1 Alfred Street

Reason for refusal:

The cabinet's siting, against the gable end of no.1 Alfred Street by reason of its proximity to the dwelling would be harmful to the setting of this listed building. Furthermore it would form a noticeable feature within the streetscene. The proposed location would detract from the character and appearance of this part of the Conservation Area and the setting of

Listed Buildings. The proposal is contrary to Local Plan policies BH1, BH2, BH6, D2 and D4 of the Bath & North East Somerset Local Plan (Adopted 2007).

DC - 11/04553/TEL - Refused - 15 December 2011 - Installation of 1no DSLAM Superfast Broadband Cabinet (PCP 012) at Fountain Buildings S/O 1 Alfred Street

Reason for refusal:

The cabinet's siting, against the gable end of no.1 Alfred Street by reason of its proximity to the dwelling would be harmful to the setting of this listed building and important terrace of which it forms part. Furthermore it would form a noticeable feature within the streetscene. The proposed location would detract from the character and appearance of this part of the Conservation Area and the setting of Listed Buildings. The grounds presented in support of the proposal do not outweigh the harm identified. The proposal is therefore contrary to Local Plan policies BH1, BH2, BH6, D2 and D4 of the Bath & North East Somerset Local Plan (Adopted 2007).

SUMMARY OF CONSULTATIONS/REPRESENTATIONS

HIGHWAYS: The applicant has already submitted details through the Highway Maintenance Team for approval to place the equipment on the highway, and the proposed position has been considered acceptable. I therefore recommend that no highway objection is raised.

ENVIRONMENTAL PROTECTION: No comment received

HISTORIC BUILDINGS TEAM: Objects, detracts from the setting of the Listed Building. It may be worth in the report also underlying the sensitivity of the site for example the numerous other listed buildings in the vicinity. They should have also given us the opportunity to see the other sites they have investigated and discarded.

REPRESENTATIONS: Two letters of objection raising the following points (summarised):

Bath Preservation Trust:

- accept that electronic and telephonic communication are facts of modern life and that above ground installations, such as these DSLAM cabinets, are required to support them.
- as Bath is a World Heritage Site and many cabinets would also be within a Conservation Area, care is needed in their siting in order to uphold the purposes of both designations.
- A resubmission of the same proposal already refused twice on grounds of harm to heritage, although the description of the proposal and the absence of necessary drawings & justification precludes certainty and unless amended/augmented is not capable of being approved.
- Consider that the size, appearance and siting of this DSLAM cabinet would detract from the character and setting of the conservation area and listed buildings. As such the proposal is contrary to Policies BH1 & BH2 of the B&NES Local Plan and PPS5, in particular policies HE6, HE7, HE9 & HE10, and the Planning (Listed Buildings & Conservation Areas) Act 1990 and should, therefore, be refused.

Other objections received:

- recognise the wider benefits of high speed broadband and have no "in principle" objection to the installation of such units,
- it is understood that these cabinets will only bring faster broadband for those willing to pay higher charges, therefore the wider public benefit is somewhat limited and therefore overemphasised.
- this is the third in the line of applications for this position. 11/01055/TEL determined Prior Approval Required and 11/04553/TEL was refused. The document 'Application for Prior Approval' for this application states 'Enclosed is a plan indicating the location of the site and also a line drawing and a photomontage indicating the siting of the proposed cabinet', insufficient detailed information has been submitted to be able to fully assess the impact of proposals on the historic environment and should accordingly be refused, or withdrawn and resubmitted with the required level of documentation.

POLICIES/LEGISLATION

The following policies are a material consideration:

ES.7 Telecommunications development
BH.1 World Heritage Site and its setting
BH.2 Listed Buildings and their settings
BH.6 Development within or affecting Conservation Areas
D.2 General design and public realm considerations
D.4 Townscape considerations
T.24 General development control and access policy

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

Bath City-wide Character Appraisal - Supplementary Planning Document - August 2005

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. The following policies should be considered

ES.7, D2. D4. T.24, B.4, BH.6, BH.2, BH.1.

OFFICER ASSESSMENT

The key issues in the consideration of the proposal relate to the impact of the proposal on the character and appearance of the Conservation Area, the setting of Listed Buildings, highway safety and the amenities of the occupiers of nearby premises.

PRINCIPLE OF DEVELOPMENT: This is an application for prior approval made under Part 24 of the Town and Country Planning (General Permitted Development Order 1995 (as amended)).

Part 24 of Schedule 2 to the GPDO 1995 gives deemed planning permission, subject to exclusions and conditions, for certain development to be carried out by, or on behalf of, an electronic communications code operator for the purpose of the operator's electronic communications network. One of the exclusions of the deemed permission requires that prior notification must be given to the Local Planning Authority of the intention to install the apparatus within a World Heritage Site or a Conservation Area, and within 56 days of the receipt of the notification the Local Planning Authority must approve or refuse the application. If a decision is not received by the applicant within the required 56 days the application is deemed to be approved. As with the previous applications, given that the applicant is asking for Prior Approval, the assessment of the application must consider the acceptability of the siting and appearance of the broadband cabinet.

The applicant has presented an argument that this is the only position that the cabinet could be sited for technical reasons and no other suitable position for such a cabinet would be available in the immediate area. It was agreed with the applicant that this application would therefore be presented to Committee as a further refusal would mean the residents and local businesses in the immediate area would not have access to fast speed broadband. However, the applicant has not quantified the number of residents/business that might be affected by the proposal. Limited information has therefore been received to demonstrate the need for this broadband cabinet.

IMPACT ON THE CHARACTER AND APPEARANCE OF THE CONSERVATION AREA AND LIST BUILDINGS: The cabinet's siting, against the gable end of no.1 Alfred Street would introduce a piece of street furniture that is not presently characteristic of the immediate area abutting an uninterrupted flank wall of this listed terrace. The cabinet is larger than existing BT cabinets and would be visually prominent when viewed within the context of the wider street scene and setting. One of the many attributes of the immediate area includes the simple classical style of the existing buildings and street layouts with existing street furniture underplayed or are elegant features of the street scene.

By reason of the size, position and proposed materials of the cabinet it would form a prominent feature within the streetscene, which would be visible from views up and down Lansdown Road. Furthermore, the proposed location against the listed terrace would be unsympathetic and intrusive to the character of the listed terrace. The proposal is therefore considered to detract from the character and appearance of this part of the Conservation Area and the setting of Listed Buildings.

OFFICER ASSESSMENT OF HIGHWAY SAFETY: The highway engineer has raised no objection to the siting of the cabinet on the public highway as it is considered that it would not present a highway safety issue. Whilst the highway narrows in this part of the street, which would restrict access, noting the highway officer comments' it is not considered to constitute an additional reason for refusal.

RESIDENTIAL AMENITY: In respect of amenity; the scale and siting of the cabinet will ensure that the amenities of the occupiers of the nearby premises will remain unaffected.

CONCLUSION

In summary the proposed siting of the broadband cabinet is considered to form an obtrusive feature within the street scene that would adversely affect the setting of this part of the Conservation Area and would adversely affect the special architectural and

historical qualities of the adjacent Listed buildings. The proposal is therefore considered to be unacceptable and as a result it is recommended that Prior Approval is refused.

RECOMMENDATION

REFUSE

REASON(S) FOR REFUSAL

1 The cabinet's siting, against the gable end of no.1 Alfred Street by reason of its proximity to the dwelling would be harmful to the setting of this listed building and important terrace of which it forms part. Furthermore it would form a noticeable feature within the streetscene. The proposed location would detract from the character and appearance of this part of the Conservation Area and the setting of Listed Buildings. The grounds presented in support of the proposal do not outweigh the harm identified. The proposal is therefore contrary to Local Plan policies BH1, BH2, BH6, D2 and D4 of the Bath & North East Somerset Local Plan (Adopted 2007).

PLANS LIST: Cabinet Location plan date received 26/01/12.

Item No: 06
Application No: 12/00012/REG04
Site Location: Queen Square, City Centre, Bath



Ward: Abbey **Parish:** N/A **LB Grade:** N/A
Ward Members: Councillor B J Webber Councillor Manda Rigby
Application Type: Regulation 4 Application
Proposal: Creation of two pedestrian access points to east and west of Queen Square Gardens and insertion of two gateway piers within the existing boundary railings to the north side of Queen Square
Constraints: Agric Land Class 3b,4,5, Article 4, Bath Core Office Area, Conservation Area, Forest of Avon, Hotspring Protection, World Heritage Site,
Applicant: Bath And North East Somerset Council
Expiry Date: 29th February 2012
Case Officer: Suzanne D'Arcy

REPORT

REASON FOR REPORTING THE APPLICATION TO COMMITTEE:

The applicant's agent has a close association with Planning Services.

DESCRIPTION OF THE SITE AND APPLICATION

Queen Square is sited in the Bath Conservation Area and wider World Heritage Site. The application site is a green space, which is surrounded by roads and the grade II star listed obelisk is sited in the centre. The site is bounded with railings and is accessed on the south side. The gate piers are black railings with black metal finials.

This is a full application for the creation of two pedestrian access points on the east and west side.

The proposed access points will be to the centre of the east and west sides of the Square at the centre of the railings. The entrances will have the same appearance as the existing south entrance.

The application also proposes the insertion of matching gate piers to the north side of the Square. The proposed gate piers will match those on the other elevations but access will be blocked by the existing railings.

The application shows indicative details of highway improvements. These works do not require express planning permission and do not form part of the planning application.

RELEVANT HISTORY: None

SUMMARY OF CONSULTATIONS/REPRESENTATIONS

BUILDING CONTROL: No comments received

HIGHWAYS: No objection, subject to advisory note

LANDSCAPE: Supports the scheme as it is well thought out and will enhance the Square

ENGLISH HERITAGE: No comments received

BATH PRESERVATION TRUST: Offer the following comments;

- Supportive of this initiative to enhance Queen Square and improve access to the gardens
- Do not feel that the information within this application is sufficient to allow a proper assessment, since the finer details regarding the design of the steelwork remains somewhat vague.
- Feel that it is necessary for the proposals to be supported by further drawings of detailing and sections.
- Given the architectural and historic significance of this high profile site it is considered appropriate to call for the submission and consideration of detail (by the public) at this application/consultation stage rather than it being dealt with by Condition.

REPRESENTATIONS: 1 letter of support received, raising the following points;

- The proposal to reinstate the east and west access points is eminently supportable and the reason for providing gatepillars but not access at the northern end is understood. The proposals as submitted in this respect are considered acceptable.
- Concern about the wider implications of the proposals due to the piecemeal approach to the whole treatment of Queen Square
- Although we do support the restoration of Queen Square, at present we are not entirely convinced that the proposals are of a sufficiently high quality for such an important Georgian setpiece.
- Various points that are not directly related to the application

1 letter of comment received, raising the following points;

Objection is raised on the grounds of child safety due to the multiple entrances

No active consultation with owners since the presentation of the draft proposals (Officer note: The Council has consulted in line with its statutory obligations and its own practice)

Various points related to wider indicative works shown on the plans that do not require planning permission

POLICIES/LEGISLATION

Planning Policy Statement 5: Planning for the Historic Environment (2010)

D.2: General design and public realm considerations

D.4: Townscape considerations

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

BH.2: Listed buildings and their settings

BH.6: Development within or affecting Conservation Areas

T.24: General development control and access policy

Bath & North East Somerset Local Plan including minerals and waste policies - adopted October 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. The following policies should be considered:

DW1: District wide spatial strategy

B1: Bath spatial strategy

B2: Central area strategic policy

CP6: Environmental quality

OFFICER ASSESSMENT

IMPACT ON THE CONSERVATION AREA AND SURROUNDING LISTED BUILDINGS:

The application is accompanied by a Heritage Analysis of the Square. This analysis concludes that Queen Square was originally intended to have an access on each of the four sides and was enclosed by a low stone balustrade. The balustrade was removed and replaced with iron railings in the 1770s.

The current railings in Queen Square were proposed by the Bath Preservation Trust in the late 1970s as part of the Queen's Jubilee celebrations, and the existing mild forged steel railings were erected.

Having considered the evolution of Queen Square and its original plan form, it is considered that the principle of the insertion of the access points and the gate piers is acceptable and will preserve the setting of the listed Obelisk, surrounding listed building and this part of the Conservation Area.

The application proposes the gate piers to match the existing gate piers on the south side of the Square. The Bath Preservation Trust have requested a condition to require further details of the details. The applicant has provided details of the piers in elevation and plan form, as well as stating that the proposed piers will match those to the south entrance. In view of this, it is not considered that the condition would be necessary and therefore would fail this test of a condition as set out in Circular 11/95.

This is considered to preserve the setting of the listed buildings and the Conservation Area.

URBAN DESIGN: The insertion of two additional access points will have urban design gains as it will improve the permeability of the Square. Queen Square currently has a single access to the south and the introduction of two further accesses will lead to an improved pedestrian flow with wider public realm benefits.

IMPACT ON HIGHWAY SAFETY: There will be no highway safety implications from the insertion of the accesses. The Highways Officer has requested further information regarding the implications of the highway works that are shown on the submitted plans. As these are for information only and do not require express planning permission, it is considered that an informative advising the applicants to enter discussions with the Highways Authority will be sufficient. Furthermore, the indicative works shown to the highway are not expressly required to allow the current proposals to come forward.

The representation makes reference to the impact on child safety due to the creation of new entrances. This consideration can only be attributed limited weight however because it is not uncommon for public spaces to be unenclosed.

The proposed additional accesses will improve pedestrian flow through and around the Square. The application proposes a blocked entrance to the north side of the Square due to the flow of traffic on this side of the Square.

IMPACT ON RESIDENTIAL AMENITY: Due to the nature of the proposal, there will be no adverse impacts on residential amenity.

CONCLUSION

The proposal will more closely reflect the intended plan form of the Square and will improve the pedestrian flow through and around the Square. The proposal is therefore considered to preserve the setting of this part of the Conservation Area and the adjacent listed building.

There will be no highway safety implications directly associated with the insertion of the gate piers.

RECOMMENDATION

PERMIT with condition(s)

CONDITIONS

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

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

2 The gate piers hereby approved shall match those on the south entrance to the Square in terms of materials, detail and design.

Reason: In the interests of preserving the character and appearance of this part of the Conservation Area.

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

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

PLANS LIST: This decision relates to drawings numbered 1118/01a, /02a Rev B, 03a Rev B, /04a rev A, /05a, /06a, /07a, 01 and 02 and related Design and Access Statement, received by the Council on 4th January 2012.

REASONS FOR GRANTING APPROVAL

1. The proposed development will more closely reflect the intended plan form of Queen Square and will preserve the setting of the Conservation Area and listed buildings. There will be no highway safety implications from the gate piers.

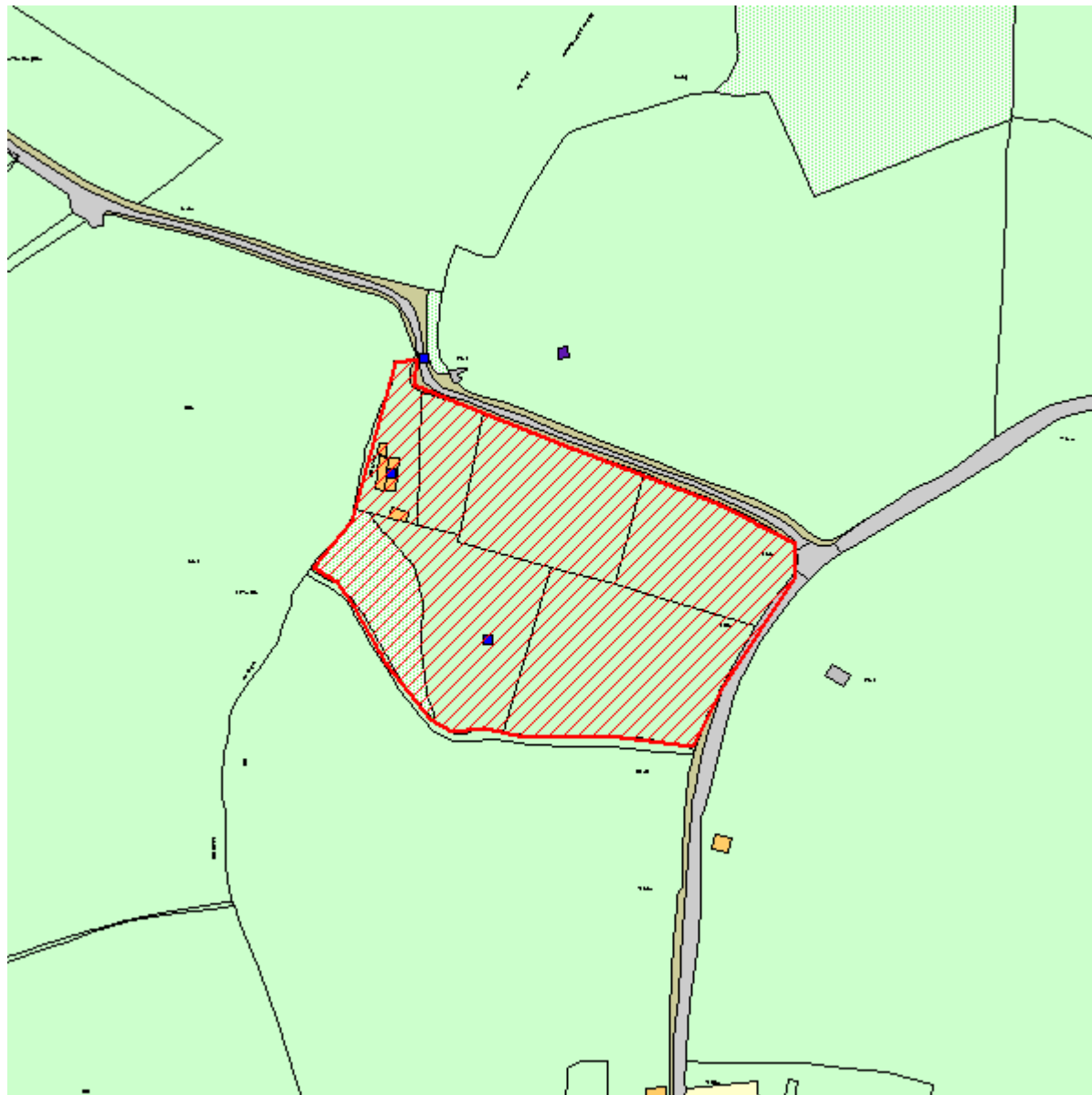
2. The decision to grant approval has taken account of the Development Plan, relevant emerging Local Plans and approved Supplementary Planning Guidance. This is in accordance with the Policies set out below at A.

A.

D.2, D.4, BH.1, BH.2, BH.6 and T.24 of the Bath & North East Somerset Local Plan including minerals and waste policies - adopted October 2007

2 The applicant should note that this Notice of Decision does not grant approval with regards either the detail of, or the carrying out of works within the limits for the public highway for which the consent and technical approval of the Council's Highways Service is required.

Item No: 07
Application No: 11/05310/FUL
Site Location: Stables, Butcombe Lane, Nempnett Thrubwell, Bristol



Ward: Chew Valley South **Parish:** Nempnett Thrubwell **LB Grade:** N/A
Ward Members: Councillor V L Pritchard
Application Type: Full Application
Proposal: Retention of stable block, field shelter, hay store, hard-standing, lean-to and secure tack room and tractor, trailer, horsebox, creation of feed/storage area, incorporating a change of use of the land to equestrian (Resubmission)
Constraints: Airport Safeguarding Zones, Agric Land Class 1,2,3a, Area of Outstanding Natural Beauty, Forest of Avon, Greenbelt, Public Right of Way, Water Source Areas,
Applicant: Mr James Livingstone

Expiry Date:	5th March 2012
Case Officer:	Richard Stott

REPORT

REASON FOR REPORTING APPLICATION TO COMMITTEE:

The Parish Council has objected to this application contrary to the recommendation of the case officer.

PROPOSAL:

This application relates to a site located immediately on Bath & North East Somerset's and North Somerset's administrative boundary to the west of Nempnett Thrubwell within the Bath and Bristol Green Belt. The site forms the northern most field of the Mendip Hills Area of Outstanding Natural Beauty with the boundary running adjacent to Butcombe Lane. Temporary permission was granted in 1999 for a detached stable block, field shelter, hay store and hard standing, this permission was renewed in 2004 however lapsed in September 2009, since which time the use of the site has been unauthorised.

The applicant applied in 2010 for the retention of the current units on site as well as a touring caravan and the change of use of the land from agricultural to equestrian. The application was deemed in accordance with policy and recommended for permission however was refused by Members at the Development Control Committee meeting in July 2011. The reason for refusal related to the siting of the caravan and the lack of justification for the buildings.

Since having the application refused, the applicant has addressed the reason for refusal by removing the caravan from site, providing full justification to demonstrate the need for the units and has carried out remedial works to improve the appearance of the site generally. This application is a resubmission seeking consent for the retention of the stable block, field shelter, hay store, hard-standing, lean-to and secure tack room and tractor, trailer, horsebox, creation of feed/storage area, incorporating a change of use of the land to equestrian. It should be noted that the tractor, trailer and horsebox are all mobile features and do not in their own rights require formal consent.

RELEVANT HISTORY

- 10/05014/FUL - Retention of stable block, field shelter, hay store, hard-standing, lean-to and secure tack room and siting of tractor, trailer, horse box and touring caravan and change of use of land to equestrian - REFUSED
- 04/02635/REN - Retention of stable block, field shelter, hay store and hard-standing - PERMITTED (Expired 31st September 2009)
- 99/02670/FUL - Detached stable block, field shelter, hay store and hard-standing as amended by letter and drawing received 20th August 1999 - PERMITTED

SUMMARY OF CONSULTATIONS/REPRESENTATIONS

NEMPNETT THRUBWELL PARISH COUNCIL: OBJECT

- The site has been tidied up but its appearance is still detrimental to the openness and setting in the Area of Outstanding Natural Beauty.
- There is still burning of industrial waste taking place on site.
- There are still breaches of previous planning conditions.
- The footpath is being obstructed.

- Vehicular access is still difficult.
- Caravan on site

(Members should note that the caravan has actually been removed from site. In addition, there have been no reported complaints of obstruction to the footpath or waste burning - which would be matters for Public Rights of Way and Environmental Health respectively, not planning. The issues relating to breaches of planning conditions have not been specified by the Parish and therefore have not been investigated.)

HIGHWAY DEVELOPMENT: NO OBJECTION

- On the basis that the land is being used for equestrian use, and the majority of the proposed buildings etc. have previously been approved, there are no grounds for a highway objection to the proposal, particularly where there are no changes to the access or traffic generation.

MENDIP HILLS AREA OF OUTSTANDING NATURAL BEAUTY PARTNERSHIP: COMMENTS

- Concerns about the impact on the character of the AONB.
- Previously raised concern about the untidy nature of the site however the improvements made to-date, including the re-roofing of the buildings is welcomed in the context of visual impact on the attractive landscape within which the site is located.
- If permission is granted, all buildings should be brought up to standard within a reasonable timeframe.

PUBLIC RIGHTS OF WAY: COMMENTS

The Rights of Way Team have advised that PROW CL4/27 runs through the middle of the application site as shown in purple on the plan forwarded to you under separate cover. The line and width of the path must not be altered or obstructed during or after the change of use. No gates or other furniture are to be erected on the line of the footpath. This should be included as an informative on any permission granted.

REPRESENTATIONS:

2x Letters of objection received raising the following points:

- Site has been tidied up but remains an eyesore.
- No further development should be allowed.
- Caravan still on site.
- Climbing frame remains on site
- Timber fence looks suburban
- Footpath is blocked
- Harmful to green belt and AONB

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

NE.2 Area of Outstanding Natural Beauty

GB.1 Green Belt

GB.2 Openness of the Green Belt

T.24 Access

SUBMISSION CORE STRATEGY, MAY 2011 (The submission core strategy is a key material consideration but at this stage it has limited weight)

CP8 Green belt

Policies T.24, NE.2, GB.2, D.2 and D.4 are Saved Local Plan Policies

SUPPLEMENTARY PLANNING GUIDANCE

Mendip Hills Area of Outstanding Natural Beauty Supplementary Planning Guidance: Guidelines for Horse Related Development

NATIONAL POLICY

PPG.2 Green Belts

PPS.7 Sustainable Development in Rural Areas

DRAFT NATIONAL PLANNING POLICY FRAMEWORK

Due consideration is given to the Draft National Planning Policy Framework, July 2011, however at present this carries little weight and in this case it proposes little change to the aspects of local and national policy that are relevant to this decision.

Planning Minister Greg Clark has said that ministers are committed to publishing the final version of the NPPF by 30 March 2012.

OFFICER ASSESSMENT

PREAMBLE: This application is a resubmission and seeks permission for the permanent retention of the existing stable block, field shelter, hay store, hard standing, lean-to and secure tack room and for the siting of a tractor, trailer and horse box, in addition permission is sought for the change of use of the land from agriculture to equestrian use. The application is submitted following the refusal of a similar scheme in 2011 and the applicant has made every effort to resolve the previous reason for refusal including removing the caravan from site, improving the buildings, tidying the site and providing full justification for the works. These are material factors in the determination of this application.

SITE LOCATION: The site is located on a double bend in the road from Nempnett Thrubwell to Butcombe; the western boundary of the site marks the boundary between the administrative areas of North Somerset Council and Bath & North East Somerset Council. The eastern, western and northern boundaries of the site mark the limits of the Mendip Hills Area of Outstanding Natural Beauty and the whole site is located in the Bath and Bristol Green Belt.

The application site is comprised of 5 parcels of land with a small copse of trees in the south western corner, the land slopes down from east to west across the site with the buildings and equine infrastructure situated on the western boundary, each parcel of land is demarked by post and rail fencing. The land is open in character with a large hedge marking the north, west and east boundaries and a line of mature trees marking the southern boundary. To the rear of the site is a line of electricity pylons running on a north east to south west axis.

The stable block, field shelter, tack store and hay store that are currently situated on the land, along with the hard standing area have existed in excess of 10 years having previously been granted consent in 1999 and renewed in 2004.

ADDRESSING THE PREVIOUS REASON FOR REFUSAL: Application 10/05014/FUL was presented to the Development Control Committee in July 2011 with an officer recommendation to permit however was overturned by Members. The original application sought the retention of a caravan on the site in addition to the retention of the stable block etc. and the change of use of the land. In refusing the application, the decision notice was issued with only one reason for refusal which stated:

"There has been no evidence submitted by the applicant to demonstrate a need to site a caravan or other buildings associated with an equestrian use on the application site and due to their siting and size it is considered that they are harmful to the openness and visual amenities of this part of the Green Belt and detract from the character and appearance of the Mendip Area of Outstanding Natural Beauty."

In seeking to address the sole reason for refusal, the applicant has removed the caravan from the site, in addition, works have been carried out to tidy the site, and improve the appearance of the buildings including re-roofing.

The application is now fully supported by a justification statement to demonstrate the need for the various units associated with the long established equestrian use of the site - storage of hay, feed and equipment. In addition the statement confirms a commitment to carrying out further improvements to the appearance of the site and this has been welcomed by the Mendip Hills AONB Partnership.

The caravan has been removed from site and thus the element of the refusal notice relating to it no longer applies.

The horsebox, trailer and tractor are all moveable objects, not uncommon in a rural location and ordinarily do not in themselves require consent, notwithstanding there was a condition attached to the 2004 permission which required no trailers to be kept on site. The siting of such features can be regularised by this application.

The burning of materials is not a material planning consideration however it is understood that such activities are no longer taking place on site. These issues would need to be dealt with by the Environmental Health Team and/or the Environment Agency.

It is noted that the equestrian enterprise on this site has existed for in excess of 13 years and the stables are tucked into the lower portion of the field largely screened from view from the wider area. The principle of the development has clearly been made by the length of time the operation has existed and this was not previously challenged by Members.

The site in its current form is considered to have a significantly lower visual impact than the ménage associated with the adjoining property (to the west); this point was presented to Members in the July Committee as part of the case to demonstrate the impact of the proposed on the wider area.

In consideration of the application submitted it is felt that the applicant has fully addressed and overcome the previous reason for refusal and it is therefore recommended that permission is granted.

The remainder of this report explores the issues in greater depth and largely follows the format and findings of the report presented to Committee in July 2011.

ISSUES: The key considerations with this application are as follows:

- Is the retention of the existing units acceptable on this site?
- Is the siting of the trailer, horse box and tractor acceptable?
- Does the retention harm the openness of the Green Belt or wider Area of Outstanding Natural Beauty?
- Is the change of use of the land to equestrian use an acceptable use of the land and does it harm the visual amenities of the countryside?
- Does the application pose a threat to highway safety?

This report will consider the above issues; in addition the concerns raised in the letters of objection will be discussed. The purpose of this report is to assess the application on its own merits and in consideration of the prevailing local and national policy and to make a recommendation as to whether planning permission should be granted.

POLICY CONTEXT: In consideration of the prevailing policy, the national context is set out in Planning Policy Guidance 2: Green Belts (PPG 2) and Planning Policy Statement.7: Sustainable Development In Rural Areas (PPS 7).

PPG.2 sets out what constitutes appropriate development in the green belt with the overarching aim of assisting in safeguarding the countryside from encroachment and helping to retain or enhance landscapes. Whilst there is a general presumption against inappropriate development in the green belt, exceptions are given to "essential facilities" which can include small stables for outdoor sport and outdoor recreation provided the proposed development preserves the openness of the green belt and does not conflict with the purposes of including land in it.

PPS.7 sets out the Governments position on development in the countryside, emphasising the need to preserve rural character. The majority of this PPS discusses the impact of new developments but also acknowledges the role that equestrian activities play in rural areas. The principle concern in relation to PPS.7 is ensuring that due consideration is given to the impact the development has on the wider landscape setting of this rural area and whether, in this instance, retention of the buildings is appropriate.

Turning to the local policy context, the relevant policies are contained within the Bath & North East Somerset Local Plan, including minerals and waste policies, which was adopted in October 2007. These policies, which are derived from national policy, are GB.1 and GB.2 relating to development in the green belt, and NE.2 relating to the preservation of the Area of Outstanding Natural Beauty. Other policy considerations seek to ensure the development fits with the context of the surrounding area, as set out in D.2, and to ensure highway safety is maintained, in line with policy T.24.

Limited weight should be given to the Mendip Hills Area of Outstanding Natural Beauty Supplementary Planning Guidance relating to horse related development. Whilst there are points of relevance in this document relating to general principles, the SPG is largely out of date as it relates to National Policies and parts of the Planning Act which have since been amended or superseded. The application is therefore assessed in line with the up to date prevailing policy.

The Submission Core Strategy, May 2011, which is the forthcoming local policy document is a material consideration but also given limited weight as it is not yet adopted. Notwithstanding this, the relevant Bath & North East Somerset Local Plan policies referred to above are all saved by the Core Strategy, whilst the introduction of Policy CP8 (Green Belt) reiterates the national framework.

PRINCIPLE OF DEVELOPMENT: In consideration of this application, it is noted that whilst the 2004 renewal of consent lapsed in 2009, with the exception of the addition of a purpose built feed and storage area measuring 5m x 4m and contained within the wider built envelope, the elements of "built mass" are not set to change from what exists on site at present and as they have existed in their current form for in excess of 10 years. In respect of the local and national context it is noted that there is a presumption to allow for small scale equestrian developments in rural areas, on the basis of this, coupled with the fact the development has existed for in excess of 10 years on this site, it is felt that the principle of development is well established, without demonstrable harm, and therefore it is acceptable to allow it to continue. The proposed retention of the existing units on site is deemed to be in accordance with both Local and National Policy.

In respect of the siting of the horse box, trailer and tractor, all of these are moveable vehicles and therefore do not ordinarily require consent, however it is noted that a condition of permission 04/02635/REN stated that no trailers shall be kept on site without prior written consent. In consideration of the keeping of the aforementioned machinery on this site, all these items are directly associated with the equine enterprise and are not uncommon features in the rural landscape therefore are not considered to be out of context.

Finally, with regard to the change of use of the land to equestrian use, it is noted that this site has been used for the private keeping of horses since at least 1999 (i.e. not a commercial or DIY livery). Looking at the current site, the land is quite clearly divided into paddocks and the use of the land visually appears as an equestrian use tied to the stables. In this regard, and given the length of time that horses have been grazed and kept on the land, it is felt that formalising the use of the land as equestrian would not be unreasonable or detrimental to the immediate or wider area. Notwithstanding this observation, it is noted that under permitted development, provided there are no 'engineering' works the applicant could at a future time construct a ménage or erect jumps or other equine related paraphernalia which cumulatively could be detrimental to the rural character of this part of the green belt and Area of Outstanding Natural Beauty. In the interest of preserving the rural character of this area it is therefore recommended that if permission is to be granted that appropriately worded conditions are applied to restrict this.

IMPACT ON THE AREA OF OUTSTANDING NATURAL BEAUTY AND GREEN BELT: Whilst the principle of the retention of the development and the use of the land is

considered to be acceptable on this site, the key consideration with this application is whether the use and buildings are acceptable in terms of the impact they have on the openness of the green belt, character of the surrounding area and rural setting of the Area of Outstanding Natural Beauty.

As previously set out, PPG.2 states that small scale horse related developments can be acceptable provided they preserve openness and do not harm the reasons for including land in the green belt; this is reflected in Local Plan policy GB.2. In terms of the Area of Outstanding Natural Beauty setting, Local Policy NE.2 states that permission will not be permitted where development adversely affects the natural beauty of the landscape.

The principle observation with this site is how the development fits within the setting of the immediate landscape. As previously discussed, the site and the use of the land have existed in this manner for a significant period of time, and this application does not seek to expand or change the level of built form on site. The site as seen at present is therefore considered to be well established and well integrated within the local environment and forms part of the setting of the wider area. Fundamentally, by reason of the local topography and the surrounding vegetation, the site is largely obscured from the wider area and is not discernable from the Mendip Hills located several miles to the south. For the same reasons, this application is not considered to represent a threat to the openness of this part of the Green Belt. As has previously been stated, when viewed from the north, the site is not visible outside its immediate boundaries, unlike the ménage situated on the adjacent land which, although having the benefit of full permission is significantly more visible.

It is noted that one of the key objections to this application relates to the untidy nature of the site, the general rubbish noted around the stables and the concerns about the burning of materials on site being detrimental to the character and appearance of the wider landscape setting. Whilst these concerns are noted, they do not go to the heart of the application which seeks to establish the acceptability of the use of the site in this location. In terms of the burning of materials, as stated this is an issue for the environmental health officer, however it is understood that any previous burning has ceased and no new complaints have been received. If there is an ongoing problem with such activities, this can be addressed through Environmental Health Legislation and in this instance it is not considered to be a material planning consideration against which planning enforcement action could be taken. Again, in respect of the tidiness of the site, whilst recognised as being an issue, this is not in itself a breach of planning against which action could be taken or against which this application could be refused. It should also be noted that since the previous scheme was determined significant site clearance and improvements to the state of the buildings have taken place and there is a commitment in the Design and Access Statement to continue improving the site. The works carried out since July 2011 are welcomed by the case officer and the Mendip Hills AONB Partnership.

Based on an assessment of the site and in consideration of the wider area and the relevant policies, on balance for the reasons set out above, the proposed application is not deemed harmful to the setting of the Area of Outstanding Natural Beauty or the openness of the green belt, therefore the application is considered to be in accordance with Policies GB.2 and NE.2 of the Local Plan.

IMPACT ON HIGHWAY SAFETY: It is noted that objections have been raised in respect of the current access arrangements to the site, however the concerns seem to stem from the potential impact that an intensification of use could have on the local highway network. In consideration of this, it should be noted that this application can only be assessed on its own merits, not on the merits of an intensified use. Any change to the use would require an application in its own right and would be assessed on the details of the individual scheme. In consideration of this point, this application is assessed on the basis that the current situation is to remain as it has been for several years and the Highway Development Officer has noted that on the basis that the use of the land and the fact the majority of the proposed buildings etc. have previously been approved, there are no grounds for a highway objection to the proposal.

On the basis of the Highway Officer's comments and in respect of the use of the site, this application is not considered to represent an increase in traffic or pose any greater harm to highway safety than already exists. The application is therefore considered to be acceptable and in accordance with Policy T.24.

CONCLUSION: Whilst the objections to this application are noted, it is understood that these generally centre on the tidiness of the site, the burning of materials and the concerns over potential future uses, all of which are concerns that can be dealt with outside the scope of the current application. In consideration of this application, it is felt that on the basis of the length of time the buildings have existed and the overall use of the land, the permanent retention of the equestrian use is acceptable in principle at this location. In respect of the environmental impact, it is considered that the retention of the units, by reason of the local topography and the setting within the landscape, they would not adversely harm the openness of the green belt or the rural setting of this part of the wider Area of Outstanding Natural Beauty.

For the reasons set out in this report it is recommended that planning permission is given for the retention of the existing units and for the change of use of the land subject to the appropriate conditions that have already been referred to above.

RECOMMENDATION

PERMIT with condition(s)

CONDITIONS

1 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 ménage or other hardstanding associated with the equestrian use of the land shall be constructed without a further planning permission having first been applied for and approved in writing by the Local Planning Authority.

Reason: In the interests of the visual amenity and character of the green belt and this part of the Mendip Hills Area of Outstanding Natural Beauty.

2 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 jumps or other equestrian associated paraphernalia shall be

erected or used on this site without a further planning permission having first been applied for and approved in writing by the Local Planning Authority.

Reason: In the interests of the visual amenity and character of the green belt and this part of the Mendip Hills Area of Outstanding Natural Beauty.

3 Within three months of the date of this permission, the works to improve the appearance of the existing buildings, including the use of timber cladding and steel profile sheeting as specified in the Design and Access Statement and shown on the drawings hereby approved shall be carried out.

Reason: in the interest of the appearance of the site and the visual amenities of the wider Area of Outstanding Natural Beauty

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

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

PLANS LIST: This decision relates to the Design and Access Statement, Site Location Plan and to drawings S4935/001 and 100B date stamped 12th December 2011 by the Council

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 proposed retention of the existing stables and equestrian buildings on this site, along with the change of use of the land to equestrian is acceptable and in accordance with National Policy as set out in PPG.2 and PPS.7 and local Policy GB.1 of the Bath & North East Somerset Local Plan, including minerals and waste policies, October 2007 and Policy CP8 of the Submission Core Strategy, May 2011.

4. The proposed retention of the existing stables and equestrian buildings on this site, along with the change of use of the land to equestrian, by reason of the siting, location, local topography and surrounding vegetation preserves the openness of this part of the Green Belt and maintains the local rural character of the Mendip Hills Area of Outstanding Natural Beauty, in accordance with Policies GB.2 and NE.2 of the Bath & North East Somerset Local Plan, including minerals and waste policies, October 2007 which are saved policies in the Submission Core Strategy, May 2011.

5. The proposed access is to a satisfactory standard, maintaining the safety of highway users, in accordance with Policy T.24 of the Bath & North East Somerset Local

Plan Including Minerals and Waste Policies Adopted for October 2007 which is a saved policy in the Submission Core Strategy, May 2011.

A

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

NE.2 Area of Outstanding Natural Beauty

GB.1 Green Belt

GB.2 Openness of the Green Belt

T.24 Access

SUBMISSION CORE STRATEGY, MAY 2011 (The submission core strategy is a key material consideration but at this stage it has limited weight)

CP8 Green belt

Policies T.24, NE.2, GB.2, D.2 and D.4 are Saved Local Plan Policies

SUPPLEMENTARY PLANNING GUIDANCE

Mendip Hills Area of Outstanding Natural Beauty Supplementary Planning Guidance: Guidelines for Horse Related Development

NATIONAL POLICY

PPG.2 Green Belts

PPS.7 Sustainable Development in Rural Areas

DRAFT NATIONAL PLANNING POLICY FRAMEWORK

Due consideration is given to the Draft National Planning Policy Framework, July 2011, however at present this carries little weight and in this case it proposes little change to the aspects of local and national policy that are relevant to this decision.

Planning Minister Greg Clark has said that ministers are committed to publishing the final version of the NPPF by 30 March 2012.

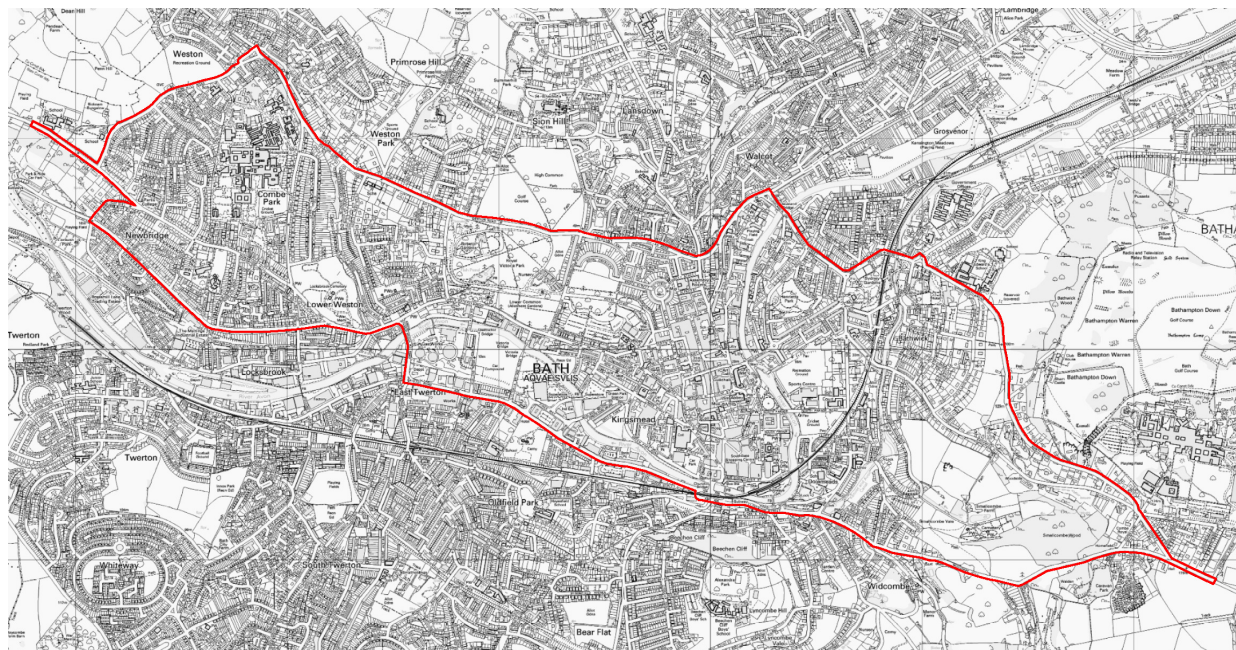
2 INFORMATIVE:

Public Right of Way CL4/27 runs through the middle of the application site. The line and width of the path must not be altered or obstructed during or after the change of use. No gates or other furniture are to be erected on the line of the footpath.

The following two applications are considered together below

Item No: 08

Application No: 11/05349/AR



Site Location: Various Streets within the Urban Area

Ward: Various Wards - parts of Weston, Newbridge, Westmoreland, Widcombe, Bathwick, Abbey, Walcot and Kingsmead

Ward Members: Councillors Colin Barrett, Malcolm Lees, Loraine Morgan-Brinkhurst MBE, Caroline Roberts, Sharon Ball, June Player, Ian Gilchrist, Ben Stevens, Nicholas Coombes, David Martin, Manda Rigby, Brian Webber, Lisa Brett, Paul Fox, Andrew Furse and Douglas Nicol

Application Type: Advertisement Consent

Proposal: Display of 60 no. freestanding feather flags (30 Olympics branding + 30 Paralympics branding), bunting on railings and around lamp-posts and fence scrim on railings

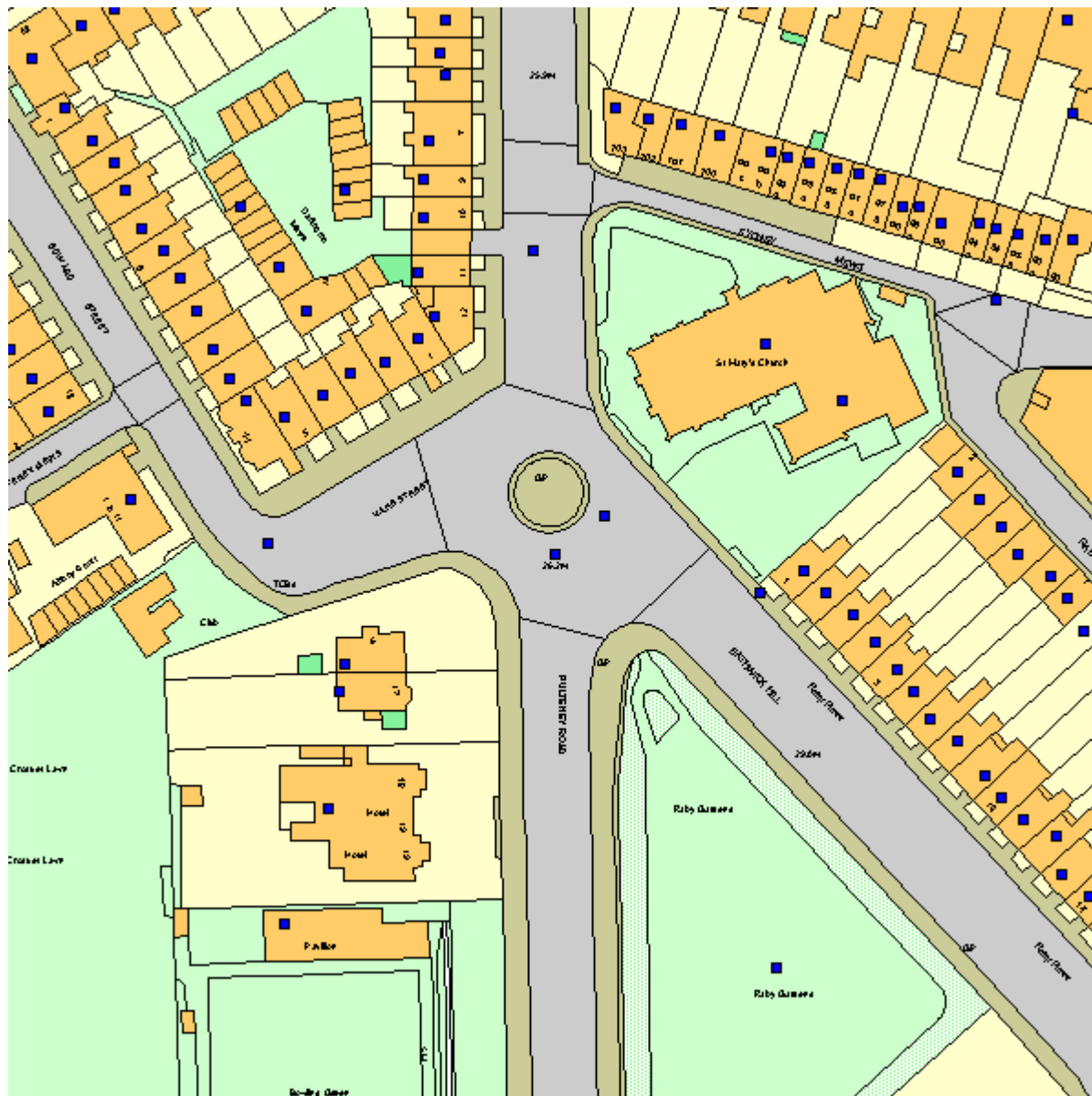
Constraints: Agric Land Class 1,2,3a, Agric Land Class 3b,4,5, Agric Land Class 3b,4,5, Scheduled Ancient Monument SAM, Area of Outstanding Natural Beauty, Article 4, Bath Core Office Area, British Waterways, City/Town Centre Shopping Areas, Coal - Standing Advice Area, Conservation Area, Cycle Route, Flood Zone 2, Flood Zone 3, Forest of Avon, General Development Site, Greenbelt, Hazards & Pipelines, Historic Parks and Gardens, Hotspring Protection, Listed Building, Local Shops, Major Existing Dev Site, Overland Flood Route, Protected Recreational, Primary School Purpose, Prime Shop Front, Public Right of Way, Railway, Sites of Nature Conservation Imp (SN), Safeguarded Roads, Sustainable Transport, Tree Preservation Order, World Heritage Site,

Applicant: Bath & North East Somerset Council

Expiry Date: 9th April 2012

Case Officer: Geoff Webber

Item No:	09
Application No:	12/00658/AR
Site Location:	Pulteney Road, Bathwick, Bath



Ward:	Bathwick	Parish:	N/A	LB Grade:	N/A
Ward Members:	Councillor Nicholas Coombes		Councillor David Martin		
Application Type:	Advertisement Consent				
Proposal:	Erection of 4 non-illuminated signs on Bathwick Hill roundabout				
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:	9th April 2012				
Case Officer:	Geoff Webber				

REPORT

These two applications relate to the dressing of the city in connection with the Olympic Games and Paralympic Games.

REASON FOR REPORTING APPLICATIONS TO COMMITTEE:

These applications have been submitted by Bath and North East Somerset Council in support of its proposals for dressing the city of Bath in connection with the Olympic Games and the Paralympic Games being held this year. The proposals are for temporary advertisements in locations that would not normally be considered to be appropriate, having regard to the character and appearance of the historic city centre. However, the proposals have been put forward on the basis that this year's twin Olympic events create exceptional circumstances and Members are invited to consider whether these circumstances justify decisions that would be contrary to the LPA's normal approach.

DESCRIPTION OF THE PROPOSALS:

To celebrate the Olympics year 2012, the Council is proposing to dress parts of the Bath urban area in a flexible manner for the duration of the period from 1st May to 30th September 2012.

The London 2012 Olympic Games start with the arrival of the Olympic Torch in the UK on 19th May. The Torch then journeys throughout the UK to arrive in London for the start of the Games on 27th July. Following the Olympic Games is the Paralympic Games, ending in early September. The Torch Relay will come through Bath on Tuesday 22nd May 2012.

All local authorities are being encouraged to engage with celebrations of the year, and to use street dressing of various kinds to decorate and enhance public spaces during the Olympics period and, in particular, to demonstrate each community's welcome of the Olympic Torch. The London Organising Committee of the Olympic Games (LOCOG) controls the branded products that can be purchased, and only official branded products can be used.

The Council is proposing to erect a total of 60 freestanding 'feather flags', together with bunting and fence scrim at selected locations within a large proportion of the Bath urban area. The flags will be branded with the copyrighted London 2012 Olympics and Paralympics logos, although the actual designs of the flags are not known at the time of writing this Report. Materials and dimensions are known and preliminary images of the proposed feather flags have been provided.

The Council wishes to erect the street decorations along the Torch Relay route from approximately 1st May, and then after the 22nd May the flags will be displayed on a short term basis in a variety of locations across the city in association with local events. Unusually, it is not possible to identify the actual locations of the flags until details are announced in due course of the route of the Olympic Torch Relay through the city. The detailed route will be publicised nationally in due course, but at present we only know when the Olympic torch will pass through Bath. The Torch Relay route is highly confidential and cannot be announced until this is officially sanctioned by LOCOG, in order not to compromise security for this high profile event.

The proposed flags are 'advertisements' within the terms of the Advertisement Regulations, and therefore their display requires formal consent. These flags are the

subject of the first application referred to in this Report. It has been necessary to find a means of addressing the provisions of the Regulations whilst working within the national embargo on the release of details of the route to be taken by the Torch Relay. Your Officers have provisionally agreed with the Applicant that if Consent is granted for the display of the flags, then a Condition will be used in order to secure approval of the detailed display arrangements not less than 7 days prior to their installation.

It is also proposed to erect plain coloured bunting and fence scrim within the same designated area for the same duration. These items are not in themselves advertisements and do not therefore come under Planning control, but they have been included in the submitted proposals in order that Members can be aware of the Council's full range of proposals.

Council officers will encourage Primary Schools to involve children in making their own bunting. This will be used to decorate school buildings, and to decorate railings or to tie round lamp-posts ('Maypole' style) for the Torch Relay day within the designated area of this planning application. This bunting will be coloured fabric and will not have any logo or other branding. Council officers are also working with Bath Spa University art students to encourage them to create decorations from coloured fabric. Again, this will be used to tie round lamp-posts for the Torch Relay day and again this bunting will be coloured fabric and will not have any logo or other branding. The fabric decorations will be erected a few days before the Torch Relay day and could remain up until the end of September. Your Officers have been advised that if decorations become damaged or unsightly, they will be removed more quickly.

In tandem with the flags and street decorations mentioned above, the Council proposes that Council-owned parks will have spring and summer bedding planted in the Olympics colour palette, and this colour theme will be repeated in the hanging baskets situated in the city centre. These proposals include the planting the Bathwick Hill roundabout with feature planting for the same duration, with the Olympics colours being represented in a first phase of planting which will subsequently be replaced by a second phase incorporating the Paralympics logo during late June. This planting and replanting will represent a significant cost to the Council which it is proposed to meet through a sponsorship arrangement. The planting scheme itself does not come under planning control, but the 4 proposed temporary sponsorship advertisements do require formal advertisement consent and are the subject of the second application referred to in this Report.

SUMMARY OF CONSULTATIONS/REPRESENTATIONS

The application for the display of the proposed 60 feather flags includes a site area that has been deliberately cast extremely widely, so as to include the full range of potential Torch Relay routes. However, Members may be aware that the statutory provisions regarding consultation on applications for advertisement consent are limited in scope and that no site notices are required. The Applicant team has advised that whilst the majority of decorations will be located on public highway or on Council-owned land, some may be placed on land owned by others, and that affected owners will be consulted with on a confidential basis at the earliest opportunity.

Each of the two applications has been advertised through the normal press advertisement placed by the Council, and at the time of writing this report only Highway comments have

been received. Any further comments that are received will be reported to Members at the meeting.

The Highways Development Officer has commented that he has No Objections to the proposed temporary flag advertisements, but that an Informative should be added to any consent advising that the details of the locations and designs of the flags will need to be agreed with the Highway Authority. No objections are raised in respect of the Bathwick Roundabout sponsorship signs, but again details of the proposed locations will need to be controlled - this time by means of an appropriate Condition.

POLICIES/LEGISLATION

RELEVANT PLANNING HISTORY:

None

POLICY CONTEXT

Only relatively few elements of the Policy context bear upon the consideration of applications for Advertisement Consent. Essentially, these proposals fall to be considered within the terms of policies aimed firstly at safeguarding the quality of the environment and the special character and appearance of the Bath Conservation Area and the World Heritage Site, and also at securing adequate levels of safety for those using the public highways.

ADOPTED LOCAL PLAN

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

D.2 General Design and public realm considerations

D.4 Townscape considerations

BH.1 World Heritage Site and its setting

BH.2 Listed Buildings and their settings

BH.6 Development within or affecting conservation areas

BH.17 Advertisements - safeguarding amenity and public safety

BATH AND NORTH EAST SOMERSET DRAFT CORE STRATEGY (May 2011):

This is currently subject to Examination and the Hearings have taken place in recent weeks. Therefore it can only be given limited weight for development management purposes. The following policy should be considered:

B4 The World Heritage Site and its setting

NATIONAL POLICY

PPS.5: Planning For the Historic Environment

DRAFT NATIONAL PLANNING POLICY FRAMEWORK

This is undergoing a consultation exercise and should only therefore be afforded limited weight at present.

OFFICER ASSESSMENT

PLANNING CONSIDERATIONS:

The description set out above of the proposed advertisements and of the justification for their display incorporates a detailed explanation of the close relationship of these

proposals with the two major Olympics events being held in the UK during 2012. In particular, the display of the 60 proposed feather flags is directly associated with the Olympic Torch Relay which will be passing through Bath on 22nd May.

Having regard to the policies in the adopted Local Plan and the provisions of national planning policy, locations within Bath's Conservation Area and the historic city centre within the World Heritage Site have in recent years typically been regarded as inappropriate for the display of street advertisements. These controls have ensured that Bath's city centre streets have remained remarkably free of the advertising 'clutter' that characterises many other town and city centres, and that the architectural and historic heritage of the city shines through with a clarity that is an essential part of Bath's attraction as an international tourist destination. The area covered by the flag advertisement proposals includes the historic core of the city, and consequently consideration must be given to the impact of the proposals upon this particularly sensitive environment.

With regard to the proposed sponsorship advertisements on Bathwick Roundabout, a similar need for careful consideration arises, in that the roundabout occupies a prominent location at an important road junction within the Conservation Area and World Heritage Site. The roundabout is clearly visible not only from the immediately adjoining roadways, but also from some distance away in views along the approach roads.

However, your Officers are satisfied that the two Olympics events in 2012 represent considerations that are unique in their scope and in the manner in which local communities are being encouraged to provide contributions towards an overall sense of national celebration. The proposed advertisements are all directly related to the Council's desire to promote the Olympics events in line with the broad encouragement being given on a national basis, and in any event the proposed displays are for a temporary period only. The proposed sponsorship advertisements are in any case modest in scale.

The national celebrations associated with the Olympics events will represent a temporary period within which these advertisements can be seen as a legitimate special case, on the basis that these justifying circumstances will not be repeated in the foreseeable future. The potential impact of the advertisements upon levels of amenity within the affected areas of the city and upon public safety must be weighed against the merits of the special justification for the displays, having regard to their temporary nature. Whilst it is essential that the special character and qualities of the city are safeguarded, it is considered that the display of these particular advertisements for the temporary periods specified will not materially harm the character or appearance of the Conservation Area, will not adversely affect the Outstanding Universal Values of the World Heritage Site, and will not materially impact upon the settings of Listed buildings within the city. Once the advertisements are removed, there will be no on-going impact upon the local environment and so the effect upon amenity will be both limited and temporary.

In terms of public safety, the Highway Development Officer has confirmed that he is satisfied that proper consideration in respect of the detailed locations of the proposed advertisements can be given at a later date under the provisions of Highways legislation.

For the reasons specified above, any consents should be subject to a condition specifically limiting the display of the advertisements to the specified temporary period, and (in respect of the feather flags proposals only) to a further condition requiring the

details of the proposed flags and of their locations to be submitted and approved by the local planning authority prior to the implementation of the proposals. Officers are reasonably satisfied on the basis of the information currently available that the flags will be of a suitable quality and design, and the sponsorship advertisements adopt the same simple design as has been used elsewhere by the Council.

In respect of the proposed sponsorship advertisements on Bathwick Roundabout, a Condition is necessary to enable the detailed locations and alignment of the advertisements to be given further consideration in respect of the potential impacts upon public safety at this busy road junction.

CONCLUSIONS

Your officers are of the view that there are exceptional circumstances that justify the display of the proposed advertisements on a strictly temporary basis, and that each of the two applications the subject of this Report can be supported without prejudicing the essential character and amenity of the city of Bath, having regard to national policy in PPS4 and without prejudice to the future application of relevant policies within the adopted Local Plan or the Draft Core Strategy, and without prejudicing public safety.

RECOMMENDATIONS

A. Application No: 11/05349/AR

CONSENT, subject to the following Conditions:

CONDITIONS

1 No advertisement the subject of this consent shall be displayed other than in accordance with further details showing the appearance of the proposed advertisement and in accordance with a Display Strategy setting out details of the locations and display programme under which advertisements are to be displayed, both of which shall first have been submitted to and approved in writing by the local planning authority. The submitted Display Strategy shall also specify the actions that will be taken in the event that any advertisement the subject of this consent becomes damaged or defaced.

Reason: In order to ensure that the appearance of and locations for the proposed advertisements are acceptable in accordance with the provisions of Local Plan Policy BH.17 and will not significantly prejudice amenity or public safety.

2 Notwithstanding the provisions of Condition 1 no advertisement the subject of this consent shall be displayed prior to 1st May 2012, and all advertisements displayed under the provisions of this consent shall be removed no later than 30th September 2012.

Reason: The proposed advertisements are only acceptable on a temporary basis in accordance with the submitted details, having regard to the provisions of Local Plan Policy BH.17.

3 The development/works hereby permitted shall only be implemented in accordance with the plans as set out in the plans list below, and/or such additional plans and details as may be submitted and approved pursuant to the Conditions attached to this consent.

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

PLANS LIST: Site Location Plan; Illustrative details of proposed advertisements, bunting and scrim; Design and Access Statement 141211, all dated 14th December 2011

2 The granting of planning permission does not convey other consents that may be required under other legislation. The applicant is advised that the formal consent of the Highway Authority is required under the Highways Act for anyone to erect a signs or similar structure within the limits of, or which overhang the highway or are attached to any street furniture, and this may be obtained from the Highway Maintenance Team who can be contacted on 01225 394337 who will need to agree the siting of each item comprising the proposed development.

RECOMMENDATION

B. Application No: 12/00658/AR

CONSENT, subject to the following Conditions:

CONDITIONS

1 No advertisement the subject of this consent shall be displayed prior to 1st May 2012, and all advertisements displayed under the provisions of this consent shall be removed no later than 30th September 2012.

Reason: The proposed advertisements are only acceptable on a temporary basis in accordance with the submitted details, having regard to the provisions of Local Plan Policy BH.17.

2 The proposed advertisements shall not be displayed until a more detailed plan showing their exact location and alignment in relation to other features and road traffic signs has been submitted to and approved in writing by the local planning authority.

Reason: In order to ensure that the details of the proposed displays do not prejudice public safety at this busy road junction.

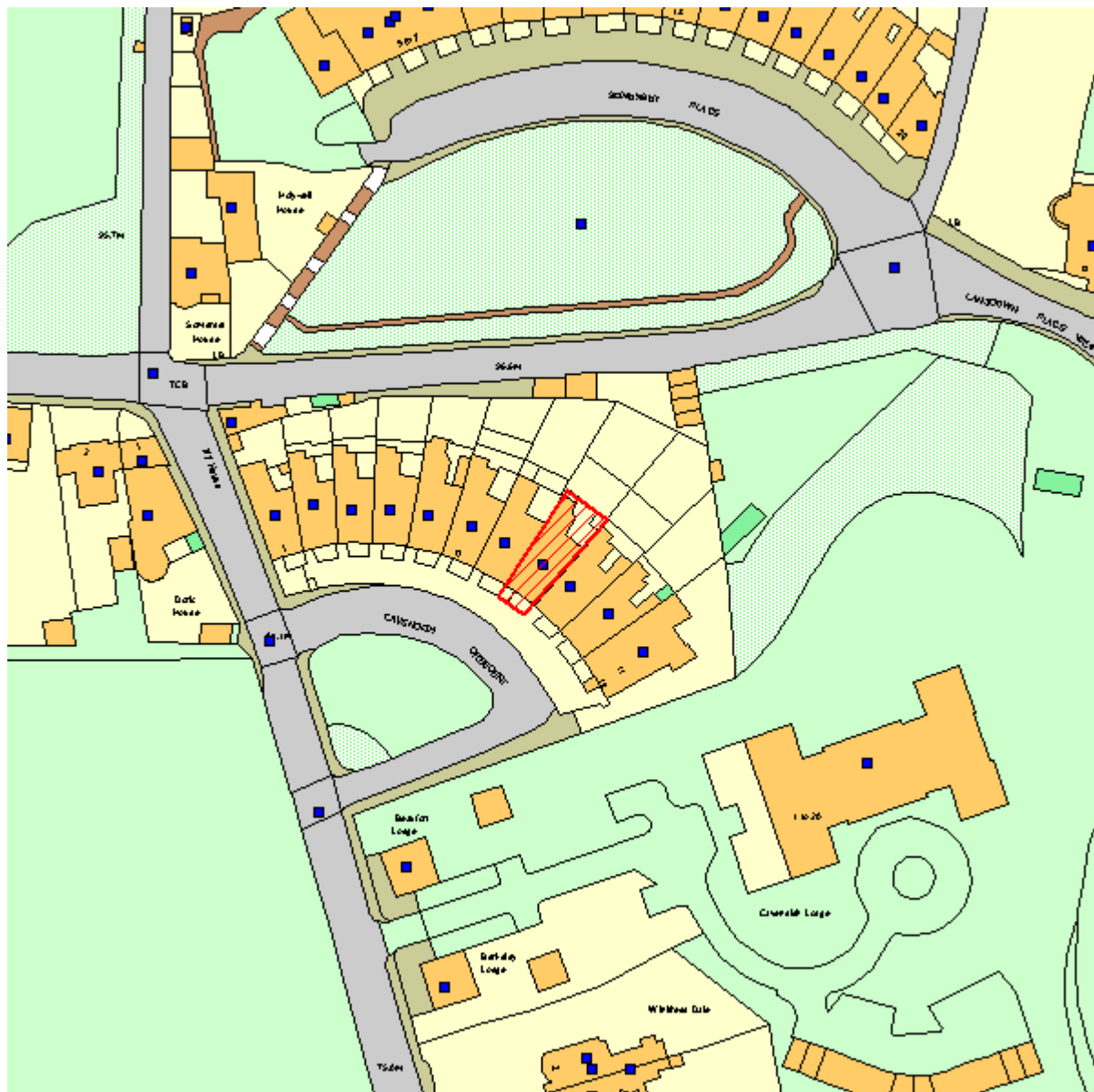
3 The development/works hereby permitted shall only be implemented in accordance with the plans as set out in the plans list below, and any additional details approved pursuant to the Conditions attached to this Consent.

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

PLANS LIST: Roundabout Sign Specification; Design and Access Statement; all received on 13th February 2012

2 The granting of planning permission does not convey other consents that may be required under other legislation. The applicant is advised that the formal consent of the Highway Authority is required under the Highways Act for anyone to erect a sign or similar structure within the limits of, or which overhang the highway or are attached to any street furniture, and this may be obtained from the Highway Maintenance Team who can be contacted on 01225 394337 who will need to agree the siting of each item comprising the proposed development.

Item No: 10
Application No: 11/05423/LBA
Site Location: 8A Cavendish Crescent, Lansdown, Bath



Ward: Lansdown **Parish:** N/A **LB Grade:** II
Ward Members: Councillor Patrick Anketell-Jones Councillor Anthony Clarke
Application Type: Listed Building Consent (Alts/exts)

Proposal:	Internal and external alterations (Part Regularisation)
Constraints:	Agric Land Class 3b,4,5, Article 4, Conservation Area, Forest of Avon, Hotspring Protection, Listed Building, World Heritage Site,
Applicant:	Mr & Mrs Mike & Elizabeth Curnow
Expiry Date:	14th February 2012
Case Officer:	Adrian Neilson

REPORT

DESCRIPTION OF SITE AND APPLICATION:

The property is a Grade II listed building and lies within a designated conservation area and the wider World Heritage Site. Cavendish Crescent was designed by John Pinch the Elder, for William Broom, builder between 1825 and 1830. It is one of Bath's more modest and short crescents yet nonetheless elegant and commands an elevated position with the principal elevation facing south/south west. It consists of eleven terrace houses and has alterations originating from the 19th and 20th centuries and is typically constructed of limestone ashlar and comprises four storeys including an attic storey and basement with vaults under the highway to the front of the building. The listing description states:

'An austere crescent designed by Pinch, his only such design for the developer William Broome, who lived at No.3. He was declared bankrupt in 1825, at which time the crescent was still unfinished, nos. 10 & 11 being offered for sale in an uncompleted state in 1829. It takes full advantage of the fine south-westerly prospect of the site, and was one of the last set-piece Georgian terraces to have been completed in Bath.'

The proposals are for internal and external alterations including the installation of new cupboard doors, new kitchen fittings and units, damp proofing, repair of historic stone flooring, minor alterations to modern external steel lightwell stair, replacement of and repair of timber doors, installation of a section of suspended ceiling, installation of new stone flooring in vaults (part regularisation).

PROPOSALS SUMMARY

1. Installation of new kitchen units and bathroom sanitary ware.
2. The installation of limestone skirting.
3. The installation of timber cupboards and cupboard doors within the recesses either side of the chimney breast in the front room.
4. The construction of a false, suspended ceiling.
5. Modifications to the bathroom entrance.
6. Removal of inappropriate modern, timber louvre doors in rear room.
7. Installation of new stone floor to the vaults.
8. Localised damp proofing.

9. Modification of the bottom steps of the modern external steel stairwell steps.

RELEVANT PLANNING HISTORY:

06/00230/LBA - consent was granted in 26 April 2006 for internal and external works including remodelling and reinstatement of existing external opening.

06/02290/LBA - consent was granted on 4 August 2006 for the installation of a pair of external doors.

10/03075/LBA - consent was granted in 6 December 2010 for internal and external alterations to the basement, including enclosure of the bridge vault, or jack arch, with an entrance screen.

11/01436/FUL - permission was granted in 28 June 2011 for the erection of a single storey bathroom extension in rear yard and insertion of 2no pairs of French doors in existing rear openings (part retrospective).

11/01437/LBA - consent was granted in 21 June 2011 for internal and external alterations for the erection of a single storey bathroom extension in the rear yard and the insertion of 2no pairs of French doors in existing rear openings (part retrospective).

The request for applications 10/03075/LBA, 11/01437/LBA, 11/01436/FUL to be considered at Committee was declined by the Chairman and were allowed to be determined under delegated powers.

SUMMARY OF CONSULTATIONS/REPRESENTATIONS

No representations have been received. The listed building application was advertised in the local press and a site notice was put in place at the property.

POLICIES/LEGISLATION

From the point of view of the historic environment the primary consideration is the duty placed on the Council under Section 16 of Planning (Listed Buildings and Conservation Areas) Act 1990 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 Section 72 of Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the preservation or enhancement of the character of the surrounding Conservation Area.

Planning Policy Statement 5: Planning for the Historic Environment sets out government advice concerning alterations to listed buildings, development in conservation areas and world heritage sites.

OFFICER ASSESSMENT

The basement of No.8 has lost much of its heritage significance and historic architectural interest and character resulting from successive campaigns of unsympathetic alterations throughout the latter part of the 20th century. Basements of classical buildings in Bath were typically used for servicing the upper floors i.e. food preparation, washing clothes etc. As such basements are usually modest in their architectural detailing and character

as befitting a utilitarian and functional area of a building used mainly for practical purposes. However, following residential conversion during the latter part of the 20th century, the character of the basement was profoundly altered and inappropriately gentrified with a loss of heritage significance and historic architectural interest. This included the introduction of a reclaimed, elaborate chimney piece in the front room and inappropriate and poor quality modern joinery. The stone floors were covered with a cementitious screed and were, until recently, lost from view. Both the basement and vaults were damp proofed using a hard, cementitious damp proofing render, possibly "Vandex". The stone floors of the vaults were removed and were replaced with a concrete slab. All historic fixtures and fittings and joinery associated with the original use of the basement and vaults has also been removed.

The property was purchased approximately two years ago by the present owners who inherited the situation described above. They approached the Local Planning Authority for advice with a view to making improvements and undertaking alterations, and where possible, reversing hitherto unsympathetic works. A number of listed building applications were submitted, and are noted below. The first listed building application submitted by the current owners (ref: 10/03075/LBA) was granted consent under delegated powers and was for internal and external works of alteration including the general refurbishment of the property and removal of modern fixtures and fittings, damp proofing of the vaults and the enclosure of the jack arch. It is worth noting that during these works the owners of the property, following advice from the Conservation Officer, carefully removed the previously applied cementitious screed and successfully exposed an outstanding original limestone floor, which has been successfully and sensitively repaired. This constitutes a positive outcome for the building and is the only remaining and surviving historic fabric of significance in the basement.

A second listed building application and a parallel planning application were submitted to the Local Planning Authority by the present owners (refs: 11/01437/LBA & 11/01436/FUL) which were both approved under delegated powers. The proposals included the construction of a small, single storey building on the footprint of a previously demolished 19th century outbuilding in the 1960s within the rear courtyard and the reopening of an historic door entrance, which would have originally connected the basement to the outbuilding. The proposals also included the construction of double doors within a previously much altered part of the building opening out onto the rear courtyard. The current owners do not appear to have implemented the approved proposals of listed building application 11/01437/LBA but do appear to have fully implemented the approved proposals for listed building application 10/03075/LBA. However it has recently come to light that a limited number of minor unauthorised variations have been carried out, which in part, form the basis of the current listed building application. Following a detailed inspection a fresh application to regularise the situation was invited. The current listed building application includes some additional proposed works and alterations.

To conclude, the proposals of recent previously submitted listed building applications and a planning application in the last two years to the Local Planning Authority have been approved as they were regarded to be sensitive and appropriate and consistent with specialist professional advice. The implemented approved works have resulted in a significant improvement to the basement and vaults of the protected building following many decades of unsympathetic alterations that resulted in an almost total loss of significance and heritage value. It should be noted that no written formal objections have

been raised to this application or submitted to the Local Planning Authority or indeed there had been no relevant objections raised to the approved applications.

During the course of processing the applications noted above various issues, including civil matters and private covenants, have been raised by a third party but these are not material to the determination of the request for listed building consent. Furthermore it should be noted that none of the works of the current listed building application or those of its predecessor, reference 10/03075/LBA, require planning permission.

The proposals will preserve the historic architectural interest and character of the protected building and are recommended for approval.

RECOMMENDATION

CONSENT with condition(s)

CONDITIONS

1 The works hereby approved shall be begun before the expiration of three years from the date of this consent

Reason: To comply with Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).

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 Prior to the commencement of installation of the new stone floor in the vaults a sample of the proposed natural limestone shall be provided for the inspection and approval in writing of the Local Planning Authority. The works shall be carried out in accordance with the approved detail.

Reason: In order to safeguard the special architectural and historic interest of the listed building.

PLANS LIST: Location Plan, No.s 06, 09, 10 and Heritage Statement and Design and Access Statement date stamped 20 December 2012.

The decision to grant consent has been made in accordance with the Government's Planning (Listed Buildings and Conservation Areas) Act 1990 and Planning Policy Statement 5: Planning for the Historic Environment. The Council regards that the proposals because of their location, design, detailing, use of materials, will preserve the building, its setting and its features of special architectural or historic interest and will enhance the setting of the Conservation Area and this part of the World Heritage Site.