

**BATH AND NORTH EAST SOMERSET COUNCIL**

**Planning Committee**

**Date: 08 February 2023**

**OBSERVATIONS RECEIVED SINCE THE PREPARATION OF THE MAIN  
AGENDA**

**ITEMS FOR PLANNING PERMISSION**

<b>Item No.</b>	<b>Application No.</b>	<b>Address.</b>
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<b>01</b>	<b>22/01124/FUL</b>	<b>Former Purnell Factory, Oxleaze Way, Paulton</b>

1. Page 24 of Agenda Reports Pack [Insert below 'Housing Services, Bath & North East Somerset Council:']

Following publication of the Committee Report, Housing Services, Bath & North East Somerset Council have issued a revised consultation response taking account of the officers recommendation. The updated response states:

*Housing Services, after giving full and careful consideration raise the following points to the Planning Committee for deliberation:*

*Livewest (the Applicant) have gone as far as they can in confirming their aspirations to deliver this 100% affordable housing scheme.*

*The inclusion of the Grampian conditions will derail the 100% affordable housing delivery via LiveWest.*

*The very substantial Homes England grant apportioned to Livewest for this scheme will fall away as the Grampian conditions will render the scheme unsuitable for Homes England.*

*It is certain no other Registered Housing Association will step in to replace Livewest & the 100% affordable housing provision if the Grampian conditions are approved as they also will be in the same position.*

*There always has been and still is an mechanism in place via the overriding Section 106 legal document obliging the landowner to deliver the Early Years provision and the junction improvements to the B3355.*

*Housing Services politely request the planning committee:*

*Consider the loss of seventy-two (72) affordable dwellings vs the inclusion of the Grampian conditions. Or  
Seek to consider other options that have no negative effects preventing the applicant from delivering the 100% affordable housing.*

*It has been raised that if this application is approved with the Grampians in place, thus failing to deliver 100% affordable housing, then policy CP9 will still require a 30% affordable housing contribution at nil public subsidy thus twenty-two (22) dwellings.  
This will still entail a loss of Fifty (50) affordable dwellings and the Homes England funding that goes with it.*

*Strategically the delivery of new build affordable housing for local residents is a key commitment within the B&NES Corporate Strategy.  
Also,  
Improving the supply of genuinely affordable housing options is one of the central aims of the new Bath and Northeast Somerset Local Plan 2022 to 2042.*

2. Page 54 of Agenda Reports Pack [Insert below ‘Sustainable Construction’]

It is clarified that the proposed development fails to comply with Policy SCR6 (Sustainable Construction Policy for New Build Residential Development) of the Local Plan Partial Update. This policy has now been formally adopted and must be afforded full weight. The application has not demonstrated compliance with the policy. Timing of the application is not a material consideration which would justify a relaxation of the requirements of adopted policy. The development is therefore contrary to this aspect of adopted policy and this weighs against the development and must be taken into account when reaching a balanced conclusion on the application.

3. Page 56 of Agenda Reports Pack [Insert above ‘Conclusion’]

### **Public Sector Equalities Duty**

In reaching its decision on the planning application, the Council is required to have regard to the duties contained in section 149 of the Equality Act 2010, known collectively as the public sector equality duty.

Section 149 provides that the Council must have due regard to the need to—

- (a) eliminate discrimination, harassment, victimisation
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and

- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard in particular, to the need to—

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

Protected characteristics include age and disability. People who share these characteristics may be less likely to be able to access planning application documents and register public consultation responses digitally. The Council has adopted a range of measures which attempt to ensure equal access and involvement in the planning process in its Planning Statement of Community Involvement. This includes the Parish Charter 2018 sets out a framework in which the Council and Parish and Town Councils will work together to serve residents. In this case, Paulton Parish Council organise volunteers and committees who assist and represent parishioners interests in the planning process. The Parish Council runs Paulton Community Library which offers public internet access with volunteers available to assist parishioners accessing relevant planning documents and registering their views. The Council is satisfied that the planning application process has been undertaken in accordance with the requirements of Section 149 of the Equality Act 2010 and in this respect it has fulfilled its public sector equality duty.

Of relevance to the proposed development, it is noted that the site has outline permission for use as a 'Continuing Care Retirement Community'. This use would notably likely benefit those who share protected characteristics of age and disability. It may be said that loss of the previously permitted use would disadvantage those groups as they will no longer have the opportunity created by the retirement housing and residential care development. However, as discussed within the Assessment section of the Committee Report, it is a material consideration that this use has not materialised following marketing over a prolonged period. In part this is due to the use being specialist and combining older persons housing with care. It is noted that there are already residential care facilities available in the area. Due to the likelihood of this use materialising, it is considered that the impact to protected groups would be minimised. The loss of the Continuing Care Retirement Community weighs against the development in equalities

terms, however give the likelihood of this use materialising, only limited weight is given to this factor.

Within the proposed development, all dwellings will be constructed to Building Regulations Part M4 (1) accessibility standards which will ensure reasonable provision is made for most people, including wheelchair users to access and enter the dwelling, access habitable rooms and sanitary facilities on the entrance level. Two dwellings would also be built to wheelchair accessible standards (Part M4(3) which provides reasonable provisions for a wheelchair user to live in the dwelling and have the ability to use any outdoor space, parking and communal facilities. The proposed development would therefore provide for the needs of these groups. This factor weighs in favour of the proposed development in equalities terms and is given significant weight.

The Council is satisfied that it has considered the needs of those who share protected characteristics in it's assessment of the application in accordance with the requirements of Section 149 of the Equality Act 2010 and in this respect it has fulfilled it's public sector equality duty.

4. Pages 56 & 57 of Agenda Reports Pack [Insert below 'Conclusion']

The conclusion is updated to reflect update no. 2 above. It is noted that the proposed development fails to comply with Policy SCR6 (Sustainable Construction Policy for New Build Residential Development) of the Local Plan Partial Update. This fact weighs against the development and is given moderate weight. However, when weighed against the wider benefits of the development, such as creation of 72 dwellings, including a policy compliant level of affordable housing, positive contextual design, comprehensive landscaping and tree planting and minimum 10% net-gain for biodiversity, the benefits are found to outweigh the harm which would result. The application is found consistent with the Local Plan Partial Update SSV22 allocation for the site. It is also found to be consistent with the development plan as a whole, taking account of the overarching objective (Policy DW1) to deliver sustainable development by focusing new housing within existing settlements in the Somer Valley with a good range of local facilities and with good access to public transport, prioritising the use of brownfield opportunities for new development in order to limit the need for development on greenfield sites, protecting and enhancing biodiversity and through use of conditions, ensuring necessary infrastructure is aligned with new development.

5. Page 57 of Agenda Reports Pack [Insert below 'Conditions']

Following update no. 2 above in relation to failure to comply with Policy SCR6 (Sustainable Construction Policy for New Build Residential Development) of the Local Plan Partial Update, the decision has been taken by the Local Planning Authority to advertise the application in

accordance with the requirements of article 15(2)(b) and (3) of The Town and Country Planning (Development Management Procedure) (England) Order 2015.

The Local Planning Authority has posted a site notice (3<sup>rd</sup> February 2023) and press advert publicising that the application for planning permission does not accord with the provisions of the development plan in force in the area, following adoption of the Local Plan Partial Update on 19<sup>th</sup> January 2023. Representations can be made in relation to the application until 2<sup>nd</sup> March 2023.

The recommendation of 'Delegate to Permit' is therefore updated to allow for review of any responses received following conclusion of the publicity process required by article 15(2)(b) and (3) of The Town and Country Planning (Development Management Procedure) (England) Order 2015, as well as entering into the Section 106 Agreement and subject to the proposed conditions list.

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**02**

**22/02863/FUL**

**Mill Barn, Millards Hill  
Welton**

Following input from the Council's Legal Officers, the wording of the following sections of the Committee Report are updated in order to set out more fully the Planning Officer's reasoning and to make clear of the impact of this proposal on the setting of the listed buildings, the proposals benefits and reasons for departure from the development plan.

Character and Appearance:

Paragraph 8 within this section has been replaced as follows:

When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Paragraph 12 has been updated as follows:

Due to the above, it can therefore be demonstrated that the expansion of the Free Rangers Forestry School would provide an alternative place for children within the district, helping to reduce the pressure on mainstream and special schools. Great weight is given to this public benefit. The harm identified to the Conservation Area and setting of the Listed Buildings is considered to fall at the lower end of less than substantial. It is therefore considered that in this instance, the public benefit identified would be sufficient enough to outweigh the less than substantial harm (even when great weight is given to the conservation of each heritage asset) and is as such considered to be compliant with part 16 of the NPPF and HE1 of the B&NES Placemaking Plan.

Additional paragraphs and updates following paragraph 13 are as the below:

The Council has a statutory requirement under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 in considering whether to grant planning permission for development which affects a listed building or its setting to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Taking account of the above, it is considered that the development would result in less than substantial harm to the setting of each of the listed buildings. As such the scheme does not preserve the setting of the listed buildings and so does not meet this requirement. However, the development provides educational facilities which amount to a public benefit. The public benefit is considered to outweigh the harm caused to the setting of each listed building. Therefore, in this instance the proposed works be compliant with part 16 of the NPPF and be compliant with policy HE1 of the B&NES Placemaking Plan (2017).

There is a duty placed on the Council under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act to pay special attention to the desirability of preserving or enhancing the character or appearance of the surrounding conservation area when determining an application for planning permission. In this case by virtue of the design, scale, massing, position and the external materials of the proposed development it is considered that the development would result in less than substantial harm to the Conservation Area. As such this scheme does not preserve nor enhance this part of the Conservation Area and as such fails to meet this requirement. However, the provision of educational facilities in this instance is considered to be a public benefit which would outweigh the harm identified. Therefore, in this instance the proposed works would be compliant with policy CP6 of the adopted Core Strategy (2014) and policy HE1 of the Placemaking Plan for Bath and North East Somerset (2017) and Part 16 of the NPPF.

#### Highways Safety and Parking:

Paragraph 3 is updated as follows:

The Statement confirms that the current application would result in eight additional children attending the site, with two full-time equivalent members of staff. This is the scale of change that has been considered as part of the application assessment, which also considers the potential for previous permissions to be fully implemented. Further traffic surveys were undertaken in October 2022, and comparisons made with the data collected as part of the 2016 planning process. A count of pedestrian movements was also completed. The traffic data enables the Statement to present a summary of trips associated with the existing site throughout the day, and this also allows a parking accumulation to be calculated. Finally, the flows have been used to review the operation of the Millard's Hill / Gladstone St / site access junction, and a traffic model has been used to review the peak periods.

Paragraph 6 is updated as follows:

The Transport Statement considers the future parking impacts associated with the scheme, and the parking accumulation results do indicate that there would be sufficient capacity at this time to accommodate a small increase in parking demand. The increase in 8 students and 2 members of staff could be accommodated without the implementation of the proposed parking as per the extant permissions. However, should the extant permissions be implemented, and number of students increased to full capacity of the extant permission, the parking requirement for the current

application could also still be accommodated. Over time there will be a requirement for the previously approved parking layout to be implemented, however, this change does not need to be associated with the current proposals.

#### Ecology:

Paragraph 1 is updated as follows:

The council have now adopted the policies which were part of the Local Plan Partial Update (LPPU). The LPPU policies now include the requirement for measurable Biodiversity Net Gain (BNG) on site (Policy NE3a). The 'small sites metric' required by policy NE3a has not been submitted within this application and therefore the application presents insufficient information to be compliant with policy NE3a. At time of validation, BNG information was not required. In this case, a significant merit of the scheme results from the provision of educational services. A recommendation, considering the substantial benefit, was made prior to the adoption of the LPPU. In addition, a landscaping condition is recommended which would secure planting within the site. Whilst the scheme has not been supported by the submission of BNG information to show measurable net gain, the case officer is satisfied that planting can be secured to achieve measurable gain. Considering this in addition to the considerable benefits derived from the increase in educational services within the locality, it is considered that the BNG information, in this instance, is not required and has therefore been advertised as a departure from the Development Plan.

#### Public Sector Equality Duty:

Additional section as follows:

In reaching its decision on a planning application the Council is required to have regard to the duties contained in section 149 of the Equality Act 2010, known collectively as the public sector equality duty

Section 149 provides that the Council must have due regard to the need to—

- (a) eliminate discrimination, harassment, victimisation
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard in particular, to the need to—

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

Protected characteristics include disability.

As explained above, the B&NES Education and Inclusion Team believe that the proposals would be likely to increase the number of occasions on which children with special educational needs could be educated within their community rather than at out of county facilities. Children with special educational needs are more likely to

have the protected characteristic of disability, so the proposals are likely to have a benefit for those with that protected characteristic by increasing their ability to access appropriate educational facilities locally. It is the planning judgement of officers that this public benefit should be given significant weight

#### Planning Balance and Conclusion:

Concluding paragraph replaced as follows:

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the decision of whether or not to grant planning permission must be made in accordance with the development plan unless material considerations indicate otherwise.

The proposed development is considered to cause harm to the setting of the listed building as a result of development within an area which historically would have been left open. The spread of development would therefore be harmful to the setting of the listed building. In addition, the structures would diminish open features of the countryside around the farm, subsequently causing harm to the character of the Conservation Area. In the words of the NPPF, the development would result in less than substantial harm to the setting of the listed building and character of the conservation area.

There are however benefits to the scheme, including the provision of educational facilities. The increase of schooling provision within the local area is welcomed. This benefit is given significant weight as determined by paragraph 95 of the NPPF. This merit is considered to constitute a public benefit which would outweigh the less than substantial harm cause by the development, to both the setting of the listed building and conservation area.

This application was not supported by any information regarding Biodiversity Net Gain, a requirement of Local Plan Partial Update which was adopted 19th January 2023 (policy NE3a). This application was validated June 2022. At time of validation, BNG information was not required. In this case, as discussed above, a significant merit of the scheme results from the provision of educational services. A recommendation for approval was therefore reached prior to the adoption of the LPPU. In addition, a landscaping condition is recommended which would secure planting within the site. Whilst the scheme has not submitted BNG information to show measurable net gain, the case officer is satisfied that planting can be secured to achieve measurable gain.

As a result of this proposal being contrary to policy NE3a, it is considered not to be in accordance with the development plan as a whole. Taking into account the material considerations in favour of the proposal (provision of educational services and likely achievement of net gain) and the material considerations against, it is considered that the other material considerations as a whole weigh strongly in favour of the proposal and indicate that a departure from the development plan is appropriate.

Officer recommendation is therefore to PERMIT the application [unchanged from main report].

#### Conditions:

Additional condition recommended:

#### **Landscape Design Proposals (Bespoke Trigger)**

No development beyond slab level shall take place until full details of soft landscape proposals and programme of implementation have been submitted to and approved by the Local Planning Authority. These details shall include, as appropriate:

1. Planting plans
2. Written specifications (including cultivation and other operations associated with plant and grass establishment)
3. Schedules of plants, noting species, planting sizes and proposed numbers / densities

Reason: To ensure the provision of amenity and a satisfactory quality of environment afforded by appropriate landscape design, in accordance with policies D1, D2, D4 and NE2 of the Bath and North East Somerset Placemaking Plan.

**External Lighting (Bespoke Trigger)**

No new external lighting shall be installed until full details of the proposed lighting design have been submitted to and approved in writing by the Local Planning Authority. These details shall include:

1. Lamp models and manufacturer's specifications, positions, numbers and heights;
2. Predicted lux levels and light spill on both the horizontal and vertical planes;
3. Measures to limit use of lights when not required, to prevent upward light spill and to prevent light spill onto nearby vegetation and adjacent land.

The lighting shall be installed and operated thereafter in accordance with the approved details.

Reason: To avoid harm to bats and wildlife in accordance with policy CP6 of the Bath and North East Somerset Core Strategy and policies NE.3 and D8 of the Bath and North East Somerset Placemaking Plan.

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**03**

**22/03945/FUL**

**9 Gainsborough Road  
Keynsham**

Members will be aware that the Council has recently updated a number of local planning policies through the introduction of the Local Plan Partial Update (LPPU) in January 2023.

Policy ST7, which is referenced within the committee report, has been updated as part of the LPPU. However, the changes to this policy are of no consequence to the assessment of this application given that it is a householder application, and no changes to the parking provision and highways access are proposed.

Public Sector Equality Duty

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- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Officers have had due regard to these matters when assessing this application and have concluded that neither the grant nor the refusal of this application would be likely to have an impact on protected groups and, therefore, that these considerations would not weigh in favour of or against this application.

The Conclusion [in the main report] is amended as follows:

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the decision of whether or not to grant planning permission must be made in accordance with the development plan unless material considerations indicate otherwise.

For the reasons set out above, this proposal is in accordance with the development plan and there are no material considerations of sufficient weight to indicate that the decision should be made contrary to it.

The application is therefore recommended for approval

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