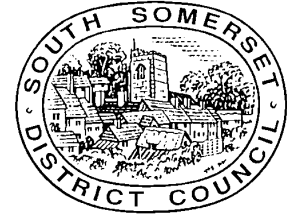


South Somerset District Council

Notice of Meeting



Area North Committee

Making a difference where it counts

Wednesday 22nd October 2014

2.00 pm

**Council Chamber
Council Offices
Brympton Way
Yeovil BA20 2HT**

(Disabled access is available at this meeting venue)



Members listed on the following page are requested to attend the meeting.

The public and press are welcome to attend.

Please note: Consideration of planning applications will commence no earlier than 3.30pm.

If you would like any further information on the items to be discussed, please ring the Agenda Co-ordinator, **Becky Sanders, Democratic Services Officer 01935 462596**, website: www.southsomerset.gov.uk

This Agenda was issued on Tuesday 14 October 2014.

Ian Clarke, Assistant Director (Legal & Corporate Services)

This information is also available on our website
www.southsomerset.gov.uk



INVESTORS IN PEOPLE

Area North Committee Membership

Shane Pledger
Paul Thompson
Pauline Clarke
Graham Middleton
Roy Mills

Terry Mounter
David Norris
Patrick Palmer
Jo Roundell Greene
Sylvia Seal

Sue Steele
Barry Walker
Derek Yeomans

South Somerset District Council – Council Plan

Our focuses are: (all equal)

- Jobs – We want a strong economy which has low unemployment and thriving businesses.
- Environment – We want an attractive environment to live in with increased recycling and lower energy use.
- Homes – We want decent housing for our residents that matches their income.
- Health & Communities – We want communities that are healthy, self-reliant, and have individuals who are willing to help each other.

Scrutiny procedure rules

Please note that decisions taken by Area Committees may be "called in" for scrutiny by the council's Scrutiny Committee prior to implementation. This does not apply to decisions taken on planning applications.

Consideration of planning applications

Consideration of planning applications for this month's meeting will commence no earlier than 3.30pm, following a break for refreshments, in the order shown on the planning applications schedule. The public and representatives of parish/town councils will be invited to speak on the individual planning applications at the time they are considered. Anyone wishing to raise matters in relation to other items on the agenda may do so at the time the item is considered.

Highways

A representative from the Area Highways Office will normally attend Area North Committee quarterly in February, May, August and November – they will be usually be available from 15 minutes before the meeting to answer questions and take comments from members of the Committee. Alternatively, they can be contacted through Somerset Highways control centre on 0845 345 9155.

Members questions on reports prior to the meeting

Members of the committee are requested to contact report authors on points of clarification prior to the committee meeting.

Information for the Public

The council has a well-established area committee system and through four area committees seeks to strengthen links between the Council and its local communities, allowing planning and other local issues to be decided at a local level (planning recommendations outside council policy are referred to the district wide Regulation Committee).

Decisions made by area committees, which include financial or policy implications are generally classed as executive decisions. Where these financial or policy decisions have a significant impact on council budgets or the local community, agendas will record these decisions as “key decisions”. Members of the public can view the council’s Executive Forward Plan, either online or at any SSSC council office, to see what executive/key decisions are scheduled to be taken in the coming months. Non-executive decisions taken by area committees include planning, and other quasi-judicial decisions.

At area committee meetings members of the public are able to:

- attend and make verbal or written representations, except where, for example, personal or confidential matters are being discussed;
- at the area committee chairman’s discretion, members of the public are permitted to speak for up to up to three minutes on agenda items; and
- see agenda reports

Meetings of the Area North Committee are held monthly, usually at 2.00pm (unless specified otherwise), on the fourth Wednesday of the month (except December) in village halls throughout Area North (unless specified otherwise).

Agendas and minutes of area committees are published on the council’s website www.southsomerset.gov.uk/councillors-and-democracy/meetings-and-decisions

The council’s Constitution is also on the web site and available for inspection in council offices.

Further information about this committee can be obtained by contacting the agenda co-ordinator named on the front page.

Public participation at committees

This is a summary of the protocol adopted by the council and set out in Part 5 of the council’s Constitution.

Public question time

The period allowed for participation in this session shall not exceed 15 minutes except with the consent of the Chairman of the Committee. Each individual speaker shall be restricted to a total of three minutes.

Planning applications

Comments about planning applications will be dealt with at the time those applications are considered, rather than during the public question time session.

Comments should be confined to additional information or issues, which have not been fully covered in the officer's report. Members of the public are asked to submit any additional documents to the planning officer at least 72 hours in advance and not to present them to the Committee on the day of the meeting. This will give the planning officer the opportunity to respond appropriately. Information from the public should not be tabled at the meeting. It should also be noted that, in the interests of fairness, the use of presentational aids (e.g. PowerPoint) by the applicant/agent or those making representations will not be permitted. However, the applicant/agent or those making representations are able to ask the planning officer to include photographs/images within the officer's presentation subject to them being received by the officer at least 72 hours prior to the meeting. No more than 5 photographs/images either supporting or against the application to be submitted. The planning officer will also need to be satisfied that the photographs are appropriate in terms of planning grounds.

At the committee chairman's discretion, members of the public are permitted to speak for up to three minutes each and where there are a number of persons wishing to speak they should be encouraged to choose one spokesperson to speak either for the applicant or on behalf of any supporters or objectors to the application. The total period allowed for such participation on each application shall not normally exceed 15 minutes.

The order of speaking on planning items will be:

- Town or Parish Council Spokesperson
- Objectors
- Supporters
- Applicant and/or Agent
- District Council Ward Member

If a member of the public wishes to speak they must inform the committee administrator before the meeting begins of their name and whether they have supporting comments or objections and who they are representing. This must be done by completing one of the public participation slips available at the meeting.

In exceptional circumstances, the Chairman of the Committee shall have discretion to vary the procedure set out to ensure fairness to all sides.

The same rules in terms of public participation will apply in respect of other agenda items where people wish to speak on that particular item.

If a Councillor has declared a Disclosable Pecuniary Interest (DPI) or a personal and prejudicial interest

In relation to Disclosable Pecuniary Interests, a Councillor is prohibited by law from participating in the discussion about the business on the agenda that relates to this interest and is also required to leave the room whilst the relevant agenda item is being discussed.

Under the new Code of Conduct adopted by this Council in July 2012, a Councillor with a personal and prejudicial interest (which is not also a DPI) will be afforded the same right as a member of the public to speak in relation to the relevant business and may also answer any questions, except that once the Councillor has addressed the Committee the Councillor will leave the room and not return until after the decision has been made.

Area North Committee

Wednesday 22 October 2014

Agenda

Preliminary Items

1. Minutes

To approve as a correct record the minutes of the previous meeting held on 24 September 2014.

2. Apologies for absence

3. Declarations of Interest

In accordance with the Council's current Code of Conduct (adopted July 2012), which includes all the provisions relating to Disclosable Pecuniary Interests (DPI), personal and prejudicial interests, Members are asked to declare any DPI and also any personal interests (and whether or not such personal interests are also "prejudicial") in relation to any matter on the Agenda for this meeting. A DPI is defined in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2112 (SI 2012 No. 1464) and Appendix 3 of the Council's Code of Conduct. A personal interest is defined in paragraph 2.8 of the Code and a prejudicial interest is defined in paragraph 2.9.

Members are reminded that they need to declare the fact that they are also a member of a County, Town or Parish Council as a Personal Interest. As a result of the change made to the Code of Conduct by this Council at its meeting on 15th May 2014, where you are also a member of Somerset County Council and/or a Town or Parish Council within South Somerset you must declare a prejudicial interest in any business on the agenda where there is a financial benefit or gain or advantage to Somerset County Council and/or a Town or Parish Council which would be at the cost or to the financial disadvantage of South Somerset District Council. If you have a prejudicial interest you must comply with paragraphs 2.9(b) and 2.9(c) of the Code.

In the interests of complete transparency, Members of the County Council, who are not also members of this committee, are encouraged to declare any interests they may have in any matters being discussed even though they may not be under any obligation to do so under any relevant code of conduct.

Planning Applications Referred to the Regulation Committee

The following members of this Committee are also members of the Council's Regulation Committee:

Councillors Terry Mounter, Shane Pledger, Sylvia Seal and Paul Thompson.

Where planning applications are referred by this Committee to the Regulation Committee for determination, in accordance with the Council's Code of Practice on Planning, Members of the Regulation Committee can participate and vote on these items at the Area Committee and at Regulation Committee. In these cases the Council's decision-making process is not complete until the application is determined by the Regulation Committee. Members of the Regulation Committee retain an open mind and will not

finalise their position until the Regulation Committee. They will also consider the matter at Regulation Committee as Members of that Committee and not as representatives of the Area Committee.

4. Date of next meeting

Councillors are requested to note that the next Area North Committee meeting is scheduled to be held at 2.00pm on **Wednesday 26 November 2014**. Venue to be confirmed.

5. Public question time

6. Chairman's announcements

7. Reports from members

Items for Discussion

8. Presentation by South Somerset Association for Voluntary and Community Action (SSVCA) (Page 1)

9. Community Offices Update (Pages 2 - 8)

10. Flooding, Drainage and Civil Contingencies (Pages 9 - 17)

11. Area North Committee Forward Plan (Pages 18 - 20)

12. Planning Appeals (Pages 21 - 28)

13. Schedule of Planning Applications to be Determined By Committee (Pages 29 - 30)

14. Planning Application 14/03835/FUL - Land at Ganges Hill, Fivehead (Pages 31 - 37)

15. Planning Application 14/03432/FUL - Land at Buttle Close, Shepton Beauchamp (Pages 38 - 45)

16. Planning Application 12/00951/FUL - Lopen Head Nursery, Lopenhead, South Petherton (Pages 46 - 115)

Please note that the decisions taken by Area Committees may be called in for scrutiny by the Council's Scrutiny Committee prior to implementation.

This does not apply to decisions taken on planning applications.

Agenda Item 8

Presentation by South Somerset Association for Voluntary and Community Action (SSVCA)

*Contact Details: Sam Best, Chief Executive Officer, SSVCA.
Tel: 01935 475914 or SamBest@ssvca.org.uk*

Sam Best, SSVCA Chief Executive Officer, will attend the meeting to give a presentation providing an update on SSVCA, including Voluntary Sector Support, Furnicare, Community Transport and the Flood Recovery work.

Agenda Item 9

Community Offices Update

Strategic Director: Rina Singh, Place and Performance
Assistant Director: Helen Rutter / Kim Close, Communities
Service Manager: Charlotte Jones, Area Development Manager North
Lead Officer: Lisa Davis, Community Office Support Manager
Contact Details: lisa.davis@southsomerset.gov.uk 01935 462746

Purpose of the Report

To update Councillors on the yearly footfall/enquiry figures across the district and the results of the recent customer satisfaction survey.

Public Interest

South Somerset District Council (SSDC) has six community offices which enable the public to access a wide range of Council and related information and assistance. This supports the other ways of contacting SSDC, which is by phone or the website. This report gives an update of the number of customers who visit the offices and also includes results of the customer survey carried out in September 2014.

Recommendation

That Area North Committee members note the contents of this report.

Background

The community offices are located in Yeovil, Crewkerne, Chard, Ilminster, Langport and Wincanton and are managed by the Community Office Support Manager and Deputy Community Office Support Manager. The Community Support Assistants also provide administrative and project support to the Area Development team.

The Community Offices

The opening hours are as follows:

Chard	Monday to Friday 9am to 1pm, 1:30pm to 3:30pm
Crewkerne	Monday to Wednesday & Friday 9am to 1pm, 1:30pm to 3:30pm Thursday 9am to 1pm
Ilminster	Monday, Tuesday & Thursday 9:30am to 12pm
Langport	Monday, Tuesday & Thursday 9am to 2pm
Wincanton	Monday to Friday 9am to 1pm
Petters House, Yeovil	Monday to Friday 9am to 4pm

The main SSDC services provided for our customers are for the following services:

Housing and Council Tax Benefits	Receipt, verification and scanning of applications forms and evidence, general advice and guidance
Council Tax	Advice and guidance on moving in/out of area, discounts and exemptions and instalment plans, processing of payments (debit cards)
Housing	Verification of evidence
Waste and Recycling	Advice on collection days, missed collection reports, ordering of new/replacement bins, payment of garden waste bins/bags
StreetScene	Report litter, fly tipping, dead animals, discarded needles, dangerous and stray dogs, dog fouling and graffiti
Community Protection	Report pest problems (rats, wasps, insects)
Horticulture	Report problems with shrub / tree / hedge maintenance
Planning and Building Control	Hand out application forms
Community Safety	Recording incidents

Not all offices have exactly the same facilities either because of location or number of customers.

- Chard and Petters House have the highest number of customers. Cash machines have been installed and are used mostly for the payments of council tax and parking fines.
- Petters House reception is co-located with the SSDC Tourist Information Centre. Visitors to Petters House can also access a range of other services including Housing, Welfare Benefits and South Somerset Voluntary Community Action (SSVCA and Citizen's Advice Bureau (CAB).
- Langport reception is co-located with the Langport Local Information Centre and South Somerset Links Transport Service.
- The Wincanton community office is successfully co-located with the Police and Somerset County Council have two small offices that provide hot desk space for employees.
- All offices except Langport have a public computer.
- All front offices have a hearing loop
- Free phones to internal services are provided in Wincanton, Petters House and Chard.
- Chard has a Job point machine and phone run by Job Centre Plus which was installed when the Job Centre closed in the town centre and a reception facility is provided on the days that the Somerset County Council Registrar is available. Somerset County Council Social Services team also occupy space within the building.

The community offices provide a face to face service which is particularly important to the more vulnerable members of the community. This enables customers to receive advice and assistance with many SSDC services. All community offices with the exception of Langport have a public computer which enables customers to access online services through self-service or assisted self-service. These computers are generally used to register for Homefinder or bid for Social Housing properties, apply for Benefits or view planning applications. During the last 12 months customers have been increasingly encouraged to submit online applications for benefits and Homefinder. An increased number of services have also been made available on the SSDC website enabling people to access more services from home.

During the past 12 months we have invested time to ensure that all Community Support Assistants are trained to deal with the wide range of front office enquiries and members of the team are now familiar with various front offices which ensures that planned and emergency

cover can be provided. I am pleased to report that despite staffing levels being low at times we have been able to maintain full opening hours at all front offices since the new structure came into effect following the lean review. The community offices provide access to services for more vulnerable members of the community and also those who are unable or find it difficult to contact SSDC online or by phone.

All Community Support Assistants are now trained to provide phone cover for the Customer Service team. This has enabled support to be provided for their fortnightly team meetings and also enables calls to be taken in the event of increased call volumes/waiting times. These volumes and waiting times are monitored by the Community Office Support Manager/Deputy Community Office Support Manager alongside the Customer Services Manager so that the need for assistance can be identified promptly and resource provided as appropriate. Improved technology means that we are now able to take calls at any location providing a greater opportunity for support to be provided to the Customer Service team. During the period June – August 2014, the Community Support team spent 85 hours taking calls to assist the Customer Service team.

The Community Support team have access to the online referral system which enables them to refer customers as appropriate to the Welfare Benefits team and outside agencies such as CAB, SSVCA. The Welfare Benefits Advisors provide support and advice to many of the visitors to the front office and work closely with the Community Support team to raise awareness of the benefits that they may be entitled to.

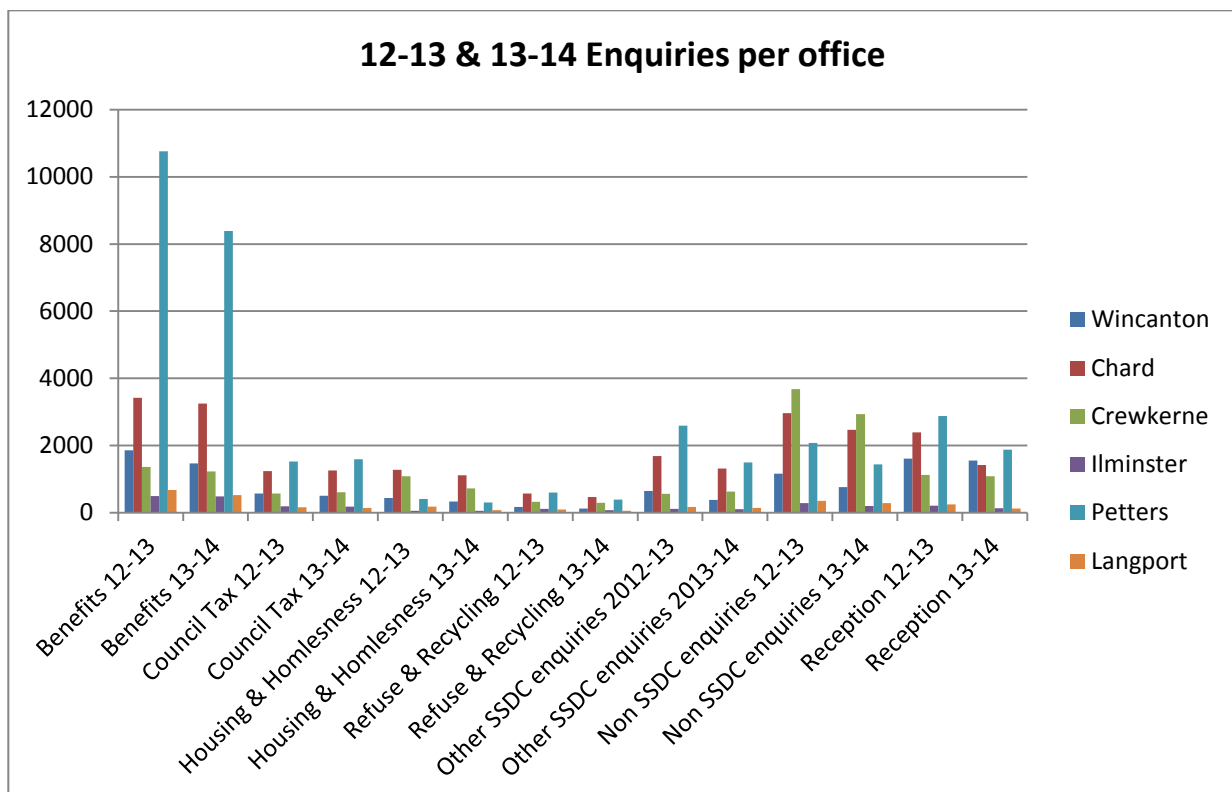
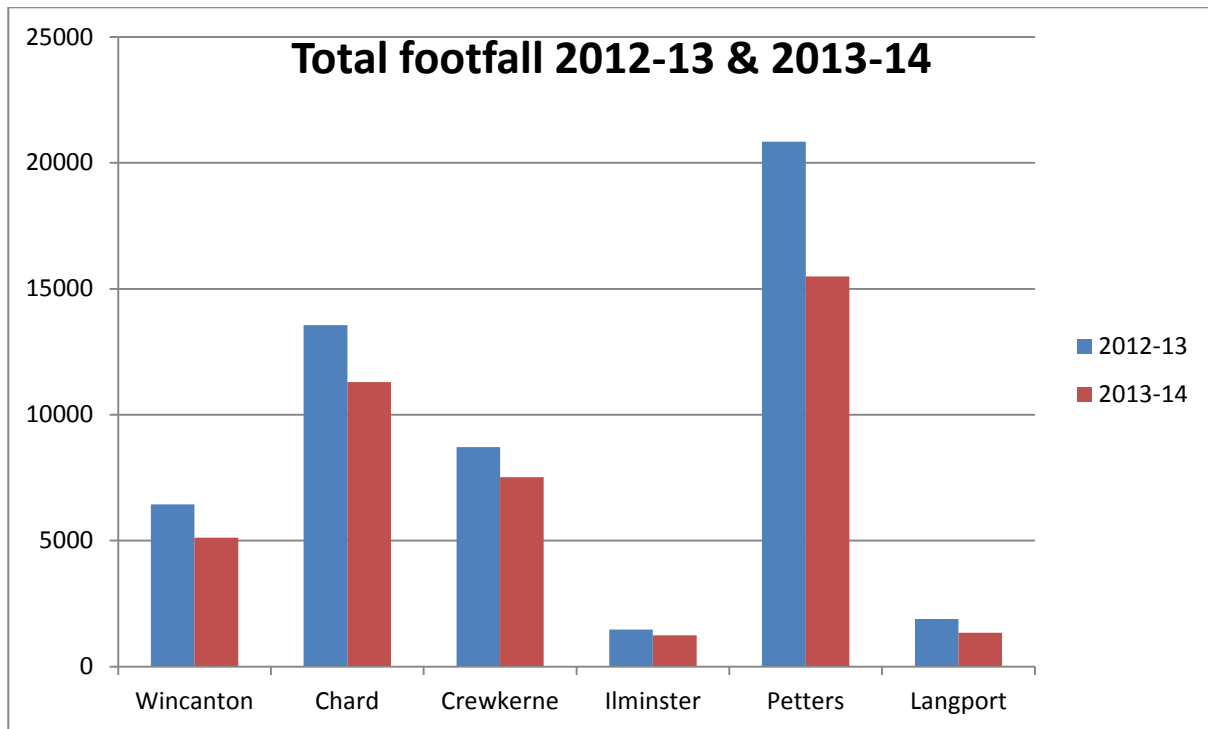
Footfall figures

The following table shows the number of enquiries in the last year for every office, this highlights the differences between offices.

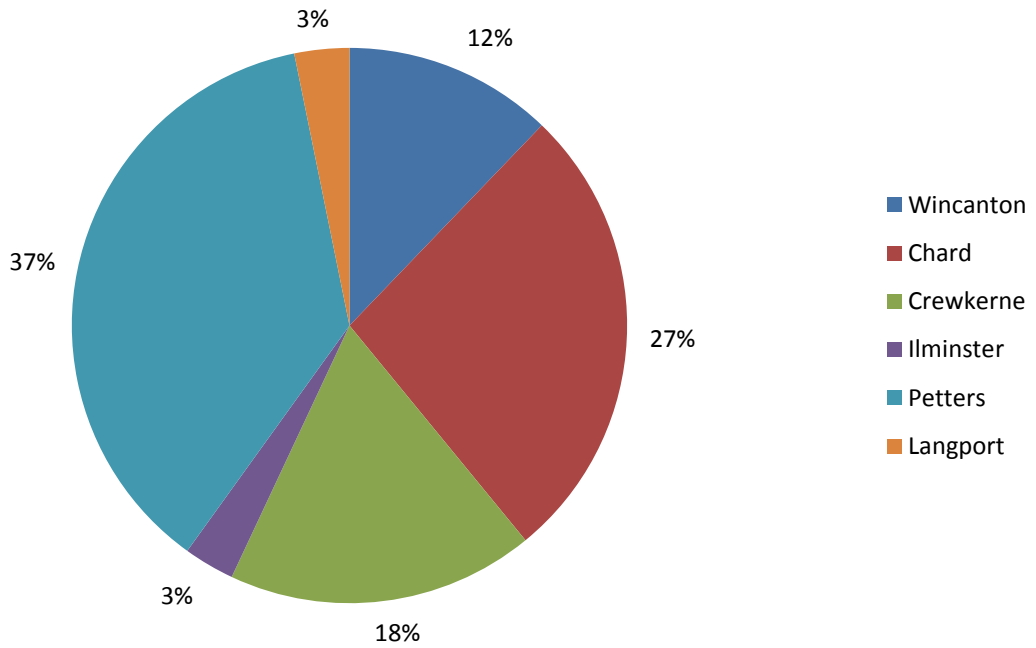
	Wincanton	Chard	Crewkerne	Ilminster	Petters	Langport	Total
Benefits	1465	3253	1230	486	8388	523	15345
Council Tax	509	1255	611	177	1591	139	4282
Housing & Homelessness	335	1112	721	61	306	73	2608
Refuse & Recycling	122	466	299	78	389	57	1411
Core service total *	2431	6086	2861	802	10674	792	23646
Other SSDC enquiries	378	1317	633	102	1494	143	4067
Non SSDC enquiries	759	2473	2937	204	1442	287	8102
Reception duties	1549	1418	1089	135	1878	120	6189
Total Footfall	5117	11294	7520	1243	15488	1342	42004

* Core services are Benefits, Council Tax, Housing & Homelessness and Refuse & Recycling

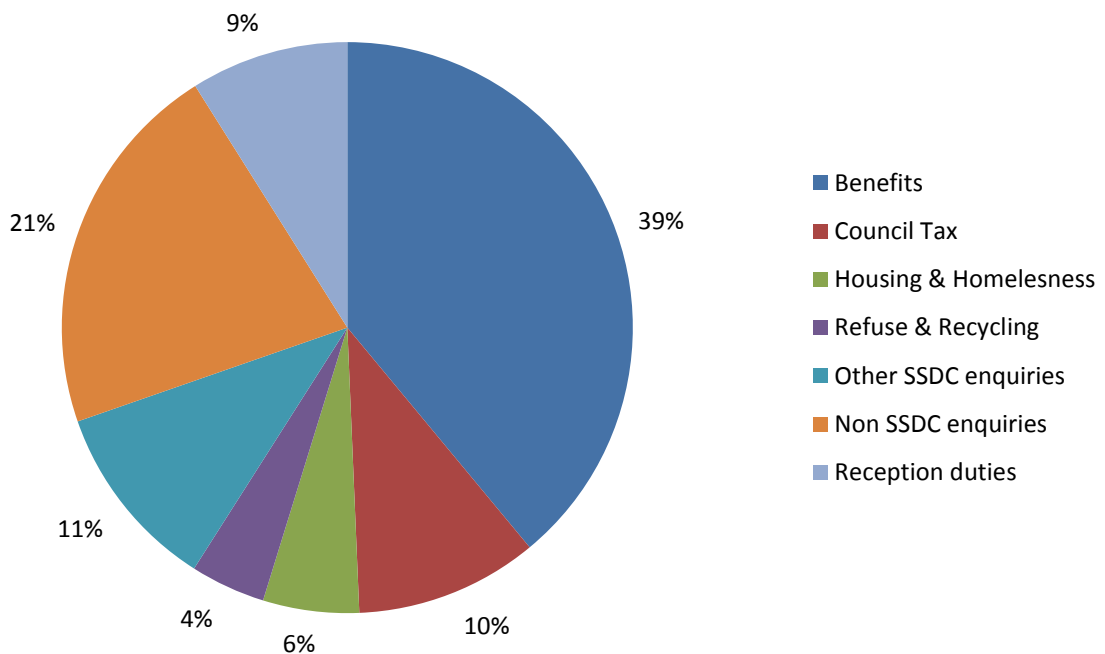
The charts below show a comparison of footfall and enquiries received at all offices in 2012-13 and 2013-14 and also a breakdown of enquiry types dealt with at Langport.



Total enquiries per office 13/14



Langport total enquiries for 13/14



It should be noted that the non SSDC enquiries include bus pass enquiries/issue of forms, Town Council and SCC enquiries and any other enquiries that fall outside of SSDC's remit.

The complexity of enquiries at the front office can vary, the following table gives an indication of the average time spent dealing with the more frequent enquiry types.

Enquiry type	Average time spent dealing with enquiry	Enquiry type	Average time spent dealing with enquiry
Car Parking enquiry	8 minutes	Request for waste containers	5 minutes
Council Tax bill/banding enquiry	5 minutes	Pest Control enquiry	5 minutes
Council Tax move	10 minutes	Garden bin renewals	5 minutes
Housing Benefit enquiry	10 minutes	Bulky collections	5 minutes
Housing Benefit application submission (assuming form fully completed by applicant)	20 minutes	Environmental Health/Streetscene enquiry (mapping)	10 minutes
Homefinder/Housing enquiry	10 minutes	Licensing enquiry	8 minutes
Planning/Building Control enquiry	2 minutes	Elections enquiry	5 minutes
Report missed waste collection	5 minutes	Reception service/issue form	1 minute

Langport

The total number of customers at the Area North reception (often referred to as footfall) for the 2013/14 financial year was 1,222 which is a decrease from 1,645 in 2012/13 (please note these figures exclude reception duties). This decrease is likely to be due to better access to web and telephone based services. The highest proportion of work undertaken by the Community Support Assistant's in the front office relate to Benefits.

Customer Survey

A customer satisfaction survey was carried out during two weeks of September 2014 in all of the community offices. 395 responses were received. The team received a 99% satisfaction score of Good or Very Good in questions 3 to 5 shown in Table 1 relating to their professionalism.

98% of our customers rated how welcoming our receptions are as Good or Very Good. Lastly, 96% said that the waiting time is Good or Very Good.

Table 1 Comparison of customer responses between 2013 and 2014 for all offices

		Very Poor	Poor	Neither	Good	Very Good
How welcoming did you find our reception area?	2014	0.2%	0.5%	1.2%	25%	73%
	2013	0%	1%	1%	21%	77%
How would you rate your waiting time before being seen?	2014	0%	0.5%	3.5%	21%	73%
	2013	0%	0.4%	2%	20%	78%
How welcoming were our staff?	2014	0%	0.2%	0.7%	18%	80%
	2013	0%	0%	0%	14%	86%
How would you rate the overall service you received?	2014	0%	0%	1%	17%	81%
	2013	0%	0%	0%	13%	87%
How knowledgeable were our staff?	2014	0%	0.2%	0.8%	18%	81%
	2013	0%	0%	0%	13%	87%

The following responses were received with regard to accessing SSDC services:

Do you use the SSDC website?		
Yes		22%
No		78%

If no, what is the reason?		
No internet access		27%
Prefer to visit community office		73%

Do you contact SSDC by phone?		
Yes		46%
No		54%

If no, what is the reason?		
No access to a phone		7%
Prefer to visit community office		93%

Was the Community Support Assistant able to give you the information or help that you needed?			
Yes	98%	NB. these customers were referred to another agency	
No	2%		

The results for Langport show that 8% of customers completing the survey would find it very difficult to get to another office. This highlights the importance of local offices for the more vulnerable residents who are unable or find it difficult to contact SSDC online or by phone or who would be unable to access a central office.

Financial Implications

None arising directly from this report.

Council Plan Implications

Focus on Health and Communities. Continue to provide Welfare Benefits support and advice to tackle poverty for our vulnerable residents.

Carbon Emissions & Climate Change Implications

Reduce carbon emissions by increasing awareness of local offices and use of alternative methods of contact i.e. online transactions

Equality and Diversity Implications

All front desk services are accessible, except our Ilminster office, which can only be improved if suitable premises can be found.

Background Papers:

Agenda Item 10

Flooding, Drainage & Civil Contingencies

Strategic Director: Vega Sturgess, Operations & Customer Focus
Assistant Director: Laurence Willis, Environment
Service Managers: Garry Green, Engineering & Property Services Manager
Pam Harvey, Civil Contingencies & Business Continuity Manager
Lead Officers: Roger Meecham, Engineer
Pam Harvey, Civil Contingencies & Business Continuity Manager
Contact Details: roger.meecham@southsomerset.gov.uk or 01935 462069
pam.harvey@southsomerset.gov.uk or 01935 462303

Purpose of Report

To provide an update on aspects of flood and water management, including recent changes to the various roles, powers and duties of land drainage and a summary of recent flooding events.

There will be a presentation to accompany this report and if members would like a copy of this or any of the individual slides they should contact the officer.

Public Interest

South Somerset has an extensive river and watercourse network with variable characteristics. The majority of the area ultimately drains in a north-westerly direction via the River Parrett then to the Bristol Channel. The catchment to the southwest of Chard drains via the River Axe to the English Channel. The southeast catchment drains via the R Cale to the English Channel.

As has been well demonstrated in the flood events of November/December 2012 and again in December/January/February 2013/14 the low-lying areas of the Somerset Levels are particularly susceptible to flooding from long duration rainfall whereas the upper parts of the catchment and the urban areas tend to be more susceptible to flooding in more intense rainfall conditions.

There are a number of organisations that have a role in respect of land drainage and flooding. Their roles are set out in this report and at Appendix A.

Recommendation

That members note and comment on the content of the report and presentation.

1. Background and Legislation Changes

Following the flooding events in 2007 a review of the roles of various organisations in respect of flood risk management was carried out by Sir Michael Pitt. This '**Pitt Review**' looked at ways by which the roles could be clarified and improved. The Review also identified:

- The need to ensure that flood risk from surface water (pluvial flooding) is effectively addressed (rather than just fluvial flooding);

- The need for collaborative arrangements and partnerships between the various organisations involved in flood risk management;
- The leadership role to be undertaken by upper tier authorities (County and Unitary)

These changes have now effectively been brought about by the Flood & Water Management Act 2010. The Act is seen as the 'rationalisation' of the various existing legislation and in the process a number of other issues have been addressed.

One of the main provisions of the new Act is the designation of a new role of 'Lead Local Flooding Authority (LLFA)' and this role has been assigned to Principal Authorities (County/Unitary Councils). The LLFA's have taken on many of the original land drainage and flooding functions of the Environment Agency and District Councils in respect of 'ordinary watercourses' (i.e. not 'main rivers').

In addition LLFA's have also been allocated the role of dealing with surface water run-off issues that weren't covered by previous legislation.

LLFA's have also been allocated an overall strategic co-ordinating function in respect of flooding and additional **duties** to investigate flooding incidents in order to identify the appropriate body to deal with it.

Summarising the Flooding and Land Drainage Roles:

a. What's the same?

- District Councils, **as a non-statutory function**, can still use powers contained in Section 14 of the Land Drainage Act 1991 to carry out improvements to 'ordinary' watercourses (*defined as all rivers, streams, ditches, drains, cuts, culverts, dikes, sluices and sewers – other than public sewers – and passages through which water flows*) in order to alleviate flooding problems.
- The Environment Agency still has jurisdiction over main rivers.
- The Highway authority (Somerset County Council and/or Highways Agency) is still responsible for highway drainage/flooding.
- Landowners (riparian owners) are still ultimately responsible for maintenance of watercourses adjacent to their own property.

b. What's changed

- Consenting/enforcement powers under Section 23 of the LD Act 1991 for structures (culverts, pipes, weirs, bridges, etc.) in watercourses are now with Somerset County Council as the 'Lead Local Flooding Authority' (this function was previously with EA).
- Section 25 powers (enforcement of **maintenance** by riparian owners) are now with County Council (previously with District Council and/or County Council). This role can be delegated to District Councils under an agreement.
- Reservoir regulations have changed in respect of the requirements for owners to carry out monitoring of dam structures, etc. and prepare emergency plans. These new regulations apply to Chard Reservoir although this was already the subject of previous regulations.

c. What's new

- New role for Somerset County Council as 'Lead Local Flood Authority' (LLFA) which brings with it:
 - A strategic co-ordinating function,
 - Duty to act consistently with national and local strategies,
 - Duty to investigate flooding incidents and determine which authority should respond,
 - Power to request information from other drainage bodies (District Councils, Drainage Boards, EA),
 - Powers (under revised S14) to deal with surface water and ground water flooding problems,
 - **Role as SUDs Approval Body for approving and adopting SUDs on new developments. This is seen as an important new function as it should hopefully resolve the adoption issues. Please note that this particular function has yet to be introduced – the target date is currently October 2014.**
- Duty for all drainage bodies to cooperate with each other and provide information.

The current roles of the various drainage organisations are set out in Appendix A.

2. Current SSDC Policies and Procedures

a. General Policy

The Council's general policy with regard to flooding has always been to alleviate internal flooding of properties. This policy was last reviewed by District Executive at their meeting in September 2002 when it was confirmed that:

"the Council will, subject to availability of resources and finance, use its best endeavours and permissive powers to alleviate internal flooding of properties."

b. Emergency Assistance

At the same meeting the Council's District Executive approved a policy in respect of provision of sandbags. This policy currently states that:

"Priority will be given in the provision of sandbags to domestic property at imminent risk of an internal flooding emergency and that the number of free sandbags will normally be limited to 6 per external doorway (excluding doorways to garages or outbuildings)."

Since 1998 (when records started), approximately **55,000** sandbags have been issued with over **7,000** of these being in 2012 and in excess of **4000** in 2013/14. This is in addition to other emergency works and assistance carried out by the Council's crews whilst operating in flooded areas. In order to make the service more efficient the option of establishing local storage/collection points for sandbags has been looked at and discussed with various parish councils but identifying suitable venues/access has often proven to be problematical. Logistical problems in the distribution of large numbers of sandbags to various locations have, in the last few years, prompted the purchase of special, gel-filled bags that are much easier (and safer) to transport in large numbers.

In recent years the focus has been more on giving advice to members of the public about ways in which they can help themselves in dealing with flooding of their property although

this is generally only appropriate where works required are within their own property rather than on 3rd party land. The use of flood boards or similar devices and/or the creation of permanent defences such as raised steps are seen as more effective alternatives to sandbags and are generally advocated.

In addition to the provision of sandbags the Council's Civil Contingencies role involves

- collation of information and requests for assistance (including evacuations);
- assisting with the setting up of emergency rests centres and
- regular communication with the County-wide Civil Contingency Unit

c. Routine Maintenance

In order to ensure continued effectiveness of watercourses that have been improved as part of past flood alleviation schemes, maintenance works are carried out by the Council's Streetscene Services operatives. The total length of watercourse currently maintained is approximately **11km** and the internal cost recharged in this respect for 2013/14 was **£20,495**.

In addition to the routine maintenance of watercourses the Council's Streetscene team also check some **63** debris screens on a regular basis. The internal cost recharged in this respect for 2013/14 was **£16,136**.

The extent of the routine maintenance carried out by the Council was subjectively reviewed in 2006. This review resulted in some reduction of lengths of watercourse maintained, focussing on those lengths that were considered 'critical' to the drainage system.

d. Capital and Minor Works

SSDC has, since the mid '70's, maintained an active role in dealing with flooding problems and providing assistance and advice to members of the public in this respect. Since that time **45** Capital flood alleviation schemes have been implemented, mostly with Government grant aid, at a total cost of approximately **£3.5m**.

Changes in Government funding criteria and availability a few years ago resulted in a switch from implementation of Capital projects to minor works using the Council's Revenue funds. This was seen as a way of providing more responsive basic flood relief across a broader area. Since the year 2000 an annual average of approximately **£20,000** has been used to deliver a total of approximately **355** of such minor drainage improvement works.

Expenditure/Budget figures for the Land Drainage Revenue Budget are set out below for information. Please note that, apart from costs of purchasing 'gell' sandbags, these costs don't include those relating to provision of emergency assistance during the recent winter flooding. These additional costs are understood to be in the order of £47,000.

	2011-12	2012-13	2013-14
Routine Maintenance	35,072	36,841	36,632
Minor works/projects	22,487	12,349	17,145
Emergency(gell-bag purchases, etc.)	3,754	14,975	11,895
Miscellaneous items	3,012	3,079	217
TOTALS	64,325	67,244	65,889

3. Rainfall and Flooding 2013/14

a. Rainfall for Winter 2013/14

Met Office Summary:

“Winter 2014 was an exceptionally stormy season, with at least 12 major winter storms affecting the UK in two spells from mid-December to early January, and again from late January to mid-February....

....The persistent heavy rainfall through the season resulted in this being the wettest winter for the UK, England, Wales and Scotland, and the second wettest winter for Northern Ireland in series from 1910. It was also the wettest winter in the long running England and Wales Precipitation series from 1766. There were more days of rain during the winter than any other in a series from 1961. There was major flooding with the Somerset Levels remaining underwater for much of the season, and flooding also affected large sections of the River Thames.....

.....Rainfall totals in December exceeded twice the monthly average across much of south-east England and Scotland, where it was the wettest calendar month in a series from 1910. The UK overall recorded 154% of December average rainfall. In January, much of southern England recorded two to three times the average rainfall and in south-east England it was the wettest calendar month in the series from 1910. The UK overall recorded 151% of January average rainfall. The wet theme continued through February which was the 4th wettest in the series. For winter overall the UK received 161 % of average rainfall. Some parts of the country had in excess of twice average winter rainfall and the region of south east and central south of England had 238 % of average.”

For the months of December, January and February Met Office rainfall totals for Southwest England were 203.4mm, 247.8mm and 219.4mm respectively all of which are significantly above the ‘norm’.

b. Flooding in South Somerset 2013

A similar pattern of rainfall to that experienced in December 2012 occurred again in December 2013 and January/February 2014 whereby the ground was saturated over long periods and the ‘sponge’ effect lost resulting in almost 100% run-off from agricultural land bringing with it much silt and debris to block drainage systems.

This gave rise to a number of ‘local’ flooding problems affecting properties and highways. Highway flooding was a particular feature of the flooding and much of this can be attributed to surface water run-off from fields as mentioned above. Highway flooding problems are referred to Somerset County Highways.

The main impact of the almost continual run-off was, of course, very severe in low-lying areas particularly the Somerset Levels where some 120 properties were reportedly subject to flooding, access to some communities was cut off and agricultural land was submerged over an extended period. About one third of the affected properties on the Somerset Levels are within the SSDC area.

During the flooding event the District Council’s emergency crews and other officers worked extremely hard, often in difficult circumstances, to distribute in excess of **4000** sandbags to a considerable number of locations across the District. In addition, and in conjunction with other emergency service providers, there was a considerable amount of general emergency

assistance provided by the Council. Without this we can safely assume that considerably more properties would have been flooded and people's lives affected. Council officers were also much involved in dealing with the social impact, health matters and evacuation procedures relating to the flooding emergency.

4. 'Action Plan'

Following a request from Central Government for a 20 year 'Flood Action Plan' a series of high level, multi-organisational discussions took place to identify possible measures and/or strategies to prevent or reduce the scale of the flooding that has occurred in recent years.

The measures include both long term and short term provisions and the key objectives of the 'Somerset Levels Flood Action Plan', as set out in the Executive Summary, are to:

- a. Reduce the frequency, depth and duration of flooding.
- b. Maintain access for communities and businesses.
- c. Increase resilience to flooding for families, agriculture, businesses, communities, and wildlife.
- d. Make the most of the special characteristics of the Somerset Levels and Moors (the internationally important biodiversity, environment and cultural heritage).
- e. Ensure strategic transport connectivity, both within Somerset and through the county to the South West peninsula.
- f. Promote business confidence and growth.

The essential elements to achieve the above objectives consist of:

Risk reduction actions:

- i. Dredging and river management
- ii. Land management – recognising that what happens in the upper and mid catchment has an impact on the lowlands
- iii. Urban run-off

and

Mitigation actions:

- i. Infrastructure resilience (road, rail, sewerage, power and telecommunications)
- ii. Building local resilience

Significant progress is being made in respect of many of the identified actions and this progress is set out in Appendix B – this progress report is available on the Somerset County Council website at <http://somersetnewsroom.com/flood-action-plan/> where further details of the 'Somerset Levels and Moors Flood Action Plan' can also be seen.

One specific element of the Action Plan in respect of 'river management' relates to the creation of a ring bank to protect the village of Thorney. Members will recall that at their meeting in May they agreed to provide a grant of £10,000 towards this scheme, a further £5,000 has been allocated from the Council's land drainage revenue budget. Based on Tenders received the cost of works will be approximately £161,000. Funding of this project is as follows:

Internal Drainage Board	£20k (design costs)
South Somerset District Council	£15k
Kingsbury Episcopi Parish Council	£1k
Somerset County Council (balance)	£145k

Works have commenced and were expected to be completed by mid-October.

5. Financial Assistance

The Government has recently introduced various financial measures to assist those residents and business owners who have been affected by the flooding. These measures are posted on the Council's website and include:

- Council Tax discounts for residents on the Somerset Levels whose properties were either flooded or inaccessible;
- A Repair and Renewal Grant of up to £5,000 for householders whose property was flooded to use for carrying out building resilience or resistance measures;
- Business Rates relief for those whose businesses have been flooded;
- A Business Support Scheme for those whose businesses have been otherwise adversely affected;
- A Repair and Renewal Grant of up to £5,000 for business owners to use for carrying out building resilience or resistance measures.

It is understood that, to date, approximately 40 enquiries relating to domestic 'R&R' Grant have been received from which 17 applications have been submitted and are being considered. In respect of business 'R&R' grants some 11 enquiries have been received from which 8 applications have been submitted.

In addition to the above, Somerset County Council is offering, as they did last year, help for communities and community groups through a £200,000 **Flood Mitigation Fund**. This funding is to enable communities to be more resilient against the effects of flooding and is aimed at small scale community schemes such as clearing ditches, building earthworks and other defences.

Financial Implications

None from this report.

Council Plan Implications

Focus Two: Environment

- We will continue to support communities to minimise flood risk.

Background papers: *None*

Appendix A

Land Drainage Responsibilities, Powers, Rights and Roles

There are, at the local level, a number of organisations that have a role in respect of land drainage and flooding. The statutory powers relating to these are generally embodied in the Water Resources Act 1991 and the Land Drainage Act 1991 although certain functions are also contained within the Public Health Act 1936 the Environmental Protection Act 1990 and the Highways Act 1980. New legislation in the form of the Flood & Water Management Bill 2010 has incorporated and amended much of this previous legislation.

Definitions:

'Watercourse'	Defined under the Land Drainage Act 1991 as "all rivers and streams and all ditches, drains, cuts, culverts, dikes, sluices, sewers (other than public sewers within the meaning of the Water Industry Act 1991) and passages through which water flows".
'Main river'	Specifically designated lengths of watercourse and are generally the larger arterial watercourses. Main rivers fall under the jurisdiction of the Environment Agency.
'Ordinary watercourse'	Watercourses that do not form part of a main river. They are generally under the jurisdiction of 'drainage bodies' although the EA act as the consenting authority in respect of any works involving culverting, diversion, abstraction, etc.

Organisation	Responsibilities, Powers, Rights and Roles
Environment Agency	<ul style="list-style-type: none"> a) general supervisory/strategic role over all aspects relating to flood defence with a more specific role in respect of 'main rivers'. b) regulating authority for works/activities in and alongside main rivers. c) influence, through the planning application process, land use and development particularly within flood plain areas. d) produce Flood Risk mapping. e) install and operate flood warning systems. f) protection and conservation of the natural environment, whilst carrying out flood risk management activities.
Internal Drainage Boards	<p>Designated as a 'drainage body' under the terms of the Land Drainage Act 1991. Drainage Boards have jurisdiction over certain, specific, generally low-lying areas. Their powers include:</p> <ul style="list-style-type: none"> a) Consenting/enforcement powers for structures in ordinary watercourses within their area. b) Power (discretionary) to serve Notice on owners requiring them to remove obstructions from 'ordinary watercourses' (S25 LD Act). c) The IDB's principal interest is in the protection of agricultural land from flooding and to achieve this they undertake maintenance work or improvements on certain 'viewed rhynes'

<p>County Council As the designated 'Lead Local Flood Authority (LLFA).</p> <p>As the Highway Authority</p>	<ul style="list-style-type: none"> a) Strategic co-ordinating function b) Duty to investigate flooding incidents to determine responsibility. c) Consenting/enforcement powers for structures in 'ordinary watercourses' (previously EA role) d) Powers (discretionary) to serve Notice on owners requiring them to remove obstructions from 'ordinary watercourses' (S25 LD Act). e) Powers (discretionary) to deal with surface water flooding. f) SUDs Approval Body (SAB) for approval and adoption of surface water control measures on new development. <ul style="list-style-type: none"> a) keep roads free from flooding b) powers to drain water from a highway into a nearby watercourse c) powers to prevent water flowing on to a highway - this latter power is often difficult to enforce.
<p>District Council</p>	<p>Designated as a 'local authority' under the terms of the Land Drainage Act 1991.</p> <p>Discretionary powers exist to carry out improvement works on 'ordinary watercourses' to prevent, mitigate or remedy flood damage – subject to consent by the LLFA</p> <p>SSDC's policy is to exercise these powers, subject to availability of finance, where property is at risk of internal flooding.</p> <p>The District Council may also give guidance/assistance to the public in respect of flooding issues and issue sandbags in times of flooding.</p>
<p>Landowners (Riparian owners)</p>	<p>The role of Riparian Owners (<i>the owner of land containing or adjoining a watercourse</i>) is generally not fully understood. Among other things they have the right to:</p> <ul style="list-style-type: none"> a) Receive flow of water in its natural state, without undue interference in quantity or quality b) Protect their property from flooding and their land from erosion <p>They also have a responsibility to:</p> <ul style="list-style-type: none"> a) Pass on flow without obstruction, pollution or diversion affecting the rights of others. b) Accept flood flows through their land, even if caused by inadequate capacity downstream. c) Maintain the bed and banks of the watercourse (including trees and shrubs growing on the banks, and for clearing any debris, natural or otherwise, even if it did not originate on their land d) Keep the bed and banks clear from any matter that could cause an obstruction. <p>Whilst riparian owners are under no common law duty to clear a watercourse that becomes silted or obstructed through natural causes, under statute law (S25 of the LD Act 1991) the EA, LLFA or IDB's <u>may</u> require and enforce them to carry out such works.</p>

Agenda Item 11

Area North Committee – Forward Plan

Strategic Director: Rina Singh, Place and Performance
Assistant Directors: Helen Rutter & Kim Close, Communities
Service Manager: Charlotte Jones, Area Development (North)
Lead Officer: Becky Sanders, Committee Administrator
Contact Details: becky.sanders@southsomerset.gov.uk or (01935) 462596

Purpose of the Report

This report informs Members of the Area North Committee Forward Plan.

Public Interest

The forward plan sets out items and issues to be discussed over the coming few months. It is reviewed and updated each month, and included within the Area North Committee agenda, where members of the committee may endorse or request amendments.

Recommendation

Members are asked to note and comment upon the Area North Committee Forward Plan as attached at Appendix A, and identify priorities for further reports to be added to the Area North Committee Forward Plan.

Area North Committee Forward Plan

Members of the public, councillors, service managers, and partners may also request an item be placed within the forward plan for a future meeting, by contacting the Agenda Co-ordinator.

Items marked *in italics* are not yet confirmed, due to the attendance of additional representatives.

To make the best use of the committee, the focus for topics should be on issues where local involvement and influence may be beneficial, and where local priorities and issues raised by the community are linked to SSDC and SCC corporate aims and objectives.

Further details on these items, or to suggest / request an agenda item for the Area North Committee, please contact the Agenda Co-ordinator; Becky Sanders.

Background Papers: None

Appendix A – Area North Committee Forward Plan

Further details on these items, or to suggest / request an agenda item for the Area North Committee, please contact the Agenda Co-ordinator; Becky Sanders, becky.sanders@southsomerset.gov.uk

Items marked in italics are not yet confirmed, due to the attendance of additional representatives. Key: SCC = Somerset County Council

Meeting Date	Agenda Item	Background / Purpose	Lead Officer(s) SSDC unless stated otherwise
As required	Somerset Levels and Moors 20 Year Flood Action Plan	A progress report on the Somerset 20 Year Flood Action Plan, and Flood Recovery Plan	Charlotte Jones, Area Development Manager (North)
26 Nov '14	Flood Action Plan – business recovery	A progress report on supporting local business recovery, including support from Government and other public funding. This report will also look ahead to proposed further investment to support the visitor economy.	Charlotte Jones, Area Development Manager (North)
26 Nov '14	Market Towns App	To receive a demonstration of the new Market Towns app.	Kerri Bruce, Town Apps Project Intern
26 Nov '14	<i>Highways Update</i>	<i>Half yearly report - update on SCC Highways Services.</i>	<i>Neil McWilliams, Assistant Highway Service Manager (SCC)</i>
26 Nov '14	<i>Streetscene Update</i>	<i>Half yearly update on the performance of SSDC Streetscene Services</i>	<i>Chris Cooper, Streetscene Manager</i>
17 Dec '14	Area Development Plan	A progress report on support for local projects including a financial statement on the Area North Capital Programme and community grants	Charlotte Jones, Area Development Manager (North)
28 Jan '15	Langport and Huish Episcopi Conservation Area	To approve proposed changes to the Conservation Area boundary (following consultation).	Adron Duckworth, Conservation Manager

<i>TBC</i>	<i>Community Youth Project</i>	<i>A presentation from the Community Youth Project, whose members include Martock, Somerton, Tintinhull, the Hamdons, and Kingsbury Episcopi.</i>	<i>Teresa Oulds, Neighbourhood Development Officer (North)</i>
<i>TBC</i>	<i>Area North Affordable Housing Development Plan - Outturn 2013-14</i>	<i>A report which looks back on the delivery of additional affordable housing units in Area North during 2013-14 and updates the current position.</i>	<i>Colin McDonald, Corporate Strategic Housing Manager</i>

Agenda Item 12

Planning Appeals

Strategic Director: Rina Singh, Place & Performance
Assistant Director: Martin Woods, Economy
Service Manager: David Norris, Development Manager
Lead Officer: As above
Contact Details: david.norris@southsomerset.gov.uk or (01935) 462382

Purpose of the Report

To inform members of the appeals that have been lodged, decided upon or withdrawn.

Public Interest

The Area Chairmen have asked that a monthly report relating to the number of appeals received, decided upon or withdrawn be submitted to the Committee.

Recommendation

That members comment upon and note the report.

Appeals Lodged

14/02823/FUL – Land at 1 & 2 Lower Orchard, Bakers Lane, Barrington, Ilminster TA19 0QZ.
Erection of 4 dwellings with garages.

Appeals Dismissed

None

Appeals Allowed

12/03954/FUL – Land at Sheria Cottage, Whitfield Lane, South Petherton TA13 5DF.
The erection of two detached dwellinghouses, two detached double garages and road improvement works.

The Inspector's decision letter is attached.



Appeal Decision

Site visit made on 14 August 2014

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

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

Decision date: 18 September 2014

Appeal Ref: APP/R3325/A/14/2219798

Sheria Cottage, Whitfield Lane, South Petherton TA13 5DF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr D C Banks against the decision of South Somerset District Council.
 - The application, Ref. 12/03954/FUL, dated 5 October 2012, was refused by notice dated 7 March 2014.
 - The development proposed is the erection of two detached dwellinghouses and two detached double garages and road improvement works.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of two detached dwellinghouses and two detached double garages and road improvement works at Sheria Cottage, Whitfield Lane, South Petherton in accordance with the terms of the application, Ref. 12/03954/FUL, dated 5 October 2012, subject to the conditions in the attached schedule.

Main Issue

2. The main issue in the appeal is the effect of the proposed dwellings on the pedestrian and highway safety of Whitfield Lane, including the junction with Careys Hollow / Palmer Street.

Reasons

3. The appeal application has been refused for a single reason which states that the two additional dwellings proposed would result in the increased use of Whitfield Lane. Including its junction with Careys Hollow / Palmer Street, this is considered to be 'sub-standard and ill-suited' to safely accommodate the extra traffic that would be generated. As a result it is argued that the proposal would be prejudicial to pedestrian and highways safety contrary to saved Policy ST5 of the South Somerset Local Plan 2006 ('the Local Plan'). Criterion 5 of this policy requires development proposals to make provision for a satisfactory means of access into and within the site and ensure that traffic resulting from development can be accommodated on the local transport network.
 4. The decision to refuse permission was taken against the advice of the Council's officers who were mindful that the Somerset County Council as the Highway
-

Authority has considered the application in considerable detail, including commissioning a Safety and Technical Audit of the proposed road widening, but have raised no objection in respect of the amended scheme. I must give substantial weight to this professional opinion. However I am also aware and take fully into account that the Parish Council and a number of local residents strongly oppose the development on a number of grounds, but particularly in respect of the effect on highway safety. I have considered all the evidence and views expressed, having had the benefit of observations made whilst walking between the allotments and Palmer Street at an accompanied site visit. I have also driven unaccompanied along that route and in both directions along Careys Hollow and Palmer Street.

5. In my view the safety issue arises mainly at two points: the junction of Whitfield Lane with Palmer Street / Careys Hollow ('the junction'), and the blind bend in Whitfield Lane ('the bend') more or less equidistant between the appeal site's access and the junction. The common denominator is that the sub-standard nature of both when compared with adopted highway design standards is such that they demand extreme caution from any reasonable driver.
6. At the junction there is to all intents and purposes no visibility to the left (westward) along Careys Hollow for vehicles exiting Whitfield Lane, with a driver having to use extreme caution to edge out into the main road up to the point where there is a line of sight past the wall of Long Acre, the corner property. In respect of the bend in Whitfield Lane there is minimal forward visibility for a driver in either direction in the single width road. However in both cases there is the ostensible paradox of the potential hazard being so obvious that the road is relatively safe, due to a combination of the extremely low vehicle speeds and the realisation of any reasonable driver that a 'safety first' approach is absolutely essential.
7. This is reflected by the Highway Authority's evidence that over the last 5 years no accidents have been recorded, despite the increase in traffic as a result the siting of the allotments in 2010 further along Whitfield Lane. I am aware of local residents referring to a number of 'incidents' and accidents but I am unable to give anecdotal information the same weight as official statistics.
8. The Highway Authority's view is that compared with the existing traffic along Whitfield Lane (a daily total estimated to be about 128 vehicles excluding for delivery and waste, which although challenged by some residents I consider reasonable), a further 16 or so daily vehicle movements from the proposed houses would not be so significant as to materially decrease highway safety and convenience and thereby preclude the appeal scheme. This effect is a matter of judgement as opposed to being able to be forecast with any degree of certainty on the basis of empirical evidence. However, bearing in mind that the County Highway Authority has a statutory responsibility relating to traffic flow and highway safety I am disinclined to set aside its view without comprehensive and convincing evidence to the contrary.
9. Furthermore, in assessing first hand the potential impact of this increase in vehicles on the junction, I saw on my visit that there is excellent visibility eastward along Careys Hollow so that the driver of any vehicle travelling in that direction at a speed commensurate with its single width would have a clear view

of the front of a vehicle as soon as it begins to emerge from behind the corner of Long Acre. In addition, either after this development or at some future stage, the Highway Authority has the options of repainting the faded 'SLOW' sign on the carriageway, the erection of one or more signs warning of encroaching vehicles and the introduction of traffic calming, if it considers such measures to be necessary in the interests of safety.

10. As regards the bend in Whitfield Lane, the appeal scheme includes the works necessary for its widening, as shown in the submitted plans. I take the view that this will increase inter-visibility between vehicles travelling in opposite directions, but not to the point where it would lull drivers into the false sense of security that is the cause of so many accidents. Furthermore, any increase in conflict between vehicles as a result of more traffic would be offset by the significant advantage of a wider carriageway at the bend.
11. The ability for vehicles to pass at this point would increase safety as it would reduce the existing necessity to reverse, which is an obvious hazard to walkers. For the same reason a two way flow would increase the convenience for drivers travelling both to and from the houses in the Lane and the allotments. The wider road would also increase the ability for walkers to take refuge from passing cars at the only point in the Lane where they are currently at risk of not being seen in sufficient time for a driver to slow down or stop.
12. Overall on the main issue, I conclude that the appeal proposal would not have an adverse effect on highway safety that would bring it into conflict with Local Plan Policy ST5 or with advice on transport in the National Planning Policy Framework 2012 ('the Framework'). Paragraph 32 of the latter requires development to have a safe and suitable access. Allowing for the context of the site being a part of South Petherton which has access roads that reflect its older buildings and rural character, I do not regard the impact as being one that would undermine this objective.
13. Paragraph 32 of the Framework also advises that development should only be prevented or refused on transport grounds '*where the residual cumulative impacts are severe*'. By definition any increase in traffic must increase the potential for accidents and congestion to some degree, but in this particular case I agree with the Highway Authority that the effect would fall short of this description. Although I note the comment of an objector that this part of the paragraph has been quoted out of context, this is neither my view nor the view of the Council and the Highway Authority.
14. I am also aware that an Inspector in an appeal in 1981 considered the junction unsuitable for more traffic, but do not consider that a decision over 30 years ago with at least some different circumstances and prevailing policies should carry significant weight. By the same token I recognise that because of their constraints, both Whitfield Lane and its junction with Careys Hollow / Palmer Street do have a limit to their capacity and decisions on any future proposals will need to be assessed on their individual merits.
15. Local residents have raised a variety of other objections to the scheme. However many of these, including the effect on the character and appearance of the area, residential amenity, ecology and drainage have been reported and considered as part of the officers' report. Although I have also taken them into

account, I have found no reasonable basis in respect of these matters to justify the withholding of permission. Moreover, the appeal site is located within the designated development limits for South Petherton where residential development is acceptable in principle under the saved policies of the Local Plan. In terms of its location the principle of two new houses is, for the same reason, also consistent with the principles and objectives of sustainable development in the Framework.

16. The Council has suggested a number of conditions if the appeal is allowed and subject to some minor modifications I consider that that these are both reasonable and necessary. A condition requiring the approved development to be carried out in accordance with the approved plans is needed for the avoidance of doubt and in the interests of proper planning. Conditions requiring the Council's approval of materials, hardstanding and boundaries, and the submission of a landscaping scheme will safeguard the character and appearance of the area.
17. Conditions in respect of the construction programme and details of highway works, including requiring the off-site work to be carried out before development on the site, are required in the interests of highway safety and residential amenity. Highway safety also supports a condition ensuring the retention of the parking and turning areas for their intended use. Finally a condition as regards the provision of surface water and foul drainage will avoid flooding and pollution.
18. I have noted from third party representations that it is considered there is some doubt whether the highway works fall within land owned by the Highway Authority. However the latter have checked their records and stated the works are within the adopted highway. If any other consents are required as a pre-requisite to the works these will be for the applicants to obtain under the relevant legislation, but I do not consider this to be a matter that needs to be addressed further in this Decision.

Conclusion

19. For the reasons stated above, the appeal is allowed subject to the conditions specified.

Martin Andrews

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin before the expiration of three years from the date of this Decision;
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: SCNDHP1; SCNDHP2; SCNDHP3; SCSP1; SCSP3 Rev. 5; SCSP4 Rev. 5; SCSP5 Rev. 5; SCSP6 Rev 5; SCSP7 Rev 6A; SCSP8 Rev.6a; SCSP9 Rev.6;
- 3) No development hereby approved shall be carried out until particulars of the following have been submitted to and approved in writing by the Local Planning Authority: (i) details of materials (including the provision of samples where appropriate) to be used for the external walls and roofs; (ii) details of the recessing, materials and finish (including the provision of samples where appropriate) to be used for all new windows (including any rooflights) and doors; (iii) details of all hardstanding (including the access over the first 5m) and boundaries; (iv) details of the rainwater goods and eaves and fascia details and treatment.

All work shall be carried out in accordance with the approved details;

- 4) No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written approval to any variation. The scheme of landscaping shall include the highways improvements at the bend to the north east of the site shown on Drawing No. SCSP8 Rev. 6a received 6/2/2014;
- 5) Before the development hereby permitted is commenced, details of the proposed highway works shown on Drawing Nos. SCSP3 Rev. 5 & SCSP4 Rev.5 received 19/2/2013;, and SCSP7 Rev 6a, SCSP8 Rev. 6a & SCSP9 Rev. 6 received 6/2/2014 shall be submitted to and approved in writing by the Local Planning Authority. Once approved, no development, other than site clearance and any investigation works that are required, shall be carried out until such time as any off-site works have been fully completed to the satisfaction of the Local Planning Authority in consultation with the County Highway Authority;
- 6) No development shall commence until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out strictly in

accordance with the approved Plan. The Plan shall include construction vehicle movements; construction operation hours; construction vehicular routes to and from the site; construction delivery hours; the expected number of construction vehicles per day; car parking for contractors; specific measures to be adopted to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice; a scheme to encourage the use of public transport amongst contractors, and measures to avoid traffic congestion impacting upon both local roads and the Strategic Road Network;

- 7) The area allocated for parking and turning on the submitted plan shall be kept clear of obstruction and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted;
- 8) Before the development hereby approved is commenced, details of foul and surface water drainage to serve the development shall be submitted to and approved in writing by the Local Planning Authority. The approved drainage details shall be completed and become fully operational before the dwellings are first occupied. Following its installation, the approved scheme shall be permanently retained and maintained thereafter.

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Agenda Item 13

Schedule of Planning Applications to be Determined by Committee

Strategic Director: Rina Singh, Place and Performance
Assistant Director: Martin Woods, Economy
Service Manager: David Norris, Development Manager
Contact Details: david.norris@southsomerset.gov.uk or 01935 462382

Purpose of the Report

The schedule of planning applications sets out the applications to be determined by Area North Committee at this meeting.

Recommendation

Members are asked to note the schedule of planning applications.

Planning Applications will be considered no earlier than 3.30pm.

Members of the public who wish to speak about a particular planning item are recommended to arrive for 3.20pm.

SCHEDULE					
Agenda Number	Ward	Application	Brief Summary of Proposal	Site Address	Applicant
14	ISLEMOOR	14/03835/FUL	The erection of a dwelling.	Land at Ganges Hill, Fivehead.	Pavilion Construction Ltd
15	SOUTH PETHERTON	14/03432/FUL	Erection of a detached dwelling and garage.	Land at Buttle Close, Shepton Beauchamp.	Mr and Mrs Rowswell
16	SOUTH PETHERTON	12/00951/FUL	Erection of a building for B1, B2 and B8 uses with associated infrastructure, parking and landscaping	Lopen Head Nursery, Lopenhead, South Petherton.	Probiotics International Ltd

Further information about planning applications is shown on the following page and at the beginning of the main agenda document.

The Committee will consider the applications set out in the schedule. The Planning Officer will give further information at the meeting and, where appropriate, advise members of letters received as a result of consultations since the agenda had been prepared.

Referral to the Regulation Committee

The inclusion of two stars (**) as part of the Development Manager's recommendation indicates that the application will need to be referred to the District Council's Regulation Committee if the Area Committee is unwilling to accept that recommendation.

The Lead Planning Officer, at the Committee, in consultation with the Chairman and Solicitor, will also be able to recommend that an application should be referred to District Council's Regulation Committee even if it has not been two starred on the Agenda.

Human Rights Act Statement

The Human Rights Act 1998 makes it unlawful, subject to certain expectations, for a public authority to act in a way which is incompatible with a Convention Right. However when a planning decision is to be made there is further provision that a public authority must take into account the public interest. Existing planning law has for many years demanded a balancing exercise between private rights and public interest and this authority's decision making takes into account this balance. If there are exceptional circumstances which demand more careful and sensitive consideration of Human Rights issues then these will be referred to in the relevant report.

Agenda Item 14

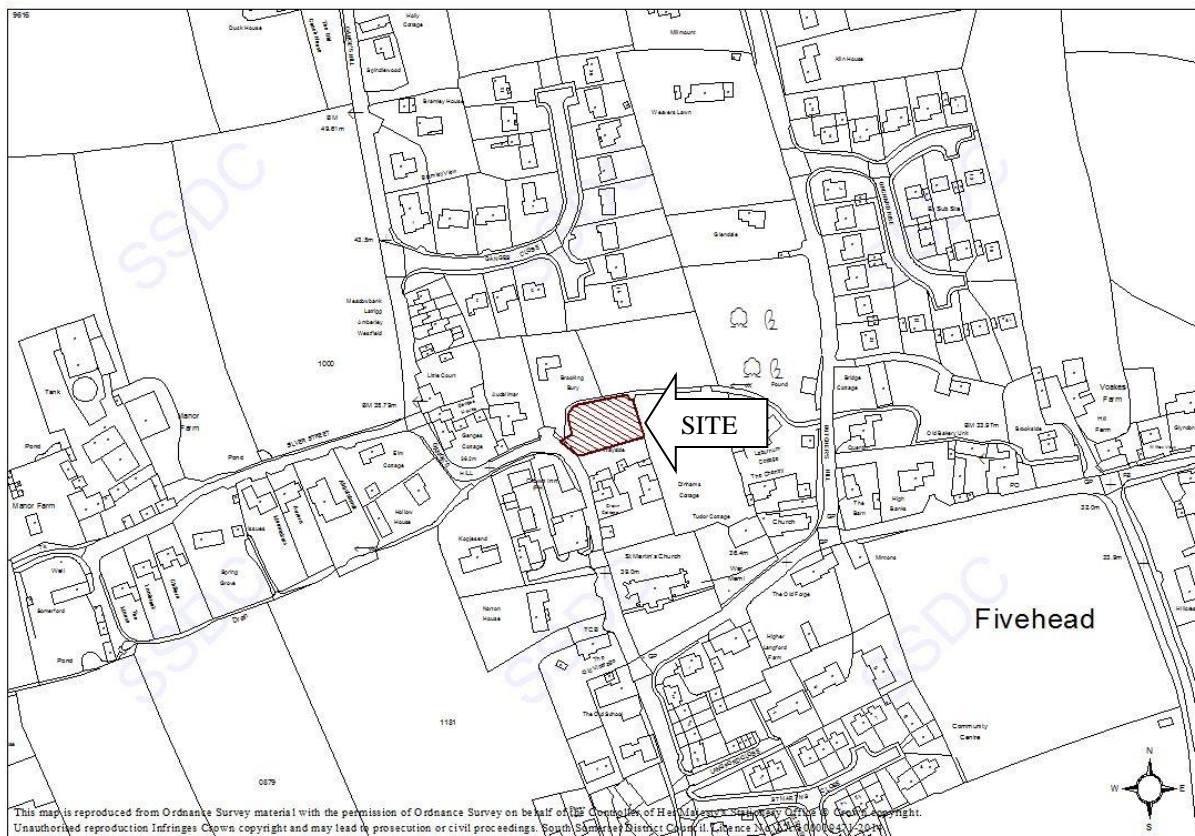
Officer Report On Planning Application: 14/03835/FUL

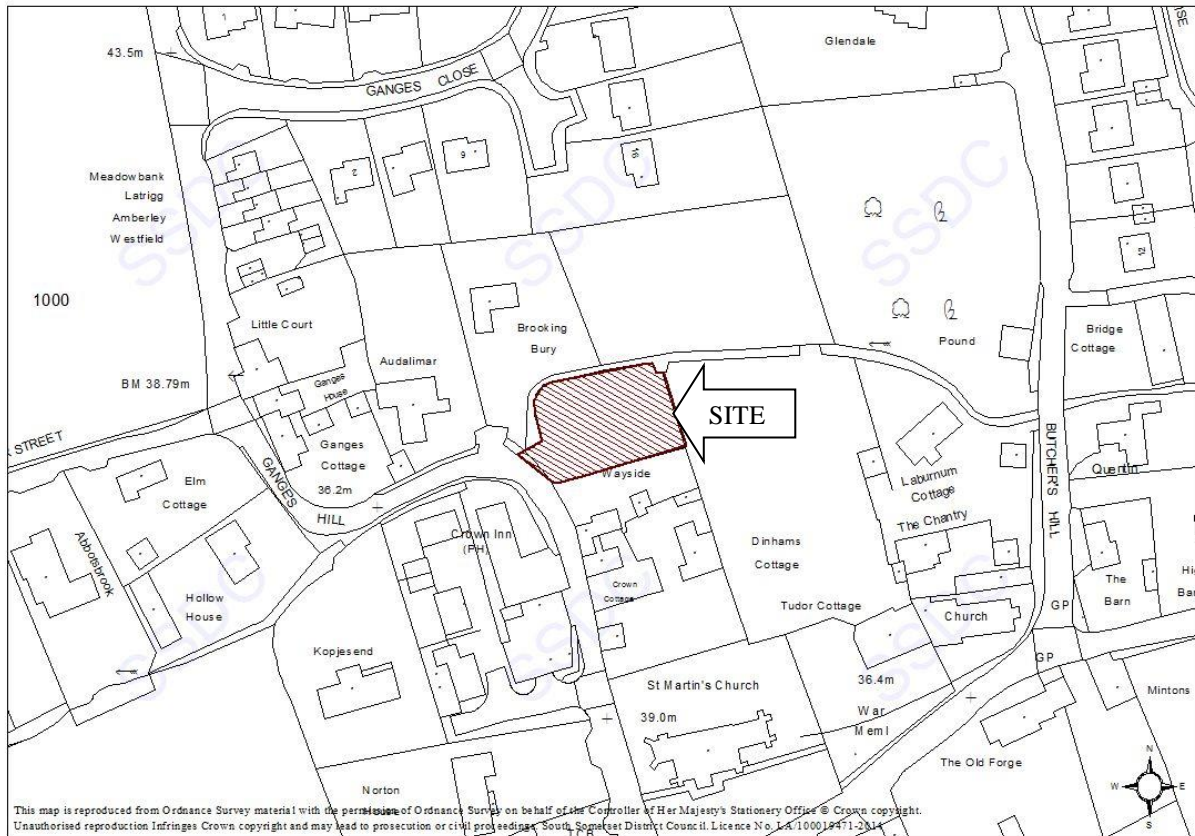
Proposal :	The erection of a dwelling (GR 335242/122966)
Site Address:	Land At Ganges Hill, Fivehead.
Parish:	Fivehead
ISLEMOOR Ward (SSDC Member)	Cllr Sue Steele
Recommending Case Officer:	John Millar Tel: (01935) 462465 Email: john.millar@southsomerset.gov.uk
Target date :	17th October 2014
Applicant :	Pavilion Construction Ltd
Agent: (no agent if blank)	Mr A Davey, Brooking Bury, Ganges Hill, Fivehead, Taunton, Somerset TA3 6PF
Application Type :	Minor Dwellings 1-9 site less than 1ha

REASON FOR REFERRAL TO COMMITTEE

The application is for the provision of a new dwelling within a village that has no defined development area. It is therefore referred to Area North Committee, in accordance with the Council's adopted scheme of delegation, as it represents a significant departure from the saved policies of the adopted local plan.

SITE DESCRIPTION AND PROPOSAL





The site comprises an infill building plot at the centre of the village and is surrounded by residential development. The majority of the neighbouring development is detached houses and bungalows, however there is a mix of designs and material finishes, including render, natural stone and reconstructed stone. The most prevalent material finish used in the immediate area is render. The Crown Inn public house is located to the south west of the site and there are several listed buildings further to the south, including St Martins Church, a Grade 1 listed building.

Planning permission was previously granted in 1981 (ref. 810553) for the erection of a two storey detached dwelling on the site. The works on this consent subsequently commenced and reached ground floor level before ceasing. An enquiry was received recently by the Local Planning Authority in respect to recommencing development, however it was flagged up that there was no record of the pre-commencement conditions imposed on planning permission 810553, being discharged. The conditions were for the provision of samples of materials and a landscaping scheme. As such, the view was taken that the commencement was technically unlawful.

This application is made to erect a dwelling of similar design, proportions and materials as to that previously approved. The proposed dwelling differs only slightly in that minor alterations have been made to fenestration and a gable porch has been added. All other aspects of the development are as previously approved, including siting, height, access position and parking arrangements. The proposed materials are 'Shearstone' reconstructed stone and Redland 50 'Farmhouse' roof tiles to match the materials used in the adjoining property to the north, Brooking Bury.

HISTORY

96236: Erection of a dwelling and alteration of vehicular access thereto - Permitted with conditions.

96236/1: The erection of a house and garage - Permitted with conditions.

782055: (Outline) The erection of a dwellinghouse on land adjoining Wayside, Ganges Hill, Fivehead - Permitted with conditions.

802205: (Reserved Matters 782055) The erection of a dwellinghouse (siting and access) on land at Little Poland, Ganges Hill, Fivehead - Withdrawn.

802563: (Reserved Matters 782055) The erection of a dwellinghouse and garage on land adjoining Wayside, Ganges Hill, Fivehead - Refused.

810553: (Reserved Matters 782055) The erection of a dwellinghouse and garage on land at Little Poland, Ganges Hill, Fivehead - Permitted with conditions.

POLICY

Section 38(6) of the Planning and Compulsory Purchase Act 2004 repeats the duty imposed under S54A of the Town and Country Planning Act 1990 and requires that decision must be made in accordance with relevant Development Plan Documents unless material considerations indicate otherwise,

Relevant Development Plan Documents

South Somerset Local Plan 2006:

ST3 - Development Areas

ST5 - General Principles of Development

ST6 - The Quality of Development

EH5 - Development Proposals Affecting the Setting of Listed Buildings

Policy-related Material Considerations

National Planning Policy Framework (March 2012):

Core Planning Principles - Paragraph 17

Chapter 4 - Promoting Sustainable Transport

Chapter 6 - Delivering a Wide Choice of High Quality Homes

Chapter 7 - Requiring Good Design

Chapter 12 - Conserving and Enhancing the Historic Environment

Somerset County Council Parking Strategy (September 2013)

Somerset County Council Highways Development Control - Standing Advice (June 2013)

CONSULTATIONS

Parish Council: No objections - The Parish Council would be pleased to see the site tidied up and the building completed.

County Highway Authority: Standing Advice applies. Specifically County Council Standing Advice requires provision of appropriate visibility splays, properly consolidated access, positive drainage arrangements to ensure no surface water runoff onto the public highway and appropriate parking and turning provision on-site.

English Heritage: No comment, the application should be determined in accordance with national and local policy guidance.

County Archaeology: Initially advised that a condition should be imposed requiring archaeological monitoring and reporting, as the site is within the Fivehead Area of High Archaeological Potential. The AHAP defines the medieval and later core of the village where there is potential for archaeology. On the basis that development has been commenced and the footings are in place, it is agreed that there is no need for this condition now.

REPRESENTATIONS

Three letters have been received in respect to the application, two of which support the proposal and one raises concerns. The concerns are raised from the occupiers of a property called 'Audalimar', which is sited one property away from the site to the west. The contributors feel that the house is out of keeping with the properties immediately around the site, with several neighbouring dwellings being chalet style bungalows with upper floor rooms in the roof. It is also requested that the existing screening on the roadside boundary is retained and made more solid to provide additional privacy to the occupiers of Audalimar, who considered their property to be in direct line of site.

The two letters of support are from the occupiers of the immediately adjoining properties to the north and south, 'Brooking Bury' and 'Wayside'. These contributors raise no objections and wish to see the development completed, especially as this will improve a currently untidy site at the centre of the village. Both also were under the impression that the previous consent had been properly commenced and could be completed.

CONSIDERATIONS

Principle of Development

In terms of principle, the site is located within a village that does not have a defined development area, therefore residential development is normally strictly controlled by local and national planning policies. Notwithstanding this, the application needs to be considered on its merit in terms whether this is a sustainable location for development, what benefits the development would bring to the local community and whether there are any site specific objections. On this occasion, the site is located at the core of the village of Fivehead, which does actually benefit from some key services, such as a public house with a shop, a village hall and two churches. In this respect, the location maybe considered to be generally sustainable, despite the lack of development area. In this particular case, it is also noted that the site has been partially developed already, in line with planning permission 810553. The footings of the approved dwelling are in place, with the development ceased when the build was at ground floor level. Despite commencement however, it is considered to be technically unlawful due to pre-commencement conditions not being discharged prior to works starting. Since works ceased, the site has become overgrown and unkempt, which is not considered ideal in this central location within the village.

Taking into consideration the relative sustainability of the village, the site location at the village core close to the available key services, the previous consent that has been partly implemented and the benefits of improving the appearance of the site, it is felt that the proposed development is deemed to accord with the objectives of sustainable development, as set out within the emerging local plan and the NPPF and to be, in principle acceptable, subject to the following considerations.

Scale and Appearance

The proposed dwelling is a two-storey detached house, with attached double garage and is proposed to be constructed from reconstructed stone and tile roof to match the adjoining property, Brooking Bury. The occupier of a neighbouring dwelling has raised concerns that the proposal is out of keeping with other properties in the area, which are mainly single storey/chalet type bungalows. Notwithstanding this objection, several of these lower profile properties are on raised ground higher than the application site. It is also noted that there is a mix of property types locally, including other two-storey detached houses, such as that immediately adjoining the site to the north, the aforementioned Brooking Bury. The proposed dwelling is considered to be of a size and scale that appropriately respects and relates to the character of the area and fits well within the application site. Furthermore, the proposed dwelling is set well back within the site, which also has well planted boundary to all sides, which will further reduce the impact of the proposed dwelling on its surroundings.

The design of the property and proposed materials are also similar to that previously approved in 1981. It is recognised that this was over 30 years ago, in which time views may have changed in respect to design and appropriateness of the finish, however on this occasion the proposed materials and appearance of the property are still considered acceptable.

Consideration has also been given to the setting of listed buildings to the south of the site, however these are over 50m from the proposed dwelling and the siting of the property make it unlikely that there will be any shared views. Even were there to be glimpses of the proposed house from any of the nearest listed buildings, it is not considered that this proposal would lead to any adverse impact on their setting or the contribution they make to the local scene.

Overall, the scheme is considered to adequately respect the local pattern of development and the setting of the heritage assets. It is further considered to enhance a dilapidated site, which will improve the appearance of the area.

Residential Amenity

The property is designed to omit any first floor windows to the side elevations, leaving only front and rear windows above ground floor level. These elevations look towards the public highway and non-residential land to the rear of the site and will therefore not lead to any harmful overlooking. Furthermore, the site boundaries are planted with mature trees and hedging that will further prevent harm to neighbouring amenity. The property itself is to be sited centrally within the site where it will cause no overshadowing or general overbearing impact on adjoining land or buildings.

The occupier of the nearby property Audalimar, has requested the provision of a more solid boundary in addition to the retention of planting on the west boundary of the site, to prevent direct views of their property, however it is not considered that any further screening is necessary. The property in question is in excess of 30m to the west and there are considered to be no direct views into the windows of this property or into any areas of private amenity space.

Highway Safety

The County Highway Authority have considered the proposal and advised that Standing Advice should apply, in this case that would necessitate a visibility splay onto George Street of 43m in each direction, as well as provision of appropriate parking and turning space, properly consolidated surfaces and appropriate drainage provision to prevent discharge of surface

water runoff onto the public highway. In this case all the requirements can be met other than the visibility splay, which cannot be fully met due to the constraints of the site and adjoining land not being within the applicant's ownership. Notwithstanding this, the access is located on the inside of a bend where there is still relatively good visibility in both directions. Taking this into consideration and bearing in mind that the access is also proposed in the same position as previously approved, it is not considered that the proposal would result in any severe harm to highway safety.

Other Issues

The site is within an Area of High Archaeological Potential, however as the site has been previously excavated and footings already put in place, it is not considered necessary to carry out any archaeological investigation. As such, no objections are raised on archaeological grounds.

Conclusion

It is considered that while the site is located beyond defined development limits, it is considered to accord with the objectives of sustainable development when balanced against the other considerations referred to above. As such, the proposed development is considered to be acceptable and furthermore will have no adverse impact on the character of the area, nearby heritage assets and highway safety and will cause no unacceptable harm to residential amenity.

RECOMMENDATION

Grant permission with conditions

01. The proposed development is considered to be acceptable, by reason of its design, scale and materials, and has no adverse impact the character and appearance of the locality, the setting of local heritage assets and highway safety and causes no unacceptable harm to residential amenity in accordance with the aims and objectives of saved policies ST3, ST5, ST6 and EH5 of the South Somerset Local Plan and the provisions of chapters 4, 6, 7 and 12 and the core planning principles of the National Planning Policy Framework.

SUBJECT TO THE FOLLOWING:

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

Reason: To accord with the provisions of section 91(1) of the Town and Country Planning Act 1990.

02. The development hereby permitted shall not be carried out otherwise than in complete accordance with the following approved plans: '1013-02' and '1013-03', received 19th August 2014 and '1013-01 A', received 22nd August 2014.

Reason: For the avoidance of doubt as to the development authorised and in the interests of proper planning.

03. The particulars of materials to be used for the external surfaces of the development hereby permitted shall match those indicated on the approved plans and as listed within the submitted application form.

Reason: In the interests of visual amenity, in accordance with saved policies ST5, ST6 and EH5 of the South Somerset Local Plan 2006 and the provisions of chapters 7 and 12 of the National Planning Policy Framework.

04. The proposed access over at least the first 5.0m of its length, as measured from the edge of the adjoining carriageway, shall be properly consolidated and surfaced (not loose stone or gravel) in accordance with details, as shown on the approved plan, drawing no. '1013-03'. Such approved works shall be provided and constructed before the dwelling hereby permitted is first occupied and thereafter retained and maintained unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of highway safety, in accordance with policy 49 of the Somerset and Exmoor National Joint Structure Plan and saved policy ST5 of the South Somerset Local Plan.

05. The area allocated for parking and turning on the approved plan, drawing no. '1013-03', shall be kept clear of obstruction and shall not be used other than for parking and turning of vehicles in connection with the development hereby permitted.

Reason: In the interests of highway safety, in accordance with policy 49 of the Somerset and Exmoor National Joint Structure Plan and saved policy ST5 of the South Somerset Local Plan.

06. Provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto the highway in accordance with details, as shown on the approved plan, drawing no. '1013-03'. Such approved drainage details shall be completed and become fully operational before the dwelling hereby permitted is first brought into use. Following its installation such approved scheme shall be permanently retained and maintained thereafter unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of highway safety, in accordance with policy 49 of the Somerset and Exmoor National Joint Structure Plan and saved policy ST5 of the South Somerset Local Plan.

Agenda Item 15

Officer Report On Planning Application: 14/03432/FUL

Proposal :	Erection of a detached dwelling and garage (GR 340407/117040)
Site Address:	Land At Buttle Close, Shepton Beauchamp.
Parish:	Shepton Beauchamp
SOUTH PETHERTON Ward (SSDC Members)	Cllr P A Thompson Cllr B R Walker
Recommending Case Officer:	John Millar Tel: (01935) 462465 Email: john.millar@southsomerset.gov.uk
Target date :	25th September 2014
Applicant :	Mr & Mrs A Rowswell
Agent: (no agent if blank)	Smith Planning & Design Limited Wayside, Fivehead, Taunton, Somerset TA3 6PQ
Application Type :	Minor Dwellings 1-9 site less than 1ha

REASON FOR REFERRAL TO COMMITTEE

The application is to be considered by Area North Committee at the request of the Ward Members, with the agreement of the Area Chair, to enable the issues raised by local residents, particularly in respect to residential amenity, highway safety and character of the area, to be fully debated by Members.

DESCRIPTION AND PROPOSAL





The application relates to a triangular shaped plot to the east of Buttle Close. It is located to the rear of a row of four houses, which were granted planning permission in 2000. The land falls within the original development site of the aforementioned scheme and is currently laid to grass with some fruit trees planted on it. There are adjoining fields to the north and east and the south boundary backs onto the rear gardens of a number of Yarlington Housing Group owned bungalows, which provide sheltered housing for elderly residents. The site is within the defined development area of Shepton Beauchamp.

This application is made for the erection of a detached dwellinghouse and single detached garage. The dwelling is proposed to be constructed from a mix of natural stone and brick to accord with the dwellings on the roadside frontage of the site. Access is to be gained via the existing access off Buttle Close, which also serves the adjoining four dwellings.

HISTORY

- 07/03264/FUL: Erection of a new vicarage - Refused.
- 04/00911/FUL: Amendment to permission 00/03000/FUL. Revised design to plot 1 including the provision of a tiled roof to rear single storey extension and the erection of a natural stone porch. - Permitted with conditions.
- 00/03000/FUL: Erection of 4 dwellings, garages and construction of a new vehicular/pedestrian access - Permitted with conditions.
- 00/01657/FUL: Erection of six two storey dwellings and one single storey dwelling - Refused.

POLICY

Section 38(6) of the Planning and Compulsory Purchase Act 2004 repeats the duty imposed under

S54A of the Town and Country Planning Act 1990 and requires that decision must be made in accordance with relevant Development Plan Documents unless material considerations indicate otherwise,

Relevant Development Plan Documents

South Somerset Local Plan (April 2006):
ST5 - General Principles of Development
ST6 - The Quality of Development
EC8 - Protected Species
EP6 - Demolition and Construction Sites

Policy-related Material Considerations

National Planning Policy Framework (March 2012):
Core Planning Principles - Paragraph 17
Chapter 4 - Promoting Sustainable Transport
Chapter 6 - Delivering a Wide Choice of High Quality Homes
Chapter 7 - Requiring Good Design
Chapter 11 - Conserving and Enhancing the Natural Environment

Somerset County Council Parking Strategy (September 2013)
Somerset County Council Highways Development Control - Standing Advice (June 2013)

CONSULTATIONS

Parish Council: Support the application but would like to see the garage repositioned to have minimum impact on the bungalows at Buttle Close.

County Highway Authority: County Council Standing Advice should be applied, specifically provision of appropriate visibility splays, properly consolidated access, positive drainage arrangements to ensure no surface water runoff onto the public highway and appropriate parking and turning provision on-site.

County Archaeologist: No objections on archaeological grounds.

SSDC Ecologist: I've noted the neighbour comments on water vole, bat and badger. The comments lack detail to corroborate these concerns. There's no such thing as a 'Designated Preservation Order for Water Voles' although they are a legally protected species, and I can only guess that they may be present in the ditch to the rear of the site? If this is the case, it's unlikely the proposed development would give rise to any significant impacts to water voles.

I haven't visited the site but from your photos the site appears very unlikely to have any significant wildlife constraints.

REPRESENTATIONS

26 letters of objection have been received in relation to the proposed development. These represent the views of 22 occupiers of the bungalows to the south and 4 other residents of Shepton Beauchamp. The main points made are as follows:

- The application shouldn't be considered at all as permission was turned down in 2001 because of access problems. There has been no change since the four most recent houses

were completed. The area is already dangerous and a new dwelling will increase the danger to elderly residents of the neighbouring sheltered housing and local children.

- A two-storey dwelling would impinge on the amenity of the residents of 1-6 Buttle Close as it would overshadow the back of the bungalows where sitting rooms are located with full length windows to let in as much light as possible from the north. The house would only be 10m away from the boundary to the bungalows, which have an outdoor space of only 2-3m. These gardens would be constantly overlooked and the presence of a solid wall would have an overbearing impact.
- The presence of a garage with a roof line of about 3m to the ridge would cut out light to the adjoining bungalows and provide no outlook at all. If the proposal is approved, the garage should be moved nearer to the house.
- The construction phase of any development will have a detrimental impact on the residents of Buttle Close, who are elderly and vulnerable. Many suffer from severe lung problems, which will be exacerbated by the creation of dust. The resident's enjoyment of their properties will also be significantly affected by the movement of large construction vehicles over the existing gravel drive.
- The existing vehicular access is already a problem, with access to Buttle Close from the High Street (Church Lane) being via a small road where 2 cars cannot easily pass and parked cars belonging to residents of Robins Lane would not allow a truck to pass without moving parked cars.
- There are concerns about drainage of the areas it is known to have flooded since the course of a nearby stream was changed.
- There is a designated preservation order on the land for Water Voles. The status of bats and badgers is being investigated with the appropriate authorities.
- The development of this orchard is unnecessary and unjustified, The green space is more important to the area.
- The proposal would devalue the adjoining four dwellings and cause parking problems on the adjoining road, as it is too narrow to park vehicles on.

CONSIDERATIONS

Principle of Development

The application is made for the erection of a single detached dwelling and detached garage on this plot, which forms a landscaped area to the rear of four dwellings constructed in the early 2000s. The site is within the defined development area of Shepton Beauchamp as such is considered to be sustainably located. The proposed development of the site is therefore considered to be generally acceptable in principle, subject to consideration of the design and appearance and the properties impact on the setting of the area, highway safety and residential amenity.

It is noted that there is a planning obligation on the land in the form of a Section 106 Agreement that prevents the land being developed for residential purposes, notwithstanding any grant of planning permission. A separate application has been made to discharge this planning obligation (14/03436/DPO) and the relevant issues will be considered under that separate application.

Design, Appearance and Local Character

The proposed dwelling is located on open land to the rear of the existing dwellings fronting Buttle Close and to the north of bungalows providing sheltered accommodation for elderly people. There is open land to the north and east. The site is within the defined development area but at the eastern edge of the existing built form.

While parts of the village are defined by a linear development pattern, there is no general pattern of

development in the immediate vicinity. There is a mix of development types ranging from bungalows to terraced, detached and semi-detached houses. There are also a mix of materials in use in the area, including reconstructed stone, natural stone and brick. The proposed dwelling is considered to be appropriately sited to respect the local pattern of development and the proposed design and materials are also considered to appropriately relate to the character and appearance the surrounding area.

Residential Amenity

A large number of objections to the scheme have been received, primarily from the residents of the sheltered housing to the south. The main objections to the proposed dwelling relate to the height of the proposed property and the presence of a garage in close proximity to the southern boundary of the site. The concerns raised advise that the development will cut out light to neighbouring residents' dwellings and gardens, will have an overbearing impact and will lead to the loss of existing views over the site and past into open countryside.

These concerns have been considered carefully, however it is ultimately considered that there will be no adverse impact on residential amenity as a result of this development proposal. The proposed dwelling is located far away enough from the adjoining bungalows (no.s 1-6 Buttle Close) to avoid both overshadowing and having a general overbearing impact. Due to its orientation, the two storey elements are between 12-15m away from the nearest bungalow (no.5) and between 8-11m away from the boundary of this property.

The garage is sited 1.4m from the boundary of no.6 Buttle Close. Both the occupier of this property and the Parish Council has requested that this garage be moved in the event of permission being granted. Firstly, this garage is very low profile, with a height of 2m to the eaves, which is the same height as any solid boundary treatment that could be provided under permitted development rights, and a height of 3.35m to eaves height. While this is close to the boundary, it is still considered to be of a size and scale that would not have an unacceptable impact on the residential amenity of the neighbouring occupiers by way of overshadowing and overbearing impact. While the garage building does extend across part of the rear boundary, it is also noted that no.6 has an extended garden to the east, which further reduces the likelihood of any feeling of enclosure. The rear gardens of the other dwellings will not have development close to the boundaries and are therefore considered to be unaffected. It is acknowledged that several of the neighbouring properties have pleasant views across the application site, however loss of these views is not considered to be adequate justification to warrant refusal of planning permission. As advised previously the site owner would be within their rights to provide boundary treatments of up to 2m in height which would effectively remove the existing views.

There are no first floor openings proposed on the south west gable elevation, which would look towards some of the Buttle Close bungalows so there is no overlooking opportunity. Furthermore, conditions of permitted development rights would prevent future openings being installed in this side elevation unless they are obscurely glazed and non-opening below 1.7m above the internal floor level of the room that the opening would serve. The views to the south east are not considered to offer any direct views over the private amenity space of no.6 Buttle Close, so as to cause unacceptable overlooking. Similarly, while there are views towards the rear of the four properties to the west, the distance to the nearest property is approximately 28m. The distance to the rear gardens is over 20m, with garages between, which offer further screening of the private amenity space associated with these dwellings.

Concerns have been raised about the impact of construction traffic and potential dust generation would have on the adjoining residents. The construction phase is an inevitable and unavoidable part of any development, however this should only occur for a short period of time. In order to protect the amenities of local residents, it is always possible to impose a CEMP (construction and environmental protection plan) condition, which considers aspects such as vehicle movements, contractor parking

and mitigation measures reduce risk of pollution. A condition can also be imposed restricting the hours at which construction work can take place.

Overall, it is not considered that the proposed development will cause any unacceptable harm to the residential amenity of the occupiers of any of the neighbouring properties.

Highway Safety

In considering the highway safety issues, the County Council Highway Authority has referred to their Standing Advice. Generally, the requirements can be achieved, with the proposed dwelling taking access from the existing drive which serves the four adjoining houses. This is properly consolidated at the point of access from Buttle Close and has a gravelled surface beyond, which is free draining ensuring that surface water is adequately controlled to avoid discharge onto the highway. The access is 4.5m in width, which is just short of the 5m width required under standing advice, however the current access does allow two vehicles to pass and the proposal is not considered likely to generate a significant increase in vehicle movements that would have a severe impact on highway safety. Similarly, the existing visibility onto Buttle Close is considered to be adequate for the increased usage of the site.

Within the site there is adequate turning provision for the proposed dwelling and for the existing four dwellings and it is proposed to provide three parking spaces, including a single garage, which is sufficient to meet the needs of the county parking strategy and should therefore prevent the need to park on the public highway.

Notwithstanding objections from local residents on highway safety grounds, the proposal is considered to be acceptable and have no adverse impact on highway safety.

Ecology

Objections have been raised on the potential impact on local bat and badger populations and also on water voles. A number of the letters received also advise that there is a 'Designated Preservation Order' for water voles on the site. The Council's Ecologist has considered the proposal and confirmed that there is no such thing as a Designated Preservation Order for Water Voles and also that there is no detail to corroborate the concerns raised. While it may be a possibility that water voles are present in the ditch to the rear of the site, it is unlikely that the proposed development will lead to any significant impact on these protected species or on any other local wildlife.

Conclusion

Overall, the proposed development is considered to be acceptable, as it will adequately respect and relate to the character and appearance of the area, will have no adverse on local ecology or highway safety and is not considered to cause any unacceptable harm to residential amenity.

RECOMMENDATION

Approval with conditions

01. The proposed development, by reason of its size, scale and materials, respects and relate to the character of the area and causes no unacceptable harm to residential amenity, highway safety or ecology, in accordance with the aims and objectives of saved policies ST5, ST6 and EC8 of the South Somerset Local Plan 2006 and the provisions of chapters 4, 6, 7, 11 and the core planning principles of the National Planning Policy Framework.

SUBJECT TO THE FOLLOWING:

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

Reason: To accord with the provisions of section 91(1) of the Town and Country Planning Act 1990.

02. The development hereby permitted shall be carried out in accordance with the following approved plans: '14/1439/01' and '14/1439/02', received 31st July 2014.

Reason: For the avoidance of doubt as to the development authorised and in the interests of proper planning.

03. No development shall be carried out on site unless particulars of materials (including the provision of samples) to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of visual amenity, in accordance with saved policies ST5 and ST6 of the South Somerset Local Plan 2006 and the provisions of chapter 7 of the National Planning Policy Framework.

04. The finished floor levels of the dwelling hereby permitted shall be carried out in accordance with the details submitted on drawing no. '14/1439/02'. Such approved details, shall not be altered without the prior written consent of the Local Planning Authority.

Reason: In the interests of visual and residential amenity, in accordance with saved policies ST5 and ST6 of the South Somerset Local Plan 2006 and the provisions of chapter 7 and the core planning principles of the National Planning Policy Framework.

05. 05. The area allocated for parking and turning on the approved plan, drawing no. '14/1439/02', shall be kept clear of obstruction and shall not be used other than for parking and turning of vehicles in connection with the development hereby permitted.

Reason: In the interests of highway safety, in accordance with saved policy ST5 of the South Somerset Local Plan and the provisions of chapter 4 of the National Planning Policy Framework.

06. 06. The development hereby permitted shall not commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include construction vehicle movements, construction operation hours, construction vehicular routes to and from site, construction delivery hours, expected number of construction vehicles per day, car parking for contractors, specific measures to be adopted to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice, pollution prevention measures and a scheme to encourage the use of public transport amongst contractors. The development shall be carried out strictly in accordance with the approved Construction Management Plan.

Reason: To safeguard residential amenity and highway safety, in accordance with saved policies ST5, ST6 and EP6 of the South Somerset Local Plan and the provisions of chapter 4 and the core planning principles of the National Planning Policy Framework.

07. 07. Construction works and deliveries to the site shall not take place outside of the hours of 07.30 to 18.00 Monday to Friday and 08.00 to 13.00 on Saturdays. No construction work or deliveries to the site shall take place on Sundays or Public/Bank Holidays.

Reason: To safeguard residential amenity, in accordance with saved policies ST6 and EP6 of the South Somerset Local Plan and the core planning principles of the National Planning Policy Framework.

Agenda Item 16

Officer Report On Planning Application: 12/00951/FUL

Proposal :	Erection of a building for B1, B2 and B8 uses with associated infrastructure, parking and landscaping (GR 342553/115366)
Site Address:	Lopen Head Nursery, Lopenhead, South Petherton
Parish:	Lopen
SOUTH PETHERTON Ward (SSDC Members)	Cllr P A Thompson Cllr B R Walker
Recommending Case Officer:	Adrian Noon Tel: (01935) 462370 Email: Adrian.noon@southsomerset.gov.uk
Target date :	11th June 2012
Applicant :	Probiotics International Ltd
Agent: (no agent if blank)	Matt Frost, Boon Brown Planning, Yeovil, Somerset BA20 2FG
Application Type :	Major Manfr f/space 1,000 sq.m or 1ha+

REASON FOR REFERRAL TO COMMITTEE

At its meeting on 24 April 2013 Area North committee resolved to grant planning permission for a new industrial building at Lopen Head, a copy of the report is attached at Appendix A. This decision was subject to a judicial review following a legal challenge on a number of grounds. The Court determined that one of the grounds for challenge was valid and that the permission should be quashed, a copy of the judgment is attached at Appendix B. Accordingly the Council is now required to 're-determine' the application. As this application was originally determined by Area North committee the matter is referred back to Committee so that members can consider the issues raised.

Further consultations have been carried out and the following update report sets out the current situation. It should be read in conjunction with the original report and the Court judgment.

BACKGROUND

The Council originally approved the scheme subject to a number of conditions on the grounds that:-

The proposed development by reason of its design, scale, siting and materials, is considered to respect the character and appearance of the area, will provide employment opportunities, will provide a satisfactory means of vehicular access and will also provide a satisfactory landscaping scheme. It is also considered that there is adequate justification to allow an expansion of Probiotics on land outside of the allocated employment site. The scheme accords with Policy ST5, ST6, and EC3 of the South Somerset Local Plan, Policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review and to policy in the NPPF.

Subsequently this was challenged on the grounds that:-

1. Condition 8 was unlawful because it was ambiguous, unenforceable and irrational as it did not fairly and reasonably relate to the development. This stated that:-

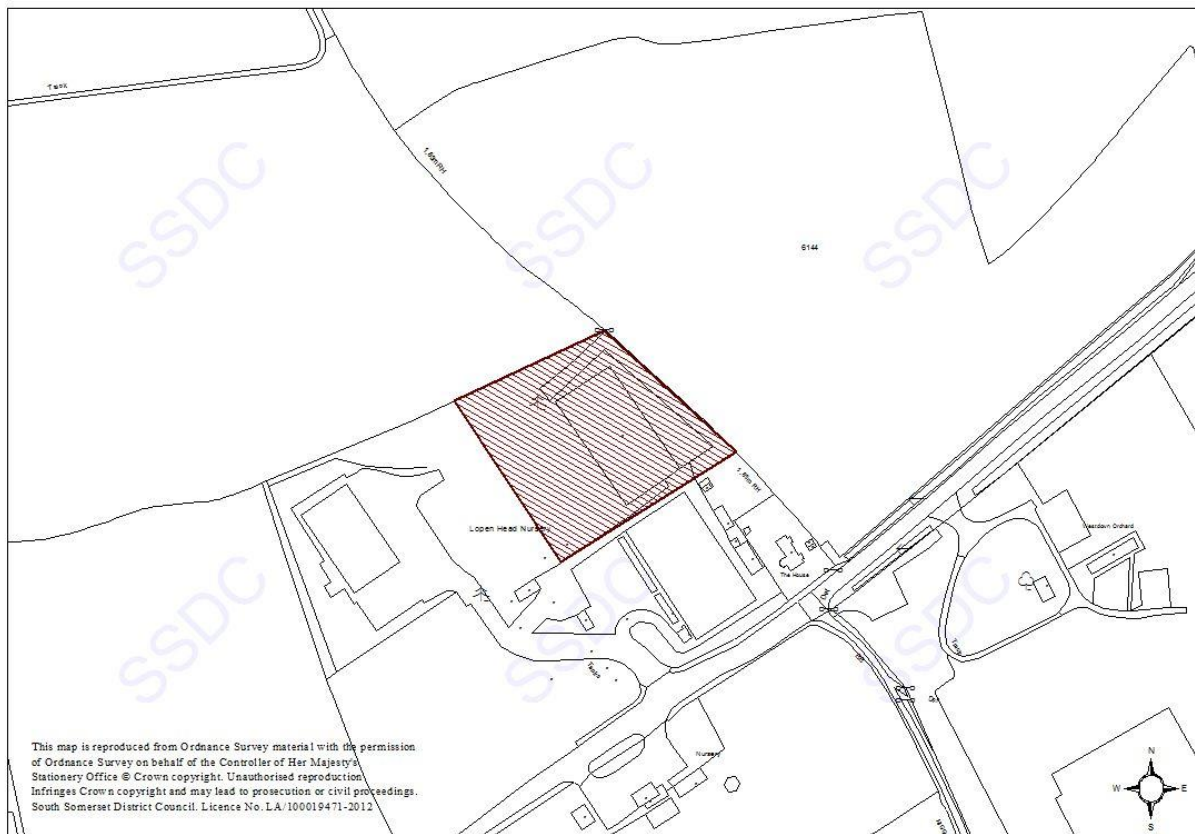
The building hereby permitted shall only be carried out by Probiotics International Ltd (or any successor company) during its occupation of the land subject to this permission.

Reason: The Local Planning Authority wishes to control the uses on this site to accord with the NPPF.

2. The Council adopted an unlawful approach by failing to recognise the primacy of the development plan and considering that the National Planning Policy Framework had superseded or replaced the relevant provisions of the development plan.
3. The council failed to give adequate reasons for the grant of permission.
4. The council granted permission without requiring an Environmental Impact Assessment
5. There was a procedural failure resulting in unfairness.

Only the first ground was upheld; no Council error or shortcoming was identified in relation to the other 4 grounds.

SITE DESCRIPTION AND PROPOSAL



This 0.69 ha site forms part of the former Lopen Head nursery, on the northern side of the old A303, approximately 1km from Lopen and 2km from South Petherton. It currently contains a large derelict glasshouse previously used in connection with the nursery, a mobile phone mast along the eastern boundary (to be retained), and a large earth mound. There is

row of leylandii trees along the eastern boundary and part of the northern boundary.

To the north and east are fields, with the existing two Probiotics buildings and the LiftWest site on an allocated employment site to the west. Between the site and the road is a further area of former nursery, including a large derelict greenhouse and smaller outbuildings. Adjacent to this greenhouse are 2 dwellings and associated gardens. On the opposite side of the road is the Trading Post farm shop. The site comprises level ground on a wide ridge running broadly east/west with the land falling away to the north behind the site and to the south beyond the Trading Post.

This application has been made by Probiotics International Ltd for the erection of a new building for B1, B2 and B8 uses along with associated infrastructure, parking and landscaping. Access would be via the existing route from the old A303 to the south of the site, along the internal road and through the existing Probiotics site.

Probiotics manufacture both human and animal healthcare products and have established their premises on the allocated employment site to the east. A third building is now proposed. This would be an L-shaped 2 storey building, extending 62 metres (east to west), 54 metres (north to south) with a height of 9.3 metres. The proposed design and materials are similar to the 2 existing buildings, with profile sheet walls and roof with aluminium framed windows.

The proposed building would be taller than the existing buildings and sited on higher land. As a result the new building would be 2 metres higher than the adjacent building (referred to as Plot D). In total, the scheme would provide for 1,322m² of B1 office space, 1,322m² of B2 production space and 914m² of B8 warehouse storage. An additional 42 car parking spaces (including 3 disabled spaces), 2 HGV waiting bays, 3 motorcycle spaces and 12 covered cycle spaces and a bin store would be provided in a yard area to the north west part of the site.

The scheme will involve the removal of the existing leylandii trees and a landscaping scheme has been submitted that includes a mix of trees, hedge, shrubs and tall and low edge species mix, along with security fencing.

The application is supported by a Design and Access Statement, a Protected Species Survey, Business Statement, a Transport Statement and a Flood Risk Assessment. Additional details of the justification for the building have been provided, the key point being that the current production facilities, storage and office infrastructure do not offer sufficient capacity to deal with the level of growth proposed over the next few years.

The applicant has clarified (06/03/14) that an annotation to the internal ground floor of the proposed building erroneously referred to 'paste mix' and 'paste fill' rooms. It is confirmed that it is not the applicant's intent to use any part of the proposed building for these purposes and these rooms have been re-annotated 'capsule fill' rooms. This change has been subject to further re-consultations.

HISTORY

- | | |
|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| 09/03849/FUL | Permission granted for the erection of a building for B1, B2 and B8 uses (second Probiotics building). |
| 09/03030/FUL | Development of land for B1, B2 and B8 use (withdrawn). This included the current application site and the land to the south of the current application. |

- 08/05122/FUL Permission granted for the erection of B1/B2 industrial building (revision of 08//00248/FUL, the first Probiotics building).
- 08/00248/FUL Permission granted for the erection of B1/B2 industrial building (first Probiotics building)
- 08/00053/OUT Outline permission granted for development of the allocated employment site for B1 and B2 uses.

Also relevant on the adjoining Lift West site are:-

- 09//00670/FUL Permission granted for the erection of B1/B2 industrial building (revision of 08/00250/FUL).
- 08/00250/FUL Permission granted for the erection of B1/B2 industrial building.

Also relevant are the following screening opinions in relation to environmental impacts that have been given:-

- 12/00587/EIASS The Council concluded that an Environmental Impact Assessment (EIA) is not required in support of the proposal (letter dated 21/02/12). The matter was subsequently raised with the National Planning Casework Unit who twice offered the same opinion (13/04/12 and 31/08/12) concluding that the “development proposed is not EIA development”.

In view of the issues raised since April 2013 a further screening opinion has been requested:-

- 14/03151/EIASS This again concludes that the impacts of the development are not such that a formal Environmental Impact assessment is required.

POLICY

Section 38(6) of the Planning and Compulsory Purchase Act 2004 repeats the duty imposed under S54A of the Town and Country Planning Act 1990 and requires that decisions must be made in accordance with the Development Plan unless material considerations indicate otherwise.

The Emerging Local Plan (ELP) sets out the long term planning framework for the District up to 2028. However, in view of the on-going Main Modifications little weight is accorded to its detailed policies. Accordingly, for the purposes of determining current applications the local planning authority considers that the relevant policy framework is provided by the National Planning Policy Framework and the saved policies of the South Somerset Local Plan 2006.

South Somerset Local Plan (adopted April 2006)

- ME/LOPE/1 - Land at Lopen Head Nursery, Lopen amounting to 1.8 Hectares allocated for employment use (B1 and B2 uses only).
- EC3 - Landscape Character
- ST5 - General principles of development
- ST6 - Quality of development
- TP6 – Non-residential parking provision.
- EC1 - Protecting the best and most versatile agricultural land.

EP1 – Contaminated Land
EU4 – Drainage
ME4 - Expansion of existing businesses in the countryside.

Other policy considerations

Somerset Parking Strategy

Emerging Local Plan

Policy EP4 – Expansion of Existing Businesses in the Countryside

National Policy:

National Planning Policy Framework

Chapter 1 - Building a strong, competitive economy

Chapter 3 - Building a prosperous rural economy

Chapter 7 - Requiring good design

Chapter 11 - Conserving and Enhancing the natural environment

National Planning Policy Guidance

CONSULTATIONS

Initial consultations were carried out upon receipt of the application and a further full round of consultations has been carried out (25/02/14) inviting interested parties to comment on any new issues arising from the quashing of the permission. Subsequently (13/03/14) local consultations have been carried out in relation to the clarification of the activities within the building.

Lopen Parish Council – initially objected concluding:-

“There is no policy support (by any measure) for this proposal. It would require such an exceptional set of (proven) overwhelming and/or mitigating circumstances to allow approval in this case which, given the local circumstances, cannot reasonably or credibly be argued to exist. The business case put forward by the applicant is very basic and lacking in any kind of supporting evidence that little or nothing can be concluded from it. Even the most robust of business cases would not represent overwhelming justification for departing from policy in this instance, as other locally available district-wide sites are available in areas of greatest employment need, at sustainable locations and in defined development areas where this scale of development can be fully supported by policy.”

(full original comments are contained in the original officer report at Appendix A)

They maintain their objection on the grounds that:-

- *A site was allocated for employment use on grade 1 agricultural land, on a hilltop in open countryside, contrary to the local plan Inspector’s recommendation and in full conflict with local and national policy, without any established need (and therefore speculative), with the basis for the allocation relying on misleading and unsubstantiated statements, even when there was and is an existing, sustainable, brownfield site of 23 ha. in Ilminster only five miles away.*
- *Even if one accepted the need for such development, the more rational location of the*

- *abutting nursery site was ignored but, with SSDC consent, that part of the site has subsequently been environmentally abused and exposed to the “detriment of the visual amenities of the area” and partially developed along with the allocated site.*
- *The conditions of the allocation (retention of the tree screening and prohibition of B8 use) have been deliberately overturned to the significant environmental detriment of the local and wider area encouraging a larger scale of development with lower employment density.*
- *The Council has failed to enforce any aspects of land contamination and to provide a fit-for purpose landscaping scheme and its timely implementation.*
- *The Council facilitated the building-in of extra capacity to the allocated site infrastructure to allow expansion onto the unallocated site.*
- *The council is supporting an application for an unsustainable large scale business expansion (which is clearly multi-stage development as proposals for this “essential” facility were first established well before the site was even occupied) totally inappropriate to the area, without any credible evidence of its need and contrary to both local policy and the NPPF, whilst leaving allocated land vacant and ignoring underused existing facilities.*

This is not a genuine small scale rural business expansion but, instead, a long-term strategy to circumvent local and national policies to gain a scale of unsustainable development in the open countryside that would ordinarily not be permitted.

Taking everything into account, the Parish Council cannot see how SSDC could rationally approve this proposal.

(extract from email of 25/02/14)

South Petherton PC (neighbouring parish): Originally recommended refusal on the grounds that:-

“This application seeks to build outside of the employment land allocation in the saved South Somerset Local Plan 2006. Plot B and the area previously marked for future expansion in front of plot C, are available on the allocated site which combine to provide a modest expansion opportunity for Probiotics. The claimed need to separate animal and human welfare products is the same stated need that was used for the separation of existing buildings C and D. Development outside of the allocated land cannot be justified when considering all the elements of this response.

“The scale, design and setting together with the landscaping proposed, are totally inappropriate to this hill-top site in open country side (as can be demonstrated by the level of concern relating to the visual aspects of the existing developed site). Development on this scale should be limited to market towns only.”

Their comments went on to cite in detail a number of saved policies that they believe would be breached. These comments are set out in full in the original officer report at appendix A.

No further comments received.

Landscape Officer: originally raised no objection subject to a landscaping condition,

commenting:-

“Whilst the site lays outside development limits, given the close relationship of this application site with the land to the immediate west that now has planning approval and two buildings in-situ; and the existing nursery structures and site use that characterise the location, I have no in-principle landscape objection to the extension of employment use over this northeast half of the site.

“The building proposal is larger in scale and will stand approaching two metres taller than the two current buildings on site. I have some apprehension over this, though I also note that the new building does not project so far to the north as building C, and that the land continues to rise to the east of the site, to thus help to reduce the perception of building scale. The return of the building to form an L plan shape, to thus reduce its overall length, similarly assists in reducing building scale. As the proposal is accompanied by a fully detailed landscape plan, which provides a buffered edge to the site, then on balance I believe the proposal to be acceptable.

“Turning to the landscape plan, I note that it is generally in line with the level of provision we have negotiated elsewhere within the Business Park, and I am satisfied with it. The materials palette for the building is to be expressed as before, to bring a consistency of treatment to the site. With the current buildings having now had sufficient time to start to blend into their wider landscape context, with their colour helping to anchor them on the skyline, I am satisfied that the tonal treatment is appropriate.”

In relation to issues raised by objectors regarding a perceived lack of a landscape assessment, the extent of the site's visibility, and the nature of the tree screening, the following additional comments were offered:-

- 1. The application seeks consent for a single building sited upon land that is characterised by development structures, and is immediately adjacent an established employment complex. A full L&VIA (landscape and visual impact assessment) is rarely required in such instances, and I can see no over-riding case for exception here.*
- 2. I would agree that the building will be visible, and this an inevitability of a hilltop site. However, it will be seen in relation to 3 other employment buildings on site, in most part obscured in views from the southwest/northwest quadrant by existing building form, whilst from the east, where visible, it will be to the fore of the existing buildings, hence only marginally increasing the mass of building presence on view. From both north and south, its presence will extend the spread of built form across the site at a higher elevation than that of the current greenhouse structures, and whilst I perceive this as a negative landscape impact, it is not so great an impact that it cannot be countered by planting mitigation, and appropriate tonal treatment.*
- 3. Planting is necessary to play down the profile of built form, and to provide a landscape-appropriate context for the site, i.e; a planting of indigenous species that visually and ecologically ties into the wider landscape. Whilst it will not provide an immediate screen, planting small leads to better growth and establishment rates, and greater certainty of long term success - the planting will, with each season, develop to better counter sight of the building group, and better integrate the development into its wider landscape setting. The removal of the original leylandii belt was undertaken as it was over-mature and dropping limbs; losing its screening capacity; and its retention was not a sustainable option. Its*

retention would also have wholly compromised any potential for the future generation of planting required by the local plan policy for allocation ME/LOPE/1, for its rootmass and shade would have inhibited the potential for healthy and consistent plant growth. Hence I view the proposal before us to extend the broadleaved buffer around the site, consistent with the approach agreed on the adjacent site, to be the only credible way forward.

In response to the most recent consultations a local resident has commissioned a landscape study. The landscape architect has considered this document and offers the following observations:-

I quite understand the concerns raised by the study, and it should not be forgotten that when the original site was allocated that it was done in the face of a landscape objection, so I am fully aware of how the site corresponds to its landscape context. However, the site has never been deemed so sensitive as to warrant an EIA on landscape grounds.

In response to the main issues raised by the study, I would advise;

1) The application seeks consent for a single building sited upon land that is characterised by development structures, and is immediately adjacent an established employment complex. A full L&VIA (landscape and visual impact assessment) is rarely required in such instances, and I can see no over-riding case for exception here. The comment relating to cumulative impact is noted, but again I see insufficient increase in built form that is likely to generate 'significant' additional effects, which is the prime concern of LVIA within an EIA.

(2) I would agree that the building will be visible, and this an inevitability of a hilltop site, which has long been characterised by a collection of building forms. Whilst visible however, it will be seen in relation to 3 other employment buildings on site; in most part obscured in views from the southwest/northwest quadrant by existing building form; whilst from the east, where visible, it will be to the fore of the existing buildings, hence only marginally increasing the mass of building presence on view, whilst the local topography and lines of vegetation afford limited prospect from this quarter. From both north and south, its presence will extend the spread of built form across the site at a higher elevation than that of the current greenhouse structures, and whilst I perceive this as a negative landscape impact, it is not so great an impact that it cannot be softened by planting mitigation, and appropriate tonal treatment. I also note that from the south, intervening structures and planting often dissipate views of the application site.

(3) Planting is necessary to play down the profile of built form, and to provide a landscape-appropriate context for the site, i.e; a planting of indigenous species that visually and ecologically ties into the wider landscape. Whilst it will not provide an immediate screen, planting small leads to better growth and establishment rates, and greater certainty of long term success – the planting will, with each season, develop to better counter sight of the building group, and better integrate the development into its wider landscape setting. I note the claim that it will be 10-15 years before the lower parts of the building is screened, this I consider is a little pessimistic, for the existing planting around the initial Probiotics building is already screening out elements relating to the ground floor, and this is occurring after only 3 growing seasons.

I am pleased to see that the report does not advocate retention of the remaining leylandii on site. I have stated before that the removal of the original leylandii belt was

undertaken as it was over-mature and dropping limbs; losing its screening capacity; and its retention was not a sustainable option. Its retention would also have wholly compromised any potential for the future generation of planting required by the local plan policy for allocation ME/LOPE/1, for its rootmass and shade would have inhibited the potential for healthy and consistent plant growth. I continue to view the proposal before us to extend the broadleaved buffer around the site, consistent with the approach agreed on the adjacent site, to be the only credible way forward. For your interest, I attach photos of the remaining conifers along the east boundary – you will note that they are over-mature; structurally deficient; and in a partial state of collapse. Also note from the Colson Stone report, photos 10-12, how it is the conifer block rather than the buildings that initially draws the eye, to demonstrate how alien is their presence in this landscape.

Highway Authority: originally accepted findings and recommendations of the submitted Transport Statement and raised no objection subject to appropriate conditions. No further comments received as a result of consultations.

Economic Development Officer: originally commented:-

“...this is a substantial and successful business that has been encouraged to remain in South Somerset (despite some consideration being given by their management to leaving the area) within reasonable proximity of their previous location at Stoke sub Hamdon. The Lopen location allowed for the retention of the majority of their employees and this had always been a high priority for the company.”

In relation to issues raised by James Smith on behalf of objectors the officer provided additional observations in relation to alternative solutions and the justification for the building:-

During conversations with [Probiotics] I enquired whether alternative solutions could be found to enable the business expansion. He clearly saw that the development of premises in another location would create a 'logistical nightmare' both for the movement and storage of goods and for a displaced workforce. I further enquired whether the proposal to build new premises was the only solution. I was informed that a split site scenario would cause severe difficulties and that the relocation of the whole business would have to be considered. This could clearly impact on the future success of the business and create staff displacement. If there were a viable solution to this problem then I am sure that the applicant and the local authority would be pleased to give it due consideration. It is my opinion that the need for expansion on this site has been adequately covered.

In the same paragraph, reference is made to conversations with the MD of Probiotics and the planning agents in acquiring this information. One wonders exactly who else would be better placed to answer the questions raised in regard to the viability of this proposed expansion?

Mr Smith quotes both UK and EU legislation, stating that there is no reason why human and animal products cannot be manufactured and stored in the same premises. Whilst this statement is correct, it fails to observe that Probiotics have been exploring successfully their markets in Asia and the Middle East. These will include Muslim countries where there are strict requirements to avoid cross- contamination between the production of goods for human and animal consumption. Probiotics are exploring sales into these countries and have recognised both the potential for growth and the production requirements that this opportunity brings. I was able to confirm the need to

avoid cross-contamination of products between species in certain countries by discussing these issues with other manufacturers operating in these markets.

At the time of my visit, there were 80 people on Probiotics employment register. Of these, 15 of them were sales people working across the UK and indeed world. Seldom did these people have cause to visit the Lopen site. I was provided with the detail of the 65 employees who work at the site. I requested this information to 1) clarify that the employment register was indeed correct and 2) to establish how far these employees had to commute to Lopen. It was from this register that I was able to determine that 80% of the Lopen based workforce lived in South Somerset. The information has not been broken down any further to avoid any contravention of employee data protection rights.

For a point of clarification, there were at the time of writing the original report 65 jobs on site, not 80 as stated. To my knowledge, there is no transport plan that has been contravened, so the arrival method of employees is irrelevant. Similarly, the fact that Probiotics employs workers whose homeland is not the UK is also irrelevant as this is perfectly legal and has been sanctioned and encouraged by respective U.K. Governments. It should also be pointed out that many of the migrant workforce are now likely to be permanent residents of South Somerset.

In summary, along with being aligned to Government policy, I look on this application as a positive growth investment during these times of austerity. To have a manufacturing business looking to further develop their home and export sales potential, is to my mind extremely positive.

Planning Policy: initially raised concerns over justification for building. In relation the additional information provided it was confirmed that there is no planning policy objection in principle to the proposal, the impact of which should be considered against the saved policies of the local plan and the NPPF.

In light of current circumstances and in response to the latest consultation the following clarification has been received:-

When the scheme was considered in 2013 some initial concerns were raised. However, since then the national and local policy context has changed, and from the additional information provided it was confirmed that there is no planning policy objection in principle to the proposal, the impact of which should be considered against the NPPF, the saved policies of the Local Plan (1991 – 2011), and the emerging Local Plan (2006 – 2028).

An important change stems from the resumed Examination Hearing Sessions into the emerging Local Plan (eLP) which took place during June 2014. As a result, Policy SS3 (Delivering New Employment Land) has been amended (see Main Modification 11). The modification removes reference to a specific amount of employment land for Rural Settlements, which includes Lopen, and indicates that future development will be considered in the context of NPPF (Supporting a Prosperous Rural Economy); and local plan policies SS2 (Development in Rural Settlements), EP4 (Expansion of Existing Businesses in the Countryside) and EP5 (Farm Diversification). This approach has been endorsed by the Inspector through his letter to the Council on the 14 July 2014.

Furthermore, in this instance, it is necessary to consider the application in the context of expansion of existing businesses in the countryside. Emerging Local Plan Policy

EP4 supports appropriately scaled expansion, as businesses in the countryside provide a valuable source of local employment. In principle the proposed development is in accordance with the NPPF, saved Local Plan Policy ME4 and eLP Policy EP4.

It is confirmed that these comments still apply.

Campaign to Protect Rural England (CPRE): Strongly object on the grounds that:-

it will further exacerbate the damage done to the local environment by this incongruous and ill considered site. Indeed the history of this site is of incremental development and permissions, renegeing on earlier pledges concerning usage categories and scale of development.

The primary concern is that this is an agricultural site of Best and Most Versatile Land. By Policy EC1 development of such category land should not be considered if there are less valuable, preferably brownfield, alternative sites, which there are. Food security may not be uppermost in English minds at present, but with food staples forecast to double in price by 2020, then it soon will be. Somerset has much of the country's best farmland, and it must be protected.

The existing development presents South Petherton with an eyesore to the south of Ben Cross/Frogmary, with Lopen head being prominent from miles around. The existing grey boxed jar with the landscape, and it is unacceptable that the previous thick conifer screening was removed and has not been replaced with anything adequate to minimize the visual intrusion. This proposed development will present an even greater visual blemish, with the buildings larger and taller. It has been claimed that the planned building will be even larger and taller than the Tesco store at Ilminster - if true then the impact will indeed be extraordinarily harmful. There is absolutely no way it could be considered as 'maintaining or enhancing the local environment', neither does it respect the form, character or setting of the locality.

This entire development is outside of a defined development area, a further strong reason why it should not be permitted. Road traffic is also an issue, with the current road layout at the entrance being used as an overtaking lane by some with all of the associated risks. Given its position at the top of a hill from all directions, sustainable transport is discouraged.

In summary, this is a development too far. With hindsight, it is clear that this site was a mistake, a good facility but in the wrong place; development should be frozen at its current state and application refused.

No further comments received.

Environmental Protection Officer: no objection.

Environment Agency: initially objected on the grounds that there was inadequate information to demonstrate that the risks posed to groundwater can be satisfactorily managed. In relation to additional information provided by the applicant the agency withdrew their objection subject to safeguarding conditions to address potential land contamination.,

No further comments received.

County Archaeologist: to demonstrate that the risks posed to groundwater can be

satisfactorily managed objection.

Council Engineer: no objection subject to agreement of detail of drainage proposals.

Wessex Water: No objection raised. The site lies within a non sewered area of Wessex Water. New water supply connections will be required from Wessex Water to serve this proposed development.

REPRESENTATIONS

Previously 6 letters/emails were received raising the following objections:

- Loss of grade 1 agricultural land
- Numerous other local brownfield sites that should be used first
- Scale and design of the building is harmful to setting/ out of keeping with local character
- Landscaping is insufficient to provide an acceptable screen which has to be provided as part of the wider landscaping scheme – earlier planting not implemented.
- Detrimental to visual amenity and out of keeping with surrounding landscape.
- Local plan does not support development at this location
- Unsustainable location.
- Contrary to many development plan policies and the NPPF.
- Employment Land Review does not demonstrate a need for any additional local employment land locally
- Lopen should not serve as the employment centre for South Petherton
- Sufficient employment opportunities exist within Lopen
- Original consent for Lopen head was a planning mistake.
- This is outside of the allocated employment site
- Original industrial estate in Lopen has spare capacity
- Insufficient evidence into the impact on the aquifer
- Question the need for more employment land when there is low unemployment
- Providing employment opportunities close to where people live is social engineering
- Requires exceptional justification
- Poorly conceived site and part of SSDC's approach to site industrial estates across the countryside
- Contrary to sustainable development principles/policies
- Question employment allocation in emerging local plan.
- Land is not previously developed land.
- Employment site allocated for small local business not large companies
- This is not a small scale development/expansion under ME4
- Poor design
- Noise and light pollution
- Building is higher than previously approved buildings on site
- Applicant's business case is not robust, concern about this being speculative development
- Spare capacity at current Probiotic facility
- Lack of evidence to support projected growth
- Information lacking on where staff live/travel from
- Few staff live in vicinity
- The firm brings very little economic benefit to local towns/villages.
- Increase traffic through local communities

- Poor public transport to serve the development
- Will be a requirement to make changes to the road layout due to significant increases in traffic.
- Why are they staying on this site – should move closer to larger town with better transport links
- Comments submitted in regard to previous outline application on this site equally apply.
- Views of smaller communities should be given more weight when considering commercial development
- The application lacks detail - more akin to an outline application
- Applicant/agent did not attend the PC meeting
- The tidying up of the area i.e. removal of glasshouses is not a justification for approval of this scheme.
- Does not allow employees to walk to work
- Significant levels of employment and available within 5 miles of this site.
- Salary figures questioned
- Deliberate tactic to obtain piecemeal permissions.
- Harmful precedent

1 respondent, whilst raising an objection, supports the need to provide opportunities for employment in rural areas but must be sustainable and at an appropriate scale.

Letters has also been received from a solicitor representing a local resident outlining that it is not considered that the applicant's additional information raises any significant new points nor provide the further information the Council should be requesting to clarify points raised by third parties. It does not agree with the screening opinion given by the Council and raises concerns about ground discharge/water and that a decision on the application has already been reached. An additional letter was received from the same solicitor on 14/12/12, the contents of which have been commented on above and are considered below.

In response to the most recent consultations 1 letter has been received re-iterating previous objections and commenting further in relation to:-

- Longterm, piece-meal strategy of applicant on a site that is not suitable for this scale of business;
- The proposal is unsustainable development contrary to the local plan and the NPPF on the grounds that such development should be focused on more sustainable higher tier settlements such as Yeovil and the market towns.
- The development should be subject to environmental assessment given the cumulative size of development and the processes involved. The Council and the Secretary of State have both taken an incorrect approach. An 'expert report', which formed part of the legal challenge, is provided which states that the activities, in the opinion of the writer, are biological processes.
- Landscape impact
- Drainage issues
- Noise and light pollution
- Lack of justification

The writer has further commissioned a 'Landscape and Visual Analysis of Proposals' which concludes that the development will:-

...form a prominent new feature on the skyline that will be visible from up to 2½ km away. This will increase the extent of the built form on the skyline by up to 1/3 in views

from the surrounding countryside.

In my opinion the planting offered in mitigation will not be adequate to provide screening of the proposed building. It is far less than had been recommended by the landscape officer in earlier consultations. The negative impact will therefore remain in the long term.

In my opinion this proposal will, therefore, result in a significant negative visual impact across a wide area.

2 letters of support have also been received making the following points:-

- Positive opportunity to introduce new career opportunities
- Young people will not have to seek work in towns and cities
- Probitics are a good neighbour

CONSIDERATIONS

Principle

In terms of the principle of development this is an un-allocated site outside settlement limits on which an established local company, located on an adjacent allocated employment site wishes to expand. Paragraph 28 of the NPPF states:-

Planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should:

- *support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings;*
- *promote the development and diversification of agricultural and other land-based rural businesses;*
- *support sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside. This should include supporting the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres; and*
- *promote the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship.*

In relation to rural employment saved policy ME4 of the 2006 local plan states:-

Proposals for the small scale expansion of existing businesses (classes B1, B2 and B8 of the use classes order) outside defined development areas shown on the proposals map will be permitted provided that they satisfactorily meet the following criteria:

- *It is demonstrated that the proposal is both needed and appropriate in this location;*
- *Existing buildings are reused where possible;*
- *Use is made of land within the curtilage of the development, beyond the curtilage*

- it is demonstrated that additional land is essential to the needs of the business;*
- There should be no adverse effect on the countryside with regard to scale, character and appearance of new buildings; and*
- There should be no substantial additional traffic generated to the site.*

Policy EP4 of the emerging plan advises:-

Proposals for the expansion of existing businesses in the countryside will be permitted where:

- The business has been operating successfully for a minimum of 3 years, and is a viable business;
- It is demonstrated that the proposal is needed in this location;
- The proposal is of a scale appropriate in this location and appropriate to the existing development;
- Existing buildings are reused where possible;
- Firstly, use is made of land within the curtilage of the development where possible, and outside of the curtilage only where it is demonstrated that additional land is essential to the needs of the business;
- There is no adverse impact on the countryside with regard to scale, character and appearance of new buildings and/or changes of use of land;
- There is no adverse impact upon designations for wildlife and conservation reasons, at either local, national or international level; and
- The proposed development ensures that the expected nature and volume of traffic generated by the development would not have a detrimental impact on the character or amenity of the area and would not compromise the safety and/or function of the road network in terms of both volume and type of traffic generated.

It is considered that saved policy ME4, whilst in general accordance with the thrust of the NPPF, is unnecessarily restrictive firstly in seeking to limit rural business expansion to small scale development and secondly in seeking to restrict such expansion outside development limits. This restrictive approach reduces its weight, whereas the Framework suggest a more permissive, impact focussed approach. Whilst ME4 requires a justification to be made for the development, para. 28 places no such obligation on applicants. Rather there is a need to consider proposals for rural economic development in light of the 'Golden Thread' of sustainability which runs through the Framework, the implication being that if a proposal is 'sustainable' an application specific justification is of less importance.

Whilst emerging policy EP4 seeks to facilitate rural business expansion, it also requires the need for the development to be justified, with the further requirement that businesses need to have been operating successfully for a minimum of 3 years and to be viable.

The applicant is a long standing local business that has been at Lopenhead for approximately 3 years and was located in Stoke-sub-Hamdon before that. Information submitted with the application and considered by the economic development officer show a need for the additional building to separate animal and human products as demanded by important markets for the applicant. It is accepted that there are good reasons why the applicant would want to expand at the existing site rather than move to a split site operation.

Whilst EP4 is a draft policy within the emerging plan and as such is afforded little weight. As with save policy ME4 it should be considered in the context of the permissive approach advocated by para. 28 of the NPPF.

Accordingly the key issue for paragraph 28 is the sustainability of the development in which respect the NPPF outlines 3 dimensions to sustainable development – economic, social and environmental. On this basis it is considered that the principle of the expansion of this rural business on this site is acceptable subject to consideration of the sustainability and impacts of the proposal.

Sustainability

In terms of this proposal, it is considered that it will have a positive economic impact, by increasing the number of employees and supporting the growth of the company. Criticism of the proposal has been made that it will contribute little to the local economy with employees heading straight to site at the start of their day and heading straight back home after work, and unlikely to use local facilities at lunchtime/travelling to/from work. However there is no evidence to support this contention that firstly this business will not employ local people and secondly that those working at the site will not use local facilities

That this development will create extra jobs (from 80 to 130 employees by 2015) can only be positive and in line with the NPPF objective of supporting economic growth in rural areas. On this basis, it is considered that this proposal would meet the economic dimension of sustainability.

The development would meet the social dimension by providing rural employment opportunities meaning local people would have a greater choice of where to work as well as the opportunity to live closer to work.

In terms of the environmental impact, it has been consistently stated through screening opinions that the nature of the development and likely impacts are not such that an Environmental Impact Assessment is justified. Accordingly it is considered that the environmental impacts of the scheme of the scheme can be properly considered through the normal application process and a conclusion arrived at as to whether the proposal addresses the environmental dimension to sustainability.

In terms of general environmental, sustainability issues, it is acknowledged that the site is not in the most sustainable of locations in terms of accessibility and public transport to serve the site is poor, increasing the likelihood of travel by private vehicle is very likely. However it is not considered that this would be significantly different to existing patterns of travel on the adjacent employment sites and ignores where employees live and might otherwise choose to work. As identified above the provision vision of rural employment opportunities provides a greater choice for rural residents and it would not be reasonable to assume that such provision automatically increases overall unsustainable travel patterns.

Accordingly, and considering the three elements of sustainable development in the round, it is not considered that the application should be refused on the basis that it is inherently unsustainable.

Justification for the Proposal

Whilst the NPPF places a greater emphasis on sustainability than policy ME4's need for an application specific justification, it is considered that regard should be had the case advanced.

Probiotics relocated its business to the adjacent allocated employment site in early 2010, having moved from premises at Stoke-sub-Hamdon. The company has grown significantly in recent years and exports to over 50 countries. It is now looking to increase its current

production facilities, storage and office infrastructure in order to meet the needs of a growing business.

The additional building will provide additional production space to enable the manufacturing of animal welfare products to be separated from human welfare products. The agent has outlined that 'export controls within the industry require that human and animal welfare products are both manufactured and stored in separate buildings'. It is important to stress that there is no legal requirement for the products to be manufactured and stored in different premises. However, from a business perspective, the company wishes to grow its export business and the separation of the animal from human products is driven on ethical grounds. A number of those countries/customers will seek the total separation of the human and animal products.

Moreover, the development will provide significantly more site storage of its goods and satisfy the need for additional office accommodation. The company presently employs 80 people (including 15 sales staff, rarely on site) with an expected increase to 130 by 2015. Based on this information, it is accepted that the company is performing very well and expanding. Furthermore there is a stated business case to separate the animal and human manufacturing processes.

Discussions with the applicant have explored whether additional capacity could be accommodated either within the 2 existing buildings, via an extension to the buildings or within land still available on the allocated employment site. The clear response was that, allowing for third party ownership, these options are not acceptable either in providing the physical capacity required or to provide the separate buildings required for the human and animal products.

It is not considered that there are any reasonable grounds to doubt the case put forward or to assume that there is an underlying speculative motive. Accordingly given the policy position that supports rural enterprise, the clear case that is advanced by the applicant and the fact that this is not an inherently unsustainable proposal the application falls to be determined on its planning merits.

Landscape and Visual Impact

In this instance there are no opportunities to re-use existing buildings (para. 28 and Policy ME4) and there is no land available within the existing Probiotics site that could accommodate a building on this scale (Policy ME4). Neither approach rules out new build.

Whilst the proposed building is large it is not of an unreasonable scale for a commercial building that one might expect to find at a rural employment site, be it agricultural or commercial. Indeed in terms of its footprint it is smaller than the original green house that was on this site. The external design, detailing and use of materials are very similar to those of the existing employment site. In particular, the proposal building is considered to site well in comparison with Building C (the first Probiotics building to the west), where the rise in land to east of the site helps assimilate its mass and scale within the site. Accordingly, whilst the new building would stand 2 metres taller than the adjacent Probiotics building and be larger in overall scale, the landscape officer considers the proposal to be acceptable.

The proposal includes a detailed planting scheme that will be implemented along the north, east and south boundaries. This requires the removal of the existing leylandii trees with new planting to adjoin and link with the landscaping undertaken as part of the previous planning approvals. It is considered that the removal of the leylandii screen is entirely acceptable given that these are not a native species, with some in poor condition with die back on the

lower parts of the trunk with resultant gaps. Their existence would also stifle the growth of any additional planting considered appropriate should the leylandii remain.

A detailed landscape scheme with a variety of native trees, hedgerow and shrubs is proposed and agreed by the Council's landscape officer. This would create a mixed edge mix comprising Dogwood, Hazel, Hawthorn, Holly along with Cherry, Oak and Acer trees, providing a belt of planting ranging from 2.5 to 10 metres in depth around all but the western (internal) boundary. It is considered that this landscaping scheme would provide a far more appropriate landscape screen than the unattractive and non-native leylandii trees.

It is noted that the allocation of the adjacent employment site (ME/LOPE/1) provides for the retention of the leylandii screen. However, for the reasons given above, and on the advice of the landscape officer, it is considered appropriate to agree their removal and replacement with a more appropriate mix of native planting.

There is a clear and understandable local concern regarding potential light pollution from this elevated site. It is considered that this could be reasonably mitigated against by the imposition of a condition to ensure that any external lighting is only installed in accordance with details to be agreed in advance by the local planning authority.

Accordingly, given the established development adjacent to the site, the existing nursery structures and the existing uses that characterise this location, there is no landscape objection to this proposal. It is suggested that the landscaping and agreement of external materials be conditioned. On this basis the landscape and visual impact of the development would not be unsustainable or unacceptable.

Highways and Parking

Members may recall that a new vehicular access from the old A303 and internal road layout was created as part of the approval of the earlier buildings on the adjacent site. These would serve the proposed building and the Highway Authority have not objected to the proposed development.

It is advised that the level of traffic generated by this proposal would result in about 50 movements in each peak period, or the equivalent of 1 additional movement per minute during peak times, with the site access junction operating well within its design capacity with these additional movements. The Highway Authority has stated that, whilst the number of parking spaces is below the standard requirement, the Transport Assessment justifies this in relation to the number of employees and this is considered to be consistent with the current trip generation of the site. Accordingly the Highway Authority considers that the number of parking spaces is acceptable. It is suggested that a Travel Plan should be required by condition to ensure that alternatives to the private motorcar are promoted and that a condition is imposed to ensure that the parking is retained.

On this basis it is not considered that the highways impacts of the proposal would be unsustainable.

Drainage

The application proposes that surface water would be attenuated at the appropriate greenfield run-off rate to the culverted ditch to the northeast corner of the site. Notwithstanding local concerns this is accepted by technical consultees and no evidence has been put forward to demonstrate that this would increase the risk of flooding elsewhere. Foul

water would be disposed of by a treatment plan. Again no technical objections have been received to this part of the scheme.

On the basis that the details of the drainage are submitted and agreed by condition it is not considered that the drainage of the site is objectionable or unsustainable or would have an adverse impact on the aquifer.

Quashing of Previous Decision

With the exception of the imposition of Condition 8, limiting the permission to Probiotics (Ground 1,) the Court found the Council's consideration of the application sound in all respects, the judgment concluding that:-

“There was no unlawful approach on the part of the Council to the grant of planning permission in this case, and this ground [Ground 2] of challenge does not succeed. The [Council] did give an adequate summary of the reasons for its decision to grant planning permission [Ground 3]. The [Council] did not act in breach of the EIA Regulations as there is no basis for challenging the decision that the development was not EIA development and that an environmental statement was not required [Ground 4]. There was no breach of the statutory provisions governing access to copies of the report and no unfairness [ground 5].”

Condition 8 was found not to serve a planning purpose and was irrational. On this basis the permission was quashed.

In light of the judgment the key issues are:-

- Have there been any changes in circumstance in relation to the 4 unsuccessful grounds?
- Have any new and relevant issues been raised by local objectors?
- Does the permission need to be 'personal' to the applicant?

Changes in Circumstance

It is not considered that the nature of the proposal has changed since April 2013 or as a result of the quashing of the decision. In this respect the lack of further comment from any statutory consultee is noted. With regard to the policy framework it is not considered that this has materially changed – the context being the saved policies of the 2006 Local Plan, where compliant with the NPPF. The introduction of the National Planning Policy Guidance (NPPG) on 6 March 2014 is noted, however this does not introduce any new policies; rather it provides guidance on the application of policy. It is considered that the previous consideration of this application is compliant with the NPPG.

Issues Raised by Objectors

The Parish Council and the local objectors reiterate a series of points that are comprehensively set out and addressed above. However for the sake of completeness the following commentary on the points now made is offered:-

- Applicant's Strategy – Whilst there may be local misgivings about the applicant's choice to relocate to this site, this cannot justify rejecting its applications out of hand. As ever each application falls to be determined on its own merits. Probiotics have permission for its existing units and now wish to expand. As such the proposal falls to be determined in light of current policies as set out above.

- Compliance with Policy – It is accepted that there are longstanding objections to the allocation of employment land at Lopen Head Nurseries (LOPE/1), however this allocation has long since been adopted, permissions have been granted, implemented and the site developed. There is simply no scope through this application to seek to challenge or revoke the allocation.

The local planning authority is now faced with an application from an existing business, which is on an allocated site to expand onto adjoining land, outside the original allocation. The policy framework applying such an application is set out above and the issues fully considered.

- The Need for an Environmental Impact Assessment – Notwithstanding the continuing assertion that an EIA should be provided, the proposal has been thoroughly screened by both the local planning authority and the Secretary of State with the conclusion that a formal EIA is not required. This issue formed part of the legal challenge and it was concluded that there is no justification for a challenge.

It is accepted that there has been a clarification of the activities within individual rooms of the proposed building. The nature of the proposed activities has been subject to vigorous dispute by objectors in challenging the Screening Opinions offered by the Council and the Secretary of State (via the National Planning Casework Unit) on the grounds that they constitute a ‘chemical or biological process’ and thereby trigger the need for an EIA.

This contention was not supported as a ground of appeal and the confirmation that the disputed activity involving ‘paste’ will not happen in the proposed building is not considered to constitute a material change. Nevertheless it has been considered prudent to revisit the screening process (14/03151/EIASS). This brings together all aspects of the proposal, the supporting information and the objector’s concerns. It is concluded that:-

With regard to Part 6(a) and Part 10(b), whilst the construction and use of a sizeable new building would have some environmental effects having regard to the characteristics of the development, the location of the development and the characteristics of the potential impact (including, as to these, in terms of topography, land use, the use of resources, the production of construction waste, patterns of travel to work, drainage, landscape and visual impact, the development of a former agricultural/horticultural site etc.) such effects form part of the normal planning considerations for any proposal such as this. Having very carefully scrutinised the relevant material, and reconsidered its original screening opinion, the Council considers that the proposed new building and its use is not likely to have significant effects on the environment whether looked at in isolation or cumulatively with other development.

Does the proposal need to be personal to the applicant?

Whilst the applicant has provided much detail to support its expansion on this site it should be noted that neither saved policy ME4 nor the NPPF stipulates that permission for the expansion of rural businesses should be personal to the applicant. In relation to ‘personal permissions’ the National Planning Policy Guidance advises:-

Unless the permission otherwise provides, planning permission runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where granting planning permission for development that would not normally be permitted on

the site could be justified on planning grounds because of who would benefit from the permission. For example, conditions limiting benefits to a particular class of people, such as new residential accommodation in the open countryside for agricultural or forestry workers, may be justified on the grounds that an applicant has successfully demonstrated an exceptional need.

A condition used to grant planning permission solely on grounds of an individual's personal circumstances will scarcely ever be justified in the case of permission for the erection of a permanent building, but might, for example, result from enforcement action which would otherwise cause individual hardship.

A condition limiting the benefit of the permission to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company.

Paragraph: 015 Reference ID: 21a-015-20140306

In this case it is accepted that a reasonable case has been made in support of the proposal.

It is difficult to envisage how any impact resulting from the building would be mitigated in any different way by tying its occupation to either the applicant or another user of the adjoining site. The impacts on visual amenity, landscape, drainage, ecology etc. would not materially alter as a result of a change of occupier and technical changes would be picked up by other legislation, e.g. environmental permits, wildlife protection legislation. Obviously planning permission would be needed for any changes of use.

Whilst a different occupier might generate differing traffic movements, the highways authority has considered both the estimated trip generation (30 – 40 per peak period) and theoretical TRICS predictions (up to 50 per peak period); these are considered to be well within the capacity of the junction. Such movements would still have to comply with the suggested hours condition and the travel plan would apply to all occupiers of the building, would help to ensure that parking is appropriately managed. A condition to require the retention of the parking area would also ensure that parking is not lost over time.

On the basis that the application is acceptable in planning terms it is considered that a personal condition is not justified in this instance and would serve no valid planning purpose and would be clearly contrary to guidance.

Other Issues

Availability of other sites

Comments have been made that Probiotics should look to other sites for their expansion plans at other employment sites that are available. It is pointed out that the company has invested significant sums on the existing site and, provided that there are no significant planning issues to warrant refusal, it makes economic sense to expand on a site adjacent to its existing facility rather than establish a new and second site elsewhere.

The NPPF specifically supports the sustainable growth and expansion of all types of business and enterprise in rural areas. It does not require existing businesses to look, in the first instance, to other sites.

Ecology

No protected species have been found to be using the site and no ecological objection has been raised to the application. Nevertheless it is suggested that an informative be added to remind the developer to adhere to the recommendations of the submitted ecology report.

Loss of Agricultural Land

The site is located on Grade 1 agricultural land. Objections have been raised that this will remove land from agricultural use and that is contrary to national and local policies that seek to protect such quality agricultural land. It is accepted that this application will result in the loss of prime agricultural land. However, given the fact that, firstly, it has been the site of previous development, albeit for greenhouse production, and secondly, it has been disused for a number of years, it is not considered that the loss of this small area of land, sandwiched between employment uses and residential properties would be so harmful that permission could reasonably be withheld on the grounds of the loss of best and most versatile agricultural land.

Residential Amenity

It is not considered that the proposed building would have any adverse impact on the amenities of the adjoining neighbours in terms of overlooking, loss of light or noise and disturbance. Whilst residential properties in the vicinity would be able to see the building it is not considered that, given the mitigation measures suggested, their outlook would be diminished to the point where permission could reasonably be withheld.

Conclusion

It is accepted that there are on-going local concerns regarding the allocation of the adjacent site for employment uses and its subsequent development. Nevertheless this is now 'water under the bridge', the site has been allocated and built out. The time for challenge to previous decisions is now long past.

The council is presented with a well-supported application for a further substantial building on adjacent land to enable the existing user of the site to expand. The application falls to be determined on the basis of whether or not it complies with the saved policies of the 2006 local plan and the policies contained within the NPPF. Policy ME4 of the 2006 local plan only supports 'small scale' expansion of rural business, which is inconsistent with the NPPF, and as such its weight is reduced.

In light of the considerations set out above it is concluded that this is sustainable development that would have no significant adverse impact on landscape character, visual amenity, ecology, water quality, residential amenity, the supply of the best and most versatile agricultural land or ecology, nor would it have a severe impact on highways safety. The proposal is therefore recommended for approval.

SECTION 106 PLANNING OBLIGATION/UNILATERAL UNDERTAKING

No planning obligations are necessary in connection with this application.

RECOMMENDATION

Grant permission subject to the following conditions

Justification

Notwithstanding local concerns, and in light of reasonable mitigation measures in the form of landscape planting and the external treatment of the building, the benefits of the proposed development in terms of employment opportunities and the contribution to the rural economy stemming from the expansion of an established business on its existing site, would outweigh any visual or landscape impacts. The scheme, for which a reasonable justification has been made, will provide a satisfactory means of vehicular access and adequate drainage without detriment to ecology, residential amenity or water quality. As such the scheme accords with saved policies ST5, ST6, EC3, EP1, EU4, EC8, TP2 of the South Somerset Local Plan. It is in accordance with the Development Plan taken as a whole, notwithstanding policy ME4, and the policies contained within the NPPF.

Conditions

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

Reason: To accord with the provisions of section 91(1) of the Town and Country Planning Act 1990.

02. The development hereby permitted shall not be commenced until particulars of the materials (including the provision of samples where appropriate) to be used for external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Once approved such details shall be implemented as part of the development hereby approved and not subsequently altered without the written agreement of the local planning authority

Reason: To protect the amenity of the area to accord with saved policy ST5 of the South Somerset Local Plan 2006.

03. No development hereby permitted shall be commenced until such time as the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority (LPA):

- 1) A preliminary risk assessment which has identified:
 - a. all previous uses
 - b. potential contaminants associated with those uses
 - c. a conceptual model of the site indicating sources, pathways and receptors
 - d. potentially unacceptable risks arising from contamination at the site.
- 2) A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- 3) The results of the site investigation and detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving

full details of the remediation measures required and how they are to be undertaken.

- 4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Thereafter the development shall be carried in accordance with the agreed measures unless the local planning authority agrees to any variation in writing.

Reason: To safeguard the water environment in accordance with saved policies EP1 and EU4 of the South Somerset Local Plan 2006.

04. Prior to the commencement of the development, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. Such Travel Plan should include soft and hard measures to promote sustainable travel as well as targets and safeguards by which to measure the success of the plan. There should be a timetable for implementation of the measures and for the monitoring of travel habits. The development shall not be occupied unless the agreed measures are being implemented in accordance with the agreed timetable. The measures should continue to be implemented as long as any part of the development is occupied.

Reason: In the interests of sustainable development in accordance with saved policy TP2 of the South Somerset Local Plan 2006.

05. The area allocated for parking and turning on the submitted plan shall be kept clear of obstruction and shall not be used other than for parking and turning of vehicles in connection with the development hereby permitted.

Reason: In the interests of highway safety in accordance with saved policy ST5 of the South Somerset Local Plan 2006.

06. No means of external lighting shall be installed on the building or within the rest of the application site without the prior written approval of the Local Planning Authority. Details of any external lighting to be submitted shall include the hours of operation of such lighting. Any approved external lighting subsequently installed shall not be changed or altered without the written consent of the Local Planning Authority.

Reason: To protect the visual amenity of the area in accordance with Policy ST5 and ST6 of the South Somerset Local Plan.

07. The development hereby permitted shall not commence unless a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include construction operation hours, construction delivery hours, car parking for contractors and specific measures to be adopted to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice. Once approved the development shall be carried out in accordance with the approved Construction Management Plan.

Reason: To safeguard the amenities of the locality in accordance with accord with Policy EP6 of the South Somerset Local Plan.

08. No development hereby approved shall be commenced until surface water drainage details, including calculations, have been submitted to and approved in writing by the local planning authority. Such details shall incorporate sustainable drainage techniques where appropriate and shall include measures to prevent surface water from private properties draining onto the public highway. Once approved such details shall be fully implemented prior to the occupation of the unit and shall be maintained in good working order at all times thereafter.

Reason: To ensure that the development is adequately drained in accordance with saved policy EU4 of the South Somerset local Plan.

09. No development hereby approved shall be commenced out until foul water drainage details have been submitted to and approved in writing by the local planning authority. Once approved such details shall be fully implemented prior to the occupation of the unit and shall be maintained in good working order at all times thereafter.

Reason: To ensure that the development is adequately drained in accordance with saved policy EU4 of the South Somerset local Plan

10. All planting, seeding or turfing comprised in the landscaping hereby approved, as shown on drawing 479/01 P1, shall be carried out in the first planting and seeding season following the occupation of the building or the completion of the development, whichever is the sooner. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of visual amenity in accordance with saved policy ST5 of the South Somerset Local Plan.

11. No development hereby approved shall be carried out until such time as details of the proposed levels across the site, including internal floor levels, have been submitted to and agreed in writing by the local planning authority. Once approved such details shall be fully implemented unless agreed otherwise in writing by the local planning authority.

Reason: In the interests of visual amenity in accordance with saved policies ST5 and ST6 of the South Somerset Local Plan.

13. No machinery shall be operated, no process shall be carried out and no deliveries taken or despatched from the site outside the hours of 07.00 - 19.00 Monday to Saturday nor at any time on Sunday, Bank or Public Holidays.

Reason: To protect residential amenity in accordance with Policy ST6 of the South Somerset Local Plan.

12. The development hereby approved shall be carried out in accordance with the following approved plans:
479/01 P1 - Landscape plan
3030/PL-007 - Elevations.
3030/PL-006 - Roof Plan
3030/PL-003 Site Plan

Reason: For the avoidance of doubt and in the interests of proper planning.

Informatives:

01. You are reminded that there should be no discharge of foul or contaminated drainage from the site into either groundwater or any surface waters, whether direct to watercourses or via soakaways/ditches. Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstandings should be passed through trapped gullies with an overall capacity compatible with the site being drained
 02. Any oil or chemical storage facilities should be sited in bunded areas. The capacity of the bund should be at least 10% greater than the capacity of the storage tank or, if more than one tank is involved, the capacity of the largest tank within the bunded area. Hydraulically inter-linked tanks should be regarded as a single tank. There should be no working connections outside the bunded area.
 03. You are reminded of the findings and recommendations of the Protected Species Survey submitted in support of the application which should be adhered to at all times to ensure compliance with the relevant legislation.
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Appendix A

Appendix A

Previous Officer Report On Planning Application: 12/00951/FUL As considered by Area North Committee in April 2013

Area North Committee – 24 April 2013

Officer Report On Planning Application: 12/00951/FUL

Proposal :	Erection of a building for B1, B2 and B8 uses with associated infrastructure, parking and landscaping. (GR 342553/115366)
Site Address:	Lopen Head Nursery, Lopenhead, South Petherton
Parish:	Lopen
SOUTH PETHERTON Ward (SSDC Members)	Cllr P A Thompson Cllr B R Walker
Recommending Case Officer:	Andrew Gunn Tel: (01935) 462192 Email: andrew.gunn@southsomerset.gov.uk
Target date :	11th June 2012
Applicant :	Probiotics International Ltd
Agent: (no agent if blank)	Boon Brown Planning, Mr Matt Frost, Motivo Alvington, Yeovil, Somerset BA20 2FG
Application Type :	Major Manfr f/space 1,000 sq.m or 1ha+

REASON FOR REFERRAL TO COMMITTEE

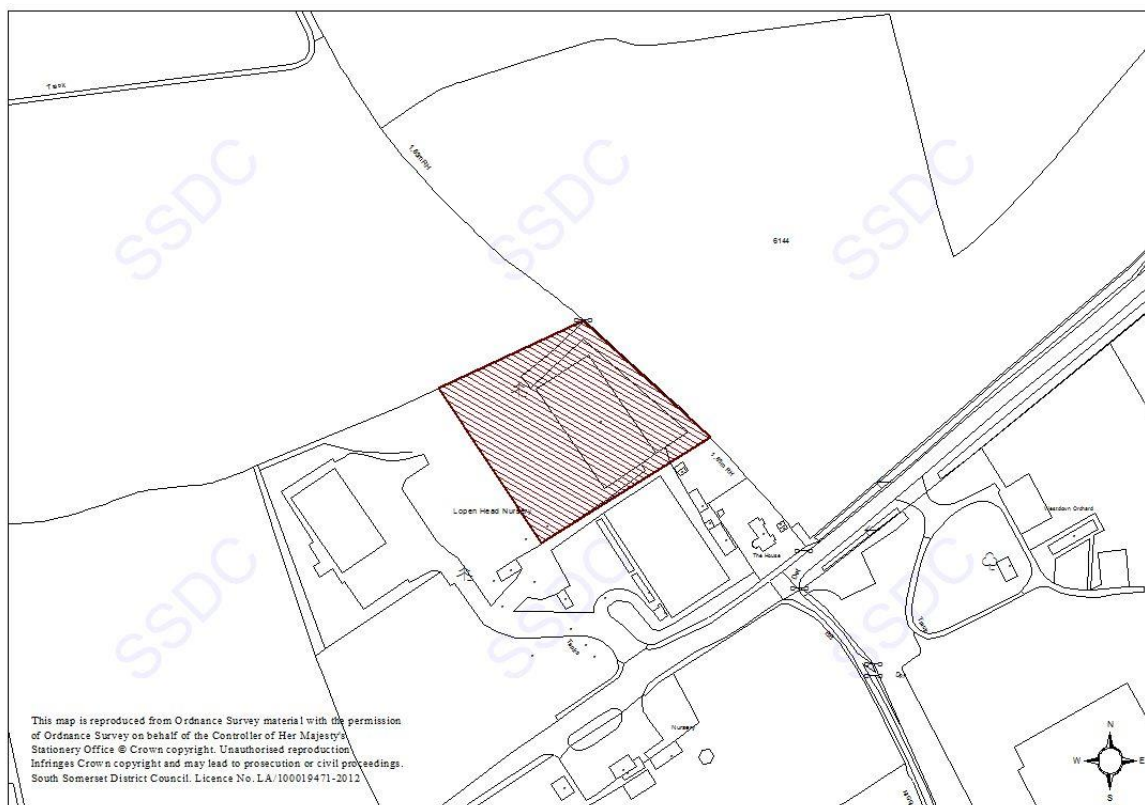
Members will recall that consideration of this application was deferred at the meeting of the Area North Committee held on the 19th December 2012 to enable the issues raised by a third party to be considered and an updated report, if necessary, to be brought back to Committee. Members were forwarded a copy of a letter dated 14th December 2012, from the solicitor of one of the objectors, via email at the time. The key points raised in the letter focused upon a procedural issue, an inaccurate outline of the site history, criticism of the EIA screening process undertaken by the Council, criticism of the Secretary of State and criticism of the comments and views of a number of the Council's officers including the Landscape, Economic Development, Policy and case officer.

The case officer asked the various consultees and applicant/agent to consider the submitted letter, to reassess the application and to advise the case officer as to whether they wished to change their recommendation or amend their original comments. This has now been undertaken and the original comments have either been added to or amended and are included as part of this amended report. As members will note from the report, the views of the various consultees have not changed. The Council acknowledges that there is a strong objection to the application from third parties and respects their views. However, after reassessing all of the various planning issues, it is concluded that the application is acceptable.

In terms of the procedural issue, the application has now been advertised as a major application, a site notice displayed and advertised in the press. The relevant planning history as outlined below in the report has been revised to make it clear that the previous Probiotics and Lift West applications are located on the adjacent allocated employment site.

Appendix A

SITE DESCRIPTION AND PROPOSAL



The application site forms part of the former Lopen Head nursery, on the northern side of the old A303. The site is located in countryside approximately 1km from Lopen and 2km from South Petherton. The site covers 0.69 hectares and currently contains a large derelict glasshouse previously used in connection with the nursery, a mobile phone mast along the eastern boundary (to be retained), and a large earth mound.

A row of leylandii trees run along the eastern boundary and half way along the northern boundary. Located to the north and east are fields, with the established Probiotics business to the west, comprising 2 buildings. To the south is a further area forming part of the ex-nursery with a further large derelict greenhouse and smaller outbuildings. Adjacent to this greenhouse are 2 dwellings and associated gardens. Vehicular access to the site is gained via the old A303 to the south of the site, along the internal road and through the existing Probiotics site.

This application has been made by Probiotics International Ltd for the erection of a new building for B1, B2 and B8 uses along with associated infrastructure, parking and landscaping. Probiotics manufacture both human and animal healthcare products. Probiotics have established their new premises on the allocated employment site to the east and seek permission for a third building. It should be noted that this current application site falls outside of the allocated employment site as defined in the South Somerset Local Plan.

The proposed new building will be an L-shaped 2 storey building. It will extend 62 metres (east to west), 54 metres (north to south) with a height of 9.3 metres. The proposed building will be taller than the existing buildings due to the need for greater internal height requirements. The application site also sits on higher land. The result is that the new building will be 2 metres higher than the adjacent building (referred to as Plot D). In total, the scheme will provide for 1,322m² of B1 office space, 1,322m² of B2 production space and 914m² of B8 warehouse storage.

Appendix A

The design and materials for the proposed building will be similar to the approach taken with the 2 existing buildings. The materials will be a mix of Corus Zeus profile sheeting and Kingspan Spectrum Diamond sheeting for the walls. The windows will be interspersed with green coloured aluminium spandrel panels. The roof will also be constructed using a Kingspan sheeting.

The scheme will involve the removal of the existing leylandii tree screen that currently exists along the whole of the application sites eastern boundary and half of the northern boundary. A landscaping scheme has been submitted that will include a mix of trees, hedge, shrubs and tall and low edge species mix, along with security fencing.

Parking will be provided in the rear yard area in the north west part of the site. It will comprise 42 car parking spaces (including 3 disabled spaces), 2 HGV waiting bays, 3 motorcycle spaces and 12 covered cycle spaces and a bin store. These are in addition to the parking spaces that currently exist and serve the 2 other Probiotics units.

In addition to the various plans, the application has been supported by a Design and Access Statement, a Protected Species Survey, Business Statement, a Transport Statement and a Flood Risk Assessment. The agent later submitted a letter providing further information in respect of the proposal.

The supporting documents outline the case for the proposed building. The key point made is that the current production facilities, storage and office infrastructure do not offer sufficient capacity to deal with the level of growth proposed over the next few years.

HISTORY

09/03030/OUT - Development of land for B1, B2 and B8 use (withdrawn). This was an application which included the current application site, on land to the immediate east of the allocated site. The application also included land to the south of the current application.

Relevant planning history on the adjacent allocated employment site.

08/00053/OUT - Development of land for B1 and B2 uses (approved). This application relates to the outline consent for the whole of the allocated employment site.

08/00250/FUL - Erection of one B1/B2 industrial building (approved). (Lift West)

09//00670/FUL - Erection of one B1/B2 industrial building (approved - revised application to 08/00250/FUL). (Lift West).

08/00248/FUL - Erection of one B1/B2 industrial building (approved). (Probiotics)

08/05122/FUL - Erection of one B1/B2 industrial building (approved - revised application to 08//00248/FUL). (First Probiotics building).

09/03849/FUL - The erection of a building for B1, B2 and B8 uses (approved). (Second Probiotics building).

Appendix A

POLICY

Section 38(6) of the Planning and Compulsory Purchase Act 2004 repeats the duty imposed under S54A of the Town and Country Planning Act 1990 and requires that decision must be made in accordance with relevant Development Plan Documents unless material considerations indicate otherwise.

In March 2012, the existing national Planning Policy Statements and Guidance Notes (PPS's and PPG's) were superseded by the publication of the National Planning Policy Framework.

In March 2013, the Government advised of its intention to revoke the Regional Spatial Strategy and the Somerset and Exmoor National Park Joint Structure Plan Review. Accordingly, regard needs to be had to the development plan policies of the saved policies of the South Somerset Local Plan 2006 and to the aims and objectives of the National Planning Policy Framework.

South Somerset Local Plan (adopted April 2006)

ME/LOPE/1 - Land at Lopen Head Nursery, Lopen amounting to 1.8 Hectares allocated for employment use (B1 and B2 uses only).

EC3 - Landscape Character

ST5 - General principles of development

ST6 - Quality of development

TP6 - Non residential parking provision.

EC1 - Protecting the best and most versatile agricultural land.

ME4 - Expansion of existing businesses in the countryside.

National Policy:

National Planning Policy Framework

Chapter 1 - Building a strong, competitive economy

Chapter 3 - Building a prosperous rural economy

Chapter 7 - Requiring good design

Chapter 11 - Conserving and Enhancing the natural environment

CONSULTATIONS

Lopen Parish Council

Lopen Parish Council held an extraordinary meeting on 16th April 2012 to arrive at its response to planning application 12/00951/FUL, Probiotics building E, Lopenhead. Lopen Parish Council recommends refusal of this application for the following reasons:

Policy - This application is contrary to the following policies:

South Somerset Local Plan 2006:

ST3, ST5, ST6, EC1, EC3, EP3, EU7, TP5, ME3 and ME4.

Emerging Core Strategy

The Core Strategy (LDF) has not yet reached submittal stage and, therefore, any significant consideration of this strategy and/or the policies within it, is premature. That said, the Employment Land Review (stage 3 2010) clearly indicates that South Petherton's employment land capacity is sufficient to 2026 and, even allowing for the latest proposed changes to the LDF, the additional employment land needed in support of additional housing will also be met by existing local capacity up to 2028.

Somerset and Exmoor National Park Joint Structure Plan review 1991-2011

Appendix A

STR1, STR5, STR6, Policy 5, Policy 7, Policy 17, Policy 18, Policy 19 and Policy 39.

RPG10 Regional Planning Guidance for the South West (Regional Spatial Strategy)
TRAN1, EC3 and SS19.

Although not strictly relevant for this application as the NPPF states - For 12 months from the day of publication, decision-takers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with this Framework, we have included the relevant sections of the NPPF that would not support this proposal going forward.

Sections: 7, 8, 10, 11, 12, 17, 28, 30, 35, 58, 64, 66, 111, 112, 125, 158, 161, 210, 211 and 214.

Reasons

- The site is located outside of the defined development areas of towns, rural centres and villages where development should be strictly controlled
- The development proposed does not maintain or enhance the local environment nor does it respect the form, character and setting of the locality especially considering the architectural and landscape design proposed. It does not preserve and complement the key characteristics of the location, to maintain its local distinctiveness
- The location and scale of the proposal fosters growth in the need to travel
- The proposal is not efficient use of land
- The proposal does not give priority to the use of recycled land and other appropriate sites within urban areas first
- The proposal will cause avoidable harm to the natural and built environment of the locality and the broader landscape
- The density, form, scale, mass, height and proportions of the proposed development do not respect and relate to the character of their surroundings
- The proposal seeks to develop on agricultural land, which is avoidable. If it were not, then poorer quality land should be used in preference to that of higher quality (defined as grades 1, 2 and 3a of the agricultural land classification), except where other sustainability considerations outweigh the agricultural land value.
- The proposal does not avoid built forms whose visual profiles would be out-of-keeping with and uncharacteristic of the surrounding landscape when viewed from publicly accessible vantage points.
- Lighting on site will adversely affect the character and appearance of the locality
- The site lies within a Source Protection Zone 2 for a Public Water Supply borehole and should not be permitted.
- The proposal is likely to generate significant levels of travel demand and is not well served by public transport, or other means of transport other than private cars and lorries.
- The proposal is not in scale with the settlement of Lopen and does not preserve the hierarchical distinction between the larger and small communities.
- The proposal is not small-scale by any measure. The applicant amplifies this point when referring to the "large building" and "breaking up the elevation it appears less massive" in his application. By any measure of expansion, be it size of land use, scale of business activity, numbers employed, turnover or any other factor, the scale of expansion proposed is NOT small-scale. The EU regards any business with 50 or more employees as medium sized. This proposed business extension alone would be regarded as a medium sized business
- The Employment Land Review (ELR) (Stage 3 October 2010) amply demonstrates that the proposal is not needed in this location
- If a need were identified then, priority must be given to the use of land within the curtilage of

Appendix A

the development. Permission for building B on the allocated land has now lapsed which, together with the area marked for future expansion (between building B and C) provide ample scope for a smaller scale expansion should an overwhelming case and local need be proven.

- Development of the design and on the scale proposed (especially considering a significant proportion of B1 use) should, by policy, be located within or on the edge of Market Towns.
- The ELR identifies local Market Towns with significant allocated and PDL land availability which have the benefit of significant alternative (public) transport options and are closest to existing available (and with predicted growth) labour force.
- The SSLP supporting text states "9.20 It is considered inappropriate for new employment development to be permitted outside the defined Development Areas because of the adverse effect that this could have on the countryside and the character and setting of the settlements. However, there are many small-scale rural enterprises, located in the countryside outside of Development Areas, which provide a valuable source of local employment. These businesses have often made significant investments in existing sites and may be restricted in choices of suitable alternative sites within the District for expansion. (our emphasis) Under the following policy, the expansion of rural businesses will be permitted especially where buildings are re-used or additional use made of the land within the curtilage of the development. Whilst substantial development of greenfield sites in the countryside will not be supported, it is important not to jeopardise the future of rural enterprise." In this case, this supporting text cannot apply. There are ample suitable (and far more appropriate sites) across the district and therefore, the exception rules do not apply.

The text states "9.21 The expansion of sites will be permitted where development does not harm the local environment and there is no significant increase in traffic generation. Where the proposal results in a scale of development that is clearly beyond that which is in accordance with the development plan strategy, the Council will give every assistance to employers to find an alternative, more appropriate location" It cannot reasonably be argued that this scale of development is in accordance with the plan strategy, and assistance should be provided by the Council to find a more appropriate location.

The SSLP appendix A1 (landscaping guidelines) states:

- 1) Skyline - "land which forms a skyline within, or adjacent development, shall be kept clear of built-form, with its rural character conserved; - where development profile does project above a rural skyline, a wooded feature should be planted to create a new skyline backdrop;"
- 2) Layout of built form; - strong blocks of new woodland should be sited to screen built development of high visual profile, and define development areas; Also Employment Land; "where sited against an edge of visual prominence or sensitivity, building scale and densities should be reduced;"

The proposal seeks to develop on a skyline in open countryside, which should be kept clear of built form. No wooded feature or strong blocks of woodland are proposed to create a skyline backdrop or to screen against development of high visual profile (as this undoubtedly is) nor have the building scale and densities been reduced. In fact, this proposal is far bigger and taller than anything already approved at Lopenhead.

The NPPF places a heavy emphasis on sustainability. The records show that the most credible of consultees, including the Planning Inspectorate, have historically regarded the Lopenhead site as unsustainable. Included in the matters, which the NPPF highlights are the following comments.

- "land of the right type is available in the right places and at the right time to support growth"
- "creating a high quality built environment, with accessible local services that reflect the community's needs"

Appendix A

- "contributing to protecting and enhancing our natural, built and historic environment;"
- "The planning system should play an active role in guiding development to sustainable solutions."
- "Plans and decisions need to take local circumstances into account"
- "Planning law requires that applications for planning permission must be determined in accordance with the development plan proposed development that conflicts should be refused"
- "recognising the intrinsic character and beauty of the countryside"
- "Allocations of land for development should prefer land of lesser environmental value"
- "reusing land that has been previously developed (brownfield land),"
- "fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable;"
- "support a pattern of development which, where reasonable to do so, facilitates the use of sustainable modes of transport"
- "give priority to pedestrian and cycle movements, and have access to high quality public transport facilities;"
- "Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions"
- "respond to local character and history, and reflect the identity of local surroundings and materials are visually attractive as a result of good architecture and appropriate landscaping"
- "local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality".

Conclusion

There is no policy support (by any measure) for this proposal. It would require such an exceptional set of (proven) overwhelming and/or mitigating circumstances to allow approval in this case which, given the local circumstances, cannot reasonably or credibly be argued to exist. The business case put forward by the applicant is very basic and lacking in any kind of supporting evidence that little or nothing can be concluded from it. Even the most robust of business cases would not represent overwhelming justification for departing from policy in this instance, as other locally available district-wide sites are available in areas of greatest employment need, at sustainable locations and in defined development areas where this scale of development can be fully supported by policy.

Adjacent Parish South Petherton PC:

(Comments dated 7th April 2012)

SPPC recommends refusal of this application for the following reasons:

- 1) This application seeks to build outside of the employment land allocation in the saved South Somerset Local Plan 2006. Plot B and the area previously marked for future expansion in front of plot C, are available on the allocated site which combine to provide a modest expansion opportunity for Probiotics. The claimed need to separate animal and human welfare products is the same stated need that was used for the separation of existing buildings C and D. Development outside of the allocated land cannot be justified when considering all the elements of this response.
- 2) The scale, design and setting together with the landscaping proposed, are totally inappropriate to this hill-top site in open country side (as can be demonstrated by the level of concern relating to the visual aspects of the existing developed site). Development on this scale should be limited to market towns only.

Appendix A

- 3) This proposal is not supported by the following policies:

National Policies

EC6: As this proposal does not protect this countryside's intrinsic character and beauty, the diversity of its landscapes, it does not strictly control economic development in open countryside away from existing settlements, or outside areas allocated for development in development plans and the location of this development is not in or on the edge of existing settlements where employment, housing (including affordable housing), services and other facilities can be provided close together.

EC12: In which local planning authorities should: support development which enhances the vitality and viability of market towns and other rural service centres and support small-scale economic development where it provides the most sustainable option in villages, or other locations, that are remote from local service centres. In this case, the evidence base does not support a need for this site nor can it reasonably be regarded as small-scale.

SSLP 2006 Policies

ME4: Proposals for the small scale expansion of existing businesses (classes B1, B2 and B8 of the use classes order) outside defined development areas shown on the proposals map will be permitted provided that they satisfactorily meet the following criteria: This proposal is not small scale. It is demonstrated that the proposal is both needed and appropriate in this location; The evidence base does not support a need for this development. Use is made of land within the curtilage of the development, beyond the curtilage it is demonstrated that additional land is essential to the needs of the business; Land is available within the curtilage of the existing development which can provide a modest expansion for the applicant.

There should be no adverse effect on the countryside with regard to scale, character and appearance of new buildings; It is well documented by important consultees and representations for the existing development site that the scale, character and appearance of commercial buildings (especially in the form they now take) at this site do adversely affect the countryside.

There should be no substantial additional traffic generated to the site. It is inevitable that expansion of the site on the scale proposed will cause substantial additional traffic to be generated.

ME3: In addition to any site specifically allocated for development, proposals for employment use will be permitted within the development areas of the following settlements, subject to the proposals being in scale with the settlement. Where the site is not well served by public transport or otherwise readily accessible to a local residential workforce only small scale development will be permitted. The proposal is not positioned within any of the defined settlements and is not small scale.

EP3: Lighting within all new developments and environmental improvements will be designed to minimise the effect of sky glow whilst providing adequate illumination levels for highway safety and crime prevention measures.

When considering matters of lighting the district council will not grant planning permission where the proposal would: Adversely affect the character and appearance of the locality. As this is an unlit hilltop site in open countryside and, given the scale of

Appendix A

the building proposed (especially when combined with the existing development), sky glow to an unacceptable level is inevitable.

EC3: Outside development areas, development proposals which are otherwise acceptable will be permitted provided that they do not cause unacceptable harm to the distinctive character and quality of the local landscape. In particular, development should: Respect or enhance the characteristic pattern and features of the surrounding landscape; and,

Avoid built forms whose visual profiles would be out-of-keeping with and uncharacteristic of the surrounding landscape when viewed from publicly accessible vantage points. This is a hilltop site in open countryside. The current development and this proposal are out of keeping and uncharacteristic of the surrounding landscape and do not respect or enhance the characteristic pattern and features of the surrounding landscape.

EC1: Where development of agricultural land is unavoidable, poorer quality land should be used in preference to that of higher quality (defined as grades 1, 2 and 3a of the agricultural land classification), except where other sustainability considerations outweigh the agricultural land value. The proposed site is grade 1 agricultural land and the site is widely considered to be unsustainable. A surplus of employment land is available in nearby Market Towns.

(Additional policies relevant but not detailed: TP5, ST10, ST6, ST5 and ST3)

Somerset and Exmoor National Park Joint Structure Plan Review Policies

POLICY STR1 Sustainable development: Development in Somerset and the Exmoor National Park should: be of high quality, good design and reflect local distinctiveness; and give priority to the continued use of previously developed land and buildings; The designs do not reflect local distinctiveness and the site proposed is not previously developed land.

POLICY STR5 Development in rural centres and villages: Development in Rural centres and Villages should be such as will sustain and enhance their role and will be commensurate with their size and accessibility, and appropriate to their character and physical identity. Size and character of the proposed development is not appropriate to the local character and physical identity nor is it sustainable.

POLICY STR6 Development outside towns, rural centres and villages: Development outside Towns, Rural Centres and Villages should be strictly controlled and restricted to that which benefits economic activity, maintains or enhances the environment and does not foster growth in the need to travel. The employment evidence base does not support a need for this development nor does the proposal maintain or enhance the environment. The location of the site in relation to the likely workforce will foster the need to travel.

POLICY 5 Landscape character: The distinctive character of the countryside of Somerset and the Exmoor National Park should be safeguarded for its own sake. Particular regard should be had to the distinctive features of the countryside in landscape, cultural heritage and nature conservation terms in the provision for development. This is a hilltop site in open countryside. The current development and this proposal are out of keeping and uncharacteristic of the surrounding landscape and do not respect or enhance the characteristic pattern and features of the surrounding

Appendix A

landscape.

POLICY 7 Agricultural land: Subject to the overall aims of the strategy, provision should not be made for permanent development, excluding forestry and agriculture, involving the best and most versatile agricultural land (Grades 1, 2 & 3a) unless there are no alternative sites on lower quality agricultural land and there is an overriding need for the development in that location. Where land in Grades 1, 2 and 3a does need to be developed and there is a choice between different grades, development should be directed towards land of the lowest grade. The proposed site is grade 1 agricultural land. A surplus of employment land is available in nearby Market Towns.

POLICY 17 Mixed-use developments: Industrial, commercial and business activities which are major generators of travel demand and are part of a mixed-use development should be provided for in town centre locations and sites which are highly accessible by means of transport other than the private car. This site proposed is in a rural location with limited transport options other than private car.

POLICY 18 Location of land for industrial, warehousing & business development: activities which are not compatible with other land uses should be located where their impact on the local environment can be mitigated; and large developments with high employment density activities should be located close to established public transport nodes. The proposed site is surrounded by agricultural uses and is not close to established public transport nodes.

(Additional policies relevant but not detailed: STR2, STR3, and STR4)

RPG10 Regional Planning Guidance for the South West (Regional Spatial Strategy)

Policy TRAN 1: Reducing the Need to Travel: Local authorities, developers and other agencies should work towards reducing the need to travel by private motor vehicle through the appropriate location of new development. Development plans and LTPs should:

- propose housing, employment and other uses in existing towns and propose a balanced mixture of uses in new developments, in accordance with Policy SS 5;
- propose major development in keeping with the roles of individual PUA's and larger towns on sites where there is a good choice of travel by sustainable transport, or where choice can be provided as part of the development, having regard to regional accessibility standards;
- propose the development of focused smaller scale retailing, housing, social facilities and services in market and coastal towns and key villages which are rural service centres to provide for the needs of the rural areas. The location of the site will increase the need to travel by private motor vehicle as it sits in open countryside divorced from any significant settlement that could reasonably serve this site. This approach is not consistent with policy SS5.

Policy EC 3: Employment Sites: Local authorities, the SWRDA and other agencies should aim to provide for a range and choice of employment sites to meet the projected needs of local businesses and new investment. These should include: The location of sites should meet the sustainable development criteria of the strategy by:

- giving preference to land within urban areas, particularly previously-developed land;
- being well integrated with the existing settlement pattern and accessible to sources

Appendix A

- of labour and business services;
- being likely to provide a realistic choice of access, including being well served by public transport;
- supporting programmes of regeneration in urban and rural areas and coastal towns;
- in rural areas, being primarily at the most accessible locations, (recognising that the potential for using public transport and other car modes is more limited than in urban areas); This site is widely considered as unsustainable and is located in a rural area, not previously developed land and not well integrated to any existing settlement or sources of labour. It is not well served by public transport.

Policy SS 19: Rural Areas: Market towns should be the focal points for development and service provision in the rural areas and this role should be supported and enhanced. Outside market towns, development should be small scale and take place primarily within or adjacent to existing settlements avoiding scattered forms of development. Local authorities in their development plans should: locate development to support the rural areas primarily in market towns, identified and designated in development plans through a balanced mix of homes, jobs, services and facilities suitable to the scale and location of such settlements; adopt policies which support the restructuring of the rural economy and the provision of jobs to satisfy local needs; This site is not in a Market Town and is not small scale. It is not located within or adjacent to any existing settlement and does not avoid scattered forms of development. The scale of the proposed development is disproportionate and out of keeping with its environment.

(Additional policies relevant but not detailed are: Vis1,SS20 and Tran7)

Emerging Core Strategy

The employment land review (stage 3 October 2010) clearly states that South Petherton's employment needs to 2026 have been met by recent planning permissions at Lopenhead. Even allowing for the proposed increases (albeit they have yet to be fully justified and accepted) in housing allocation, existing permissions at Lopenhead amply cater for the resulting additional employment need and, therefore, even at the increased allocation, no additional employment land is required before 2028.

Landscape Officer:

I have reviewed the application seeking the erection of a further building at the Lopenhead site, and recall previous applications on this site, with which I have been involved.

Whilst the site lays outside development limits, given the close relationship of this application site with the land to the immediate west that now has planning approval and two buildings in-situ; and the existing nursery structures and site use that characterise the location, I have no in-principle landscape objection to the extension of employment use over this northeast half of the site.

The building proposal is larger in scale and will stand approaching two metres taller than the two current buildings on site. I have some apprehension over this, though I also note that the new building does not project so far to the north as building C, and that the land continues to rise to the east of the site, to thus help to reduce the perception of building scale. The return of the building to form an L plan shape, to thus reduce its overall length, similarly assists in reducing building scale. As the proposal is accompanied by a fully detailed landscape plan, which provides a buffered edge to the site, then on balance I believe the proposal to be acceptable.

Turning to the landscape plan, I note that it is generally in line with the level of provision we

Appendix A

have negotiated elsewhere within the Business Park, and I am satisfied with it. The materials palette for the building is to be expressed as before, to bring a consistency of treatment to the site. With the current buildings having now had sufficient time to start to blend into their wider landscape context, with their colour helping to anchor them on the skyline, I am satisfied that the tonal treatment is appropriate.

If minded to approve, please condition the landscape proposal to be planted in its entirety on completion of the external building works.

Officer Comment:

The Landscape Officer was asked to assess the comments in respect of the landscape issues outlined by Mr Smith, the solicitor of one of the objectors, in his letter dated 14th December 2012. The following response has been received:

In relation to landscape impact, the letter highlights three issues of concern;

- (i) the perceived lack of a landscape assessment;
- (ii) the extent of site visibility, and;
- (iii) the nature of the tree screening.

In response:

(1) The application seeks consent for a single building sited upon land that is characterised by development structures, and is immediately adjacent an established employment complex. A full L&VIA (landscape and visual impact assessment) is rarely required in such instances, and I can see no over-riding case for exception here.

(2) I would agree that the building will be visible, and this an inevitability of a hilltop site. However, it will be seen in relation to 3 other employment buildings on site, in most part obscured in views from the southwest/northwest quadrant by existing building form, whilst from the east, where visible, it will be to the fore of the existing buildings, hence only marginally increasing the mass of building presence on view. From both north and south, its presence will extend the spread of built form across the site at a higher elevation than that of the current greenhouse structures, and whilst I perceive this as a negative landscape impact, it is not so great an impact that it cannot be countered by planting mitigation, and appropriate tonal treatment.

(3) Planting is necessary to play down the profile of built form, and to provide a landscape-appropriate context for the site, i.e; a planting of indigenous species that visually and ecologically ties into the wider landscape. Whilst it will not provide an immediate screen, planting small leads to better growth and establishment rates, and greater certainty of long term success - the planting will, with each season, develop to better counter sight of the building group, and better integrate the development into its wider landscape setting. The removal of the original leylandii belt was undertaken as it was over-mature and dropping limbs; losing its screening capacity; and its retention was not a sustainable option. Its retention would also have wholly compromised any potential for the future generation of planting required by the local plan policy for allocation ME/LOPE/1, for its rootmass and shade would have inhibited the potential for healthy and consistent plant growth. Hence I view the proposal before us to extend the broadleaved buffer around the site, consistent with the approach agreed on the adjacent site, to be the only credible way forward.

Comments from the Planning Agent (additional comments in response to Mr Smith's letter):

You have asked us to comment on the content of Mr Smith's letter dated 14th December 2012

Appendix A

where this questions the business need for the proposal. I have asked my client to advise on this matter and they respond to bullet points (a), (b) and (c) on the 4th and 5th pages of the letter as follows:

(a) There is currently a capacity shortfall on site. In order that we may fulfil our current orders we are forced to manufacture in the Czech Republic and Australia as we do not have the production space to install the machinery or the warehousing needed to store the raw materials, packaging and finished goods. This is not a long term solution as we need to have all our production in house under the same controlled conditions. We are now turning business away for the same reasons.

(b) The business wants to separate the animal and human products. Whilst manufacturing both animal and human products in the same facility is not a problem for many of our customers, there are some that are insisting that the facilities are separate in the near future. This is our preferred approach going forward so as not to exclude any potential business.

(c) It is quite simply the case that the animal production side of the business has now outgrown any production capacity of plot D and, therefore, there needs to be a rethink of the strategy. The existing building at Plot D cannot realistically be extended to accommodate either product line without expansion outside of the allocated site, or displacing significant areas of yard/parking/access arrangements etc, which would need to be replaced elsewhere, and inevitably outside of the local plan allocation. Similarly Plot C could only be extended by a small amount and not without displacing yard/car park areas etc., which would need to be replaced elsewhere. In any event the space in front of Plot C would not be sufficient to meet our needs.

With regard to Mr Smith's comments regarding the availability of remaining land within the allocation, it is my understanding the modest area in front of Plot C has always formed part of the operational parking/service requirements for the site, rather than being 'earmarked for modest future expansion.'. The parking and service requirements for such buildings involve a considerable land take that cannot simply be ignored. We have commented previously on the availability of Plot B.

With regard to Mr Smith's comments at (f), it must be noted that the planning system, or any planning permission, cannot reasonably control where an employee of any company might live. Similarly I do not consider the nationality of these employees to be of any relevance to the material planning considerations.

What evidence is there of any 'noise and pollution emanating from this development', as referred to by Mr Smith in his conclusion? There are no objections from the Council's Environmental Health Officer or from the Environment Agency. My client has never received any complaints from the Council or otherwise in this regard.

Officer comment:

Further to the above comments, the agent has also confirmed that the landowner of Plot B proposes to develop this site and thus it is not available to Probiotics to develop.

Highway Authority:

I refer to the above mentioned planning application received on 26th March 2012 and following a site visit on the same day I have the following observations on the highway and transportation aspects of this proposal.

The proposal relates to the erection of a building for B1, B2 and B8 use.

The applicant submitted a Transport Statement as part of the application. This has been submitted for audit and the Highway Authority's comments are as follows.

Appendix A

In terms of trip generation the applicant undertook a survey of the current site use and there corresponding trip rates. Based on these figures the number of new movements is estimated to be around 30 in the AM peak and 40 in the PM peak. This was coupled with a TRICS based exercise being undertaken. The data sets indicated the levels of movements would be about 50 movements in each peak period. The additional movement would result in a total of one additional movement per minute during the peak times.

From the PICADY modelling it has been demonstrated that the site access junction would be operating well within capacity even with this increase in movements.

In terms of the internal arrangements the proposal has made provision for 42 car spaces, which includes three disabled spaces, and 12 cycles spaces with a further three spaces allocated for motorcycles. This is considered to be below the standards, however the Transport Statement has justified this by reference to the number of employees and is also considered to be consistent with the current trip generation of the site. Therefore overall parking numbers are therefore considered to be acceptable.

However no Travel Plan has been submitted and as such I would advise that the applicant contacts Somerset County Council's Travel Plan Co-ordinator on 01823 358079 to discuss this matter further.

Taking into account the above information I raise no objection to this proposal and if planning permission were to be granted I would require the following condition to be attached.

Prior to the commencement of the development, a Travel Plan is to be submitted to and approved in writing by the Local Planning Authority. Such Travel Plan should include soft and hard measures to promote sustainable travel as well as targets and safeguards by which to measure the success of the plan. There should be a timetable for implementation of the measures and for the monitoring of travel habits. The development shall not be occupied unless the agreed measures are being implemented in accordance with the agreed timetable. The measures should continue to be implemented as long as any part of the development is occupied.

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

Economic Development Officer:

Officer Comment:

In response to the concerns raised by Mr Smith, the Economic Development officer has submitted the following comments in response:

In responding to this application, I was very clear in my own mind that this is a substantial and successful business that has been encouraged to remain in South Somerset (despite some consideration being given by their management to leaving the area) within reasonable proximity of their previous location at Stoke sub Hamdon. The Lopen location allowed for the retention of the majority of their employees and this had always been a high priority for the company.

James Smith in his letter refers in detail to the comments that I made on behalf of the Economic Development Service. My responses to the main points raised are as follows:

"Probiotics expansion aspirations can be better achieved through an alternative solution which does not have so many planning issues"

Appendix A

During conversations with Toby Lewis, I enquired whether alternative solutions could be found to enable the business expansion. He clearly saw that the development of premises in another location would create a 'logistical nightmare' both for the movement and storage of goods and for a displaced workforce. I further enquired whether the proposal to build new premises was the only solution. I was informed that a split site scenario would cause severe difficulties and that the relocation of the whole business would have to be considered. This could clearly impact on the future success of the business and create staff displacement. If there were a viable solution to this problem then I am sure that the applicant and the local authority would be pleased to give it due consideration. It is my opinion that the need for expansion on this site has been adequately covered.

In the same paragraph, reference is made to conversations with the MD of Probiotics and the planning agents in acquiring this information. One wonders exactly who else would be better placed to answer the questions raised in regard to the viability of this proposed expansion?

(b) "There is no evidence whatsoever to verify the claim that there is a requirement for animal and human products to be manufactured and stored in separate buildings".

Mr Smith quotes both UK and EU legislation, stating that there is no reason why human and animal products cannot be manufactured and stored in the same premises. Whilst this statement is correct, it fails to observe that Probiotics have been exploring successfully their markets in Asia and the Middle East. These will include Muslim countries where there are strict requirements to avoid cross- contamination between the production of goods for human and animal consumption. Probiotics are exploring sales into these countries and have recognised both the potential for growth and the production requirements that this opportunity brings. I was able to confirm the need to avoid cross-contamination of products between species in certain countries by discussing these issues with other manufacturers operating in these markets.

(e) At the time of my visit, there were 80 people on Probiotics employment register. Of these, 15 of them were sales people working across the UK and indeed world. Seldom did these people have cause to visit the Lopen site. I was provided with the detail of the 65 employees who work at the site. I requested this information to 1) clarify that the employment register was indeed correct and 2) to establish how far these employees had to commute to Lopen. It was from this register that I was able to determine that 80% of the Lopen based workforce lived in South Somerset. The information has not been broken down any further to avoid any contravention of employee data protection rights.

(f) For a point of clarification, there were at the time of writing the original report 65 jobs on site, not 80 as stated. To my knowledge, there is no transport plan that has been contravened, so the arrival method of employees is irrelevant. Similarly, the fact that Probiotics employs workers whose homeland is not the UK is also irrelevant as this is perfectly legal and has been sanctioned and encouraged by respective U.K. Governments. It should also be pointed out that many of the migrant workforce are now likely to be permanent residents of South Somerset.

In summary, along with being aligned to Government policy, I look on this application as a positive growth investment during these times of austerity. To have a manufacturing business looking to further develop their home and export sales potential, is to my mind extremely positive.

Spatial Planning Officer:

Mr Smith cites that the Lopen Head application is contrary to 'almost every relevant adopted and emerging development plan policy and the NPPF' and should be refused. He suggests

Appendix A

that there are misleading statements in the officer's report and that the application has not been assessed properly against the relevant development plan policies and the NPPF, hence any decision made by members on the basis of the officer's report will be unlawful.

Mr Smith asks that a number of key issues be explained by officers and then be drawn to the attention of members. Please find the points of relevance to planning policy below:

Mr Smith suggests that Planning Policy have made no assessment of the application against the relevant development plan and national policies and that the planning policy response is materially deficient. Unfortunately the officer's report does not include the planning policy context which was considered and which led to these comments. This is detailed below:

Pre-application Meeting – December 2011

A pre-application meeting was held on 14th December 2011 with the agent for the applicant in which the planning policy position was articulated as follows:

a) Extension of the Lopen Head Nursery Site

National Guidance - PPS4 states that in rural areas economic development should be strictly controlled in the open countryside or outside areas allocated in development plans.

Adopted Local Plan (1991-2011) - relevant policies:

Saved Policy ST3 which seeks to strictly control and resist development in the countryside to that which benefits economic activity, maintains or enhances the environment and does not foster growth in the need to travel.

Emerging Local Plan (2006-2028) - relevant policies:

Explained that the Draft Core Strategy identified 1 hectare of employment land for South Petherton, but that this was in the process of being reviewed and potentially increased therefore an application for an extension of the entire site would be premature until March/April Full Council, where if the provision were reviewed and potentially increased it would have greater weight and materiality. It was noted that any additional employment land identified would be for the benefit of people living in South Petherton.

b) Extension of Probiotics at Lopen Head Nursery Site

National Guidance - In addition to points above re.PPS4, it also states that in rural areas LPA should support small-scale development.

Adopted Local Plan (1991-2011) - relevant policies:

Saved Policy ME4 which allows the small-scale expansion of existing businesses in the countryside, where it is demonstrated that the proposal is needed and appropriate in the location and satisfies a number of criteria.

There was a discussion regarding the ownership of the remainder of the site and an explanation that it was going to be development by Lift West, therefore planning policy advised that a case may be made for the expansion of Probiotics under existing saved Local Plan Policy ME4, and that PPS4 would be supportive of this position also.

Application Submitted - March 2012

The application was submitted in March 2012. In light of Saved Policy ME4, and emerging Policy EP4 concerns were raised over the scale of the proposed new building:

Copy of email sent to Case Officer on 4th May 2012

As discussed earlier, I would like to see a stronger justification made as to why a single, self-contained planning unit is required, as opposed to a split site for expansion of the business. The applicant states that there are common staff, management and economies of

Appendix A

scale involved, but I think a little more detail would give a stronger justification.

In terms of scale of the building, can they explain the need for that space in a little more detail, i.e. are there particular machines or something that require that size? Do they have stock that needs storage for x periods of time. From reading the information submitted, I think the new building will be exactly the same as the existing one, but manufacture for human as opposed to animal products. Using the existing building as an example will help.

I think the answers to these will help me to understand clearly the justification for this building in this location and of this scale.

The NPPF was published in March 2012. It must be noted that the NPPF gives greater weight to economic development in the countryside - paragraph 28 is supportive of economic growth in rural areas to create jobs. Planning policies should support expansion of all types of business and enterprise in rural areas. The core planning principles outlined in paragraph 17 state that planning should support sustainable economic development whilst recognising the character and role of different areas.

The applicant submitted the additional information required and this information, coupled with the guidance in the NPPF led planning policy to accept the applicant's economic justification, leading to the comment of the 1st June 2012:

Copy of email sent to Case Officer on 1st June 2012

I think the supplementary information submitted from Probiotics provides a clearer justification for the need for a new building of this scale, in this location. Therefore there is no planning policy objection to the proposed development.

I trust this sets out the thought process behind the planning policy comments made in relation to this application and it explains in detail to members the planning policy background within which they should consider this application, namely Saved Local Plan Policy ME4 and para 28 of the NPPF.

Campaign to Protect Rural England (CPRE):

Strongly object to the proposal on the grounds that it will further exacerbate the damage done to the local environment by this incongruous and ill considered site. Indeed the history of this site is of incremental development and permissions, reneging on earlier pledges concerning usage categories and scale of development.

The primary concern is that this is an agricultural site of Best and Most Versatile Land. By Policy EC1 development of such category land should not be considered if there are less valuable, preferably brownfield, alternative sites, which there are. Food security may not be uppermost in English minds at present, but with food staples forecast to double in price by 2020, then it soon will be. Somerset has much of the country's best farmland, and it must be protected.

The existing development presents South Petherton with an eyesore to the south of Ben Cross/Frogmary, with Lopen head being prominent from miles around. The existing grey boxed jar with the landscape, and it is unacceptable that the previous thick conifer screening was removed and has not been replaced with anything adequate to minimize the visual intrusion. This proposed development will present an even greater visual blemish, with the buildings larger and taller. It has been claimed that the planned building will be even larger and taller than the Tesco store at Ilminster - if true then the impact will indeed be extraordinarily harmful. There is absolutely no way it could be considered as 'maintaining or enhancing the local environment', neither does it respect the form, character or setting of the locality.

Appendix A

This entire development is outside of a defined development area, a further strong reason why it should not be permitted. Road traffic is also an issue, with the current road layout at the entrance being used as an overtaking lane by some with all of the associated risks. Given its position at the top of a hill from all directions, sustainable transport is discouraged.

In summary, this is a development too far. With hindsight, it is clear that this site was a mistake, a good facility but in the wrong place; development should be frozen at its current state and application refused.

Environmental Protection Officer:

No observations on this application.

Environment Agency: (original comments 5th April 2012)

The Environment Agency originally objected to the application on the grounds that: 'The site lies within a Source Protection Zone 2 for a Public Water Supply borehole. Our approach to groundwater protection is set out in our recently revised policy 'Groundwater Protection: Policy and Practice' (2008).

"Outside SPZ 1 [within Zone 2] we will object to developments involving sewage, trade effluent or other contaminated discharges to ground unless we are satisfied that it is not reasonable to make a connection to the public foul sewer."

The applicant has not supplied adequate information to demonstrate that the risks posed to groundwater can be satisfactorily managed. We recommend that planning permission should be refused on this basis.

In accordance with our groundwater protection policy we will maintain our objection until we receive a satisfactory risk assessment that demonstrates that the risks to groundwater posed by this development can be satisfactorily managed.

We would also wish to see a report on the design of SUDS and assessment of the risks to groundwater as the site is on a Principal aquifer.

In addition, prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority (LPA):

- 1) A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site.
- 2) A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- 3) The results of the site investigation and detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
- 4) A verification plan providing details of the data that will be collected in order to demonstrate

Appendix A

that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Environment Agency: (revised comments dated 10th May 2012)

The Environment Agency has received additional information from the applicant's agent concerning the above application, which was received on 30 April 2012.

The applicant has provided a letter from Wessex Water (Ref ST/SS/NC/1655 dated 4th Aug 2009) which states that 'The above proposal is not located within a Wessex Water sewered area'. As such we are now satisfied that it is not reasonable to make a connection to public foul sewer and can therefore WITHDRAW our objection, subject to the following conditions and informatives being included within the Decision Notice:

The applicant has indicated that foul water will be served by package treatment plant.

The discharge from the package treatment plant will require an Environmental Permit under the Environmental Permitting Regulations 2010.

We would encourage the applicant to apply for an Environmental Permit for the discharge at an early stage. It is likely that a groundwater risk assessment will be required as part of the application to assess the impact of the proposed discharge on controlled water receptors. An environmental permit will only be granted if the Environment Agency is satisfied that the proposed discharge will not result in an unacceptable impact on controlled water receptors.

The applicant can contact the Environment Agency to discuss the application process.

In addition, we require the following condition to be included:

CONDITION:

Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority (LPA):

- 1) A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site.
- 2) A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- 3) The results of the site investigation and detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
- 4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Appendix A

Reason: To prevent pollution of the water environment.

The following informatives and recommendations should be included in the Decision Notice.

There shall be no discharge of foul or contaminated drainage from the site into either groundwater or any surface waters, whether direct to watercourses, ponds or lakes, or via soakaways/ditches.

Oil or chemical storage facilities should be sited in bunded areas. The capacity of the bund should be at least 10% greater than the capacity of the storage tank or, if more than one tank is involved, the capacity of the largest tank within the bunded area. Hydraulically inter-linked tanks should be regarded as a single tank. There should be no working connections outside the bunded area.

Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through trapped gullies with an overall capacity compatible with the site being drained.

County Archaeologist:

As far as we are aware there are limited or no archaeological implications to this proposal and we therefore have no objections on archaeological grounds.

Council Engineer:

Applicant to confirm that drainage proposals comply with overall site strategy. Details to be submitted for approval.

Wessex Water:

No objection raised. The site lies within a non sewered area of Wessex Water. New water supply connections will be required from Wessex Water to serve this proposed development.

REPRESENTATIONS

6 letters/emails have been received raising the following objections:

Landscape/Visual issues

- Development on grade 1 agricultural land
- Numerous other local brownfield sites that should be used first
- Scale and design of the building is harmful to setting/ out of keeping with local Character
- Landscaping is insufficient to provide an acceptable screen which has to be provided as part of the wider landscaping scheme - earlier
- planting not implemented.
- Detrimental to visual amenity and out of keeping with surrounding landscape.

Local Plan/Emerging plan issues

- SLP does not support development at this location
- Not a sustainable location.
- Contrary to many development plan policies and the NPPF.
- Employment Land Review does not demonstrate a need for any additional local employment land locally
- Lopen should not serve as the employment centre for South Petherton
- Sufficient employment opportunities exist within Lopen

Appendix A

- Original consent for Lopen head was a planning mistake.
- This is outside of the allocated employment site
- Original industrial estate in Lopen has spare capacity
- Insufficient evidence into the impact on the aquifer
- Question the need for more employment land when there is low unemployment
- Providing employment opportunities close to where people live is social engineering
- Requires exceptional justification
- Poorly conceived site and part of SSDC's approach to site industrial estates across the countryside
- Contrary to sustainable development principles/policies
- Question employment allocation in emerging local plan.
- Land is not previously developed land.
- Employment site allocated for small local business not large companies

Design/Layout issues

- This is not a small scale development
- Poor design
- Noise and light pollution
- Building is higher than previously approved buildings on site
- This is not a small scale expansion under ME4.

Justification/case made for development

- Applicant's business case is not robust, concern about this being speculative development
- Spare capacity at current Probiotic facility
- Proposal does not meet sustainability requirements
- Business case is very weak.
- Lack of evidence to support projected growth
- Information lacking on where staff live/travel from
- Few staff live in vicinity
- Insufficient justification to support the need for the additional unit
- The firm brings very little economic benefit to local towns/villages.

Highway issues

- Increase traffic through local communities
- Poor public transport to serve the development
- Will be a requirement to make changes to the road layout due to significant increases in traffic.
- Why are they staying on this site – should move closer to larger town with
- better transport links

Other issues

- Comments submitted in regard to previous outline application on this site equally apply.
- Views of smaller communities should be given more weight when considering commercial development
- The application lacks detail - more akin to an outline application
- Applicant/agent did not attend the PC meeting
- The tidying up of the area ie removal of glasshouses is not a justification for approval of this scheme.
- Does not allow employees to walk to work
- Significant levels of employment and available within 5 miles of this site.
- Salary figures questioned

Appendix A

- Deliberate tactic to obtain piecemeal permissions.
- Harmful precedent

1 representor, whilst raising an objection, supports the need to provide opportunities for employment in rural areas but must be sustainable and at an appropriate scale.

1 letter has also been received from a solicitor representing a local resident. This was submitted in response to further comments made by the applicant's agent. The letter outlines that it does not consider that the applicant's letter does not raise any significant new points nor further information the Council should be requesting to clarify points raised by third parties, do not agree with the screening opinion given by the Council, ground discharge/water issues and concern that a decision on the application has already been reached. An additional letter was received from the same solicitor on December 14th as referred to in this report.

CONSIDERATIONS

Need for the development

The applicant has outlined within the supporting documents the reasons for the additional building. Probiotics relocated their business to the adjacent allocated employment site in early 2010, having moved from premises at Stoke Sub Hamdon. The company has grown significantly in recent years and exports to over 50 countries. It is now looking to increase their current production facilities, storage and office infrastructure in order to meet the needs of a growing business.

The additional building will provide additional production space to enable the manufacturing of animal welfare products to be separated from human welfare products. The agent has outlined that 'export controls within the industry require that human and animal welfare products are both manufactured and stored in separate buildings'. It is important to stress that there is no legal requirement for the products to be manufactured and stored in different premises. However, from a business perspective, the company wishes to grow its export business and the separation of the animal from human products is driven on ethical grounds. A number of those countries/customers will seek the total separation of the human and animal products.

Moreover, the development will provide significantly more site storage of their goods and to satisfy the need for additional office accommodation. The company presently employ 80 people (includes 15 sales people who are rarely on site) with an expected increase to 130 by 2015. Based on this information, it is apparent that, despite the general poor state of the economy over the last few years, the company is performing very well and is expanding at an increasing rate. Allied to the fact that there is a business case to separate the animal and human manufacturing processes, it is considered that there is a need for an additional building. The officer has asked the MD about the need for the building and whether the extra capacity required could be accommodated either within the 2 existing buildings, via an extension to the buildings or within land still available on the allocated employment site. The clear response was that these options were not acceptable either in providing the physical capacity required or to provide the separate buildings required for the human and animal products. In addition, it is not considered that the company are building this 3rd facility as a speculative form of development. It is costly to construct such a building and it is not considered that the company would be seeking consent if there were other cheaper or more practical solutions.

Due to the fact that any permission granted is on the basis of an acceptance of the need put forward by Probiotics, it is considered that any consent should be conditioned restricting the use of this building for Probiotics only.

Appendix A

The key issue that follows therefore is whether the proposed site is acceptable in planning terms.

Suitability of the proposed site?

The key starting point is the fact that the proposed site is located in the countryside, distant from any settlement and outside of, although adjacent to, the defined allocated employment site. Third parties have commented on the suitability of the adjacent allocated employment site following the clear recommendation of the Local Plan Inspector that it should not be allocated. However, the Inspector's recommendations were not binding on the Council and, whilst the concerns about the allocation are noted, the site was allocated by the Council. It is not considered necessary or particularly relevant to reassess the historic allocation.

In terms of the current application site, a number of different issues have been raised by third parties about the suitability of the application site. In terms of sustainability issues, this raises a number of points. It is agreed that both local and national planning policies seek sustainable forms of development. This has been a key thread running through the current local plan, the RSS, the range of different PPG's/PPS's (now abolished) and importantly at the heart of the NPPF.

The NPPF outlines 3 dimensions to sustainable development ie economic, social and environmental. In terms of this proposal, it is considered that it will have a positive economic impact, by increasing the number of employees and supporting the growth of the company. Criticism of the proposal has been made that it will contribute little to the local economy with employees heading straight to site at the start of their day and heading straight back home after work, and unlikely to use local facilities at lunchtime/travelling to/from work. There is some sympathy with this point given the location of the site at a distance from local shops etc although the local pub and café may benefit. However, it is clear that the company are growing and are projecting future growth. The fact that this development will create extra jobs (from 80 to 130 employees by 2015) can only be positive. Moreover, the NPPF outlines its support for economic growth in rural areas in order to create jobs. On this basis, it is considered that this proposal would meet the economic aim of government policy.

In terms of the environmental impact, objections have been received that this development would be detrimental to the local landscape and be contrary to the character of the area. Moreover, the Secretary of State (via his Senior Planning Manager) in his response to the screening request from a third party noted the visual impact it would have, particularly given its visibility from the A303. It is accepted that a development in this location will have a visual impact. This was also accepted with the previous approvals on the allocated site. However, this was clearly an inevitable consequence of allocating the adjacent employment site in the first place. The key question is whether the proposed development would have a significant detrimental visual impact to warrant a refusal. In assessing this issue, the landscape officer has not raised an objection and his views are outlined earlier in this report. Moreover, the view of the Secretary of State's Senior Planning Manager is that the local landscape is not of high quality and is not recognised under any national or local designations. Moreover, the view of the site from the A303 would only be short given the speed of travel. Also, given the existence of an established built form on this site, it is not encroaching onto currently undeveloped land – the site has an existing visual presence. Finally, the site will be screened with a range of native tree and shrubs. This will assist with mitigating the visual impact of the scheme. For these reasons, whilst acknowledging there will be visual impact, this is not considered to be significantly harmful to warrant a refusal on landscape grounds.

In terms of the wider sustainability issues, it is acknowledged that the site is not in the most

Appendix A

sustainable of locations in terms of accessibility to services and facilities. In addition, public transport to serve the site is poor and thus travel by private vehicle is very likely. Also, sustainability issues were key factors behind the Local Plan Inspector's decision not to recommend the site for inclusion in the SSLP. Policy officers also supported this view at the time. Given this scenario, the key question is whether the sustainability concerns are sufficient to outweigh the merits of the scheme. Notwithstanding the objection of the Local Plan Inspector, The Council decided to allocate the adjacent employment site, thus placing the need for an employment site above the sustainability concerns. It is considered that given this starting point, the established employment site adjacent to this proposal, the fact that it is sensible for Probiotics to operate from one site thus reducing travelling between different sites, and the support of the NPPF, it is not considered that the application should be refused on the basis of these sustainability issues.

Availability of other sites

Comments have been made that Probiotics should look to other sites for their expansion plans. Moreover, that there are a number of other employment sites that are available. It is accepted that other employment sites are available and the company could have decided to expand via a new facility elsewhere or uproot entirely. However, the company have invested significant sums on the existing site and, provided that there are no significant planning issues to warrant refusal, it makes economic sense to expand on a site adjacent to their existing facility rather than establish a new and second site elsewhere.

Landscaping and Design

The proposal includes a detailed planting scheme that will be implemented along the north, east and south boundaries. The scheme involves the removal of the existing leylandii trees and the new planting will adjoin and link with the landscaping undertaken as part of the previous planning approvals. It is considered that the removal of the leylandii screen is entirely acceptable given that these are not a native species, with some in poor condition with die back on the lower parts of the trunk with resultant gaps. Their existence would also stifle the growth of any additional planting considered appropriate should the leylandii remain.

A detailed landscape scheme with a variety of native trees, hedgerow and shrubs is proposed as agreed with the Council's landscape officer. This will create a tall and low edge mix comprising Dogwood, Hazel, Hawthorn, Holly along with Cherry, Oak and Acer trees. This will provide a belt of planting ranging from 2.5 to 20 metres in depth around all but the western (internal) boundary. It is considered that this landscaping scheme will provide a far more appropriate landscape screen than the unattractive and non-native leylandii trees.

It should be noted that the Policy associated with the allocation of the adjacent employment site (ME/LOPE/1) contains the retention of the leylandii screen. However, for the reasons given above, and the advice of the landscape officer, it was considered appropriate to agree to the removal of the leylandii trees and their replacement with a mix of native planting.

The landscape officer has assessed this application and has not raised an objection to the proposal. Given the established development adjacent to the site, the existing nursery structures and site use that characterise this location, there is no in principle landscape objection to this proposal. In addition, its design, orientation, and siting particularly in comparison with building C (the first Probiotics to the west), and the rise in land to east of the site, assists in assimilating its mass and scale within the site. Thus, whilst the new building will stand 2 metres taller than the adjacent probiotics building and larger in overall scale, the landscape officer considers the proposal to be acceptable. In addition, the tonal treatment for the materials reflects that used for the previous approvals and thus is acceptable. Whilst it is

Appendix A

accepted that the finish for the current buildings is not supported by all, the LPA was keen to ensure that the finish was not too bright or reflective.

Associated with the scale of the development, it is considered that, whilst SSLP policy ME4 supports the expansion of businesses in the countryside, and that this development would meet the various criteria outlined under this policy, it is more difficult to accept that this constitutes a small scale expansion of the existing business. However, it is considered that this policy is now superseded by the policy support contained in the NPPF for the expansion of all types of business in rural areas.

Highways/Parking

The Highway Authority has not raised an objection to the proposed development. They have advised that the level of traffic to be generated by this proposal would result in about 50 movements in each peak period, or the equivalent of 1 additional movement per minute during peak times. In addition, the site access junction would be operating well within capacity with these additional movements. Members will be aware that a new vehicular access was created from the old A303 as part of the approval for the earlier buildings on the adjacent site. In addition, a new internal road has been constructed that serves the existing units and will serve the proposed building.

The Highway Authority has stated that whilst the number of parking spaces is below the standard requirement, the Transport Assessment justifies this in relation to the number of employees and is considered to be consistent with the current trip generation of the site. On that basis, the Highway Authority considers that the number of parking spaces is acceptable. The Highway Authority have also sought submission of a Travel Plan – this will be imposed as a condition subject to permission being granted.

Environmental Impact Assessment (EIA)

Prior to the submission of the application, the agent requested a screening opinion from the Council to determine whether an EIA will be required as part of the current application. The Local Planning Authority replied stating that in its opinion and on the basis of the information provided, that the transport/highways, landscape/visual, ecological, flooding/drainage and noise impacts of the proposed development would not result in significant environmental effects. On that basis, the Local Planning Authority advised that an EIA was not required.

Third parties did not agree with the Council's position in respect of the EIA. An agent on behalf of a third party wrote to the Secretary of State on 2 separate occasions requesting that the Secretary of State issues a screening direction for the above development. A number of issues were raised by the third parties including the original allocation of the employment site by the Council contrary to the Local Plan Inspector's recommendation, the landscape and visual impact of the development, traffic issues, noise and light pollution, the Council's failure to issue an EIA screening on an earlier application and the manufacturing processes undertaken by Probiotics. On both occasions the Secretary of State through his Senior Planning Manager at the National Planning Casework Unit has ruled that the proposed development is not EIA development. The Secretary of State's decision letters are attached to this report (please see appendices A and B).

Mr Smith's letter is critical of both the Council and the Secretary of State with regard to the screening process. In particular, he, on behalf of his client does not agree with the conclusions reached by the Council and the Secretary of State. As outlined above, on 2 separate occasions, the Secretary of State has confirmed that an EIA was not required. It is important to note that notwithstanding the Council's position regarding EIA, it is able to review the situation

Appendix A

during the course of assessing an application, particularly if and when new relevant information becomes available. However, the Council remains of the view that EIA is not required for this proposed development.

Other issues

A point raised by third parties is that there is no strategic requirement for this site. The emerging local plan is stating the requirement for an additional 2 hectares of employment land in the South Petherton ward which includes the Lopen site. This is not an adopted policy and only limited weight can be attached to it at the current time. However, notwithstanding the current debate about the level of employment land required, it is not considered that this is particularly relevant to the consideration of this application nor indeed the correct test/policy to apply. It is not an application for a strategic employment site but an expansion of an existing business in the countryside. This is the basis upon which the application should be determined on the basis of local plan policy and the NPPF.

Following on from the last point, it is considered that if the application was for a general outline consent with no identified end users, then it could rightly be treated as speculative and to all intents and purposes as a strategic employment site. This was the case with the application for outline consent submitted in 2009 which included the current application site and land to the front of the site. Third parties have correctly referred to this earlier application. This was withdrawn as it was considered premature as other plots were available on the allocated site and would have been refused. As this current application is for an identified end user and 2 additional plots have subsequently been developed on the allocated site, and plot B is not available to the applicant, it is a fundamentally different application to the earlier outline application. In addition, the NPPF has now been introduced with its support for economic growth in rural areas.

The site is located on Grade 1 agricultural land. Objections have been raised that this will remove land from agricultural use and that is contrary to national and local policies that seek to protect such quality agricultural land. It is accepted that this application will result in the loss of prime agricultural land. However, given the fact that it has been disused for a number of years, the small area of land involved and given its physical orientation sandwiched between employment uses and residential properties thus questioning whether it would actually be used for agricultural purposes, it is not considered that the application should be refused on the basis of loss of Grade 1 agricultural land.

Comments have been made about salaries paid by Probiotics. This may have well have a link to the level of local expenditure but staff salaries are not a planning issue.

Conclusion

It is fully acknowledged that there are a number of valid planning concerns about this proposal. However, for the reasons outlined in the report above, it is considered that the application is in accordance with the NPPF and is recommended for approval. The views of third parties have been carefully assessed and taken into account by the case officer and a number of consultees. However, for the reasons given above, it is not considered that the impacts of the development are so adverse that they significantly and demonstrably outweigh the benefits of the scheme.

SECTION 106 PLANNING OBLIGATION/UNILATERAL UNDERTAKING

No planning obligations are being sought in connection with this application.

Appendix A

RECOMMENDATION

Grant permission

01. The proposed development by reason of its design, scale, siting and materials, is considered to respect the character and appearance of the area, will provide employment opportunities, will provide a satisfactory means of vehicular access and will also provide a satisfactory landscaping scheme. It is also considered that there is adequate justification to allow an expansion of Probiotics on land outside of the allocated employment site. The scheme accords with Policy ST5, ST6, and EC3 of the South Somerset Local Plan, Policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review and to policy in the NPPF.

SUBJECT TO THE FOLLOWING:

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

Reason: To accord with the provisions of section 91(1) of the Town and Country Planning Act 1990.

02. The development hereby permitted shall not be commenced until particulars of the materials (including the provision of samples where appropriate) to be used for external walls and roofs have been submitted to and approved in writing by the Local Planning Authority.

Reason: To protect the amenity of the area to accord with Policy ST5 of the South Somerset Local Plan.

03. prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority (LPA):

1) A preliminary risk assessment which has identified:

- all previous uses
- potential contaminants associated with those uses
- a conceptual model of the site indicating sources, pathways and receptors
- potentially unacceptable risks arising from contamination at the site.

2) A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

3) The results of the site investigation and detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Appendix A

Reason: To prevent pollution of the water environment.

04. Prior to the commencement of the development, a Travel Plan is to be submitted to and approved in writing by the Local Planning Authority. Such Travel Plan should include soft and hard measures to promote sustainable travel as well as targets and safeguards by which to measure the success of the plan. There should be a timetable for implementation of the measures and for the monitoring of travel habits. The development shall not be occupied unless the agreed measures are being implemented in accordance with the agreed timetable. The measures should continue to be implemented as long as any part of the development is occupied.

Reason: To promote sustainable means of travel to comply with the NPPF.

05. The area allocated for parking and turning on the submitted plan shall be kept clear of obstruction and shall not be used other than for parking and turning of vehicles in connection with the development hereby permitted.

Reason: In the interests of highway safety to accord with Policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review

06. The development hereby approved shall be carried out in accordance with the following approved plans:
479/01 P1 - Landscape plan
3030/pl-007 - Elevations.
3030/PL-006 - Roof Plan
3030/PL-003 SITE Plan

Reason: For the avoidance of doubt and in the interests of proper planning.

07. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), there shall be no extensions to this building without the prior express grant of planning permission.

Reason: To ensure that there is a proven planning need for any future enlargement of the building to accord with the NPPF.

08. The building hereby permitted shall only be carried out by Probiotics International Ltd (or any successor company) during its occupation of the land subject to this permission.

Reason: The Local Planning Authority wishes to control the uses on this site to accord with the NPPF.

09. No means of external lighting shall be installed on the building or within the rest of the application site without the written approval of the Local Planning Authority. Details of any external lighting to be submitted shall include the hours of operation of such lighting. Any approved external lighting subsequently installed shall not be changed or altered without the written consent of the Local Planning Authority.

Reason: To protect the visual amenity of the area in accordance with Policy ST5 and ST6 of the South Somerset Local Plan.

Appendix A

10. No construction works or deliveries shall take place outside of the hours of 08.00 to 17.30 Monday to Saturday. No construction works or deliveries shall take place on Sundays or any Public/Bank Holidays.

Reason: In the interests of residential amenity to accord with Policy ST6 of the South Somerset Local Plan.

11. No development approved by this permission shall be commenced until a Construction Environmental Management Plan, incorporating pollution prevention measures, has been submitted to and approved by the Local Planning Authority. The plan shall subsequently be implemented in accordance with the approved details and agreed timetable.

Reason: To prevent pollution of the water environment to accord with Policy EP9 of the South Somerset Local Plan.

12. Before the development hereby permitted is commenced, surface water drainage details to serve the development, shall be submitted to and approved in writing by the Local Planning Authority and such approved drainage details shall be completed and become fully operational before the development hereby permitted is first brought into use. Following its installation such approved scheme shall be permanently retained and maintained thereafter.

Reason: To ensure a satisfactory means of surface water drainage is implemented as part of this development.

13. 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 additional windows, including dormer windows, or other openings (including doors) shall be formed in the building, or other external alteration made without the prior express grant of planning permission.

Reason: To protect the amenity of the area in accordance with Policy ST6 of the South Somerset Local Plan.

14. The development hereby permitted shall not be commenced until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of the development, as well as details of any changes proposed in existing ground levels; all planting, seeding, turfing or earth moulding comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of visual amenity to accord with Policy ST5 of the South Somerset Local Plan.

15. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order with or without modification), no walls or other means of enclosure, other than those granted as

Appendix A

part of this permission, shall be constructed or erected within the application site without the written consent of the Local Planning Authority. Once agreed, no changes shall be made to the fencing without the written agreement of the Local Planning Authority.

Reason: To protect the character and appearance of the area to accord with Policy ST6 of the South Somerset Local Plan.

16. No machinery shall be operated, no process shall be carried out and no deliveries taken or despatched from the site outside the hours of 07.00 - 19.00 Monday to Saturday nor at any time on Sunday, Bank or Public Holidays.

Reason: To protect residential amenity in accordance with Policy ST6 of the South Somerset Local Plan.

17. Before any of the development hereby permitted is commenced details of the internal ground floor levels of the building to be erected on the site shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To protect the amenity of the area to accord with Policy ST5 of the South Somerset Local Plan.

18. No raw materials, products of any description, scrap or waste materials whatsoever shall be stored in the open on any part of the subject land without the prior written consent of the Local Planning Authority.

Reason: To protect the amenity of the area to accord with Policy ST5 of the South Somerset Local Plan.

Informatives:

01. There shall be no discharge of foul or contaminated drainage from the site into either groundwater or any surface waters, whether direct to watercourses, ponds or lakes, or via soakaways/ditches.

Oil or chemical storage facilities should be sited in bunded areas. The capacity of the bund should be at least 10% greater than the capacity of the storage tank or, if more than one tank is involved, the capacity of the largest tank within the bunded area. Hydraulically inter-linked tanks should be regarded as a single tank. There should be no working connections outside the bunded area.

Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through trapped gullies with an overall capacity compatible with the site being drained.

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Terms: R on the application of Sienkiewicz v South Somerset District Council
2013

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Judgments

QBD, ADMINISTRATIVE COURT

Neutral Citation Number: [2013] EWHC 4090 (Admin)

Case No: CO/8296/2013

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 19/12/2013

Before :

MR JUSTICE LEWIS

Between :

R (on the application of) TERESA SIENKIEWICZ

Claimant

- and -

SOUTH SOMERSET DISTRICT COUNCIL

Defendant

- and -

PROBIOTICS INTERNATIONAL LIMITED

Interested Party

(Transcript of the Handed Down Judgment of

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Gregory Jones QC and Sarah Sackman (instructed by James Smith Planning) for the Claimant

Page 103

Stephen Whale (instructed by **South Somerset District Council**) for the **Defendant**

Hearing date: 9th December 2013

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

Mr Justice Lewis

Judgment

As Approved by the Court

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Mr Justice Lewis :

INTRODUCTION1. This is a claim for judicial review of a decision of the Defendant, the local planning authority, granting planning permission to the Interested Party, Probiotics International Limited ("Probiotics") for the erection of a building for B1, B2 and B8 uses with associated infrastructure, parking and landscaping on land forming part of the former Lopenhead Nursery ("the application site") in Lopenhead, South Somerset. Frances Patterson Q.C. (as she then was) ordered that the application for permission to apply for judicial review be considered at an oral hearing with the hearing itself to follow immediately after if permission were granted.

BACKGROUND

The Application

2. The application site covers an area of approximately 0.69 hectares and contains a large derelict greenhouse, a mobile phone mast and a large earth mound. It forms part of what was the former Lopenhead nursery.
3. Part of the former nursery is allocated for employment use under the South Somerset Local Plan ("the Local Plan") which forms part of the Defendant's statutory development plan. That part of the former nursery is divided into four plots. Industrial buildings have been constructed and are now used by Probiotics for the production of human and animal health care products on two of those plots.
4. The application site itself falls outside the area of the former nursery which is allocated for employment use under the Local Plan. Probiotics wished to expand its operations and to erect, and operate from, another building on the application site (but outside the area allocated for employment use). The business reasons why Probiotics wish to do so were that its operations had grown significantly in recent years. It needed to expand its production facilities, storage and office infrastructure and it wished to separate the production of human from animal health care products.
5. Prior to the application being considered, the Council considered whether or not the proposed development fell within the definition of "EIA development" in the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 ("the EIA Regulations") in which case the application needed to be accompanied by an environmental statement. In broad terms, development will be EIA development if either (1) it falls within one of the categories of development listed in Schedule 1 to the EIA Regulations or (2) it falls within one of the categories listed in Schedule 2 to the EIA Regulations and is likely to have significant effects on the environment by virtue of factors such as its nature, size or location.
6. On 6 February 2012, the Council issued a screening opinion indicating that although the development fell within one of the descriptions in Schedule 2 it was not likely to have significant environmental impacts. It

concluded therefore that the proposed development was not EIA development and an environmental statement was not required. The Claimant requested the Secretary of State to give a direction on whether the proposed development was EIA development. By letter dated 13 April 2012, the Secretary of State gave a direction that the development was not EIA development. He considered that it did not fall within Schedule 1 to the EIA Regulations and, although it fell within Schedule 2, the proposed development would not be likely to have significant environmental effects. He was asked to reconsider the matter. He sought further information including, in particular information on whether the manufacture of the products involved the use of chemical conversion processes. That was relevant as installations manufacturing products using such processes fall within paragraph 6 of Schedule 1 to the EIA Regulations and would be EIA development and an environmental statement would be required to be submitted with an application for planning permission. Having received information from Probiotics' planning consultant on 13 June 2012, the Secretary of State determined that the application did not fall within paragraph 6 of Schedule 1 to the EIA for the reasons set out in his letter of 31 August 2012. He decided that there was no reason to reconsider the earlier direction that the application for planning permission was not EIA development.

The Report

7. The application was considered by the relevant committee who had a report from officers. That report set out a description of the site and the proposed development. It set out the planning history of the site. The report then turned to the relevant policies and expressly referred to and summarised the effect of section 38 (6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act"), that is that decisions must be made in accordance with the development plan unless material considerations indicate otherwise. The report referred to the development plan, and in particular the relevant policies contained in the Local Plan. It referred to national policy and, in particular, to the National Planning Policy Framework ("the Framework"). That Framework is not part of the development plan but it is a material consideration.

8. The report summarised the responses to the consultations and the objections that had been made to the grant of planning permission by, amongst others, the local parish councils, the Campaign to Protect Rural England and individuals. The report noted the comments of others including the Defendant's landscape officer. He had no objection in principle to the extension of employment use over this part of the former nursery and made detailed comments explaining why the negative impact of the proposed building would not be so great that it could not be dealt with by way of planting trees and other measures to mitigate its effect. The Defendant's economic officer also commented. He considered that the fact that a manufacturing business was looking to develop their business was a positive feature. The report also summarised the comments from other officers and agencies. The report then addressed the question of whether or not planning permission should be granted. First it considered the need for development and said this;

"The applicant has outlined within the supporting documents the reasons for the additional building. Probiotics relocated their business to the adjacent allocated employment site in early 2010, having moved from premises at Stoke Sub Hamdon. The company has grown significantly in recent years and exports to over 50 countries. It is now looking to increase their current production facilities, storage and office infrastructure in order to meet the needs of a growing business.

The additional building will provide additional production space to enable the manufacturing of animal welfare products to be separated from human welfare products. The agent has outlined that 'export controls within the industry require that human and animal welfare products are both manufactured and stored in separate buildings'. It is important to stress that there is no legal requirement for the products to be manufactured and stored in different premises. However, from a business perspective, the company wishes to grow its export business and the separation of the animal from human products is driven on ethical grounds. A number of those countries/customers will seek the total separation for the human and animal products.

Moreover, the development will provide significantly more site storage of their goods and to satisfy the need for additional office accommodation. The company presently employ 80 people (includes 15 sales people who are rarely on site) with an expected increase to 130 by 2015. Based on this information, it is apparent that, despite the general poor state of the economy over the last few years, the company is performing very well and is expanding at an increasing rate. Allied to the fact that there is a business case to separate the animal and human manufacturing processes, it is considered that there is a need for an additional building. The officer has asked the MD about the need for the building and whether the extra capacity required could be accommodated either within the 2 existing buildings, via an extension to the buildings or within land still available on the allocated employment site. The clear response was that these options were not acceptable either in providing the physical capacity required or to provide the separate buildings required for the human and animal products. In addition, it is not considered that the company are building this 3rd facility as a speculative form of development. It is costly to construct such a building and it is not considered that the company would be seeking consent if there were other cheaper or more practical solutions."

9. Then it considered whether the proposed development was acceptable in planning terms. First, it considered that the proposal would have a positive economic impact by increasing the number of employees (from about 80, 65 of which were based at the Lopenhead Nursery site, to about 130). It noted that the Framework supported growth in rural areas in order to create jobs. Next, the report considered the environmental impact. It considered the impact on the landscape and, for a variety of reasons, concluded that the visual impact was not considered to be significantly harmful. The report considered the wider sustainability issues in terms of accessibility to services, facilities and the fact that public transport links serving the site were poor and travel by private vehicle was likely. The report set out a number of reasons why permission should not be refused on sustainability issues. It then referred to the Council's screening opinion and the Secretary of State's direction that the proposed development was not EIA development and attached the two letters from the Secretary of State. The report noted that the view of the Council remained that the proposed development was not EIA development. The report considered the availability of other sites. It then considered landscaping and design and said this:

"Associated with the scale of the development, it is considered that, whilst SSLP policy ME4 supports the expansion of businesses in the countryside, and that this development would meet the various criteria outlined under this policy, it is more difficult to accept that this constitutes a small scale expansion of the existing business. However, it is considered that this policy is now superseded by the policy support contained in the NPPF for the expansion of all types of business in rural areas."

10. The report then dealt with highways, parking, the environmental impact assessments and other issues. In that regard, the report said this:

"Following on from the last point, it is considered that if the application was for general outline consent with no identified end users, then it could rightly be treated as speculative and to all intents and purposes as a strategic employment site. This was the case with the application for outline consent submitted in 2009 which included the current application site and land to the front of the site. Third parties have correctly referred to this earlier application. This was withdrawn as it was considered premature as other plots were available on the allocated site and would have been refused. As this current application is for an identified end user and 2 additional plots have subsequently been developed on the allocated site, and plot B is not available to the applicant, it is a fundamentally different application to the earlier outline application. In addition, the NPPF has now been introduced with its support for economic growth in rural areas.

The site is located on Grade 1 agricultural land. Objections have been raised that this will remove land from agricultural use and this is contrary to national and local policies that seek to protect such quality agricultural land. It is accepted that this application will result in the loss of prime agricultural land. However, given the fact that it has been disused for a number of years, the small area of land involved and given its physical orientation sandwiched between employment uses and residential properties thus questioning whether it would actually be used for agricultural purposes, it is not considered that the application should be refused on the basis of a loss of Grade 1 agricultural land."

11. The conclusion is in the following terms:

"It is fully acknowledged that there are a number of valid planning concerns about this proposal. However, for the reasons outlined in the report above, it is considered that the application is in accordance with the NPPF and is recommended for approval. The views of third parties have been carefully assessed and taken into account by the case officer and a number of consultees. However, for the reasons given above, it is not considered that the impacts of the development are so adverse that they significantly and demonstrably outweigh the benefits of the scheme."

12. The report therefore recommended the grant of planning permission.

13. On 17 April 2013, the Claimant's solicitor sought to access the committee report on the Council's website but he was unable to obtain a legible version of the report. He e-mailed a planning officer at the Council and was sent an electronic version of the report at 16.44 on 19 April 2013.

14. On 24 April 2013, the Claimant's solicitor wrote a four-page letter repeating objections made previously.

The Grant of Planning Permission

15. The matter was considered by the relevant Council committee on 24 April 2013. The Claimant's solicitor attended the meeting and requested that the matter be deferred as he wanted his letter of 24 April 2013

circulated in full. He also made observations about the application. The committee decided they would not defer consideration of the matter. There was a short debate during which several members expressed their support for the proposal. They resolved to accept the officer's recommendation and grant planning permission. It can be inferred that the committee adopted the reasoning in the officers' report. On the 30 April 2013, planning permission was issued. The notice sets out the summary of reasons for granting the permission in the following terms:

"The proposed development by reason of its design, scale, siting and materials, is considered to respect the character and appearance of the area, will provide employment opportunities, will provide a satisfactory means of vehicular access and will also provide a satisfactory landscaping scheme. It is also considered that there is adequate justification to allow an expansion of Probiotics on land outside of the allocated employment site. The scheme accords with Policy ST5, ST6 and EC3 of the South Somerset Local Plan, Policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review and to policy in the NPPF."

16. There were a number of conditions attached. For present purposes, the relevant one is condition 8 which is in these terms:

"The building hereby permitted shall only be carried out by Probiotics International Ltd (or any successor company) during its occupation of the land subject to this permission.

Reason: The Local Planning Authority wishes to control the uses on this site to accord with the NPPF. "

LEGAL FRAMEWORK

17. Planning permission is required for development including, as here, the erection of a building and the making of a material change of use of land: see section 57 of the Town and Country Planning Act 1990 ("the 1990 Act").

18. Section 70(1) of the Town and Country Planning Act 1990 ("the 1990 Act") provides that a local planning authority:

- "(a) ... grant planning permission, either unconditionally or subject to such conditions as they think fit; or
- (b) ... refuse permission".

19. Section 70 (2) of the 1990 Act provides that where an application for planning permission is made to a local planning authority, then:

"(2) In dealing with such an application the authority shall have regard to

- (a) the provisions of the development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations."

20. The development plan is defined in section 38(3) of the 2004 Act. Further, section 38(6) of that Act provides that:

"(6) 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".

21. The development plan in the present case included certain saved policies contained in the South Somerset Local Plan ("the Local Plan"). For present purposes the relevant policies include ME/LOPE/1. That allocates land at Lopenhead Nursery amounting to 1.8 hectares for employment use. The application site, however, does not fall within that area of land and is not allocated for employment use. The next significant relevant policy is Local Plan Policy ME4. That provides that:

"Proposals for the small scale expansion of existing businesses (classes B1, B2 and B8 of the use classes order) outside defined development areas shown on the proposals map will be permitted provided that they satisfactorily meet the following criteria..."

22. A list of criteria is then set out. Furthermore, Policy ST3 also provides that development outside defined

development areas of towns, rural centres and villages will be strictly controlled and restricted to that which benefits economic activity, maintains or enhances the environment and does not foster growth in the need to travel. Policy ST5 provides that proposals for development are to be considered against certain specified criteria. Policy ST6 provides that proposals for development which is otherwise acceptable in principle will be permitted if certain specified design criteria are met.

23. The Framework sets out the government's planning policies for England. The Framework is a material consideration to which the Defendant must have regard in considering applications for planning permission.

THE ISSUES

24. The Claimant seeks to challenge the grant of planning permission on five grounds. The grounds raise the following issues:

- (1) Did the Defendant adopt an unlawful approach to the consideration of the application for planning permission in that the Defendant failed to recognise the primacy of the development plan and considered that the Framework had superseded or replaced the relevant provisions of the development plan (ground 2)?
- (2) Was condition 8 limiting the permission to Probiotics (or a successor company) unlawful because it was ambiguous and unenforceable, or irrational or did not fairly and reasonably relate to the development (ground 1)?
- (3) Did the Defendant fail to give adequate reasons for the grant of planning permission (ground 3)?
- (4) Did the Defendant breach the EIA Regulations by granting planning permission without requiring the submission of an environmental statement pursuant to the EIA Regulations (ground 4)?
- (5) Was there a failure to comply with the requirements of section 100B of the Local Government Act 1972 ("the LGA") or the requirements of procedural fairness (ground 5)?

GROUND 2 - THE APPROACH OF THE DEFENDANT

25. I consider first ground 2 and whether the Defendant adopted an unlawful approach to the grant of planning permission. The Claimant contends that the Defendant failed to recognise the primacy of the development plan and assumed, wrongly, that the Framework superseded the relevant policies contained in the development plan.

26. First, in general terms, one could expect a planning officer or an experienced planning committee to be familiar with the basic principles underlying section 38(6) of the 2004 Act, namely that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Furthermore, in the present case, the report to committee expressly referred to section 38(6) of the 2004 Act and summarised its effect. In addition, the structure and content of the report clearly reflects a careful consideration of the relevant development plan policies and other material considerations, such as the Framework. In my judgment, the committee would therefore have been well aware of the provisions of section 38(6) of the 2004 Act and the need to determine the application in accordance with the development plan unless material considerations indicated otherwise.

27. Secondly, the report itself, read as a whole, and in context, makes it clear that the proposed development would conflict with the development plan. The allocation site was not in the area of Lopenhead nursery allocated for employment use. Development in rural areas would otherwise be restricted. Furthermore, as the discussion of Local Plan Policy ME4 makes clear, the development would not meet the requirements of that policy as the proposed development would not involve "small scale expansion". In my judgment, therefore, the report (and by implication the Committee) were well aware that planning permission would be refused, in accordance with the development plan, unless material considerations indicated otherwise. Mr Whale for the Council submitted, correctly, that conflict with one or more particular policies in the development plan does not necessarily mean that the proposal is not in accordance with the development plan as a whole. That may be the case, for example, when policies point in different directions. In the present case, however, all the development plan policies to which reference was made indicate that the proposed development on this site (i.e. large scale business expansion in a rural area) would not be permitted. In my judgment, the report proceeds on the basis that the proposed development would not be permitted applying the provisions of the development plan alone.

28. For that reason, the report does go on to consider material considerations which might justify the grant of permission. In particular, the Framework supported the expansion of all types of business in rural areas. In

other words, the approach in Policy ME4 of only permitting expansion in rural areas if they were "small scale" was not the approach adopted by the Framework. The Framework would support the grant of planning permission for even a large scale expansion of a business in a rural area assuming, of course, that any adverse effects of the proposed development were considered acceptable and the proposed development was otherwise acceptable in planning terms. That approach appears, for example, from paragraph 28 of the Framework which says planning policies should support economic growth in rural areas in order to create jobs and prosperity. That policy would, in my judgment, be a material consideration which is capable in principle of justifying the grant of planning permission.

29. Mr Jones QC submits that the report erred by stating that the Framework "superseded" the policies in the development plan. It is correct that the Framework cannot change the development plan. The Framework is, however, a material consideration and may provide the reasons why an application for planning permission should be granted notwithstanding the development plan. Furthermore, the provisions of a development plan may become outdated as national policy changes, or particular development plan policies may no longer meet current needs, or other changes may have occurred which make the particular provisions of the development plan less relevant. In such circumstances, other material considerations, such as more recent national policies, may assume greater importance and indicate that the application for planning permission should be approved (see the comments of Lord Hope of Craighead in *City of Edinburgh v Secretary of State for Scotland* [1997] 1 W.L.R. 1447 at 1450B-E). In my judgment, read as a whole and in context, the report was merely saying that the approach of permitting only small-scale development in rural areas was no longer up to date as the Framework recognised that it may be appropriate to support business expansion more generally. The report then goes on to consider whether or not permitting a larger scale business expansion would be acceptable in planning terms. That is a lawful approach. The committee would have understood that to be the approach set out in the report and, given that they resolved to accept the recommendation, it can be inferred that they adopted that approach.

30. The Claimant also submitted that the Council should have consulted the Secretary of State pursuant to Article 9 of the Town and Country Planning (Consultation) (England) Direction 2009 ("the Direction") before granting planning permission. That article provides that where a local planning authority in England does not propose to refuse an application for planning permission to which the Direction applies, it shall consult the Secretary of State. The material provision is Article 5 of the Direction which provides:

"For the purposes of this direction, "development outside town centres" means development which consists of or includes retail, leisure or office use, and which -

- (a) is to be carried out on land which is edge-of-centre, out-of-centre or out-of-town; and
- (b) is not in accordance with one or more provisions of the development plan in force in relation to the area in which the development is to be carried out; and
- (c) consists of or includes the provision of a building or buildings where the floor space to be created by the development is:
 - (i) 5,000 square metres or more; or
 - (ii) Extensions or new development of 2,500 square metres or more which, when aggregated with existing floor space, would exceed 5,000 square metres."

31. The Claimant submits that the proposed development includes office use which meets the criteria in Article 5(1)(a) and (b). She also submits that the area of the floor space of the proposed development exceeds 2,500 square metres and taken together with the existing floor space of the existing Probiotics developments on the nursery site, the total floor space exceeds 5,000 square metres so that Article 5(1)(c) is met. In calculating the relevant floor space, the Claimant submits that Article 5(1)(c) requires the entire floor space of the proposed development (whether or not intended to be used for office use) has to be aggregated with the other areas on the nursery site which are used by Probiotics. Furthermore, she submits, it is not just the area of the rest of the former nursery site occupied by Probiotics which is actually used for office use which is to be included in the calculation. Rather it is the floor space of the entire area for which planning permission has been granted. That entire area could be used for office use even if it is not being used for that purpose at present.

32. I understand the argument that Article 5(1)(c) deals with "the floor space to be created by the development" and is not expressly limited to the floor space intended to be used for office use. But without ruling on whether that interpretation of Article 5(1)(c) is correct, as a minimum, in my judgment, Article 5(2) is looking at the area of existing floor space in another development which is actually used for office purposes.

The calculation is to include "retail, leisure or office floor space". That is consistent with looking at the amount of existing floor space actually used for that purpose and assessing whether that, together with the floor space in the proposed development, exceeds 5,000 square metres. The Direction is not intended to require consultation on a development which depends on aggregating the floor space of that development with the floor space of an existing development which is not being used (but could theoretically be used at some stage in the future) for office use. I understand that the Claimant accepts that she had no evidence to suggest that even taking the floor space of the proposed development, together with the area of the existing Probiotics developments on the former nursery site actually used for office use, the floor space would not exceed 5,000 square metres. In those circumstances, there was no obligation to consult the Secretary of State on the application for planning permission before granting it.

THE VALIDITY OF THE PLANNING CONDITION

33. Mr Jones Q.C. for the Claimant submitted that condition 8 was invalid as it was so ambiguous as to be unenforceable. He further submitted that the condition limiting the benefit of the permission to Probiotics (and a successor company) was not a valid condition as it did not fairly and reasonably relate to the development, was irrational and did not serve any planning purpose.

34. The law governing the exercise of the power to impose conditions is conveniently summarised in the judgments of the House of Lords in *Newbury District Council v Secretary of State for the Environment* [1981] A.C. 578. At page 599 Viscount Dilhorne said this:

"The power to impose conditions is not unlimited. In *Pyx Granite Co. Ltd. v Ministry of Housing and Local Government* [1958] 1 Q.B. 554 Lord Denning said, at p. 572:

"Although the planning authorities are given very wide powers to impose 'such conditions as they think fit,' nevertheless the law says that those conditions, to be valid, must fairly and reasonably relate to the permitted development. The planning authority are not at liberty to use their powers for an ulterior object, however desirable that object may seem to them to be in the public interest."

.....

"It follows that the conditions imposed must be for a planning purpose and not for any ulterior one, and that they must fairly and reasonably relate to the development permitted. Also they must not be so unreasonable that no reasonable planning authority could have imposed them..."

35. Advice about the circumstances in which conditions may be imposed is also given in Circular 11/95: Use of conditions in planning. That, as Mr Jones Q.C. recognises, is primarily an expression of view on the relevant law and how the law applies in particular circumstances rather than being guidance on matters of planning policy. The Circular itself recognises that it is a guide and is not intended to be definitive and that an authoritative statement of the law can only be made by the courts. At paragraph 92 and onwards, the Circular begins consideration of conditions restricting the occupancy of buildings and land. Under the heading "Occupancy: general considerations", paragraph 92 says this:

"Since planning controls are concerned with the use of land rather than the identity of the user, the question of who is to occupy premises for which permission is to be granted will normally be irrelevant. Conditions restricting occupancy to a particular occupier or class of occupier should only be used when special planning grounds can be demonstrated, and where the alternative would normally be refusal of permission."

36. In dealing with personal permissions, that is the grant of planning permission which is limited to the benefit of a named person, paragraph 93 of the Circular says this:

"Unless the permission otherwise provides, planning permission runs with the land and it is seldom desirable to provide otherwise. There are occasions, however, where it is proposed exceptionally to grant permission for the use of a building or land for some purpose which would not normally be allowed at the site, simply because there are strong compassionate or other personal grounds for doing so. In such a case the permission should normally be made subject to a condition that it shall enure only for the benefit of a named person-usually the applicant (model condition 35): a permission personal to a company is inappropriate because its shares can be transferred to other person's without affecting the legal personality of the company. This condition will scarcely ever be justified in the case of a permission for the erection of a permanent building."

37. Paragraph 94 of the Circular deals with conditions which are intended to confine the occupation of commercial or industrial premises to local firms and generally indicates that such conditions are not

appropriate. Paragraph 95 says this:

"However, where the need of a local firm to expand is sufficiently exceptional to justify a departure from a general policy of restraint it will be essential to ensure that such a permission is not abused. It may be reasonable to impose a "local occupancy" condition in such circumstances, provided it is for a limited period (10 years is considered to be a suitable maximum), covers a large catchment area (for example, the area of the relevant county) and clearly defines the categories of persons or firms who may occupy the premises. Occupancy conditions should be imposed only where special planning grounds can be demonstrated and where the alternative would normally be to refuse the application. It would not normally be appropriate to impose such conditions on small buildings of less than 300 square metres of office floor space (or 500 square metres of industrial floor space). Occupancy conditions should not be imposed which provide for a system of vetting by the local planning authority or the use of a vague test such as "needing to be located in the area"."

38. Against that background, I turn to consider the proper interpretation of condition 8 and whether or not it is valid. I bear in mind the principles summarised in the judgment of Elias L.J. in *Hulme v Secretary of State for Communities and Local Government* [2011] EWCA Civ 638 at paragraphs 13 and 14:

"13

a) The conditions must be construed in the context of the decision letter as a whole.

b) The conditions should be interpreted benevolently and not narrowly or strictly: see *Carter Commercial Development Limited v Secretary of State for the Environment* [2002] EWHC 1200 (Admin) para 49, per Sullivan J, as he was.

c) A condition will be void for uncertainty only "if it can be given no meaning or no sensible or ascertainable meaning, and not merely because it is ambiguous or leads to absurd results" per Lord Denning in *Fawcett Properties v Buckingham County* [1961] A.C. 636, 678. This seems to me to be an application of the benevolent construction principle.

d) There is no room for an implied condition

"14 Accordingly, whilst there must be a limit to the extent to which conditions should be rewritten to save them from invalidity, if they can be given a sensible and reasonable interpretation when read in context, they should be.

39. Two questions arise in relation to the interpretation of condition 8. The first concerns the fact that it states that the "The building hereby permitted shall only be carried out by Probitics". The question is whether it is concerned with the use of the building or whether it applies the erection of the building itself, or possibly, applies to both the erection and use of the building. Mr Whale, for the Defendant submits that read reasonably the condition is intended to relate only to the use of the building. In my judgment, that interpretation is correct. The condition, read as a whole, is intended to apply during the occupation of the land. That is more consistent with a condition concerning use (i.e. what is to happen while Probitics is on the land) rather than a condition concerning the erection of the building. Furthermore, the reason for imposing the condition is that the Defendant wishes to control the uses on the application site. That again points to the condition being concerned with the use to be made of the application site.

40. The second question arises from the fact that the benefit of the planning permission is only to be enjoyed by Probitics and any successor company. The question is what is meant by "any successor company". Mr Whale for the Defendant submitted that there were three possibilities. The condition could be dealing with situations where the name of Probitics was changed. It could be dealing with situations where someone acquired the shares in the company. Or it could be dealing with a company which was the successor in title to the land. Mr Whale submitted that the phrase encompassed the first and second meanings. He submitted that the intention underlying the condition was to prevent a company which was unconnected with Probitics from obtaining the benefit of the planning permission. Mr Jones QC, for the Claimant, submitted that the first two interpretations were in effect meaningless and that the ambiguity over what the condition meant had the result that the condition could not be enforced. For completeness, I note that a further possibility is that the phrase means a successor company in the sense of a company that takes over the business of Probitics, i.e. a company that acquires its buildings, plant, other assets and staff. Neither Mr Whale nor Mr Jones QC submit that that is the correct meaning of condition 8.

41. It is not easy to give meaning to the words "any successor company" in condition 8. On a literal interpretation it would not include a situation where there was a change in the name of the company. The company would remain the same legal entity but would have a different name. Nor, on a literal interpretation,

would the phrase include a change in the share ownership. The company would remain the same legal entity but it would be owned by a different person. A "successor company" implies a different company from the original company and so would not be expected to embrace a situation where the legal entity does not change but its name changes or the ownership is transferred to a different person. Equally, the phrase is unlikely to mean to a successor in title to the land. Such a condition would not be necessary as planning permission would, in normal circumstances, pass with the land in any event. Further, if the condition was meant to include a successor in title to the land it could easily have said so. The reference to successor company must have been intended to have some other meaning.

42. I assume, for present purposes, that the condition could be read as meaning it applies to Probiotics and to any company or individual that acquires the shareholding in Probiotics, as Mr Whale submits. The question then arises as to whether or not such a condition is imposed for a planning purpose and fairly and reasonably relates to the development.

43. The reason given for the condition is that the local planning authority wishes to control the use of the land. In my judgment, however, a condition such as condition 8, will not enable the local planning authority to control the use of the land. Nor has any rational planning reason been advanced to restrict the benefit of the planning permission to Probiotics or a successor company.

44. The usual position is that planning permission is concerned with the use of the land, rather than the identity of the user, as paragraph 92 of the Circular recognises. First, there is nothing in condition 8 which enables the Defendant to limit the use to which the land may be put. Permission has been granted for any B1, B2 or B8 use. Limiting the benefit of the planning permission to Probiotics (or a successor company, whatever that means) does not enable the Defendant to impose any control on the use of the application site. It simply seeks to control the identity of the person carrying on the permitted use.

45. Secondly, no planning reasons explain why an unconnected company should not be allowed to use the building and land for the permitted purposes. The rationale underlying the grant of planning permission was that use of that site for employment purposes would be beneficial as it would generate jobs. It is difficult to see on what basis the use of the land for B1, B2 or B8 purposes by a different company, with different employees, would raise any planning issues.

46. It was suggested in argument that the condition would promote sustainability. The report to the committee does refer to the fact that there would be some benefit in employees from Probiotics not having to travel to the Lopenhead nursery site from other sites when considering sustainability in terms of travel journeys. But the condition does not, in fact, contribute to that purpose. Probiotics could use the application site for any B1, B2 or B8 purpose: it is not limited by the condition to using the application site in connection with its existing business on the other part of the nursery site (although that was the original rationale for its planning application).

47. The report also refers to the fact that if the application was for a general outline consent with no end users, it could be regarded as speculative and intended to obtain permission for the application site as a strategic employment site. That may explain why this application was granted. But once permission is granted, and it is accepted that a building should be erected on the application site, and that the site is suitable for B1, B2 or B8 use as that supports economic growth, there is no rational planning reason for saying that only Probiotics (or a company which buys the shares of Probiotics) should have the benefit of a planning permission to enable them to use the site for the permitted purposes.

48. Standing back from the details, the position is that planning permission is to be granted for the erection of a building. There will be a permanent structure on the application site, irrespective of the identity of the present user. The condition does not, and does not seek to, control any land use impact resulting from the presence of the building. The condition is said to be imposed to enable the Defendant to control the use of land but it does not in fact enable the Council to do so. The land may be used only for B1, B2 and B8 purposes. That will be the situation whether the land is occupied by Probiotics, a successor company (however interpreted) or some other company. No other sensible planning reason has been suggested to limit the range of person who are able to use the building for B1, B2 or B8 purposes.

49. For those reasons, in my judgment, however interpreted, condition 8 is invalid as it does not serve a planning purpose, it is not fairly and related to the development and is irrational. Both parties accepted that the condition was not capable of being severed from the planning permission and that the planning permission itself would therefore need to be quashed. The Council would then have to consider the application for planning permission. It could, in principle, grant planning permission without condition 8, or it could refuse planning permission. If the Defendant could identify some relevant planning purpose for limiting the permission, and drafted an appropriately worded condition, it could grant conditional planning permission. Those matters are ultimately planning issues for the Council to determine.

THE REASONS CHALLENGE

50. The Claimant contends that the Defendant has failed to give an adequate summary of reasons for the grant of planning permission or for the imposition of condition 8 as required by Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 ("the Order"). That provided that where planning permission was granted, the notice shall

"i. include a summary of their reasons for the grant of planning permission

ii. include a summary of the policies and proposals in the development plan which are relevant to the decision to grant permission; and

iii. where the permission is granted subject to conditions state clearly and precisely their full reasons for each condition imposed, specifying all policies and proposals in the development plan which are relevant to the decision.

51. Summary reasons may be brief where the relevant committee agree with the reasoning of the report: see *R (Siraj) v Kirklees Metropolitan Borough Council* [2011] J.P.L. 571 at paragraph 16. Article 31 of the Order has since been amended.

52. The summary reasons given in this case, in my judgment, clearly set out the reasons for granting the application. The proposed development would provide employment opportunities and by reason of its design, scale, siting and materials was considered to respect the character and appearance of the area. Similarly, the reason for condition 8 is clear. It was imposed as the Council wished to control the use of the site. For the reasons given above, the condition does not in fact achieve that aim and is invalid. However, the reason for imposing the condition is set out in the notice. There has not been any failure to give reasons contrary to Article 31 of the Order.

53. Furthermore, even if there were a breach of that Article, I would refuse to quash the decision to grant planning permission on this ground. Article 31 of the Order has since been amended. If the decision were quashed, planning permission could be granted again without the need to give summary reasons.

THE EIA REGULATIONS

54. The Claimant contends that the Defendant acted unlawfully in failing to treat the proposed development as EIA development. The Claimant submitted that the proposed development fell within Schedule 1 of the EIA Regulations. She contends that a precautionary approach should be taken and the Defendant could not be sure on the information available that the use of the site did not involve chemical conversion processes and, therefore, it could not rule out the possibility that the development fell within paragraph 6 of Schedule 1 to the EIA Regulations. Alternatively, the Claimant submits the decision that the proposed development would be unlikely to have significant environmental effects and so did not fall within Schedule 2 to the EIA regulations was unlawful.

55. The report relied upon the fact that both the Council (in its screening opinion) and the Secretary of State (in his direction) had formed the view that the proposed development was not EIA development. The report drew attention to the fact that the Council was able to review the position particularly if new information became available. However, the report noted that the view remained that an environmental statement was not required for the proposed development. The minutes of the committee meeting note that the committee members were given an overview of issues relating to, amongst other matters, the EIA issue. The natural inference is that the committee accepted the view expressed in the report when deciding to approve the officers' recommendation to grant planning permission without requiring submission of an environmental statement.

56. In my judgment, there is no basis for challenging the view that the proposed development did not fall within Schedule 1 to the EIA Regulations and no basis upon which the application of the precautionary principle meant that the Council had to proceed on the basis that it did fall within Schedule 1. The fact is that the point was expressly raised with the Secretary of State. He sought and obtained information from the planning consultants on the nature of the processes being used by Probiotics. In a long and detailed e-mail dated 13 June 2012, the consultants explained how Probiotics products were produced and why it was that no chemical conversion processes were used. The Secretary of State was entitled, in my judgment, to conclude in the light of that information that the proposed development did not fall within the definition of EIA development. The committee were entitled to proceed, as they did, on the basis that the proposed development did not fall within Schedule 1 to the development. Similarly, the committee were entitled to

proceed on the basis that the Council's screening opinion and the Secretary of State's direction was to the effect that the proposed development was not EIA development because although it fell within Schedule 2, it was unlikely to have significant environmental effects. The Secretary of State gave his reasons for that conclusion in his letter of 13 April 2012. The Council, in its screening opinion of 21 February 2012, had concluded that the impacts of the proposed development would not be significant. There is no basis for contending that the screening opinion or the direction are unlawful. The committee were therefore entitled to proceed, as they did, on the basis that the proposed development was not EIA development and no environmental statement was required.

THE LOCAL GOVERNMENT ISSUE

57. The Claimant contends that there has been a breach of section 100B of the LGA in that the officers' report was not made available five clear days before the committee meeting of 24 April 2013 and that led to unfairness as the Claimant and third party objectors did not have the documents in time to make fully informed representations before the committee meeting on 24 April 2013. The Claimant also says that she was deprived of the opportunity to instruct an expert in relation to the screening direction.

58. First, on the evidence, there has been no breach of section 100B of the LGA. That provision requires that copies of a report shall be open to inspection by members of the public at the Council offices. There is simply no evidence from the Claimant that copies were unavailable at the offices. Secondly, the Claimant contends that she and her advisers relied upon electronic versions and the version on the Council's website was not legible. I accept the evidence of Mr Andrew Gunn, one of the Defendant's officers, on this matter. He says that the committee report had been uploaded in both Word and pdf formats onto the Council's planning website and that the Word version was legible but the pdf one was not. He further says that the report was also uploaded in both formats onto the committee meetings section of the Council website which is accessible by the public and both formats were legible. As a matter of fact, therefore, the officers' report was electronically available 5 days before the meeting. It is correct that the Claimant's solicitor e-mailed Mr Gunn on 18 April 2013 asking for an electronic copy as when he accessed the website the version was not legible. Mr Gunn replied apologising that the website was not working and saying he would report it and would send a copy electronically, which he did the next day. In fact, the website was working, as it subsequently transpired, and the Claimant's advisers could have accessed the report electronically.

59. Furthermore, there was no unfairness in the present case. Third party objectors could (and some did) make objections to the proposals. Those objections are summarised in the report. Third parties did have access to the officers' report and could have made further representations if they wished. Indeed, it is clear from the minutes of the meeting and the Claimant's consultant's own notes of the meeting that some individuals had commented on the report and those comments were referred to at the meeting. The Claimant, and her planning consultants, were well aware of the proposal and had been so for some months and had made detailed comments on it by letter dated 14 December 2012. The solicitor had corresponded with the Secretary of State about the EIA screening issues and had been told about the information provided by Probiotics in the Secretary of State's letter of 31 August 2012. The planning consultants set out further representations to the Council by letter dated 24 April 2013 and that information was relayed to the councillors at the meeting. The Claimant's planning consultant attended the meeting and was allowed to speak about the proposal. In my judgment, there was no breach of the relevant statutory requirements and no procedural unfairness in the present case.

CONCLUSION

60. In the circumstances, I grant permission to apply for permission for judicial review on all five grounds. I do not consider that the complaints in grounds 2, 3, 4 or 5 are established. There was no unlawful approach on the part of the Council to the grant of planning permission in this case, and this ground of challenge does not succeed. The Defendant did give an adequate summary of the reasons for its decision to grant planning permission. The Defendant did not act in breach of the EIA Regulations as there is no basis for challenging the decision that the development was not EIA development and that an environmental statement was not required. There was no breach of the statutory provisions governing access to copies of the report and no unfairness.

61. However, the complaint in ground 1 is, in my judgment, established. Condition 8 of the planning permission is invalid as it does not serve a planning purpose, is not fairly and reasonably related to the proposed development and is irrational. The condition is not capable of being severed from the planning permission and that the planning permission itself must therefore be quashed. The Council would then have to consider the application for planning permission and decide whether to grant planning permission without condition 8, or to refuse it, or to grant it but with an appropriately revised condition if it could identify a proper planning purpose for such a condition and the condition was otherwise valid.

