

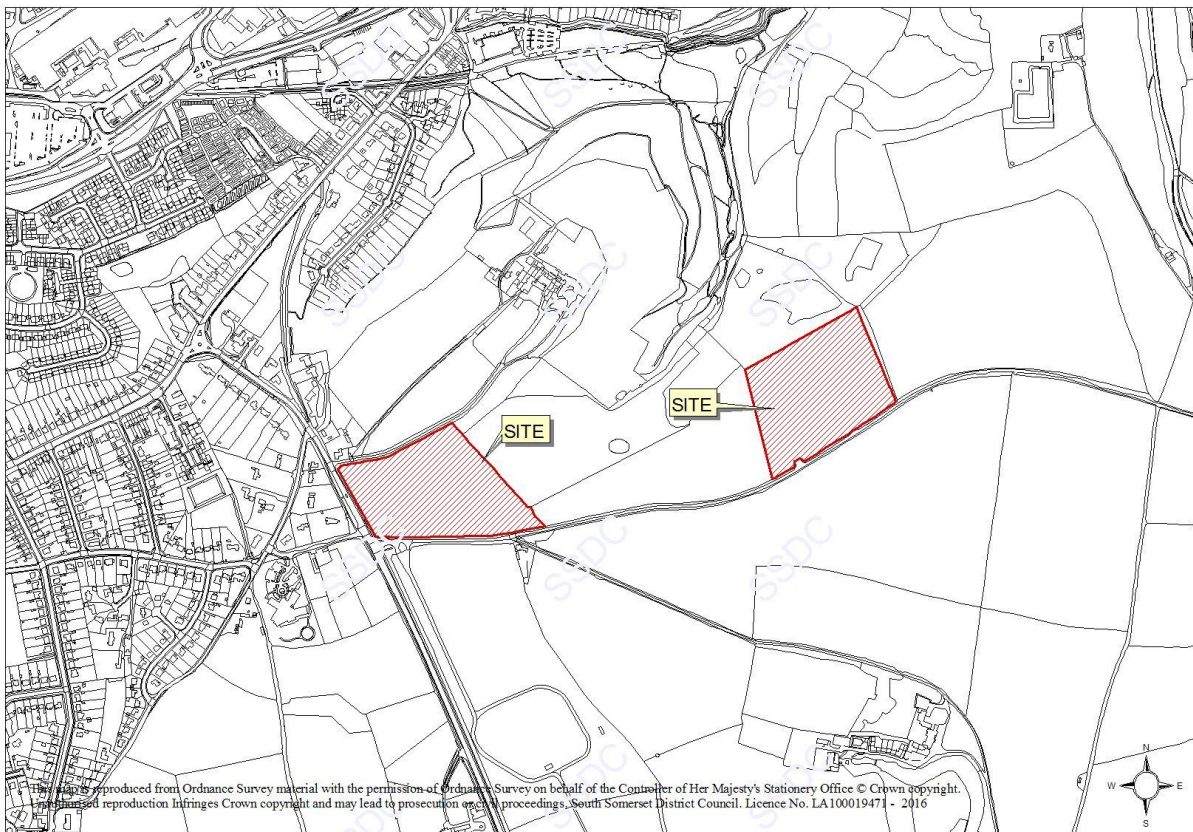
## Officer Report on Planning Application: 16/01826/DPO

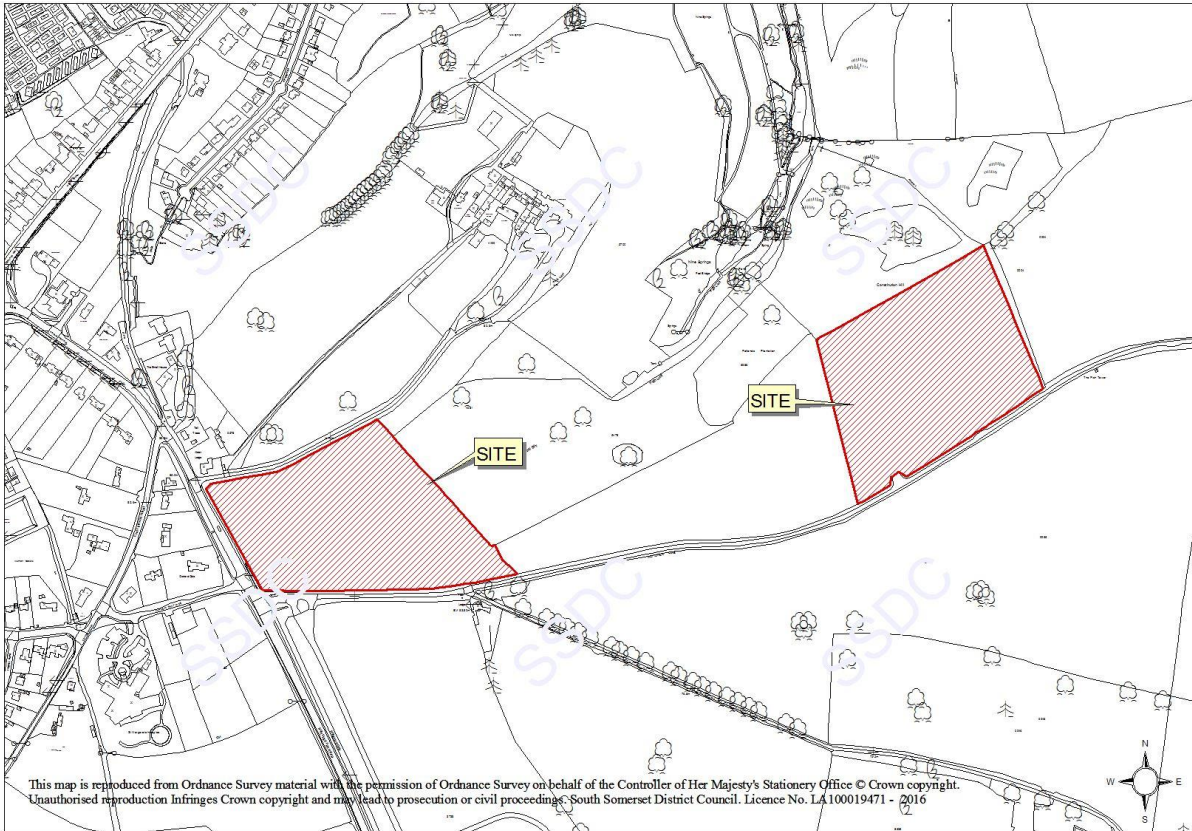
<b>Proposal :</b>	Application to discharge a S 106 agreement dated 13th September 1999 between South Somerset District Council and the trustees of Yeovil Agricultural Society, William Batten, Susan Batten and David Batten to release land
<b>Site Address:</b>	Land at Two Tower Lane, Barwick, Yeovil
<b>Parish:</b>	Barwick
<b>COKER Ward (SSDC Member)</b>	Cllr G Seaton Cllr Cathy Bakewell
<b>Recommending Case Officer:</b>	Andrew Collins Tel: 01935 462276 Email: andrew.collins@southsomerset.gov.uk
<b>Target date :</b>	17th June 2016
<b>Applicant :</b>	Yeovil Agricultural Society
<b>Agent: (no agent if blank)</b>	Symonds And Sampson Llp 2 Court Ash Yeovil Somerset BA20 1HG
<b>Application Type :</b>	Non PS1 and PS2 return applications

### REFERRAL TO COMMITTEE

This application is referred to Area South Committee at the request of the Development Manager with the agreement of the Chairman to allow consideration of highways aspects in the area near the Keyford Sustainable Urban Extension.

### SITE DESCRIPTION AND PROPOSAL





This application is seeking to discharge a Section 106 agreement dated 13 September 1999, which is an agreement relating to the following planning permission;

98/01814/FUL - Application for relief from condition 3, to allow car boot sales, and variation of condition 4 of decision notice 930410, dated 29/4/93 (i.e. Increasing overall maximum number of days use to 160 per annum)

The legal agreement restricts the use of two sites in Two Tower Lane and a site off Church Lane. The sites are located at;

- 1) the western end of Two Tower Lane on the northern side of the road up to the boundary of Dorchester Road.
- 2) a field on the northern side of the road opposite The Fish Tower on the Aldon estate.
- 3) on the southern side of Church Lane to the east of the Keyford Roundabout junction

In addition a separate clause requires a traffic management plan submitted and agreed in writing with the Council prior to first use of the Yeovil Showground site for car boot sales. A traffic management plan was submitted and agreed.

The legal agreement details the 2 sites within Two Tower Lane as being 'specified land' and the Church Lane site as being 'additional land'. The legal agreement details that on first use of the Yeovil Showground site for car boot sales the other sites shall not be used for car boot sales. The legal agreement details that the Batten family were owners of the 'specified land' and the Trustees of Yeovil Agricultural Society were owners of the 'additional land.'

Also there was a clause which required a scheme of traffic management arrangements to be implemented when the Yeovil Showground site was used for car boot sales.

This application seeks to release of the 'specified land' (the site's within Two Tower Lane) from the agreement as a primary requirement but does indicate that the whole legal agreement could be released.

In the supporting letter from the agent it is detailed that in order for the owners of the 'specified land' to enter into the legal agreement the applicants agreed to make an annual payment based upon a percentage of income received from the Yeovil Showground site. But for this incentive the owners of the 'specified land' would not have entered into the Section 106 agreement. It is detailed that the owners of the 'specified land' are aware of and in agreement with this application.

It is further stated that the Yeovil Agricultural Society is a non profit making charity whose objective is to hold an annual agricultural show and donate grant funds to agricultural students in Somerset and Dorset. The Society funds the Batten Memorial Fund which donates grants to full time agricultural students under 25 years old resident in Dorset or Somerset.

## **RELEVANT HISTORY**

930410 - Alterations to access and egress arrangements, and the use of land as a showground on up to 120 days per year - Application permitted with conditions - 05/05/93

98/01814/FUL - Application for relief from condition 3, to allow car boot sales, and variation of condition 4 of decision notice 930410, dated 29/4/93 (i.e. Increasing overall maximum number of days use to 160 per annum) - Application permitted with conditions - 07/04/99. This permission had a number of restrictions on the use by car boot sales. Whilst allowing 160 days use of the site per year conditions were imposed that said that there can be only be a car boot sale one day a week / 52 days a year, shall only be open between 09:00 and 16:00, vehicles are limited to 1.5 tonnes, trailers shall not exceed 50kgs and that there shall be no market stalls or other display structures. In addition goods sold are restricted to 'second hand goods; and surplus home grown vegetable and fruit products only. Other conditions were imposed but none of particular relevance to the consideration of this application.

## **POLICY**

Section 38(6) of the Planning and Compulsory Purchase Act (2004), and Paragraphs 2, 11, 12, and 14 of the NPPF state that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise.

For the purposes of determining current applications the local planning authority considers that the adopted development plan comprises the policies of the South Somerset Local Plan 2006 2028 (adopted March 2015).

Policies of the South Somerset Local Plan (2006-2028)

Policy SD1 - Sustainable Development

Policy SS1 - Settlement Strategy

Policy TA5 - Transport Impact of New Development

National Planning Policy Framework

Chapter 4 - Promoting Sustainable Transport

Paragraph 32

*"Plans and decisions should take account of whether:*

- o the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;*
- o safe and suitable access to the site can be achieved for all people; and*
- o improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe."*

Paragraphs 203 - 205 - Planning conditions and obligations

Other Relevant Considerations

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Part 4 Class B - Temporary Use of Land

## **CONSULTATIONS**

Barwick Parish Council - No comments received.

Yeovil Town Council (neighbouring parish) - Support.

County Highways Authority - *"The proposal seeks to discharge the S106 agreement which stopped other sites operating car boot sales under the permitted development rights.*

*From a highways point of view this proposal would likely see an increase in traffic across the network. However it should be noted that these would be for a limited period of 14 set days as set out in the permitted development rights document. Consequently it is unlikely that the levels of movement could be considered to be severe enough to warrant an objection on traffic impact grounds.*

*Therefore based on the above the Highway Authority would not raise an objection to this proposal."*

## **REPRESENTATIONS**

None received

## **CONSIDERATIONS**

### Permitted Development

Under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Part 4 Class B allows for the use of land for 14 days on any land not including a building for 'the holding of a market' which includes car boot sales. Therefore without this restriction on the owner of the 'specified land' by the Section 106 legal agreement each site could be used for 14 days in any calendar year. Such a use would not be restricted on the size of vehicle, opening hours, the sale of goods and the erection of temporary market stalls.

Each separate field along Two Tower Lane could theoretically be used as a separate car boot sale for up to 14 days. These could be all run at the same time or run consecutively.

## Highways

It is clear that the legal agreement was imposed due to concerns by the Highways Authority in relation to the number of car boot sales using Two Towers Lane. In considering the 1998 application the County Highways Authority raised no objection subject to the entering into the Section 106 legal agreement restricting the holding of future car boot sales on neighbouring sites.

In order to remove a Section 106 Agreement it needs to be proven whether the legal agreement still serves a useful purpose.

The Highways Authority in this case has assessed the application and note that the proposals would likely see an increase in traffic across the network. However they conclude that such levels of movement could be considered severe enough to warrant an objection on traffic impact grounds.

## Assessment

Reference in the submitted information is made to a payment that was agreed for the owners of the 'specified land'. This is not detailed in the legal agreement is not a material planning consideration and as such should not be given any weight.

Since the Section 106 legal agreement was signed in 1999, the NPPF was published in 2012. This at Paragraph 32 clearly gives guidance that development should only be refused on transport grounds where the residual cumulative impacts of development are severe. This changed guidance altered the stance on highway guidance that was previously imposed in PPG13.

The agent has indicated a complete deletion of the Section 106 as an option. However, the 'additional land' located to the South of Church Lane could be used for car boot sales. This could be a concern especially due to proximity to the Keyford Sustainable Urban Extension and potential conflicts with the Ivel Barbarians Rugby Club. On this basis it is considered that the 'additional land' should remain in the legal agreement. The other clause related to a traffic management plan. Such a plan was submitted and agreed. However this matter is not detailed in any condition and therefore if, and this is a big if, problems arose in the future this is the only mechanism to control it. Therefore it is considered that this clause still serves a useful purpose and should be retained.

## Conclusion

In the covering letter it is stated that the variation of the Section 106 agreement is to avoid the continued payments to the owners of the 'specified land'. This is not a material planning consideration and as such cannot be given any weight. However despite this we still need to consider whether the legal agreement still serves a useful purpose. Since the Yeovil Showground site has been running car boot sales there have not been any other operating in Two Tower Lane. This includes land not restricted by the legal agreement. It is therefore unlikely that the variation of the legal agreement to allow release of the specified land would result in an increase of car boot sales within Two Tower Lane as economic supply and demand would indicate with an adequate supply there is no demand. Even if a further car boot sale were to commence operating the informed opinion of the County Highways Authority is that it is unlikely that the levels of movement could be severe enough to warrant a refusal of traffic impact grounds.

In assessing all the above it is considered that the alteration requested is acceptable.

## **RECOMMENDATION**

To allow the variation of the Section 106 agreement dated 13 September 1999 made between South Somerset District Council, the trustees of Yeovil Agricultural Society and William Batten, Susan Batten and David Batten in relation to the deletion of the 'specified land' from the agreement.

## **SUBJECT TO THE FOLLOWING:**

### **Informatives:**

01. A copy of this decision will be sent the Councils Land Charges Department and Legal Department so that they can remove the restriction from their records. A copy of this certificate should be retained and kept with the deeds of the property.