

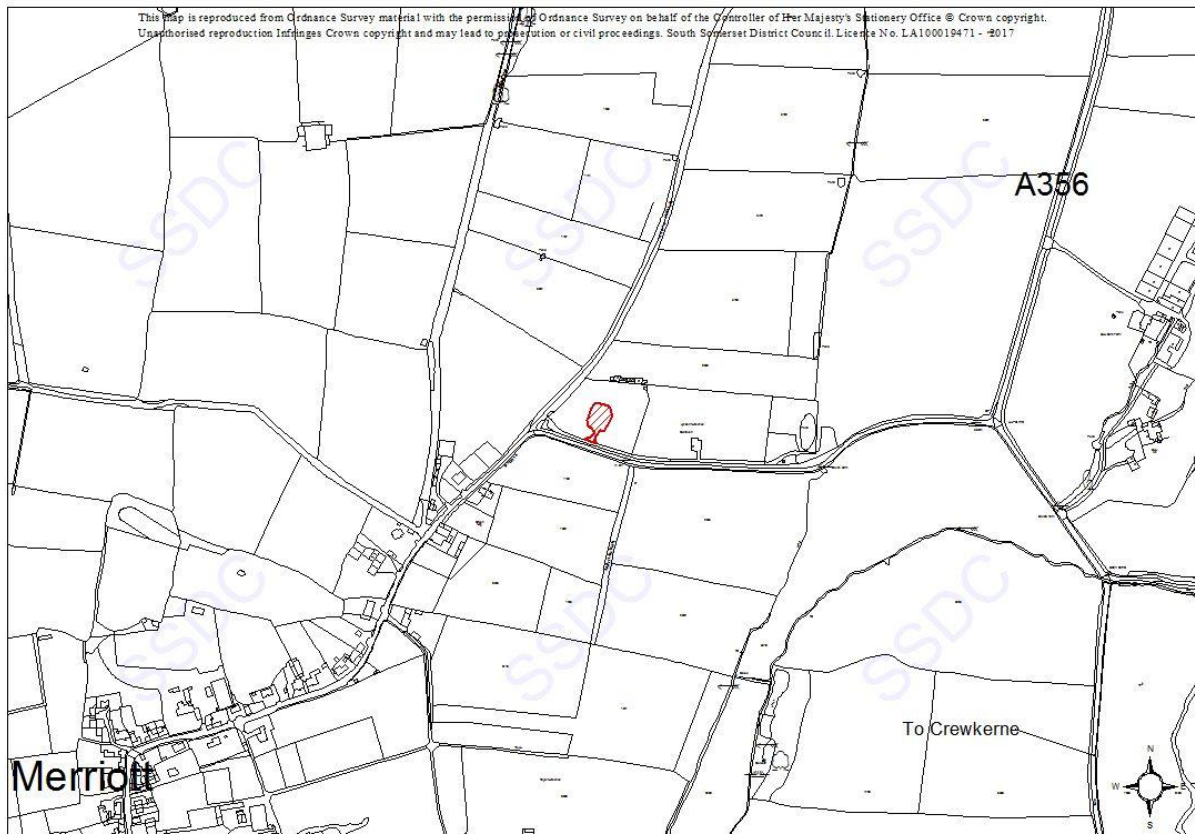
## Officer Report on Planning Application: 17/02272/S73A

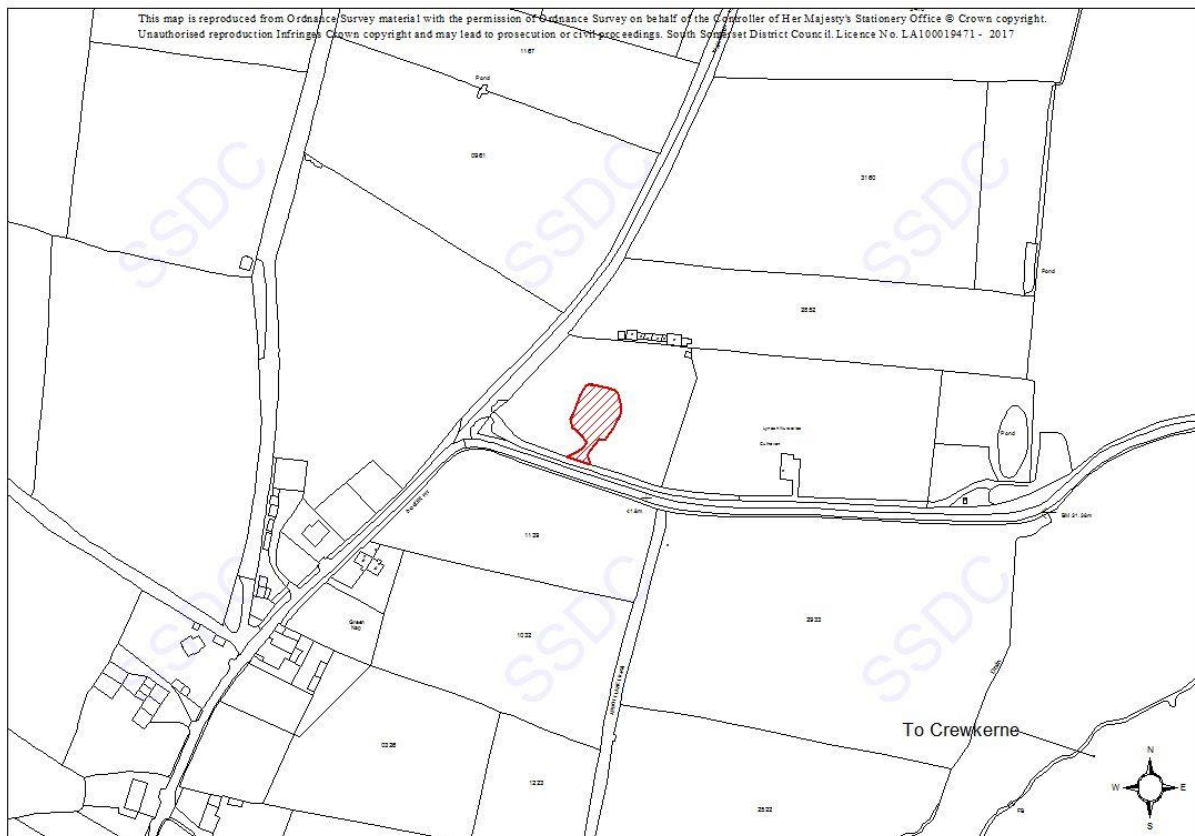
<b>Proposal :</b>	Application to remove condition 02 (agricultural workers occupancy) from planning permission 04/02261/FUL
<b>Site Address:</b>	Lynash Nurseries, Boozer Pit, Merriott
<b>Parish:</b>	Merriott
<b>EGGWOOD Ward (SSDC Member)</b>	Cllr P Maxwell
<b>Recommending Case Officer:</b>	Louisa Brown Tel: (01935) 462344 Email: louisa.brown@southsomerset.gov.uk
<b>Target date :</b>	26th July 2017
<b>Applicant :</b>	Mr & Mrs Wallis
<b>Agent: (no agent if blank)</b>	Mr APA Booth, Symonds and Sampson LLP 2 Court Ash Yeovil BA20 1HG
<b>Application Type :</b>	Minor Dwellings 1-9 site less than 1ha

### REASON FOR REFERRAL TO COMMITTEE

The ward member, in agreement with the Area Chairman, has requested that it goes to committee so that a full and democratic debate can take place concerning all the issues of the case.

### SITE DESCRIPTION AND PROPOSAL





This is a Section 73A application to remove condition 02 (agricultural workers occupancy) from planning permission 04/022661/FUL.

The site is located within the open countryside on the outskirts of Merriott, which is situated to the southwest. The agricultural dwelling is a large two-storey property situated to the north of the highway, with the nursery business and polytunnels to the east of it.

## HISTORY

- 00/00189/OUT: erection of an agricultural workers dwelling - approved 19/06/00
- 02/02646/REM: Erection of an agricultural workers dwelling - approved 14/11/02
- 03/02179/FUL: continued use of land as a site for a mobile home for horticultural worker - approved 14/03/05
- 04/02261/FUL: Proposed erection of Agricultural Workers Dwelling - approved 02/11/04
- 15/00625/DPO: application to vary S106 agreement to allow release of part of land relating to planning application 00/00189/OUT - allowed 24/03/15

## POLICY

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

The South Somerset Local Plan (2006 - 2028) was adopted on the 5th March 2015. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) and Section 70(2) of the Town and Country Planning Act 1990 (as amended), the adopted local plan now forms part of the development plan. As such, decisions on the award of planning permission should be made in accordance with this development plan, unless material considerations indicate otherwise. Legislation and national policy are clear that the starting point for decision-making is the development plan, where development that accords

with an up-to-date local plan should be approved, and proposed development that conflicts should be refused, unless other material considerations indicate otherwise.

Relevant Development Plan Documents:

Government Guidance:

National Planning Policy Framework

Chapter 3: Supporting a prosperous rural economy

Chapter 7: Requiring Good Design

Chapter 11: conserving and enhancing the natural environment

National Planning Practice Guidance

South Somerset Local Plan (Adopted March 2015):

Policy SD1 - Sustainable Development

Policy SS1 - Settlement Strategy

Policy HG10 - Removal of Agricultural and Other Occupancy Conditions

## **ENVIRONMENTAL IMPACT ASSESSMENT**

None required

## **CONSULTATIONS**

Merriott Parish Council:

"The parish council understand the declining horticultural industry in the current economic climate has played a major part in the need for this application. We can only sympathise and give our whole hearted support for Mr Wallis's application."

SCC Highways:

Standing advice.

SSDC Highway consultant:

The planning submission is considered to be largely a planning matter to determine.

## **REPRESENTATIONS**

A site notice displayed. No comments have been received.

## **CONSIDERATIONS**

This application is to remove the agricultural tie condition from the property. The proposal does not include any changes to the current access, parking or appearance of the dwelling as such the only matter to consider is if the property can be occupied without the agricultural tie.

The site is located within the open countryside where the NPPF supports dwellings where there is an agricultural need; which outweighs the local policy SD1 on sustainable development.

Policy HG10 of the local plan addresses the criteria which must be assessed when considering if an agricultural tie can be removed. The Agent has addressed each point of this policy in turn and as such this will be addressed accordingly.

"There is no longer a continued need for the property on the holding, or for the business."

The agent identifies that the site can only be occupied by a retired farmer or someone working locally in agriculture or prepared to work on the existing holding. However he states that factors that would limit this are the size of the holding, the existing buildings, infrastructure and size and value of the dwelling and success of the current business.

The agent states that the holding is only 7.3 acres and that the modest holding has a limited use with the temporary structures and as such any purchaser would need a significant capital investment for new buildings. He further states that the lack of advertisement being allowed on the A356 affected the retail trade and there is the knowledge of similar horticultural businesses failing.

The supporting document giving a valuation of the site, as carried out by Rendells, indicates that in total the applicants own 15.27 acres of land. This is further supported by the site plan that shows an additional area edged in blue. Whilst this land was the subject of a variation to the Section 106 agreement, which was allowed, it is still in their ownership and could be used to market the whole plot. The agent states that the holding is only approx. 7 acres, but that statement is only through the applicant's choice, as in fact all 15 acres could be included, thus making the holding possibly more feasible for a business investment.

It is noted that horticultural business may be failing and some of these are referred to by another owner of such a business, however many are also not failing. In addition to this the agricultural tie refers to agriculture and not the nursery business alone, as such another agricultural activity could take place on the site, which has not been investigated.

The tie also relates to 'someone last working, in the locality in agriculture or forestry...' as such a retired farmer may be interested in the dwelling.

"There is no long term need for a dwelling with restricted occupancy to service local need in their locality."

The Agent states that the dwelling is too large to meet any local need. He refers to the original consent back in 2004 which allowed a larger dwelling than the policy guidelines at the time. There is nothing on the previous planning approval that indicates why the larger dwelling was allowed, however the policy at the time required dwellings to be commensurate with the needs of the holding and as such it can only be considered that the case officer considered there was a need.

The agent argues that the dwelling is too large and valuable for an agricultural worker; however this theory has not been tested. The valuation may be beyond the spending power of an agricultural worker, but there is no proof of this, as the property has not been marketed to see if anyone is interested in the site with the 15 acres, and with the possibility of starting an alternative agricultural business. In addition to this the statement that the valuation is 'beyond the spending power of all but the wealthiest of retired farmer', has not been tested.

"The property has been marketed locally for an appropriate period (a minimum eighteen months) at an appropriate price and evidence of marketing is demonstrated."

The agent states that a marketing campaign is unwarranted due to the peculiar and unusual circumstances at Lynash Nurseries, those being;

- 1) The applicants do not wish to sell, so marketing campaign would be pointless, and costly.

It is considered that there is no justified reason to remove the tie if the applicants do not intend to sell. Currently they comply with the agricultural tie as they either work or last worked in agriculture. This condition relates to being retired and to the widow or widower of such a

person.

2) Mrs Wallis is suffering from a medical condition and the applicants wish to ensure domestic arrangements are ordered and organised in good time.

It is considered that the health of the applicants does not affect the agricultural tie, due to the wording of it and as they have stated within point 1 that they do not wish to sell, it is unclear as to how the removal of the tie will help with domestic arrangements. If the intention was to sell the property then this could be assessed in further detail, but the agent has clearly indicated that this is not the case.

3) Evidence of an appeal submitted where a marketing campaign was deemed unnecessary.

This has been looked at and the appeal was following a certificate of lawfulness for non-compliance with an agricultural tie condition. The COL allowed the current occupiers to continue the occupation not complying with the tie but any future occupiers who met the condition's requirements would still need to adhere to the restrictions. An application was then submitted to remove the tie and this was refused and appealed. The inspector allowed the appeal on the basis that there was no evidence that the condition was necessary for the small holding as the holding was very small and unlikely to be capable of supporting a full-time agricultural worker.

However this case differs from the appeal, in so much as the condition on the appeal did not refer to those who 'last worked' in agriculture, thus allowing a retired agricultural worker to occupy the dwelling and the holding was approximately 4 acres, not the 15 acres that this applicant owns.

4) The large house and smallholding and high value demonstrate why a marketing campaign would be fruitless.

This is not based on tested evidence of carrying out any marketing, in addition to this as stated within this report the land ownership extends to 15 acres, though only the approx. 7 acres has been referred to. Also the owners comply with the tie and do not currently intend to sell the premises.

5) There are a lack of purchasers from the world of horticulture, nursery and plant propagation.

This may be the case however the condition is for an agricultural and forestry tie and as such another agricultural business may be successful on the site, this has not been addressed.

6) SSDC accepted evidence of the nurseries financial pressure in 2015 when allowing some of the land to be released from the Section 106 agreement.

The Section 106 was assessed on its individual merits at the time and based on the applicants need to cover debts. Within the report the Case Officer stated;

"A condition on the 2000 planning application restricted the occupancy of the dwellinghouse with an agricultural tie and the Section 106 tied the land to the dwellinghouse with some area of land being allowed to be let for short periods of time. A request was made in 2008 to allow the release of some of the land so that it could be sold separately, and this was allowed. This request seeks to allow the remainder of the land shown in yellow on the Section 106 agreement to be released as the land has not been used in conjunction with the nursery since 1988."

The variation was supported as the land had not been used in connection with the nursery for some time and as such was considered surplus to the nursery activity. The application showed

that the land containing all the polytunnels and the dwelling were to remain as one.

Additionally this application shows that the applicants still own a proportion of the land that was released from the Section 106 agreement and therefore can be included in any marketing of the agricultural dwelling.

**Conclusion:**

It is considered that the application does not provide the evidence required to support the removal of the agricultural tie condition and the application also fails to recognise the full extent of land ownership which would make the site more appealing to an agricultural business. The agent routinely refers to 7 acres of land when the valuation includes up to 15 acres of land, as shown on the site plan edged in blue.

Furthermore the owners do not wish to sell the property at this time, and as they last worked in agriculture, they still comply with the agricultural tie, accordingly it is considered that there is no need or justification to remove the condition which is still considered to be;

- Necessary
- Relevant to planning
- Relevant to the development to be permitted
- Enforceable
- Precise and
- Reasonable in all other respects.

Therefore it is considered that the proposal is contrary to the aims and objectives of policy HG10 of the South Somerset Local plan and the NPPF.

**RECOMMENDATION**

Refuse

**SUBJECT TO THE FOLLOWING:**

01. The application lacks evidence that the property has been appropriately marketed and that there is no longer a need for the continued use of the occupancy condition, no. 02 on planning permission 04/02261/FUL, contrary to Policy HG10 of the South Somerset Local Plan 2006-2028, and the NPPF.

**Informatives:**

01. In accordance with paragraphs 186 and 187 of the NPPF the council, as local planning authority, takes a positive and proactive approach to development proposals focused on solutions. The council works with applicants/agents in a positive and proactive manner by;
  - offering a pre-application advice service, and
  - as appropriate updating applications/agents of any issues that may arise in the processing of their application and where possible suggesting solutions.

In this instance no pre-application advice was sought prior to submission. During the life of the application the Agent was informed of the District Councils view.