

OFFICER: Lee Walton (01935) 462324

APPL.NO: 07/05377/COU APPLICATION TYPE: Change of Use

PARISH: Fivehead WARD: ISLEMOOR

DESCRIPTION: Change of use of land from paddock to gypsy site for 4 no pitches. GR (335271/122354)

LOCATION: Land Os 2847 part, Isle Abbotts Road, Fivehead, Taunton, Somerset TA3 6QH

APPLICANT: Mr William Birch

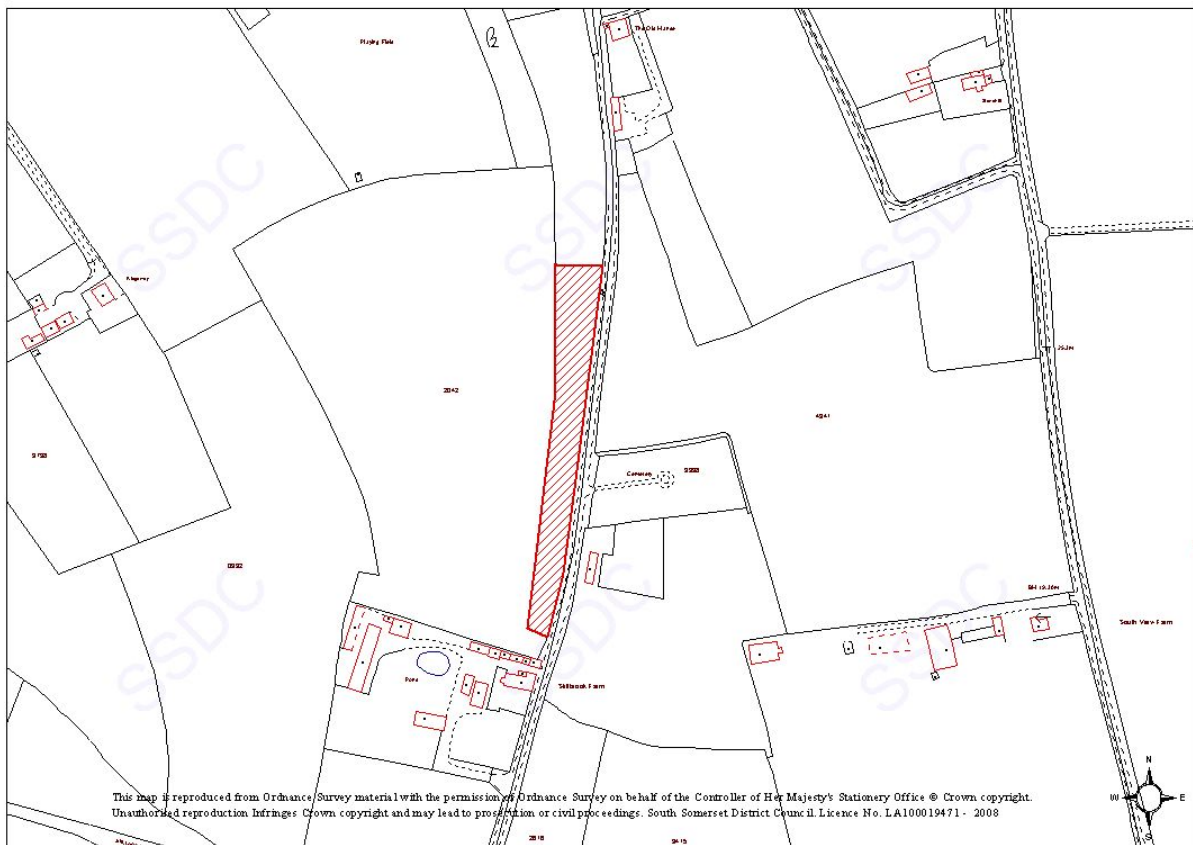
AGENT: Matthew Green, Green Planning Solutions LLP, 3A High Street, Much Wenlock, Shropshire

DATE ACCEPTED: 23 November 2007

Reason for Referral to committee

The Ward Member has asked that the application be brought to Committee given the local public interest that is raised by the unauthorised presence of the occupants and to permit Members to consider the issues raised by the application.

Site Description and Proposal



The site is designated part of the open countryside and is found some 500metres south of the village of Fivehead, a settlement located within the countryside without the benefit of development limits. The village has limited services and sits a short distance south of the main Langport - Taunton Road.

The proposal seeks change of use to a gypsy site providing for 4(no.) residential pitches. Occupation of the site has commenced and works on site have been ongoing without the benefit of any authorised planning permission.

Planning History

05/02326/FUL - Erection of a stable building. Approved.

Policy Context

Section 38(6) of the Planning and Compulsory Purchase Act 2004 repeats the duty imposed under 54A of the Town and Country Planning Act 1990 and requires that decisions must be made in accordance with relevant development plan documents unless material considerations indicate otherwise.

Relevant Development Plan Documents:

South West Regional Spatial Plan
Policy GT1 - Housing
Policy VIS 1 - Expressing the Vision
Policy VIS 2 - Principles for Future Development

Somerset and Exmoor National Park Joint Structure Plan Review 2000
Policy 36 - Sites for Gypsies and Travelling People
Policy STR1 - Sustainable Development
Policy STR6 - Development Outside Towns, Rural Centres and Villages
Policy 49 - Transport Requirements of New Development
Policy 5 - Landscape Character

South Somerset Local Plan (Adopted April 2006):
Policy HG11 - Long Term/Residential Sites
Policy ST3 - Development Areas
Policy ST5 - General Principles of Development
Policy ST6 - The Quality of Development
Policy EC3 - Landscape Character

Consultations and Representations

Parish Council - Objection. The Parish Council met on 10th Dec 2007 to discuss this application. At public session there were 85 villagers present. This was one of the largest audiences we have had in recent years and shows a clear level of concern. We have tried to address their concerns together with those of the Parish Council in our comments that follow:-

1. Having reference to SSDC Local Development Framework and Policies ST2, ST3 and ST6 of the Joint Structure Plan Review it is clear that Fivehead has not been identified as a village suitable for development and therefore does not have a development plan or a defined development boundary. Any development is therefore considered to be within the open countryside. As the proposed development does not constitute infilling or minor extensions to small groups of houses, it is contrary to the Local Development Framework in that it does not benefit economic activity, maintain or enhance the environment but does foster growth in the need to travel.

2. With reference to the document "PLANNING FOR GYPSY AND TRAVELLER CARAVAN SITES (PGTCS) 01/06":- There has been an obvious disregard of the planning process as there should have been no movement onto the site without planning consent. Consultation

with the planning office is advised prior to purchase. Para. 59. This was the most contested item at our public session. Feelings ran strongly as the public felt there one rule for gypsies and travellers and another for the general public. (A local retiring farmer, who does a lot for the community, did ask the Planning Dept, prior to auction, whether a wooden home might be put on this site. He was told quite clearly that this would not be contemplated). Local residents being unable to build on the site are placed at an unfair disadvantage. Because of the gypsies approach to planning matters and the exceptions and provisions for Gypsies and Travellers the land is of greater value to them enabling them to outbid any member of the general public whose interest is restricted to agriculture, horticulture, horses or otherwise.

3. The application is not transparent. The site plan shows only half the site which is extremely misleading. At the northerly end of the paddock, which has a separate entrance, the surface has recently been hard cored to facilitate the parking of heavy plant (a tarmac-ing lorry), in effect using the site for a business. There is also concern at the storage of numerous 200 litre barrels on the site (presumably bitumen). Surely such barrels would come under the Control of Hazardous Substances. Is this site practical for both business and domestic use? (PFGTCS 01/06 para.56).

4. The wooden building, erected as a stable block, when constructed had a tie to the owner of the property 17 Millers Orchard, Fivehead. Use of this building therefore requires planning permission. This was clearly stated in the sale particulars.

5. PFGTCS 01/06 12b states its intention is to reduce the number of unauthorised encampments and developments and the conflict and controversy they cause, and to make enforcement more effective, and under sustainability 64a considers the promotion of peaceful and integrated coexistence between site and the local community.

The community has been quite unsettled by these recent events, clearly demonstrated by the number of people at our meeting.

a. The proposed development is directly opposite the parish cemetery and, if allowed, will spoil the solitude and dignity of the cemetery. Mourners will be overlooked by a continuous presence and the character of the cemetery will be changed. This will be especially so if the site is developed as an industrial work area.

1. The Private Keep Out, signs erected within days of the occupation of the site appear unfriendly and do not demonstrate a willingness to integrate into the community. Parishioners have said they find them intimidating.

6. Sustainability. This site does not comply with the requirements for sustainable development. It is not positioned on suitable public transport infrastructure as identified in the Local Development Plan.

7. This proposal would cause an increase in traffic movements both business and domestic. The junction to the north of the site, by the Old Manse, (Isle Abbots Road with Hazel Tree Lane) is dangerous. Furthermore, when development was considered for Fivehead at the request of SSDC, who were seeking additional areas for housing, the junctions out of the village onto the A378 were deemed to be unsuitable to take more traffic hence only infill would be permitted.

8. This is a very narrow site. The field behind it is very wet in winter and historically there is flood water running down the road from the area of the gateway below this site. There are concerns that this waterlogged land is not suitable for the installation of a septic tank. Tests to confirm suitability are needed. There may be current issues over grey water disposal.

9. The council understood that there are vacancies on the nearby Ilton site for gypsies and travellers, if this is the case then we would question the need for this site. Council is concerned at the concentration of permitted gypsy camps/developments in the local area.

10. Should this application be successful Council would like to see more and better screening especially at the southern end beside Stillbrook Farm. This property is the most affected by far, especially in terms of both increased noise and loss of privacy let alone depreciation in value. They have had this situation forced upon them illegally and as such, Council feel more effort should be forthcoming to screen the site at this end to minimise the impact.

11. Council understands the duty on local authorities under the provisions of the European Convention on Human Rights to actively seek to eliminate unlawful discrimination, and promote good race relations but this does not give gypsies and travellers a right to establish sites in contravention of planning control. The rights of the settled community must also be considered.

Community Liaison Officer - Awaited

County Highway Authority - Fivehead has no development limit. While it may have a post office, there are no primary or secondary schools and I am not aware that the village has much employment, retail, leisure, recreation and health facilities. As such, the occupants of the site are likely to undertake lengthy journeys to access such facilities. These journeys are likely to be made by the private car, given that the bus service running along the A372 only operates on an hourly basis. Consequently, it could be argued that the development would be contrary to Government guidance given within PPG13 and RPG10, and to the provision of policies STR1 and STR6 of the Somerset and Exmoor National Park Joint Structure Plan Review, that seeks to minimise the need for journeys particularly by the private car.

As a result, under normal circumstances the Highway Authority would recommend the application for refusal on sustainability grounds. However, Policy 36 of the Somerset and Exmoor National Park Joint Structure Plan Review states that 'the provision of sites for gypsies and other travelling people should be made where the site is within reasonable distance of a settlement providing local services and facilities'. The site is approximately 3.0kms from Curry Mallet, which is the nearest settlement with any facilities. I consider that this distant may not be so great as to conflict with Policy 36.

In detail, the access to the site at present is substandard by reason of its consolidation and surfacing and the level of visibility that can be achieved due to the presence of the existing boundary hedge that fronts the highway. However, this is all in land within the applicants control and as such improvements can be made.

Therefore, in the event of permission being granted I would recommend that the following conditions be imposed:

1. The proposed access over the first 4.5m 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, which shall have been submitted to and approved by the Local Planning Authority.
2. Any entrance gates erected shall be hung to open inwards and shall be set back a minimum distance of 4.5m from the carriageway edge.
3. The gradient of the proposed access shall not be steeper than 1 in 10.
4. Provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto the highway details of which shall have been submitted to and approved by the Local Planning Authority.

5. The development hereby permitted shall not be occupied until the turning space shown on the submitted plan has been properly consolidated and surfaced to the satisfaction of the Local Planning Authority. Such turning space shall be kept clear of obstructions at all times.

6. There shall be no obstruction to visibility greater than 900mm above adjoining road level in advance of lines drawn 2.0m back from the carriageway edge on the centre line of the access and extending to points on the nearside carriageway edge 33.0m either side of the access. Such visibility splays shall be fully provided before the development hereby permitted is first occupied and shall thereafter be maintained at all times.

SSDC Technical Services - No comment

Wessex Water - General Information and informative(s) to be attached to any decision.

Environment Agency - No comment

Planning Policy - Circular 01/06 requires Local Planning Authorities to identify and allocate sites for Gypsy and Traveller accommodation to meet an identified need. The Public Consultation - Review of additional pitch requirements for Gypsies and Travellers in the South West, Draft Policy GT1, identified that there is a requirement for 17 residential pitches and 10 transit pitches in South Somerset. The Examination in Public (EiP) of this Gypsy and Traveller policy is to take place from Tuesday 4th March to Friday 7th March at the Thistle Hotel in Exeter.

Policy HG11: Long Term Residential Sites, of the adopted South Somerset Local Plan (2006) permits development for gypsy and caravan sites in areas outside of AONBs or SSSI's as long as the following criteria are met:

1. Vehicle movements, noise, fumes or any subsidiary business activities would not harm the residential amenities of neighbouring dwellings or the character of the area.
2. The site is reasonably well related to schools and other community facilities.
3. No serious highway problem would result.
4. The site includes the following facilities:
 1. A refuse collection point.
 2. Access to a drinking water supply.
 3. A satisfactory means of sewage disposal/management and surface water disposal.
 4. Hardstanding for living vehicles and ancillary parking spaces.
 5. A defined safe play area for children.

It is difficult to assess exactly what facilities are provided on site from the information submitted with the planning application although I note that the applicants are of the view that the proposal does comply with Policy HG11. Whilst being well related to the settlement of Fivehead where I believe there is a shop/post office and a public house the site is not closely related to other dwellings so an impact on the amenity of neighbouring dwellings would be minimal. I also believe that there is a primary school at Curry Mallet, which the applicants state is just less than 3 km away; which in my view could be considered to be "reasonably well related". Given that there is a need for sites for Gypsies and Travellers in South Somerset and as long as you can be satisfied that the criteria above are met then no planning policy objection is raised.

Landscape Architect - I see that the site lays outside the village, and in open countryside. Development in such a location is contrary to policy ST3, unless the proposal inherently 'maintains or enhances the environment' which this proposal does not.

The paddock is linear and narrow, and runs alongside Isle Abbots road. Any development on this plot would appear as ribbon development. This is contrary to the settlement form, which is nucleated around the church, with northward extension back toward the Taunton-

Langport road, whilst to the south, there is relatively open land beyond a relatively well defined village edge. I also note that the plot doesn't allow for concentrated development. Hence I view its linear layout beyond the established settlement as being at variance with the locality, and thus contrary to policy ST5 para 4.

2 neighbour notifications were sent to adjoining properties and a site notice (General Interest) posted at the site. There have been 23 responses received. These relate to:-

- Unsustainable location
- Local services. Oversubscribed school at Curry Mallet
- Highways safety, dangerous junctions, narrow country lane.
- Opposite village cemetery - spoils the solitude and peacefulness of the cemetery. People feel intimidated whilst being overlooked. Intrusive noise.
- Circular 01/06 point 70 on human rights states that 'The obligation on public authorities to act compatibly with Convention rights does not give gypsies and travellers a right to establish sites in contravention of planning control.'
- Human Rights of the local settled community, which has been considerable unsettled by the breaking of legislation in the area.
- The system does nothing to enhance mutual respect and consideration between both communities and makes it more difficult for the gypsies to integrate.
- Drainage
- Business as well as a residential site.
- Encroaching on the surrounding countryside.
- Ribbon development
- General downgrading of the amenity value of the area. How is a suitable screening between the road and the new installations is going to be provided. The land sits approx. 2 feet above the road level. Lane verges are breaking down.
- The site is already hideous, with tar macadam everywhere, drums of what looks like chemicals stored on it. This is surely dangerous and potentially hazardous to the environment.

Applicant's supporting information

The applicants are English/Romany gypsies who comply with para. 15 of Circular 01/06. The site lies 500metres south of the settlement of Fivehead. The site measures approx. 0.40ha. The proposal is for 4 pitches within two caravans each, one of which may be a mobile home. Entry into the site will be via an existing access.

Applicant's personal circumstances evidence

This is awaited from the applicants having been requested. The evidence is of importance, as is site demand as distinct from the wider planning merits of the case were the Local Planning Authority to consider a refusal at which time the evidence is of particular relevance.

Prelude to considering the planning merits

The Parish Council's response focuses in part on the lack of a development boundary and the immediate area being recognised as an unsustainable location for development. Nevertheless the application, having accepted the ethnic background of the applicants, engages policy HG11 (Gypsies and Travellers). Notwithstanding the unauthorised and unlawful way in which the applicants have entered the site, the first consideration is the suitability of the site in terms of planning considerations and the immediate policy that is engaged is policy HG11. This policy should not be considered to take precedence over all other policies. The broader policy context is of relevance but clearly policy HG11 represents an exceptions policy, its relevance and the context in which it is used is discussed below and it must be expected that there will be some relaxation in the way other policies might be interpreted, especially at this time when government advice (including circular 01/2006)

seeks to have local authorities provide location policy to identify sites that can address the supply demands for gypsy and traveller sites.

Whether local demand is being met is a critical factor in determining applications although this should not lead to inappropriate locations becoming permanently occupied. This point must be stressed. An alternative to a refusal is a temporary permission. Circular 01/2006 encourages the use of temporary permissions to await the point in time when local authorities have addressed local supply demand for sites. It is possible to consider temporary permissions even in areas where permanent occupation is considered inappropriate.

Planning Considerations

The application engages policy HG11 (Gypsies and Travellers), which is considered alongside all other relevant local plan policies that seek to protect the countryside.

Proposals for gypsies by their nature tend to reflect locations beyond development areas. An 'exceptions' policy: policy HG11 is considered in the same way as other exceptions policy, for instance, policy HG9 (Rural Housing Need). The criteria used by both policies having been engaged, there remains the requirement to consider all other relevant local plan policy, but as the terminology suggests there is an exception allowed having considered the broader policy implications. In the case of the rural affordable housing needs policy if demand is to be met there may be alternatives that sees development a little beyond the immediate area of the settlement boundary where otherwise development is the preferred location. In the same way policy HG11 is engaged that permits some relaxation of the way in which we would view the broader policy context.

Central government advice issued in Circular 01/2006 (Gypsies and Travellers) is central to the consideration of this application. This requires local authorities to identify parcels of land suitable for use by gypsies and travellers. It provides for a balance to be struck between the needs of gypsies and travellers to find sites (acknowledged as often difficult) and in return requires gypsies and travellers to work with the planning system in support of sustainable communities.

The applicants moved on to the site in breach of planning and occupied the site unlawfully. Enforcement Officers have been active but the occupants have continued to develop the site despite being aware of the need to work with the planning system. Public feeling is aroused by the actions of the occupants - critically the circular's emphasis is that planning law applies to gypsies and travellers in the same way as to all others. There is widespread public frustration that the law is being abused. That this might form part of an argument against the proposal is not disputed but such sentiment needs to be put into some context and where a site is ultimately not considered suitable as a gypsy and traveller site, unlawful occupation can be given its full weight.

In considering the application having accepted the applicant's gypsy status we have to consider the merits of the application in terms of the suitability of the site related to visual amenity, public gaze, mitigation measures to address any of the above, highway requirements, sustainable location (mindful that public transport is not a critical issue where the exceptions policy is engaged), and any other materials circumstances arising.

Description

The site lies to the western side of a quiet country lane that lies to the south of the settlement known as Fivehead. This settlement is without a development area and has limited services and most residents will be reliant on private travel arrangements. Gypsies and travellers are expected will be primarily dependent on private means of transport and in this respect are treated differently to the wider public, indeed there is policy HG11 to work with.

The site forms a long narrow strip of land alongside the highway, aligned with a hedgerow. Proximity to the roadside and the presence of the hedgerow helps to screen the site when travelling along the road. The land is raised above the roadside, not that this makes the site any more prominent simply because of the presence of the retained hedgerow. There are two gated accesses onto the land. One sits towards the northern end of the site and offers access into a grassed area, the other offers access to the hardcore surface, the stables and mobile homes. The hardcore is spread towards the southern end of the site.

The site lies opposite the village cemetery, its main entrance (centred on the hardcore surfaced area) sits a few metres immediately to the south of the cemetery entrance. Structures on the site are positioned immediately opposite the cemetery entrance, but it is proposed that these will stretch southwards and a little to the north of this point.

The proposal shows four plots with mobile homes. These are stretched out along the roadside. Mobile homes are each accompanied by a touring caravan. The northern area of the site is shown as open ground, as exists. Proximity of the mobiles to the roadside, the presence of the hedgerow tends to screen the site with the exception that during the winter months the nature of planting, namely, deciduous planting will inevitably help 'reveal' the site to passers-by.

Visual Amenity

The site is not considered to be so prominent due to the relationship of structures to the roadside: the hedgerow screens the site because the structures are near by and less exposed causing less visual impact in contrast to a highly engineered roadside where hedgerow is set back and the site much more exposed to public gaze. The lack of public gaze is also emphasised by the type of road, which is not considered a main route with limited wider public views of the site. Of course, passing pedestrians obviously will be aware of the site, and the location of the cemetery causes some concern and visitors to the graveside will face onto several structures as they enter and leave the cemetery. However, in considering the relevance of the cemetery the main issue remains one of visual amenity. This needs to be considered in terms of pedestrian footfall. Members may wish to consider the proximity and relationship of the site to the cemetery but very little weight can be attached to the relationship.

Landscaping through planting, reinforcement of the hedgerow - perhaps a double hedge that during the winter months would reduce views into the site - can be considered, securing a buffer to the south of the site (suggested by the Parish Council). The fact remains that the stables building in many ways was the most prominent structure on the site during the officer's site visit. It was this structure on reflection that was higher and more obvious compared to the mobile homes and touring caravans on site.

The Landscape Officer objects to the scheme being ribbon development whereas the village of Fivehead is nucleated. The Landscape Architect comes out strongly against the proposal in terms of landscape character. He notes that the plot doesn't allow for concentrated development. Its linear layout beyond the established settlement is at variance with the locality, and thus contrary to policy ST5 para 4.

Character and local distinctiveness forms part of the planner's 'tool kit' in considering the merits of an application and some weight should be attached to the approach that seeks to manage the way in which proposals are considered and that seek to work with the context to which a site relates. The danger in ignoring the role of character, which has been developed within the local plan policy context is that an area's clear character is eroded and in the longer term undermined by development otherwise not controlled. The approach does not stop development but does help to define the appropriateness of a development to a particular location. The need for applicants to engage with planners in pre-application advice

can be seen to be paramount to avoid inappropriate locations becoming centres of tension undermining the government's expressed objective in support of sustainable communities. The landscape architect sees merit in a nucleated and concentrated site rather than one that sprawls.

There is a farmhouse to the south of the site. The number of pitches present on site extends the site alongside the highway, whereas one pitch would be more capable of addressing the character issues raised above. The scale of a proposal is therefore of interest. In giving weight to character planners are positively working with policy that identifies suitable sites. Within this context the appropriateness of scale related to the particular proposal under consideration has some relevance.

Returning to visual amenity as opposed to character the former remains a significant issue and provided there is limited harm with mitigation proposals the linear development identified caused through the scale of development proposed remains relevant due to the scale witnessed. Of course, there is an expectation that the countryside is where gypsies will inevitably be found, but there is also an expectation that small scale is appropriate to rural villages where such development should not dominate villages and in working positively with the HG11 policy some concern is raised related not only to character but related to the scale involved. Use of a fraction of the site nearest the existing farmhouse would have maintained a consolidation of development as against the encouragement of sprawl that is otherwise the case, notwithstanding that gypsy communities might be expected to have extended sites those sites need to be suitable to their location.

Sustainable Location

County Highways raise no objection in terms of location. Sited some 500 metres south of Fivehead a village designated in the countryside without a development area and with limited services. Gypsies and travellers, as noted elsewhere in this report, are expected will be primarily reliant on private travel arrangements. Access to the Langport - Taunton Road is relatively straightforward with swift travel arrangements in place to larger settlements, their services and facilities. The proposal is considered reasonably well related as per policy.

Response to the Parish Council's comments

The Parish Council refers to the local development plan. This should include reference to the Council's exceptions policy HG11, not quoted in their response. This and the broader planning policy base can be used to consider the application. Policy ST3 identifies development areas and conversely area in the open countryside. Gypsies and travellers rarely have the opportunity of finding sites within a development area and the use of policy ST3 to oppose this kind of application is likely to be perverse. There is therefore a need to consider the visual impact of the application in terms of policies HG11, ST5, ST6 and EC3 as well as the broader planning objectives presented by local plan policies, as well as the material considerations including the supply demand for sites.

Point 2 of their letter refers to 'an obvious disregard of the planning process' and that 'This was the most contested item at our public session.' In considering the planning application we have first to consider the broader planning merits of the proposal. The way in which the site was occupied in breach of planning and without any pre-application advice, notwithstanding local upset due to the unlawful way in which the site is occupied the breach and the way in which the applicant occupied the site without relevant planning permission in place, or lacking any pre-application advice all adds due weight to the case against the application where a proposal is considered for a refusal having failed to address the wider policy objectives. Of itself the unlawful occupation of the site cannot be used as a standalone reason, with planners having to first engage with the relevant planning policy and whether this is considered ultimately to favour the applicant's case or otherwise.

Point 3 of their letter refers to concerns over storage of possible hazardous materials and to a shared residential/ business use of the site. A planning condition is the correct means to control the site. It would not be expected that a business use of the site is readily accepted although as with many agricultural operations the storage of farm related articles and other industry goods is often blurred, although we should expect in this case to seek to control any hazardous materials or the use of the site that is anything other than ancillary to gypsy residential development.

Point 4 - A planning permission would supersede the earlier planning history that permitted personal use of the stables.

Point 5 - Refer to point 2 above. (a) The only reason not to support the application is concerned with visual amenity and detrimental harm rather than the presence of a cemetery and visitors to the site. The use made of the cemetery needs to be seen in context as with the use by pedestrians of the public highway that fronts the site. (b) Intimidation through the presence of 'keep out' signage is understood however there is no control over these signs.

Point 6 - Policy HG11 is relevant and the County Highways supports the location in terms of being a sustainable location.

Point 7 - Seen in context four mobile homes would not be seen as sufficient to warrant a refusal. There is no highways support for such a move. Policy HG11 is available to the applicants and generally supports the proposal.

Point 8 - A planning condition can be attached to any permission. Wessex water shows a water supply near by. In terms of a septic tank a condition can control this aspect.

Point 9 - An approach that takes in alternative sites is engaged once the proposed site is not considered suitable.

Point 10 - Landscaping and further screening can be controlled by condition.

Point 11 - Human Rights. These apply to all parties involved and where the location was considered unsuitable the rights of the applicants as well as the wider community would be engaged. In this particular case human rights have not been engaged with the location considered not unacceptable at the outset.

Owl Street Appeal

Members will be aware of the recent appeal dismissal where the Inspector referred to the landscape and visual amenity issues that were evident. This was the central reason for dismissing the appeal.

The Owl Street site was relatively exposed, having met highway requirements, set back the hedgerow to create the technical visibility splays, with the residential compound set on land higher than the roadway, the eye is drawn to the highway works, the widened roadway the exposed compound the presence of the caravan, the site located next to a relatively busy through road, exposed to a relatively high level of public gaze with limitations to mitigate its presence and to draw the eye away from its physical attributes given the initial highway problems identified.

Had the visibility splays not been required, in part demanded by the use of the road; had the hedgerow not been taken out and realigned the lack of any imposed technical features would have resulted in the passers-by eye not being drawn. With the help of screening its presence on site would have been lessened to an extent that the site would have been acceptable both visually and in terms of local character.

The landscape architect favoured development to the front of the site, this being in accordance with the character of the area. Occupation involved one pitch and was adjacent to a residential property. The scale and relationship to the built form tended to be favourable but the visual realities were much more evident.

It can be seen that the particular merits of the Owl Street site are clearly contrasted with the current applicant's site. The particular factors found here are considered to relate to character and scale, notwithstanding that visual amenity is less evident occupation of the site would always be evident.

Temporary Permission

Paragraph 45 of the new Circular states that temporary permission may be justified where it is expected that planning circumstances will change in a particular way at the end of the temporary permission period. This may occur, for example, when there is an unmet need and a reasonable expectation that new sites will become available at the end of that period, consideration should then be given to granting temporary permission.

Any granting of temporary permission on this site would permit full consideration to be given to the character issues that arise from consideration of the proposal and permit the Council to identify location site policy to address the supply demand that is evident. Given that the visual amenity is to some degree addressed a temporary period to remain on site would enable all outstanding matters to be resolved. The applicants would need to agree to a temporary permission otherwise there may be a case to address the longer term concerns now.

Housing Need

Since the Council's criteria-based approach started in the deposit draft version of the Local Plan in 1998, 10 applications have been refused (including 5 at one site at Gawbridge and the one at Owl Street) and during roughly the same period 7 have been approved.

The public consultation - 'Review of Additional Pitch Requirements for Gypsies and Travellers in the South West' (August 2007) identifies a need for 17 residential pitches and 10 transit pitches in the South Somerset District Housing Market Area. The Gypsy and Traveller policy of the Draft Regional Spatial Strategy underwent an Examination in Public (4-7th March 2008).

A new Gypsy and Travellers Accommodation Assessment is to be undertaken as part of the Strategic Housing Market Assessment (as required by government guidance) - although this is in its early stages.

As the allocations DPD is likely to be produced sometime after 2010, the Council must continue to deal with gypsy need on an ad-hoc basis through one-off planning applications, assisted by the Council's Community Liaison Officer. The Council has also recently undertaken some work to identify sites on County Council owned land that may have the potential to provide sites for gypsies or travellers in the future.

The situation as of 1st December 2007 in South Somerset was that there are two public residential sites. Tintinhull is fully occupied with 8 plots. Ilton is currently with 5 families on licence and two families who are not with a total of 6 plots. Ilton is awaiting the start of refurbishment and the creation of 4 new plots that will bring the total to 10 by the end of 2008. There are currently 7 families on the waiting list for either of the two Council operated sites at Ilton and Tintinhull.

Unauthorised sites as at the beginning of December 2007: there are 3 unauthorised sites holding 9 caravans.

Personal Circumstances

At the time of drafting this report the personal circumstances evidence is awaited from the applicant's agent. The applicant's agent's planning assessment submitted with their application does not refer to the personal background of applicant, dependents or other parties. Reference is made to village schools respectively 7.2 and 2.9kms distant. Issues of sustainability, of location in the countryside, of visual amenity and residential amenity are not disputed.

Evidence of personal circumstance has been asked for on the basis that were the application to be refused in determining the proposal full consideration would need to reflect on the personal circumstances and of the demand for gypsy and travellers sites which is discussed above.

Legal Issues

The Application

When deciding this application, the Committee has to have regard to relevant material planning considerations and these considerations will include (but not necessarily be limited to) the development plan policies referred to elsewhere in this report; policy guidance from central government; and the gypsy status of the applicant(s) and other persons occupying the application site, and their personal circumstances. The human rights of both the applicant(s), other occupiers of the site and third parties who may be affected by the Council's decision on this application also need to be considered.

As indicated, the Development Plan (comprising the Regional Spatial Strategy, the adopted County Structure Plan and the adopted Local Plan) is the starting point. Development Plan policies relevant to gypsies may be relevant to this application but only if the applicant(s) and other occupiers of the site are gypsies as defined, as to which see below.

Therefore, the first thing that the Committee has to do is to decide whether the applicant(s) and other occupiers of the application site are indeed gypsies for planning purposes. If they are not, then this application falls to be determined without reference to the relevant Development Plan gypsy policies and any other planning policy guidance on gypsies. The application would then have to be considered as simply development taking place in the open countryside and Development Plan policies for such development would be applicable, along with any non-gypsy justification for it.

However, even if the applicant(s) and other occupiers are not gypsies under planning law, there may be other material considerations, such as their personal circumstances, which might lead the Committee to decide that the statutory presumption in favour of the Development Plan should be overridden in this case. That statutory presumption is now to be found in Section 38(6) of the Planning and Compensation Act 2004 which says that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts (as will be the case with all planning applications), the determination must be made in accordance with the plan unless material considerations indicate otherwise.

In short, therefore, a condition precedent for the application of gypsy planning policies in this case is that the applicant(s) and other occupiers establish to the Committee's satisfaction that they are indeed gypsies. For planning law purposes, gypsies and travellers are now defined in Circular 01/2006 as:

'Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants educational or health needs or old

age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such'.

It will be apparent from this definition that the ethnic origin of a person calling himself/herself a gypsy is irrelevant for present purposes. What is relevant are the criteria set out in the Circular definition.

The leading court case on the status of gypsies, whether they are of nomadic habit and the approach to gypsy planning applications to be followed by decision-makers, including local planning authorities, is to be found in the Court of Appeal decision in *Wrexham County Borough Council -v- the National Assembly of Wales and Berry* (2003). Guidance was given by the Court (Lord Justice Auld) on the procedure and criteria for deciding nomadic habit. The Court's judgment concerned the old definition of gypsy, which the new Circular definition has replaced, but the guidance of the Court on the procedure to be followed by a decision-maker deciding gypsy applications is still partially relevant. Relevant extracts from the judgment (in the light of the changes flowing from Circular 01/2006) are as follows:

Whether applicants for planning permission are of nomadic way of life as a matter of planning law and policy is a functional test to be applied to their way of life at the time of the determination'.

Where a question is raised before [a decision-maker on a planning application] as to whether applicants for planning permission are 'gypsies' for the purpose of planning law and policy, he should: (1) clearly direct himself to, and identify, the policy meaning of that word; and (2) as a second and separate exercise, decide by reference to that meaning on the facts of the case whether the applicants fall within it.

If the decision-maker concludes that the applicants have the status of gypsies as a matter of planning law and policy, he should then give it whatever relevance or weight is accorded to it in the Local Plan when having regard to that plan and any other material considerations under [Section 38(6) Planning and Compensation Act 2004: presumption in favour of the development plan] and [Section 70(2) of the Town and Country Planning Act 1990: requirement to have regard to the development plan, if relevant, and any other material considerations].

If the decision-maker concludes that the applicants do not have the status of gypsies as a matter of planning law and policy, he may still have regard to their personal circumstances to the extent that he considers them relevant and of weight when considering material considerations, in addition to the development plan, under those provisions.

The Court (Lord Justice Clarke) went on to say:

- (i) The time at which gypsy status falls for decision is the date of the planning decision.
- (ii) The decision in each case [on such status] is one of fact and degree.

The following advice can be distilled from the *Wrexham* case and other decided cases, and this advice (coupled with that on human rights below) should guide the Committee in reaching a decision on this application:

- 1) The Committee needs to (a) have regard to the Circular 01/2006 definition of gypsies referred to above and (b) decide, as a matter of fact and degree based on the evidence presented, whether the applicant(s) and other occupiers of the site fall within that definition. The Committee's decision on this point and its reasons for so finding need to be clearly minuted;

- 2) Only if they are 'gypsies' under planning law (as defined in Circular 01/2006) can planning policies relating to gypsies and travellers apply to this application;
- 3) The LPA (acting through the Committee) has to decide a planning application (such as the current application) on the situation pertaining at the date of its decision. The relevant evidence presented to the Committee by and on behalf of the applicant(s), the planning officer and any other party (such as local residents) needs to be carefully weighed in the balance and a decision made on it as a matter of fact and degree. The reasons for that decision need to be clearly minuted;
- 4) In reaching its decision as to the gypsy status of the applicant(s) and other occupiers of the site, the Committee should bear in mind that the Planning Inspector who decided the 2005 appeal against the previous refusal of planning permission found that the then applicant (Mrs Isaacs), her husband, adult sons and other children were gypsies for planning purposes. To the extent that the current applicant(s) and the other occupiers of the site are the same persons (and the Committee needs evidence of this), the Committee needs to decide if they retain that gypsy status. The fact that they may have been gypsies for planning purposes in 2005 does not, as a matter of law, necessarily mean that they are still gypsies now. The gypsy status issue for all current occupiers needs to be looked at afresh by the Committee.
- 5) However, and as stated in the Wrexham case (see above), even if the Committee decides that the applicant(s) and other occupiers are not gypsies for the purposes of planning law, the Committee may consider that their personal circumstances are sufficiently weighty material considerations to override the relevant planning policies restricting development in the countryside as set out in the Development Plan. The personal circumstances of the applicant(s) and other occupiers (including children) are material planning considerations to be weighed in the balance by the Committee in reaching its decision. Those circumstances include the matters referred to elsewhere in this report and/or to be verbally reported by the officers, such as health and education issues. The Committee can decide the application on the basis of the personal circumstances notified and known to it;
- 6) Once the status of the applicant(s) and other occupiers has been determined, the Committee need to consider and have regard to the material Development Plan policies that are applicable to this application, together with any other material considerations, and determine the application in accordance with those Development Plan policies unless any material considerations indicate otherwise;
- 7) If the Committee decide to grant planning permission, it is open to the Committee to impose an occupancy condition limiting occupancy of the site to either specific, named occupiers or to persons who meet the status of gypsy, as defined in Circular 01/2006. Clearly there would need to be other appropriate conditions as well.

Human Rights

In deciding this application, the Committee must also consider whether any planning harm caused by the development in question is outweighed by the damage and interference with the applicant(s) human rights and the human rights of other occupiers of the site. Additionally, the Committee must consider the human rights of others (such as local residents) who may be affected by the development and any grant of planning permission.

The Committee's assessment of the human rights issues will need to be based on this legal advice and the evidence presented to the Council in connection with the planning application.

As the Committee will be aware, the Human Rights Act 1998 (HRA) enacted the European Convention on Human Rights into UK domestic law. The Convention imposes duties on public authorities, including local planning authorities, and Section 6 (1) HRA makes it unlawful for such an authority to act in a way incompatible with Convention rights, unless specifically mandated to do so by legislation that does not allow the authority to act differently. The most relevant Convention rights with this type of application are Articles 8

and 14, namely, (Article 8) the right to respect for private and family life, home and correspondence and (Article 14) the right to freedom from discrimination on the grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with national minority, property, birth or other status. Article 1 of Protocol 1 to the Convention (protection of property) is also relevant, as is Article 2 of Protocol 1 (the right to education). Both Article 8 and Article 1 of Protocol 1 allow proportional interference by the State with the rights expressed for purposes of environmental protection (which includes planning controls) or the control of property in the general interest.

For the purpose of considering Article 8 rights, any decision-maker (such as the Committee) has a duty to carry out an overt and structured assessment of the proportionality of the interference with human rights resulting from the action it proposes by asking itself a series of connected but discrete questions. To this end, the Committee must identify the (perhaps competing) interests that will be interfered with, carry out a balancing exercise of such interests to ensure the proportionality of the interference, decide the matter before it in the light of that balancing exercise and give reasons for its decision, with those reasons being minuted.

In deciding this application, and for the purposes of the required human rights assessment, the Committee should have regard to the following:

- (a) Does the proposed measure constituting the interference with human rights (the recommended refusal of planning permission) serve a legitimate aim of upholding planning policy; that is, is the objective sufficiently important to justify limiting a fundamental right under human rights legislation?
- (b) Is the measure proposed (the refusal of permission) rationally connected to that aim; that is, can it in fact serve to further that aim?
- (c) Is it the least restrictive way of achieving the aim; that is, are the means used (the refusal of permission) no more than its necessary to accomplish the objective?
- (d) Is it proportionate in the longstop sense that, viewed overall, the measure does not place too great a burden on the individual for the good of the community?

Some important factual matters that are relevant to the Committee's consideration of the human rights issues pertaining to this application include:

1. The seriousness of the impact of the Committee's decision on the applicant(s) and other occupiers basic rights including their security of accommodation, family life, health, children's education and ability to maintain their traditional travelling way of life;
2. The availability of an alternative site, including its suitability for the individuals particular needs, the financial circumstances of those affected, and the efforts made to find an alternative site;
3. Whether there has been a full and fair opportunity for the applicant(s) and other occupiers of the site to make their case for respecting their Article 8(1) rights, including those arising from their gypsy status, before the relevant administrative authorities, including a planning inspector;
4. Whether the site was established unlawfully;
5. The strength of reasons justifying an interference with human rights;
6. The seriousness of any enforcement measures contemplated and whether less restrictive measures could be taken;
7. The views and rights of others such as third party objectors and any other persons who may be affected by the development.
8. Why the applicant(s) / occupiers came to the site and whether they left a lawful pitch and why?
9. What planning conditions can be imposed?

10. What provision for housing homeless persons can be made if this application is refused?
11. Whether a decision to grant permission could arguably amount to a precedent for the district and whether it is desirable or undesirable in planning terms.

The above does not purport to be an exhaustive list. It will also be relevant to some of the material planning considerations to be considered in connection with this application, such as the availability of alternative sites, the needs of the applicant(s) and other site occupiers, personal circumstances.

Further enforcement action

Although the recommendation now before the Committee does not refer to further enforcement action, it is anticipated that the Committee may wish to discuss this aspect if the decision of the Committee is to refuse the current application. For legal reasons, it is strongly recommended that such a discussion does not take place at this Committee meeting and that the decision on any enforcement action be left to the Head of Development & Building Control to deal with under delegated powers. If the Committee wish to decide on future enforcement action and the nature of that action, then the Committee is advised that it does not presently have sufficient information before it to make that decision. A separate enforcement report will need to be prepared by officers for the Committee's consideration at a future date. No discussion should take place at this meeting. Most importantly, Members are urged to dismiss any question of enforcement action from their minds prior to making a decision on the current application.

Further enforcement action will engage the human rights of those enforced against and an assessment of the proportionality of the particular enforcement action to be taken will need to be carried out when a final decision as to enforcement method is made. The possibility of legal challenge to any such action should not be discounted, although that is no reason in itself to delay action. The fact that an appeal may be made against any decision to refuse planning permission for the current application is not a reason in itself to delay further enforcement action. However, as said, these are considerations for another day.

Conclusion

Consideration is given to the harm identified, mitigation that is possible, to need for sites and any very special circumstances arising from the application. Consideration of the application is based on the suitability of the site for occupation, the visual amenity arising, the character identified and any materials circumstances arising.

Gypsy and traveller sites by their nature will predominantly be found in the countryside and their occupants will be expected to use private means of transport. The location is considered sustainable, evidenced through the proximity to the Langport - Taunton Road.

The site fronts onto a quiet country lane that is not a main through route. Consequentially, public views are restricted. The presence of the cemetery has no particular consequence in considering the merits of the application other than in terms of the visual amenity explored as part of the pedestrian activity on the highway that crosses the front of the site.

There are no highly visible works required to make the site safe in terms of access arrangements. The visibility splays can be achieved without setting the hedgerow back or further exposing the site to public gaze. The structures within the site relate to the hedgerow and mitigation through enhanced screening - possibly including a double hedgerow, would aid screening of the site, mindful that occupation of the site would always be present to passers-by who would be aware of the site.

Small-scale development is considered appropriate for small rural villages, where development is considered not to dominate villages accordingly. There is no objection 'in principle' but it is considered that the development is inappropriate due to its scale that in turn engages with the issue of character, whereas a case might be made adjacent to the farmhouse towards the south of the site, the sprawl that has been encouraged engages with the issue of landscape and local character that is itself representative of a 'bigger issue' for the district. Pre-application contact would have identified policy objectives had the occupants engaged at the outset with the Authority.

Therefore on balance officers having considered the broader policy context, seek temporary planning permission that will permit supply/demand to be addressed, the limited visual impact identified coupled with the lack of any permanent change, being reversible, in character to countryside character that would otherwise represent the material harm.

RECOMMENDATION:

APPROVE

JUSTIFICATION

Notwithstanding the concerns that have been raised by the application that involve the consideration of landscape character, the strategic nature of which is given full consideration; the limited weight in favour of visual amenity appears generally supportive for the site's short term occupation during which time the supply demand for gypsy and traveller sites combined with the length of time required for the Authority to be in a position to address the issues of 'need' that are raised argues in favour of a temporary planning permission in accordance with the guidance of Circular 01/2006.

01. The permission shall be temporary for a period not greater than 5 years from the date of the decision notice at which time occupation of the site shall cease and all materials associated with the occupation of the site removed from the site.

Reason: This condition accords with the advise issued in circular 01/2006 and relates to anticipated changes and permits further consideration of issues arising at the time the temporary planning permission expires.

02. The occupation of the site hereby permitted shall be limited to Mr William Birch and his dependents and to no other persons other than those named in a list that shows the occupation of the other mobile homes/ caravans to be submitted in writing to the Local Planning Authority within 1 month of the date of the decision notice.

Reason: The site is considered acceptable for occupation in the short term and at the end of which the issues arising shall be able to be reviewed in accordance with the advise issued in circular 01/2006.

03. When the land ceases to be occupied the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to the land in connection with the use shall be removed. Within 1 month of that time the land shall be restored to its condition as an orchard before the use commenced.

Reason: In the interests of visual amenity in accordance with policies ST5, ST6 and EC3 of the South Somerset Local Plan 2006.

04. No more than eight caravans (mobile home and touring caravans), as defined in the

Caravan Sites Act 1968 and Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006, (of which no more than 1 shall be a static caravan or mobile home and 1 touring caravan) shall be stationed on the site at any time.

Reason: To avoid any ambiguity as to what is approved and to avoid any detrimental harm arising to visual amenity and character of the locality in accordance with policies ST5, ST6 and EC3 of the South Somerset Local Plan 2006.

05. No caravan shall be stationed on the site other than within the area shown on the approved drawing (block plan BIR1) dated stamped 29th October 2007.

Reason: To avoid any ambiguity as to what is approved and to avoid any detriment to visual amenity and character in accordance with policies St5, ST6 and EC3 of the South Somerset Local Plan 2006.

06. No commercial activities shall take place on the land unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of visual and neighbour amenity and intensification in the use of the site in accordance with policies ST5 and ST6 of the South Somerset Local Plan 2006.

07. The gradient of the proposed access shall not be steeper than 1 in 10.

Reason: In the interests of highway safety in accordance with policy 49 of the Somerset and Exmoor National Park Joint Structure Plan 2000.

08. The proposed access over the first 4.5metres 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, which shall have been submitted to and 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 Park Joint Structure Plan 2000.

09. There shall be no obstruction to visibility greater than 900mm above the adjoining road level forward of a line drawn 2.0metres back and parallel to the nearside carriageway edge and extending a distance of 33 metres either side of the access. Such visibility splays shall be fully provided before the development hereby permitted is first occupied and shall thereafter be maintained at all times.

Reason: In the interests of highway safety in accordance with policy 49 of the Somerset and Exmoor National Park Joint Structure Plan 2000.

10. Any entrance gates erected shall be hung to open inwards and shall be set back a minimum distance of 4.5 metres from the carriageway edge.

Reason: In the interests of highway safety in accordance with policy 49 of the Somerset and Exmoor National Park Joint Structure Plan 2000.

11. A scheme of planting shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall be submitted within 1 month of the date of the decision. The scheme shall be implemented in its entirety during the first season (October to March inclusive) following the decision. Full particulars shall show a buffer

zone at the southern end of the site and shall involve the thickening of the hedgerow (double hedgerow) along the entire road frontage related to the presence of the residential pitches, and tree planting as appropriate. Any tree, shrub or hedge plant (including replacement plants) removed, uprooted, destroyed, or be caused to die, or become seriously damaged or defective, within 5 years of planting, shall be replaced by the occupants with species of the same type, size and in the same location as those removed, in the first available planting season following removal.

Reason: In the interests of visual amenity in accordance with policy ST5 and ST6 of the South Somerset Local Plan 2006

12. Within 1 month of the date of the decision written confirmation of length, width and height of the mobile homes (structures) shall be submitted to the Local Planning Authority. No further structures shall be brought onto or erected on site other than replacements for the existing structures which shall not exceed the existing structures in size, and their shall be no extensions to these structures.

Reason: In the interests of visual amenity in accordance with policy ST5 and ST6 of the South Somerset Local Plan 2006.

13. The development hereby permitted shall not be occupied until the turning space shown on the submitted plan has been properly consolidated and surfaced to the satisfaction of the Local Planning Authority. Such turning space shall be kept clear of obstructions at all time.

Reason: In the interests of highway safety in accordance with policy 49 of the Somerset and Exmoor National Park Joint Structure Plan 2000.

14. Provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto the highway details of which shall have been submitted to and approved 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 Park Joint Structure Plan 2000.

15. Before the development hereby permitted is commenced, foul and 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 that the site is adequately served and disposes of water without interference or contamination of the surrounding area, further to policies ST5 and ST6 and HG11 of the South Somerset Local Plan 2006.