



JOINT AREA COMMITTEES IN SOUTH SOMERSET
Officer Report On Planning Application:
08/05225/COU

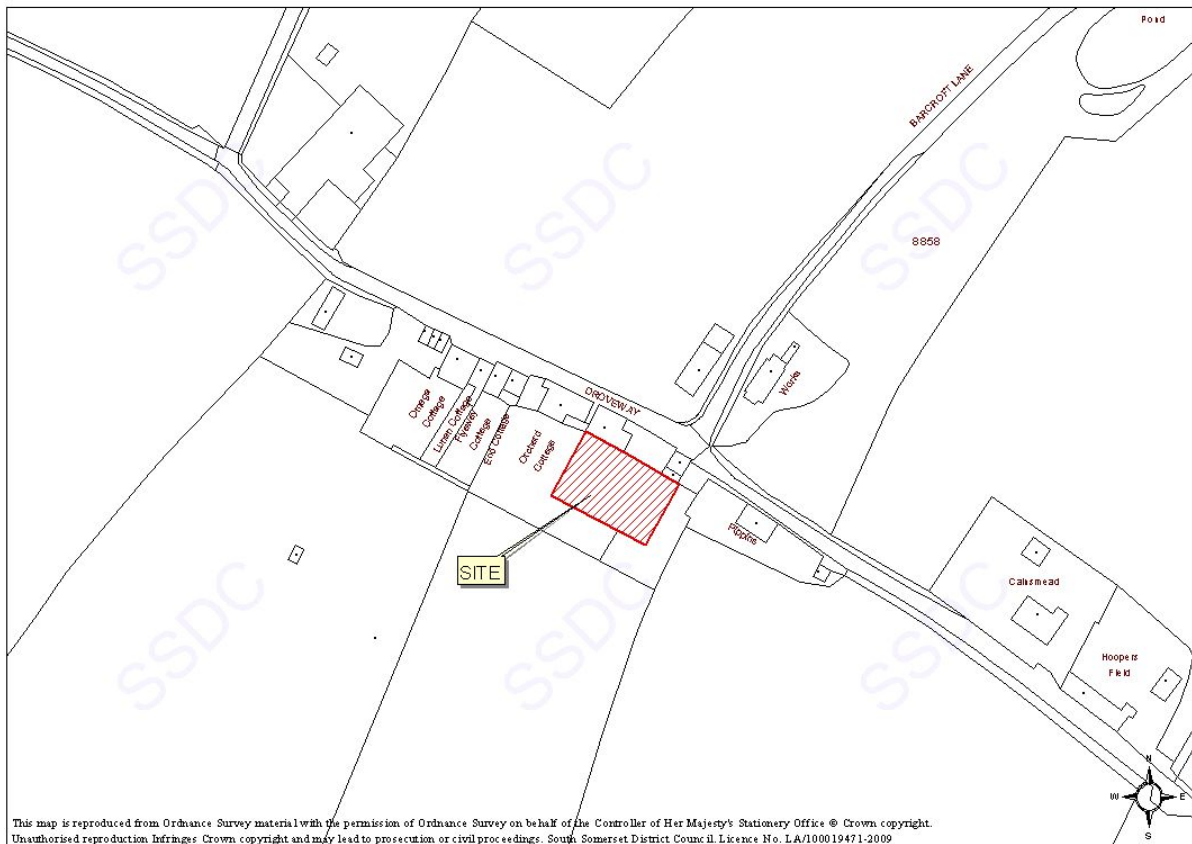


Proposal:	The change of use of land to form extension to residential curtilage (Retrospective) (GR 342787/117527)
Site Address:	Hillberry, North Street, South Petherton
Parish:	South Petherton
Ward: (SSDC Member)	SOUTH PETHERTON Mr D P Robathan (Cllr) Mr K Ronaldson (Cllr)
Division: (SCC Member)	SOUTH PETHERTON Mr J Sharpe (Cllr)
Recommending Case Officer:	John Millar Tel: (01935) 462465 Email: john.millar@southsomerset.gov.uk
Target date:	4th February 2009
Applicant:	Mr N Screen
Application Type:	Other Change Of Use

REASON(S) FOR REFERRAL TO COMMITTEE

The application is to be considered by the Joint Area North Committee at the request of the Ward Members and with the agreement of the Area Chairman. It is felt that the issues should be given further consideration by Members.

SITE DESCRIPTION AND PROPOSAL



Hillberry is one of a line of properties along North Street, to the north of South Petherton. It is just beyond the defined development area of South Petherton and as such is considered to be open countryside. The property has agricultural land to the rear, part of which has been used to form a

residential curtilage. This however, does not benefit from a grant of planning permission. At present the land to the rear of Hillberry is used as residential curtilage and land to the rear of the neighbouring property, Orchard Cottage (also under the same ownership) is still agricultural land. This area has been separated from the agricultural land to the south by a mix of hedgerow planting and fencing. The hedgerow runs in line with the rear boundaries of the neighbouring properties to the north west, all of which have gardens.

There is a footpath running through the site, which is currently the subject of a diversion order.

The application is made retrospectively to allow the retention of the residential curtilage extension to the rear of Hillberry. Even though it has been separated from the field to the south, the land to the rear of Orchard Cottage is to remain as agricultural land. As such, this application only relates to the area marked red on submitted plan 5076 02, immediately to the rear of Hillberry.

HISTORY

08/03043/COU: The change of use of land to form extension to residential curtilage (retrospective) - Withdrawn.

POLICY

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

Relevant Development Plan Documents

Regional Spatial Strategy (RSS) for the South West (RPG10) (adopted September 2001):
VIS 2 - Principles for Future Development

Somerset and Exmoor National Park Joint Structure Plan (adopted April 2000):
STR1 - Sustainable Development
STR6 - Development outside Towns, Rural Centres and Villages
Policy 5 - Landscape Character

South Somerset Local Plan (adopted April 2006):
ST3 - Development Areas
ST5 - General Principles of Development
ST6 - The Quality of Development
EC3 - Landscape Character
CR9 - Public Rights of Way and Recreation Routes

Policy-related Material Considerations

Draft Regional Spatial Strategy for the South West (Proposed Changes July 2008):
SD3 The Environment and Natural Resources
SD4 Sustainable Communities
ENV1 Protecting and Enhancing the Region's Natural and Historic Environment

PPS's/PPG's
Planning Policy Statement 7: Sustainable Development in Rural Areas

South Somerset Sustainable Community Strategy
Goal 11 - Protection and Enhancement of Our Natural Environment And Bio-Diversity (Environment)

Parish/Town Plan - South Petherton
Local Environment

CONSULTATIONS

South Petherton Parish Council: Recommend approval.

SSDC Technical Services: No comments.

County Highway Authority: No observations.

Environment Agency: This Proposal falls outside the scope of matters on which the Environment Agency is a Statutory Consultee.

SSDC Rights of Way Officer: I have no objection to the proposed change of use. Public Footpath Y24/16 runs through the site, near the rear of the house known as Hillberry.

Proposals to divert the footpaths in the vicinity of Hillberry were initiated in late 2004. Informal consultation began in March 2005 and the latest scheme was agreed by Area North Committee in February 2007. Diversion Orders were made in October 2008. The orders were made under the Highways Act 1980 and are in the interest of the landowners and occupiers. The Diversions are not related to the current or earlier planning applications but would remove the footpath out of the application site.

It is not possible to condition the diversion of a public footpath within a planning permission. It is our usual practice to add a note to a PP advising that the developer should apply to SSDC for a diversion order. As such an order has already been made in this case I recommend that you add a note 'Public footpath Y24/16 crosses this site'.

SSDC Principal Landscape Officer: The plan indicates a reduced domestic area (from the previous application) to that which aligns with the house and its outbuilding, and does not stray into the wider rural landscape. With established property boundaries to the northwest also extending to - and a little beyond - the extent of this proposal, then I am satisfied that the extent of the domestic garden, along with its hedged containment, has some relationship with the local landscape and property pattern, and is a palatable COU proposal. Having said that, these proposals do not necessarily overcome in-principle landscape concerns of erosion of the countryside (PPS7 and ST3) - by virtue of domestic expansion into open - previously agricultural - land, thus I am unable to offer unequivocal landscape support for this proposal.

REPRESENTATIONS

Ten separate representations have been received from four individuals: All responses object to the development.

The objector(s) make(s) the following comments:

- The change of use from agricultural to domestic land is outside of the development limits of the village, will result in the loss of open countryside and fails to respect established agricultural field patterns.
- If permission is granted this could set a precedent for other similar applications.
- The changes have been made without planning permission and have led to the illegal blocking up of an important public footpath, causing the loss of enjoyment of the open countryside for walkers. There have been many objectors, including local walking groups, other ramblers, local residents, neighbours, the Rambler's Association and disability groups.
- The change of use will have a negative effect on the neighbouring properties.
- The agricultural area has been extensively excavated, removing natural levels, appearance and vegetation.
- The area of land marked 'orchard and paddock' is not suitable for livestock containment and no storage shelter have been proposed. Without this, it will require mowing and attention. This will cause high levels of use, which will breach the Human Rights of the occupier of End Cottage, under Article 8.
- Six fruit trees cannot be considered legitimate commercial use of agricultural land.
- The establishment of field maples will significantly reduce light to End Cottage and reduce enjoyment of the countryside.
- The dominance of the large parking area is out of scale with the dwelling, which already has a substantial car park in field opposite.
- The change in the surface of the area has and continues to cause flooding problems.
- The excavation of land and removal of existing drains has caused severe flooding to neighbours houses, the road and other land.

- The new entrance has already caused highway problems at a very narrow junction with three other entrances converging on it.

CONSIDERATIONS

It is considered that the main planning considerations with regard to this proposed development are the impact on environment and landscape character of the locality.

Principle of the Change of Use

The site is located outside of the South Petherton development area as defined in the South Somerset Local Plan and is therefore considered as countryside. Policy ST3 of the SSLP is relevant along with STR6 of the Structure Plan. National guidance in relation to protection of the countryside contained in PPS7 is also relevant.

Policy ST3 strictly controls development outside of defined development areas and restricts it to that which benefits economic activity, maintains or enhances the environment and does not foster growth in the need to travel. Policy EC3 adds that outside of development areas, proposals which are otherwise acceptable will be permitted provided that they do not cause unacceptable harm to the distinctive character and quality of the local landscape.

The application is for a change of use which does not involve operational development. There will be no economic impact from the proposal and it will not cause any variation in traffic movements. Therefore, the main issue that needs consideration is the impact on environment and landscape character of the locality.

The works that have been carried out include the loss of agricultural land to the rear of Hillberry. This agricultural land would have previously continued to the rear of Hillberry and Orchard Cottage, the neighbouring property, being part of the field beyond. The other neighbours to the north west all have gardens to the rear of their properties, roughly in line with the existing works. Historic boundary patterns show that these neighbouring properties would originally have had no gardens either but have more recently extended out to form residential curtilages.

The Council's Landscape Officer has been consulted as part of the planning process. While unable to offer unequivocal support to the principle in relation to erosion of the countryside, the Landscape Officer does consider that the residential curtilage is in line with the established property boundaries of the neighbouring properties and does not stray into the wider rural landscape. As such, the change of use with the associated landscaping works, are considered to be palatable. The applicant has carried out pre-application negotiations with the Landscape Officer and has presented a landscaping scheme that is considered acceptable in the event of permission being granted.

A residential curtilage extension is considered to be development in the same way that any other operational development is and will on the most part be resisted by the Local planning Authority. However, in this case particular attention is made to the existing gardens of the neighbouring properties. The application site is closely related to these and the extent of the curtilage extension is within that of the neighbours' gardens. Therefore, even though the principle of a residential curtilage extension is not particularly desirable, it is considered on balance that the proposal will not cause any unacceptable harm to the environment or to the quality of the local landscape, due to its relationship with the established boundaries of properties to the north west.

A concern has been raised that allowing this proposal will lead to setting a precedent for future proposals elsewhere. This is not considered to be the case, as all applications are considered on their own merits, taking into account locality and site constraints, etc.

Objections made by one neighbour relate to the area of land marked on proposed plan 5076 02, as orchard and paddock. These comment on the possible impact on the residential amenity of the occupier of End Cottage, from this area of land being used for agricultural purposes and from the proposed tree planting.

Firstly, this application only relates to the area of land marked by the red line on drawing 5076 02. Therefore there other land is still strictly agricultural land. As such, there is no planning control over activities on this land that fall under the use of agriculture. These include practises such as keeping of

animals, planting of vegetables, planting of trees and other similar horticultural practises. As such, objections to the use of this land are not relevant to this application.

It is noted that measures have been taken to separate the area being used as residential curtilage and the adjacent orchard/paddock from the rest of the field to the south by planting hedges and installing a fence and gates. While this could be considered to impact on the local landscape character, there are no planning controls on this. The planting of hedges and trees, etc are not development and the erection of gates, fences, walls and other means of enclosure are permitted development as minor operations under Part 2 of The Town and Country Planning (General Permitted Development) Order 1995. Even though this development leads to the fragmentation of the agricultural land, the newly formed boundaries are also in line with the rear boundaries of the neighbouring gardens, reducing the impact on the wider rural landscape.

Public Footpath

The other main objection raised related to the public footpath running through the site. Objections have been raised that this has been illegally blocked to the detriment of users.

Local Plan policy CR9 refers to applications which involve the closure or diversion of public rights of way. It states that development proposals will only be permitted where an alternative public right of way is made that is equally convenient to users. However, this policy is not particularly relevant to this application as it relates to larger developments, where operational development will physically block footpaths.

The Council's Rights of Way Officer has considered the proposal and has no objections to the scheme. There is currently a footpath diversion order in place, which was made in October 2008. As referred to in the objectors' statements, there is a challenge to the order, however this is not a planning matter and as such not a material consideration to this application. The objector's correctly point out that the original route of the footpath has been illegally blocked by a garden wall and hedges, however this is a matter that is dealt with under Rights of Way legislation.

In terms of planning policy, there are no major physical obstructions to the original footpath. The diversion that is currently being considered is deemed to improve the route for the convenience of users. It should be noted that the diversion order is not made solely in relation to the stretch of footpath passing through the site but also significant lengths further along North Street that pass through other residents' front gardens.

As referred to above, the diversion order is being challenged and it should be noted that in the event of the challenge being successful, a change of use to the land would not in anyway stop users continuing along the original route. If this did occur, the applicant would need to clear any obstructions, which again is not a planning consideration but a material for Rights of Way legislation.

One of the representations from one of the objectors states that there have been many objectors to the footpath diversion, including local walking groups, other ramblers, local residents, neighbours, the Rambler's Association and disability groups. No comments have been received directly from any of these parties and the Parish Council has recommended approval of the application.

Other Issues

Other objections were raised, in relation to the parking area and the excavation of the site.

The parking area referred to is an area of hardstanding inside the vehicular access, leading to the field to the rear of the site. This is not within the red line site, which is the subject of the application and is therefore not under consideration. Likewise comments about the access are not relevant either as this application is solely for the change of use of agricultural land to residential curtilage. No new access has been formed and alterations to accesses onto unclassified highways do not require planning permission.

In regard to the changes in level on the land, this is difficult to comment on as there is no evidence of what the land looked like before. It is possible to see where the soil has been removed from the rear elevation of the property but this does not indicate changes to the topography of the site. The levels rise from the east of the site to the west, where it is level with the neighbouring gardens. It has been stated that the changes have caused flooding to the road and to neighbouring properties but no

neighbours have indicated that there has been any harm caused to their properties or land. The site is not within a Flood Risk Zone 2 or 3, as designated by the Environment Agency, as such the photos provided show a localised incident. The Environment Agency were consulted during the course of the application but have responded by confirming that the proposal falls outside the scope of matters on which they are a statutory consultee. The topography of the wider landscape slopes sharply to the south, where any surface water would have originated from and the site itself slopes away from the neighbouring properties so it is not considered that there is likely to be any harm caused to the neighbouring properties.

Conclusion

It is considered that the main issue to consider is the impact on the local environment and landscape character. Applications for residential curtilage extensions in open countryside are usually strongly resisted but on this occasion the proposal is considered to be sufficiently acceptable, due to the relationship with the established boundaries formed by the neighbouring gardens to the north west and that it does not stray into the wider rural landscape. On balance, the proposal is considered to respect and relate to the character of its surroundings, maintains the local environment and is not deemed to cause unacceptable harm to the quality of the local landscape character.

RECOMMENDATION

Grant permission

01. The proposed change of use of agricultural land to residential curtilage is considered to be an acceptable form of development, which respects and relates to the character of the area, maintains the local environment and does not cause unacceptable harm to landscape character, in accordance with the aims and objectives of policy VIS 2 of the Regional Spatial Strategy, policies 5, STR1 and STR6 of the Somerset and Exmoor National Park Joint Structure Plan Review and policies ST3, ST5, ST6, CR9 and EC3 of the South Somerset Local Plan 2006.

SUBJECT TO THE FOLLOWING:

01. Notwithstanding the time limits given to implement planning permission as prescribed by Sections 91 and 92 of the Town and Country Planning Act 1990 (as amended), this permission (being granted under section 73A of the Act in respect of development already carried out) shall have effect from the 10th December 2008.

Reason: To comply with Section 73A of the Act.

02. The approved scheme of landscaping shall not be carried out otherwise than in complete accordance with the submitted plans and specifications as detailed in drawing no. 5076 02, dated 10th December 2008. All new hedge and tree planting comprised in these approved details of landscaping shall be carried out in the next planting and seeding season and any trees or plants which within a period of five years, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: To safeguard the character and amenity of the area, in accordance with policy 5 of the Somerset and Exmoor National Joint Structure Plan Review and policies ST5, ST6 and EC3 of the South Somerset Local Plan 2006.

Informatives:

01. The applicant is reminded that public footpath Y24/16 crosses the application site.
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