

## Planning Applications – 23 January 2013

### Planning Applications will be considered no earlier than 3.30pm

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

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

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

Item	Page	Ward	Application	Proposal	Address	Applicant
1	20	MARTOCK	<b>12/02139/ S73A</b>	Section 73A application to vary condition 23 (approved plans) of 10/05082/FUL to reflect development as built and update other conditions to reflect matters already agreed by discharge of conditions	Land To The West Of Hirst Cottage, Middle Street, Bower Hinton.	Summerfield SD3 Ltd

Area North Committee – 23 January 2013

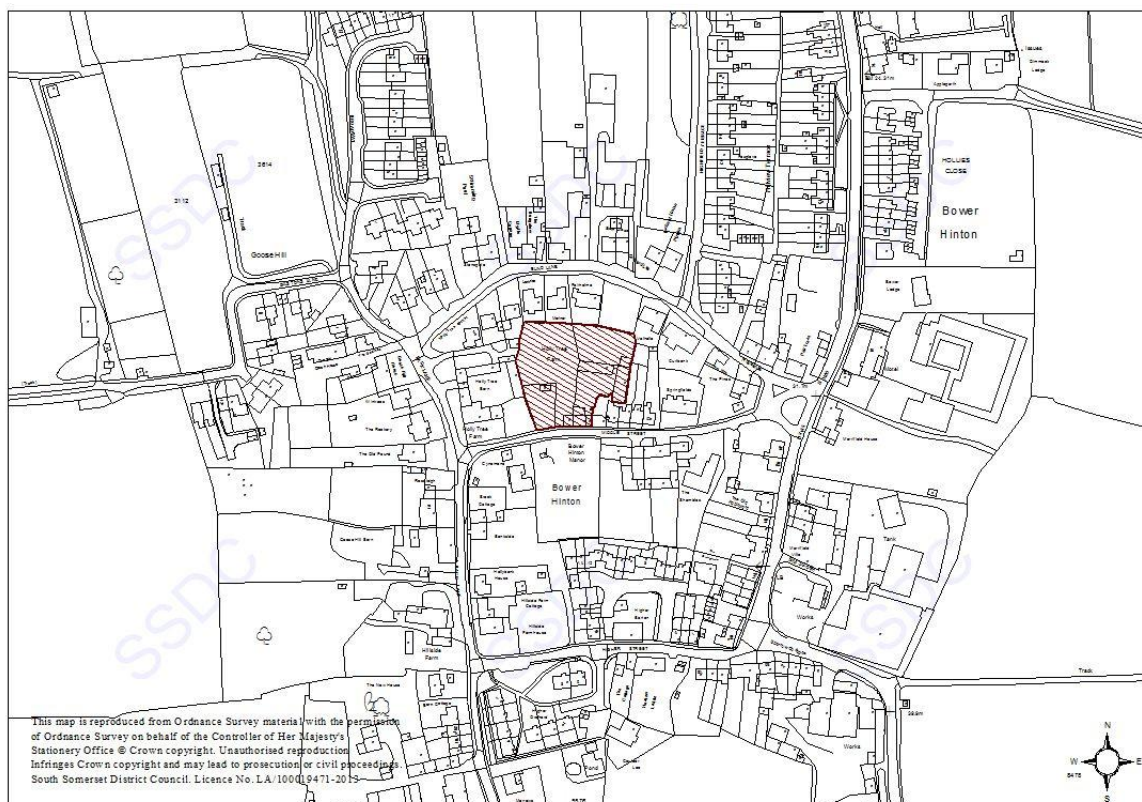
## Officer Report on Planning Application: 12/02139/S73A

<b>Proposal :</b>	Section 73A application to vary condition 23 (approved plans) of 10/05082/FUL to reflect development as built and update other conditions to reflect matters already agreed by discharge of conditions
<b>Site Address:</b>	Land To The West Of Hirst Cottage, Middle Street, Bower Hinton.
<b>Parish:</b>	Martock
<b>MARTOCK Ward (SSDC Members)</b>	Cllr Graham Middleton; Cllr Patrick Palmer
<b>Recommending Case Officer:</b>	Adrian Noon Tel: 01935 462370 Email: adrian.noon@southsomerset.gov.uk
<b>Target date :</b>	17th September 2012
<b>Applicant :</b>	Summerfield SD3 Ltd
<b>Agent: (no agent if blank)</b>	
<b>Application Type :</b>	Minor Dwellings 1-9 site less than 1ha

### REASON FOR REFERRAL TO COMMITTEE

This application is referred to Committee at the request of the Ward Member (who is the Chairman of Area North) with the Agreement of the Vice Chairman to enable local concern to be fully debated.

### SITE DESCRIPTION AND PROPOSAL



This 0.34 hectare site is a former agricultural yard within the development area and Conservation Area that has recently be developed with the conversion of three barns to residential use and the erection of six dwellings together with associated parking and site works. It fronts onto Middle Street where there are a number of listed buildings.

Departures from the approved plans have been brought to the Council's attention. These do not relate to the layout, height or size of the structures, rather it is matters of detail that have come to our attention and are considered to be beyond the scope of a 'minor amendment'. Following investigations and discussions with both the developer and local residents, during which it was agreed that a number of irregularities would be rectified, this application is made under s73 of the Act to regularise the situation at plots 2-9 with regard to changes to the window detail, repositioning of solar panels, amended roof pitch to the rear of Barn A, alterations to chimney details and other minor changes. It is intended to resolve irregularities on plot 1 by a separate, stand-alone application to be submitted by the new owners of that property.

This application seeks to vary conditions of the implemented approval, principally the condition 23 which specified the approved plans to allow the development to be retained 'as built', in accordance with the amended set of plans. Other conditions would also be varied to reflect the changes including:

- Condition 5 (window details) to reflect revisions to the installed window units
- Condition 18 (bat mitigation measures) to reflect the revised measures that have been agreed.
- Other conditions which originally required the submission of further details need not be reimposed where these details have been agreed and implemented, e.g. drainage details, boundaries and hard surfacing, external materials, landscaping etc.

The application is supported by updated drawings and a revised bat mitigation strategy. It has been amended with the submission of further revised drawings (20/11/12) to address inaccuracies in the original submission. A second round of consultations has been carried out.

## PLANNING HISTORY

10/05082/FUL	Planning permission granted for revised scheme for the conversion of barns to 3 dwellings and the erection of 6 dwellings with associated parking and site works (11/03/11). This scheme has been implemented and is largely complete.
07/05656/FUL	Planning permission granted for the conversion of barns to 3 dwellings and the erection of 7 dwellings with associated parking and site works (27/06/08).

## 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.

For the purposes of determining current applications the local planning authority accords significant weight to the saved policies of the Somerset and Exmoor National Park Joint

Structure Plan Review, and the saved policies of the South Somerset Local Plan.

Relevant Development Plan Documents:

Somerset and Exmoor National Park Joint Structure Plan 2000

STR1 - Sustainable Development

STR3 - Rural Centres and Villages

9 - Historic Built Environment

South Somerset Local Plan

ST1 - Rural Centres

ST5 - Principle of Development

ST6 - Quality of Development

EH1 - Conservation Areas

EH5 - Setting of Listed Buildings

EC8 - Protected Species

EU4 – Drainage

National Planning Policy Framework

## CONSULTATIONS

**Martock Parish Council** – initially resolved not support, commenting:-

*“Whilst members would not object to the change of colour of the window frames, members agreed that the bat mitigation proposals were inconsistent with other local bat habitats. Members needed clarification over the original roof lines and were also concerned over various other changes which had occurred from the original plans and in some cases present on site. In particular plot 1/house, the windows appear to be in breach of condition 5. Concerns were raised over roof lines and the size of the windows and doors in general. It would appear that the barge boards on the north and south elevation on house B were not in the original plans and there appears to be unbalanced casements to windows as built throughout the site. One point on which members were extremely concerned was that it would appear oak strips have been placed over concrete lintels instead of oak lintels as in the original plans.”*

Subsequently the Parish Council members resolved “not to recommend the above planning application for approval as there had been inappropriate deviation from the original plan without due consultation with the SSDC Planning Department.”

**County Highway Authority** - No objection subject to previously recommended conditions with regard to dropped kerbs, splays, estate roads, turning, no obstruction, consolidated surfaces, visibility splays.

**Area Engineer** – no comment offered.

**Council’s Ecologist** – notes the amended mitigation measures. No objection is raised subject to a condition being imposed to require on-going adherence to the updated recommendations.

**Natural England** – notes that condition 18 requires variation in order to bring the details of the planning application in to line with the agreed conditions of the European Protected species Licence issued by Natural England on 31/08/11. No objection raised.

## REPRESENTATIONS

3 letters of objection and a petition signed by 26 local residents have been received in relation to the initial consultations raising the following concerns:-

- The Council has been aware of departures from the approved plans and should not now allow so many variations. The application should be reused and the a clear message be set to Summerfield that they should either put the situation right or take the matter to the Planning Inspectorate.
- Confusion over the approved plans;
- The owners of Plot 1 have not been notified of this application;
- The window treatment of plot 1 are out of character and ugly;
- Plot 1 is not covered by this application;
- The application refers to 'minor changes'. The sum of the changes is not minor and a S73A application is not therefore appropriate;
- The changes are not listed in the application (the letter accompanying the petition goes on to list them);
- The approved bat dormer and slates have not been installed;
- The bats were not able to use the roof spaces for the duration of the construction;
- The internal block work to the carports is unsightly
- Oak strips have been used instead of oak lintels;
- Unbalanced casements have been used which do not preserve or enhance the conservation area. The District Council has enforced against such windows elsewhere;
- The infilling of the roof space to the retained wagon way/'threshing floor' is inappropriate. This space would provide a bat habitat;
- Loss of gates to wagon is unjustified and detrimental to the setting of the attached listed building;
- The alteration of the roof line to the rear of Barn a neither preserves nor enhances its character;
- The haunching to the boundary wall is not suitable, it should be a cock-and-hen finish.
- Overall the development does not enhance the conservation area and the conditions/approved plans of the original application (10/05082/FUL) should be enforced.
- Impact of construction traffic on Blind Lane has damaged properties and there are other development proposed in this area.

Additionally the owner of the property to the north has asked that windows to the north elevation of plot 5 remain obscurely glazed.

No further responses have been received to the second round of notifications.

## CONSIDERATIONS

It is accepted that there are many departures from the approved plans and whilst there is a clear local feeling that the District Council should rigorously enforce adherence to the terms of the permission discretion must be exercised. Firstly the council must consider whether it is expedient to take enforcement action; secondly, are the changes so harmful that there is no option but to seek their removal?

In this instance the changes are on a scale that the situation should regularised (i.e. it would not be reasonable to take no action), however it has been considered that, with

certain amendments, the changes could be adequately considered through a S73a application which would enable local residents to comment on the merits of the case and the Council to consider what harm would result should the changes be retained.

## **Background**

The residential development of this site has been approved twice before in 2008 and 2011. Since then the National Planning Policy Framework (NPPF) has been issued, however there is nothing in this framework which is considered to weigh against this development or the level of development previously approved. Accordingly the principle of the redevelopment of this site for 9 dwellings is firmly established.

No changes to the layout, level of development or size of units is proposed, the proposal seeks to address various changes to the details. Whilst there are local reservations it is considered that this S73A application is the appropriate mechanism to resolve the situation. There are also concerns that not every change is detailed in the application. It is accepted that this is the case, however as the objector's petition identifies the list is extensive (some 14 pages including illustrations). The application has been advertised as being to retain the development as built. On this basis local residents have been able to view the house on offer their opinions as they see fit.

There are no objections to the highways arrangements or relationship with existing dwellings from a residential amenity point of view. Subject therefore to the imposition of suitable controls over the glazing of window to the north elevation of plot 5 (as requested by the neighbour) and the removal permitted development rights for the subsequent installation of additional windows to the north elevation of plot 5 and the east elevation of Barn C it is considered that the amended scheme would safeguard the amenities of existing residents.

With regard to occupiers of the development no changes to garden size, amenity provision or window arrangements are proposed. Nevertheless, on a precautionary basis it is suggested permitted development rights also be removed for the insertion of windows to the north elevation of Barn B to safeguard the amenities of the occupier of plot 6.

On this basis it is considered that the key issues are:-

- Visual amenity and the impact on the conservation area
- Any impact on bats

## **Visual Amenity**

The primary concern is whether or not the retention of the development as built would be harmful to the visual amenities of the locality or the character and appearance of the conservation area. A number of issues now causing concern were approved as part of the original scheme including the enclosure to the roof space of the wagon-way, the removal of the gates to the wagon-way and the haunching to the boundary wall (which in any event reflects what was there previously). It is not considered that it would now be reasonable to object to these.

With regard to the other areas of concern the following observations are offered:-

- Unbalanced casement windows – whilst there may be a local preference for balanced casements each case must be considered on its own merits. Although the site is within the conservation area, the retained buildings are not listed and

the new buildings are set back from the road – only Barn A fronts Middle Street. Elsewhere in the conservation area there are unbalanced casement unit, generally on more modern properties.

Additionally it would normally be permitted development for an existing unlisted building to install replacement windows without planning permission. Finally it is pointed out that condition 5 of 10/05082/FUL required the agreement of the window frames but was drafted so as not to stipulate that the approved units should be installed, and, crucially, did not require the approved units to be maintained in perpetuity. In other words had balanced casements been installed as approved they could have been subsequently replaced without reference to the Council.

On this basis it is considered that the retention of the existing window units would not be harmful the character and appearance of the conservation area or the visual amenities of the locality. As such this aspect of the proposal complies with policies ST5, ST6, EH1 and EH5.

- The lintels – the original approval required the use of oak lintels. Unfortunately the applicant installed case stone window surrounds to plots 1-4. Subsequently plots 2-4 were re-done using concrete lintels with oak strips applied to give the appearance timber lintels – as has been done on the barn conversions. Discussions with building control colleagues reveal this is relatively common practice as timber lintels can have warrantee implications for new built properties.

There are a variety of lintel types in this part of the conservation area, including stone and timber, and it is not considered that the applied timber lintels is detrimental to the visual amenities of the locality; their retention would not therefore be contrary to policies ST5, ST6, EH1 and EH5.

- Raised roof line to rear of Barn A – this has become necessary to create headroom at first floor level. Whilst it is regrettable that this was not identified at the outset, it is not unusual for building control requirements to trigger changes to approved barn conversions. The resulting stepped, rear roof arrangement is not considered to be unusual for a former agricultural building or so detrimental that its removal could be justified. Its retention would not therefore be contrary to policies ST5, ST6, EH1 and EH5.
- Repositioned solar panels – the inclusion of these panels on the approved scheme was welcome and it should be noted that the installation of such panels would normally be permitted development on any unlisted building in the conservation area. On this basis the amended positioning that has occurred is not considered objectionable in light of policies ST5, ST6 and EH1.

### **Impact on Bats**

The originally approved bat mitigation measures included a 'bat dormer' to the rear roof slope of Barn A to enable bats to access the roof space. Subsequently an alternative strategy using 'bat tiles' as access points was agreed as part of Natural England's licencing process. Whilst it is regrettable that this change was not agreed in advance with the Council the omission of the dormer and use of bat-tiles raises no objections from an visual amenity point of view and is support by the Council's ecologist and Natural England. On this basis the proposal complies with policy EC8.

**Neighbour Comments:**

The following observations are offered in relation to the outstanding observations:-

This application does not include plot 1 and as such the applicant has no duty to notify the new owners of that property who will, it is understood, make an application to retain their property as built in due course. The changes to that property do not therefore form part of the consideration of this application.

It appears that there may have been some difficulty in identifying the approved plans, condition 23 of the approval of 10/05082/FUL refers to the approved plans by number and date received by the Council. The failure of the applicant to date the revisions does not prevent identification of the relevant plans which are available on the council's website.

The Parish Council maintains that this application should be refused simply because the applicant has deviated from the approved scheme without consultation with the local planning authority. Whilst this is an unfortunate situation, this on its own cannot justify withholding permission, especially as no harm is identified.

**Other Issues**

No planning obligations are sought from this development as at the time of approval it fell under the threshold (at the time 10 dwellings). As this is an application under s73 the Council can on revisit the condition and cannot seek to impose a new and more onerous obligation on the scheme. In reviewing the conditions it is appropriate to consider which conditions need to be re-imposed and which should be re-drafted to reflect the fact that the development is now substantially complete.

The applicant has discharged many of the previous conditions and it is considered reasonable simply to require compliance with the agreed and implemented details.

**Conclusion**

It is accepted that the development of this site has not been carried out in accordance with the approved plans and that the developer should have sought to address the situation as it developed. Nevertheless the Council is required to accept and consider retrospective applications to regularise such situations.

As with all applications the proposal must be considered on its merits and permission should only be withheld if the harm outweighs the benefits. In this instance the principle, layout and levels of development is firmly established and it is essentially the visual impact of the changes to the detail that are to be considered. Whilst there is clearly local concern about the appropriateness of the changes it is not considered that they would fail to preserve or enhance the character and appearance of the conservation area. In the absence of demonstrable harm the application should be approved.

**Recommendation**

Grant permission subject to the following conditions.

**Justification**

Notwithstanding local concerns about the changes the proposal, by reason of its size, scale and materials, causes no demonstrable harm to highways safety, protected



species, residential or visual amenity or the character and appearance of the conservation area and the setting of listed buildings. As such the proposal complies with saved policies EC8, EU4, EH1, EH5, ST5 and ST6 of the South Somerset Local Plan and the policies contained within the National Planning Policy Framework.

**SUBJECT TO THE FOLLOWING:**

01. The development hereby permitted shall be begun before the expiration of three years from the date of the original permission for this development ref. 10/05082/FUL.

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

02. With the exception of plot 1 the roof tiles and external walls shall be reclaimed double roman tiles, local natural stone, Ibstock Bridgwater weather red brick and rough cast render with an ivory finish as agreed by letter dated 30/03/12 in relation to conditions 2, 3, 4 and 21 of the decision letter dated 11/03/11 ref. 10/05082/FUL.

Reason: In the interests of visual amenity and to safeguard the character and appearance of the conservation area and the setting of listed in accordance with saved policies EH1, EH5, ST5 and ST6 of the South Somerset Local Plan.

03. With the exception of plot 1 the door and window detailing shall be as indicated on the plans hereby approved as shall not subsequently be altered which out the prior express grant of planning permission.

Reason: In the interests of visual amenity and to safeguard the character and appearance of the conservation area and the setting of listed in accordance with saved policies EH1, EH5, ST5 and ST6 of the South Somerset Local Plan.

04. With the exception of plot 1 the eaves/fascia/ verge detailing, guttering, downpipes), mortar filleting, lead flashings and meter boxes, flues and extraction equipment shall accord with the drawings hereby approved and the details agreed by letter dated 30/03/12 in relation to condition 6 of the decision letter dated 11/03/11 ref. 10/05082/FUL.

Reason: In the interests of visual amenity and to safeguard the character and appearance of the conservation area and the setting of listed in accordance with saved policies EH1, EH5, ST5 and ST6 of the South Somerset Local Plan.

05. With the exception of plot 1 the levels of the development hereby approved shall accord with the details agreed by letter dated 30/03/12 in relation to condition 7 of the decision letter dated 11/03/11 ref. 10/05082/FUL.

Reason: In the interests of the amenities of the locality in accordance with saved policies EH1, EH5, ST5 and ST6 of the South Somerset Local Plan.

06. Prior to the development hereby approved being first brought into use the first floor window in the north elevation of plot 5 shall be fitted with obscure glass (and fixed closed) and shall be permanently retained and maintained in this fashion thereafter.

Reason: In the interests of neighbour amenity and overlooking in accordance with saved policy ST6 of the South Somerset Local Plan.

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

Reason: In the interests of visual and neighbour amenity, and the character and appearance of the conservation area in accordance with saved policies ST6, and EH1 of the South Somerset Local Plan.

08. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no additional windows, including dormer windows and rooflights, shall be formed to the north elevations of Plot 5 and Barn B or the east elevation of Barn C.

Reason: In the interest of residential amenity in accordance with saved policy ST6 of the South Somerset Local Plan.

09. The accesses hereby permitted shall not be brought into use until drop kerbs have been installed at the carriageway edge and a vehicle crossover constructed across the footway fronting the site for the width of the access.

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

10. The access arrangements and internal road layout hereby approved shall accord with the drawings hereby approved and the details agreed by letter dated 30/03/12 in relation to condition 13 of the decision letter dated 11/03/11 ref. 10/05082/FUL.

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

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

Reason: In the interests of highway safety and saved policy 49 of the Somerset and Exmoor National Park Joint Structure Plan.

12. There shall be no obstruction to visibility greater than 900mm above adjoining road level in advance of lines drawn 2.4m back from the carriageway edge on the centre line of the access and extending to points on the nearside carriageway edge 25.0m either side of the access. Such visibility splays shall be fully provided before the access hereby permitted is first brought into use and shall thereafter be maintained at all times.

Reason: In the interests of highway safety and saved policy 49 of the Somerset and Exmoor National Park Joint Structure Plan.

13. The recommendations set out in sections 6.2 and 6.3 of the ecology report ('Update of Ecological Surveys', Country Contracts, February 2011) regarding bird and badger mitigation measures, are completed in full. The completed approved mitigation and enhancement measures will thereafter be retained.

Reason: To safeguard the interests of protected species in accordance with saved policy EC8 of the south Somerset Local Plan.

14. The development hereby approved shall be carried out in accordance with the foul and surface water drainage details agreed by letter dated 30/03/12 in relation to condition 20 of the decision letter dated 11/03/11 ref. 10/05082/FUL. Following its installation such approved scheme shall be permanently retained and maintained thereafter.

Reason: In the interests of residential amenity in accordance with saved policy EU4 of the South Somerset Local Plan.

15. The development hereby permitted shall be carried out in accordance with drawing numbers 10.45.02; 10.45.08A; 10.45.12; 10.45.13; 10.42.14A and SPP1385.2B received 23/07/12 and drawing numbers 10.45.03D; 10.45.04C; 10.45.05C; 10.45.06C; 10.45.07D; received 20/11/12.

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

**Informatives:**

You are reminded that the drawings hereby permitted do not approve the departures from the approved scheme in relation to plot 1 which remains subject to the conditions of the original approval letter dated 11/03/11 ref. 10/05082/FUL. A further application will be required to regularise the situation and you are reminded of the council's powers of enforcement.

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