

Area North Committee – 28 May 2014

## Officer Report On Planning Application: 13/03483/OUT\*\*

<b>Proposal :</b>	Outline application for residential development and the provision of access from Wincanton Road. (GR 342616/127443)
<b>Site Address:</b>	The Trial Ground, Somerton Road, Langport.
<b>Parish:</b>	Huish Episcopi
<b>LANGPORT AND HUISH Ward (SSDC Member)</b>	Cllr Roy Mills
<b>Recommending Case Officer:</b>	Dominic Heath-Coleman Tel: 01935 462643 Email: dominic.heath-coleman@southsomerset.gov.uk
<b>Target date :</b>	13th December 2013
<b>Applicant :</b>	The Lloyds Family Trust
<b>Agent: (no agent if blank)</b>	Mrs Catherine Knee, WYG, Hawkridge House, Chelston Business Park, Wellington TA21 8YA
<b>Application Type :</b>	Major Dwlg 10 or more or site 0.5ha+

### REASON FOR REFERRAL TO COMMITTEE

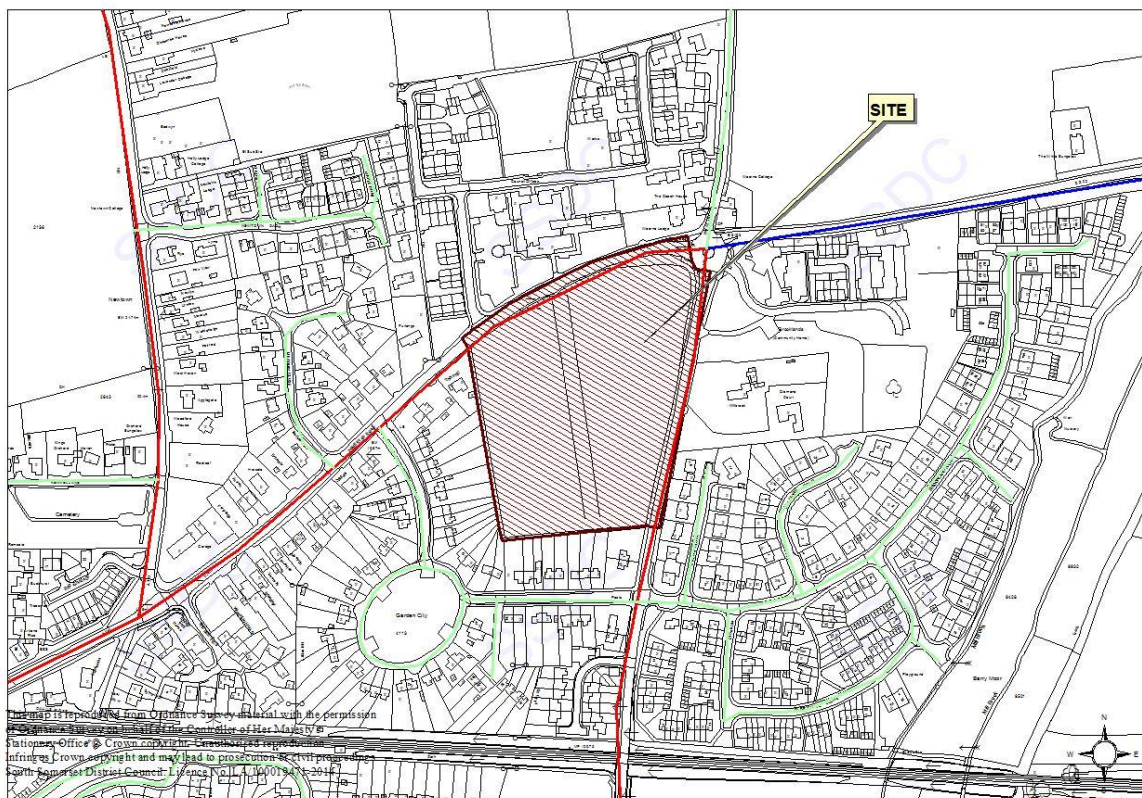
The application was originally referred to committee on 26<sup>th</sup> February 2014. The committee resolved to defer the application to allow further discussion/negotiation regarding land offered for community use to be off set against sports, arts and leisure obligations and to establish the value of the land offered for community use. The applicant declined to have the land independently valued, and withdrew the offer of transferring the land to the community in lieu of financial contributions towards sports, arts and leisure obligations. The application was again referred to committee and discussed on 26<sup>th</sup> March 2014. On this occasion the committee resolved to approve the application as per the officer's recommendation with an additional clause to the legal agreement to ensure that the central double hedge line is retained.

The applicants have indicated that they are not willing to enter into a legal agreement containing a clause requiring the retention of the hedge line. Their solicitors have indicated that they believe that such a legal agreement would be unlawful, failing to comply with Regulation 122 of the CIL Regulations and the policy tests in paragraph 204 of the NPPF. The applicant's solicitor's letter is appended to this report at Appendix 1. The council's solicitor is in full agreement with the position laid out in the applicant's solicitor's letter.

As such, the report, as per the 26/03/14 agenda papers, is before the committee again, and members are invited to re-consider the application in light of the above advice.

The application is \*\* at the agreement of the Area Chair and the Development Manager. The committee has previously resolved to approve the application subject to a clause in the legal agreement requiring the retention of the central hedge line. As the applicant has indicated that they are unwilling to enter into such a legal agreement, the committee must consider whether the application should be refused for reasons relating to the potential loss of the hedgerow. Given the expert advice from the SSDC Tree Officer, the SSDC Landscape Architect, and the SSDC Ecologist regarding the possibility of preserving the hedge, it is considered that a refusal would result in a significant risk of costs being awarded against the council at any subsequent appeal.





This application seeks outline permission for the residential development of land. All matters are to be reserved with the exception of access. The site consists of two agricultural fields currently in arable use. The two fields are broadly flat and divided by a large hedge made up of a double line of trees. The site is bounded by a variety of residential properties to all sides, with some commercial properties to the north, including a Grade II listed building. The site is not within a development area as defined by the local plan.

It is proposed to provide vehicular access to the site through the eastern boundary from the existing classified highway known as Field Road (A372), with various proposed pedestrian links to the east and north of the site, including a pedestrian crossing over the A372 to the north.

The indicative layout shows the retention of much of the existing hedgerow to the east of the site, additional coppiced planting to the west and south. The layout shows an area of open space to the north of the site.

The application is supported by:

- Design and Access Statement
- Planning Statement
- Statement of Community Involvement
- Ground Conditions Desk Study Report
- Flood Risk Assessment and Drainage Assessment
- Transportation Assessment
- Archaeology and Heritage Desk-Based Assessment
- Extended Phase 1 Habitat Survey Report
- Interim Hazel Dormouse Presence/Likely Absence Survey Report
- Hazel Dormouse Presence/Likely Absence Survey Report
- Bat Activity Survey Report
- Bat Roost Assessment of Trees
- Hedgerow Survey

- Various indicative plans.

Within the Planning Statement it is suggested that an area of land to the south of the railway line, next to the cricket ground, could be offered to a 'Town Trust' as a contribution towards sport and leisure facilities.

## HISTORY

13/02232/EIASS - Request for a screening opinion concerning residential development - EIA not required 14/06/2013

99/00034/OUT - Construction of class A1 retail store with restaurant/café, associated car park, petrol filling station, construction of new access, landscaping and other works - Application withdrawn 23/03/1999

## 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.

For the purposes of determining current applications the local planning authority considers that the relevant development plan comprises the saved policies of the South Somerset Local Plan.

The policies of most relevance to the proposal are:

### **Saved policies of the South Somerset Local Plan (Adopted April 2006):**

ST1 – Rural Centre

ST3 - Development Area

ST5 - General Principles of Development

ST6 - The Quality of Development

ST7 - Public Space

ST9 - Crime Prevention

ST10 - Planning Obligations

EC3 - Landscape Character

EC8 - Protected Species

EU4 - Drainage

TP1 - New Development and Pedestrian Movement

TP2 - Travel Plans

TP4 - Road Design

TP7 - Car Parking

CR2 - Provision for Outdoor Playing Space and Amenity Space in New Development

CR4 - Amenity Open Space

HG7 - Affordable Housing

EH5 - Setting of Listed Buildings

EH12 - Areas of High Archaeological Potential and Other Areas of Archaeological Interest.

### **National Planning Policy Framework**

Chapter 4 - Promoting Sustainable Transport

Chapter 6 - Delivering a Wide Choice of High Quality Homes

Chapter 7 - Requiring Good Design



Chapter 8 - Promoting Healthy Communities  
 Chapter 10 - Meeting the Challenge of Climate Change, Flooding and Coastal Change  
 Chapter 11 - Conserving and Enhancing the Natural Environment  
 Chapter 12 - Conserving and Enhancing the Historic Environment

### **South Somerset Sustainable Community Strategy**

Goal 3 - Healthy Environments

Goal 4 - Services and Facilities

Goal 8 - High Quality Homes

### **Other Policy Considerations**

Verrington Hospital Appeal Decision 11/02835/OUT – this established that the Council did not then have a demonstrably deliverable 5-year housing land supply as required by the NPPF (para. 47).

Slades Hill Appeal Decision 12/03277/OUT – on the basis of the Annual Housing Monitoring Report 2012 the Council conceded that it could not demonstrate a deliverable 5 year housing land supply. This was accepted by the Inspector (29/10/13).

The 2013 Annual Housing Monitoring Report to District Executive demonstrates that, as of 31<sup>st</sup> December 2013 the Council still does not have a demonstrably deliverable 5 year housing land supply. District Executive resolved (06/02/13) to undertake 6 monthly monitoring to keep the situation under continual review.

Nevertheless in such circumstances, the National Planning Policy Framework (NPPF) advises that relevant policies for the supply of housing should not be considered up to date (NPPF para. 49) and housing applications should be considered in the context of the presumption in favour of development. In this Council's case, the principal effect is that saved policy ST3 (Development Areas) no longer applies in relation to housing or mixed use proposals which should not be refused simply on the basis that they are outside Settlement Limits.

## **CONSULTATIONS**

**Huish Episcopi Parish Council** - Recognises that the site is a prime location for development but recommends rejection of any estate development applications until specific local sustainability issues have been addressed. They have particular concerns regarding the present sewage and waste water systems, the lack of local employment and the resulting likely congestion, and the provision of medical and dental facilities.

The parish council welcome the offer of the land adjoining the cricket pitch for community recreational use but are dismayed by the suggestion of an additional large Community Infrastructure Levy' unless that will fund facilities on the land. They therefore recommend refusal, but note that if it is permitted the following would be welcome:

- a) Light controlled pedestrian crossings on Somerton Road and on Field Road.
- b) Retention of part of the beech avenue or a similar avenue panting with benches as a reminder of the original.
- c) Consideration given to the provision of bungalows for the elderly or infirm.
- d) Every effort is made to take advantage of the generous offer of land for community recreational use.

**Langport Town Council (adjoining town council)** - Recommend refusal as there is no evidence that present infrastructure can support further development (particularly sewerage and water services), existing community facilities (Huish Academy, Langport

Surgery and Langport Dental) will not be able to cope with additional level of housing, and there is a lack of employment opportunities in the immediate area meaning new residents would have to travel therefore increasing vehicle movements. The town council also express an opinion that there should be approvals of future significant housing developments in Langport and Huish Episcopi until the District Plan has been finalised and approved by the planning inspector.

**County Highway Authority** - Notes the site is outside the development area, but leaves it to the LPA to determine whether development is acceptable in principle. The highway authority raises no objection to the development subject to conditions to control:

- A construction management plan
- A condition survey of the existing highway
- The disposal of surface water
- The details of estate roads, footways, cycleways, etc.
- Servicing of dwellings with roads prior to occupation
- A drainage scheme
- The implementation of the proposed vehicular access and pedestrian crossing
- A service road
- A network of cycleway and footpath connections
- Parking and turning for proposed dwellings
- The preparation and implementation of a travel plan
- Details of the proposed vehicular access

**SSDC Climate Change Officer** - Objects to the outline application as it currently stands because the precise road layout does not maximise the opportunity for south facing roof space or garden space.

**SSDC Housing Officer** - Notes the policy requirement of 35% affordable housing, split 67:33 social rent: intermediate. On the basis of 80 residential units they would require 28 units, of which at least 19 should be for social rent. She proposes the following property mix based on the current Housing Need Register data:

08 x 1 bed  
 11 x 2 bed  
 08 x 3 bed  
 01 x 4 bed

She also states that she would expect the housing to be pepper potted throughout the site, the units design to blend in with other housing, and for 1 beds to be houses or have the appearance of houses. She would also expect the units to meet the minimum space standards as adopted by our approved housing association partners.

**SSDC Conservation Officer** - Notes proximity of site to listed buildings, but states he is happy with proposed access point away from the frontage with the listed buildings. He notes the indicative layout indicates a soft planting area opposite the listed buildings which is happy with. He states that the indicative layout otherwise needs attention, highlighting vistas along the streets and the position of buildings adjacent to the access.

**Natural England** - Raises no objection subject to the imposition of a condition to secure the submission and implementation of a detailed mitigation and monitoring strategy in relation to bats and dormice. They note the requirement for a European Protected Species license. They note the applicant's and LPA's duties in relation to local wildlife site, biodiversity enhancements and landscape enhancements.

**SSDC Environmental Protection Unit** - No observations

**SSDC Trees** - He states he has no objection to the removal of the parallel double beech hedgerows, notes that the retention of the northern roadside trees is welcome, and states that the indicative planting is promising. He states that the installation of pathways and hard surfacing near retained trees will require a degree of care. He states he has no objections but suggests the use of a tree protection condition.

**SSDC Planning Policy** - Notes that the proposal is contrary to saved policy ST3 of the adopted local plan but the current lack of a 5 year housing land supply means that there must be significant reasons to object to the scheme. He notes that the site is located within the direction of growth and is consistent with the approximate scale of growth identified for the settlement in the emerging Local Plan. He therefore concludes that he raises no objection, subject to there being no adverse impacts raised by other consultees that would significantly and demonstrably outweigh the benefits of additional housing provision.

**SSDC Landscape Architect** - He notes that a 2008 peripheral landscape study of Langport/Huish Episcopi found that the site has a high capacity to accommodate built development. Consequently he raises no objection to the principle of development within the site. He notes the indicative layout and states he is supportive of the general approach but suggests it is need of some refinement when worked up to a detailed layout. In this respect he suggests that further thought is given to the definition of the site's entrance and nodal points through built form, the arrangement of open space, along with the treatment and height of the building facades facing the listed buildings. He agrees to the removal of the central beech trees, which he states are structurally poor, and to the retention of the site's best trees as features within the layout. He thinks it unlikely that the hedge was planted as a commemorative feature and in order for it to flourish it would have to be reduced to the point that it would have minimal visual impact. He is also concerned that its retention would compromise the potential urban design.

He notes the intention to add to the boundary planting, which he states is acceptable providing clear and deliverable management prescriptions form part of the landscape proposal. He suggests the use of a condition to ensure that a detailed landscape proposal comes forward allied to the site layout.

**SSDC Community, Health and Leisure** - Seeks contributions of £206,605.16 towards local facilities, £95,566.51 towards strategic facilities, £67,586.51 in commuted sums, and £3,697.58 as an administration fee. They note the offer of land in lieu of the requested contributions, but believe that the value of the land for community benefit is likely to be somewhere in the region of £20,000 to £25,000 and would only be prepared to offset contributions if the amount to be offset is fairly related to the value of the land in question.

**SCC Education** - He states that the local primary school would be likely to be overcrowded taking into account demographic factors alone. It is therefore appropriate for all new development to contribute to meeting the likely shortfall in primary school places. He states that the cost attributed to each primary school place is £12,257. If 80 dwellings are provided this would equate to 16 places, which would mean needing to secure £196,112 or £2,451.40 per dwelling.

**Environment Agency** - No objections subject to conditions to control the provision and future maintenance of a sustainable drainage system, and notes regarding surface water drainage systems, pollution prevention during construction, and waste management.

**Parrett Drainage Board** - The Board notes that the site lies outside of its area, but states that any increased surface water run-off will discharge into their area. They state that insufficient definite information has been provided with the application to assess the

likely impacts. As such they raise no objections subject to the following condition:

*"No development should proceed until the foul, surface water and land drainage proposal have been agreed with the Local Planning Authority in conjunction with the Parrett Internal Drainage Board.*

*Reason: The application has insufficient information to determine if the drainage matters will be properly addressed. It is therefore not possible to determine if the site will have an adverse impact on flood risk elsewhere which is contrary to principles set out in Section 103 of the national Planning Policy Framework and Section 2 of the Technical Guidance to the National Planning Policy Framework."*

**SSDC Ecologist** - Satisfied with and generally agrees with the conclusions of the various ecological reports and makes the following comments and recommendations:

**BATS:** Recommends the tree removal measures outlined in submitted report are made the subject of a condition but is otherwise satisfied that bat activity levels do not represent a significant constraint.

**NESTING BIRDS:** He notes that the removal of the central hedge has a high potential to disturb nesting birds and therefore recommends the use of a condition to control when such works are carried out.

**JAPANESE KNOTWEED:** Notes the presence of Japanese Knotweed on the site and recommends the use of a condition to secure a scheme for the eradication of the plant from the site.

**REPTILES:** He recommends the use of an informative regarding the small number of slow worms on the site.

**BIODIVERSITY ENHANCEMENT:** He recommends the use of a condition to secure measure for biodiversity enhancement in line with the provisions of the NPPF.

**DORMICE:** He notes that a dormouse nest has been found on site confirming their presence. However he states that the site is too small to maintain a self-sustaining population, and with very poor links to other suitable habitat, the importance of the site to dormice is likely to be very low. He therefore concludes that the proposed development would not be detrimental to the Habitats Regulations test of 'maintaining favourable conservation status'. He states that any section of hedge or shrub could be occupied by a dormouse, so some mitigation will be required. He therefore recommends the use of a condition to secure the submission (at reserved matters stage) and implementation of a dormouse mitigation strategy, and an informative regarding the need for a European Protected Species Mitigation Licence. He notes the local objection to the removal of the central beech hedges, but concludes that such a single species hedge is likely to be of limited value in terms of providing food and supporting dormice. Given the other limitations on the site, he does not regard the presence of dormice as justifying the retention of the beech hedge. He notes that as the development will affect dormice, the committee report must include an assessment against the three Habitats Regulations tests and provides some guidance as to what this involves.

**SCC Rights of Way** - Confirms presence of a restricted byway abutting the proposed development. Welcomes proposed links onto the existing byway, but notes that these should be discussed with the Rights of Way Team. They state that no works should encroach on the width of the byway. They note the rules and regulations surrounding the use of a restricted byway. They also note the circumstances in which authorisation for the proposed works must be sought from the SCC Rights of Way Group, and when a



temporary closure order may need to be obtained.

**Wessex Water** - Notes that connection to the existing foul sewer will require the provision of a pumping station or access across third party land. They state that the need for downstream capacity improvements will require assessment. They state that there must be no surface water connections to the public sewerage network. They recommend the use of the following condition:

*"The development shall not be commenced until a foul and surface water drainage strategy is submitted and approved in writing by the local planning authority and Wessex Water. The drainage scheme shall be completed in accordance with the approved details and to a timetable agreed with the local planning authority."*

*Reason: To ensure that proper provision is made for sewerage of the site and that the development does not increase the risk of sewer flooding to downstream property."*

They also note that there is limited capacity available in the water supply network and suggest that network modelling will be required to assess the level of off-site reinforcement required.

**Somerset Wildlife Trust** - They support the suggested enhancements contained within the submitted survey reports. They state they would also like to see the provision of green corridors to maximise connectivity within the final layout.

**SCC Archaeology** - No objection to this proposal being granted permission and no further archaeological work is required.

## REPRESENTATIONS

Fourteen letters of objection have been received. Nine were from the occupiers of properties in Langport and Huish Episcopi. One from the occupier of a property in Pibsbury, two from the occupiers of properties in Wearne, one with no address given, and one from an agent acting on behalf of the company that owns the Old Kelways complex of buildings. Additionally a petition was received requesting that developers and planners give serious consideration to incorporating the beech avenue into the plans. The petition was signed by 99 people from a variety of addresses across the nearby area.

Objections were raised on the following grounds:

### Principle of Development:

- Current infrastructure (schools, doctor's surgery, dentists, community nurses, sewage system) is inadequate and problems will be exacerbated by the development.
- The area has already contributed enough towards meeting housing targets.
- Why is all the development in Huish Episcopi rather than Langport?
- Houses will be to provide a 'dormitory' facility for Yeovil, Taunton and Bridgwater.
- There will be little benefit to residents of Huish Episcopi/Langport. Contributions should be towards local facilities, not facilities in Yeovil.
- There is a limited market for new houses in the local area.
- The parish council is being 'bribed' by the offer of land, which would serve little practical purpose and could be sold to Railtrack if a stopover is created nearby. Such a scheme could be a threat to the Cricket Club.
- As an outline permission the developers would not be restricted to just 80 houses. It is likely that to maximise profits the development would be at a higher

density.

#### **Highways:**

- The site is close to the A372, which skirts the site on two sides, and as such safety issues could be caused.
- The safety of the students who walk along Field Road could be affected.
- Traffic is already heavy and will be made worse. The estimate of 40 additional cars is ludicrously low. It is unlikely that public transport will be used in such a rural location.
- The proposal will create a hazard for the residential properties opposite the proposed junction.
- Street lighting is currently inconsistent and therefore hazardous.
- Other hazards are ignored in the submitted report.
- Vehicular traffic should not be off Field Road but off the existing island (roundabout).
- The proposal indicates access from Wincanton Road, but the plans show access from Field Road.

#### **Residential Amenity:**

- There should be substantial planting to form a buffer between the site and the properties in Garden City.
- Proposed pedestrian access will have an adverse impact on objector's residential amenity by way of noise, due to youngsters gathering and from pub users, and through light pollution.
- Currently no light intrusion into objector's property, development will undoubtedly change that.
- Privacy will be invaded.

#### **Visual Amenity:**

- Street lighting can cause considerable light pollution and should be controlled.
- Loss of one of the last remaining green sites (the last field in Field Road).
- Only the southern portion of the site is suitable for development in order to preserve the setting of the listed buildings at old Kelways.
- The site is a gateway to Langport and more attention should be paid to preserving the northern part of the site and the design of the proposed dwellings.

#### **Other Matters:**

- Property values in the area could be lowered.
- The perimeter hedge has historical significance and its retention should be investigated before it is too late.
- The central hedge line has historical significance (being planted to commemorate a royal occasion), is a carefully designed landscape feature, and should not be lost.
- The central hedge is a haven for wildlife and should be retained.
- If the development is allowed the central hedge should be returned to its 'former glory' as a promenade.
- Existing hedges and trees around the perimeter of the site should be retained as a setting for the listed building opposite.
- The submitted plan is plotted incorrectly as a large extension on 17 Garden City is not shown.
- There is no Statement of Community Involvement, Planning Statement of detailed Heritage Impact Statement. As such, proper consideration cannot be given to these areas.

## APPLICANT'S CASE

*"The relevant Development Plan is out of date so the National Planning Policy Framework (the Framework) carries significant weight in respect of the application.*

*The Framework confirms that where a Development Plan is out of date there is a presumption in favour of sustainable development where there is no conflict with any other of its policies and where any adverse impacts of a development do not significantly and demonstrably outweigh the benefits.*

*Recent appeal decisions indicate that a five year housing land supply, as required by the Framework, cannot be demonstrated. The emerging Local Plan also confirms that Langport is suitable location for new housing and least 85 new dwellings will be required.*

*The development proposals are considered to be a sustainable form of development on the basis that they will deliver a mix of housing to meet a local and identified need.*

*The proposals would not conflict with any policies in the Framework and would not give rise to any impacts that would significantly and demonstrably outweigh the benefits.*

*The submitted technical reports that accompany the application and planning reasons identified in this statement demonstrate that the proposed development is acceptable in planning terms.*

*The Framework confirms that planning permission should be granted for sustainable developments, such as that proposed, given the fact that the Council cannot demonstrate a five-year supply of deliverable housing sites. Using the definition of sustainable development within the Framework, the development performs strongly in respect of social and economic environmental roles."*

## CONSIDERATIONS

The main areas of consideration are considered to be:

- Principle of Development
- Flooding and Drainage
- Sewerage and Water Supply
- Highways
- Visual Amenity
- Residential Amenity
- Ecology
- Planning Obligations
- Trees and Hedges
- Infrastructure and Facilities
- Archaeology

### Principle of Development

It is accepted that the site is located outside the defined development area of Langport/Huish Episcopi, where residential development is normally strictly controlled by local and national planning policies. However in a recent appeal decision in relation to a residential development at Verrington Hospital in Wincanton (11/02835/OUT) a planning inspector concluded that SSDC cannot demonstrate a deliverable 5-year land supply as required by paragraph 47 of the National Planning Policy Framework (NPPF). More recently (29/10/13) the Inspector at the Slades Hill, Templecombe appeal

(12/03277/OUT) concluded that the Council was still unable to show a five- year land supply.

In such circumstances, the NPPF advises that policies for the supply of housing should not be considered up to date (para 49). Housing applications must therefore be considered in the context of the presumption in favour of development. Accordingly, policy ST3, which seeks to limit development outside settlement limits, can no longer be regarded as a constraint on residential development simply because it is outside development areas.

The Council's position in light of this decision is that sites outside, but adjacent to current settlement boundaries, may be acceptable in principle for residential development subject to there being no other significant objections on other grounds. This stance reflects two considerations. Firstly the development areas were drawn around the larger villages and settlements that were considered to be sustainable locations where development was seen as acceptable in principle. In Langport's case the previous local plan designated the town as a Rural Centre (ST1) and appropriate for development given the:-

*"...generally superior service provision, better accessibility, generally better employment opportunities and .... capacity in terms of both physical and community infrastructure to absorb further development..."* (para. 2.48)

Secondly it acknowledges that the emerging local plan designates Langport/Huish Episcopi as a Market Town capable of accommodating at least 85 additional dwellings up to 2028 (policy SS5, Proposed Submission of Local plan, June 2012). It is not proposed to allocate sites at this stage; rather it would be a case of responding to each proposal on its merits. This reflects the fact that Langport/Huish Episcopi contains a variety of shops, services, facilities, and employment opportunities and is a sustainable location for residential development.

The 80 dwellings proposed by the current scheme, taken with the 36 allowed at appeal at Newtown (13/00314/OUT) and the 25 approved to the rear of Badger Cottage (13/03115/OUT) exceeds the 85 dwellings identified for Langport/Huish Episcopi up until 2028 through the emerging plan (policy SS5), however, it should be noted that this figure is the minimum requirement identified for the settlement and not the maximum. It is considered that Langport's role and function as a Market Town makes it suitable, in principle, to absorb further housing growth to that identified. In this instance the additional housing proposed through the current scheme is not considered to be disproportionate in scale bearing in mind the settlement's role, function and size.

It is considered that this position is consistent with the advice of the NPPF, which advises that where relevant policies are out of date, permission should be granted unless any adverse impacts of so doing would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or where specific policies in the Framework indicate development should be restricted (NPPF para 37). This means that normal development management criteria will continue to apply in terms of landscape, historic environment, access, flooding, environmental damage, amenity etc. There is no automatic assumption that sites will be approved.

On this basis, and notwithstanding the various objections from the parish council and neighbouring occupiers in relation to principle, it is considered that the principle of the residential development of this site is acceptable and the application therefore falls to be determined on the basis of its impacts. It is considered that the proposal would not set any kind of undesirable precedent.

## **Flooding and Drainage**

The Environment Agency, the Parrett Drainage Board, and Wessex Water have been consulted as to the potential flooding impacts of the development and the proposed surface water drainage scheme. They are all content with the principle of the scheme, subject to the imposition of various conditions and informatives on any permission granted. The site is located within the Environment Agency flood zone 1 and is therefore not considered to be an area at risk of flooding. Therefore, subject to the imposition of suitable conditions on any permission issued, it is considered that the proposed development would not increase the risk of flooding to existing properties in accordance with the aims and objectives of the NPPF and the local plan. The drainage proposals are considered to be adequate subject to conditions to secure further details.

## **Sewerage and Water Supply**

Concerns have been raised regarding the adequacy of the local sewerage and water supply network. Wessex Water has indicated that there are potentially issues in regard to both of these factors. However, they are content that these issues can be adequately controlled through the imposition of a suitable condition on any permission issued, and that financial contributions can be secured using the Water Industry Act 1991.

## **Highways**

Concerns have been raised by neighbouring occupiers, and the parish and town councils regarding the potential impact of the proposed development on the surrounding highway network, in regard to traffic generation and highway safety. The county highway authority was consulted as to these impacts and all highway aspects relating to the development. They have assessed the impact of the proposal including the submitted transport assessment. They have concluded that there is no traffic impact grounds for a recommendation of refusal, subject to the imposition of certain conditions on any permission issued.

Accordingly, whilst local concerns are noted, it is considered that the proposed access arrangements and local highway network are capable of accommodating the traffic generated by the development without detriment to highway safety. As such the proposal complies with saved policies ST5, TP1 and TP4 of the local plan.

Parking provision and other matters of detail (footpaths etc.) would be assessed at the reserved matter stage and need not be conditioned at this stage as requested by the highways officer.

It has been pointed out by a local objector that the description of development indicates that access will be derived from Wincanton Road, whilst the submitted plans indicate that the access will derive from Field Road. There has clearly been error in the description of development, but the submitted plans make it completely clear where the proposed access will be located.

The parish council have stated that light controlled pedestrian crossings on Somerton Road and Field Road would be welcome. However, whilst they may be welcome they are not considered necessary to make the development acceptable. As they have not been proposed by the applicant it would therefore be unreasonable to insist on their provision.

## **Visual Amenity**

Concerns have been raised regarding the impact of the proposal on the character of the area and the setting of the nearby listed buildings. The SSDC Landscape Architect and

the SSDC Conservation Officer were consulted as to the visual impacts of the scheme. The landscape architect noted that the application site was evaluated as having a capacity for development in the peripheral landscape study of Langport/Huish Episcopi carried out in 2008, and concluded that there is no landscape issue with the principle of developing the site for housing. He had some concerns as to the detailed design, but was satisfied that these could be satisfactorily resolved at the reserved matters stage and through the imposition of a suitable landscaping condition. A neighbouring occupier has also suggested that the double hedge feature should be returned to its 'former glory' as a promenade. It is considered that these matters should be considered as part of any reserved matters application.

The site is located in close proximity to a Grade II listed building. As such, the conservation officer was consulted and he has carefully considered the impact on the character and setting of that building. He has reviewed the information submitted by the applicant in relation to this impact. He indicated that he is content with the principle of the scheme, and that he is happy that the site can be developed for residential purposes without causing significant adverse impact on the setting of the listed building. He did indicate that he had some concerns as to the indicative layout, but these would have to be resolved at the reserved matters stage. The LPA has therefore had special regard to the desirability of preserving the setting of the listed building in accordance with its duties.

On this basis, and subject to the agreement of a suitable design and appropriate landscaping measures at the reserved matter stage, it is considered that the proposal complies with saved policies EH5, ST5, ST6 and EC3 and would not have such a harmful impact that permission should be withheld on the grounds of visual amenity. The various concerns of the neighbouring occupiers regarding the impact of any development on the visual amenity of the area have been considered but are not considered to outweigh the conclusions of the SSDC Landscape Architect and the SSDC Conservation Officer as to the visual impacts of the scheme.

### **Residential Amenity**

Concerns have been raised by the occupiers of neighbouring properties regarding the potential impacts of the development on their residential amenity by way of loss of privacy, light pollution, and noise generated by users of the footpath shown on the indicative layout plan. However, subject to the consideration of the layout at reserved matters stage it is not considered that the development of this site would give rise to any loss of privacy to any existing residents in these areas. The indicative layout shows a pedestrian access at a particular point. However, the layout is indicative only and as such the impacts of a possible pedestrian access on residential amenity should be considered at the reserved matters stage. There will inevitably some impact from increased lighting levels when moving from a completely un-developed site to a residential estate. However, it is considered that the detail of any lighting can be adequately controlled at the reserved matters stage, so as to prevent the harm being significant enough to warrant refusal of the scheme.

The occupier of a neighbouring property has requested that there should be substantial planting to form a buffer between the site and the properties in Garden City. However, detailed consideration of whether such a buffer is necessary is best left to the reserved matters stage.

It can therefore be concluded that the proposed development will not cause demonstrable harm to the residential amenity of adjoining occupiers in accordance with policy ST6 of the South Somerset Local Plan.



## Ecology

Concerns have been raised in relation to the impact of the proposal on local ecology, in particular in relation to the potential loss of the central hedgerow. Natural England, the SSDC Ecologist, and the Somerset Wildlife Trust all made comments in relation to this aspect. All three support the findings of the submitted ecological reports and none raise any concerns regarding the principle of the development. All refer to specific improvements that can be incorporated into the design of the scheme, but these are considered to be matters best dealt with as part of any reserved matters application. A survey has been submitted that found evidence of dormouse activity on site. The SSDC Ecologist is satisfied that the site is too small to maintain a self-sustaining population, and with very poor links to other suitable habitat, the importance of the site to dormice is likely to be very low. The presence of dormice on the site does mean that the development must be assessed against the three Habitats Regulations tests. The tests are:

1. the development must meet a purpose of 'preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment'
2. 'there is no satisfactory alternative'
3. the development 'will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range'.

The ecologist has indicated that he is satisfied that test 3 is satisfied and that broad interpretation of tests 1 and 2 would be appropriate and proportionate in this case. In terms of test 1 the development will be providing approximately 80 residential units (a number of which will be affordable) in a time of national housing shortages. The development is therefore considered to be imperative for reasons of public interest. In regard to test 2 the applicant has submitted a document demonstrating in what ways they have considered the development against the test, demonstrating that 'there is no satisfactory alternative'. Their submission rests heavily on the argument that South Somerset cannot demonstrate a five year housing land supply and that the land is within the identified direction of growth for Langport/Huish Episcopi. However, they have clearly demonstrated that reasonable steps have been taken to minimise the impacts of the development on dormice, and have considered the 'do nothing' scenario. The second test is therefore considered to be met.

As such, notwithstanding the concerns raised, the proposal is considered not to have an impact on local ecology or protected species significant enough to warrant refusal of the scheme in accordance with policy EC8 of the South Somerset Local Plan and the aims and objectives of the NPPF.

## Planning Obligations

- Sport, Art and Leisure - a contribution of £373,455.77 (£4,668.20 per dwelling) has been sought. The applicant has offered an area of land in their ownership to the local community in lieu of these contributions. However, the SSDC Community, Health and Leisure department has made it clear that they would only be prepared to offset the contributions by an amount that fairly represents the value of the land (which they put at £20,000 - £25,000 in the absence of any evidence from the applicant as to its value). The applicant has indicated that they would prefer to pay the contributions and keep the land than accept an offset to the value of the land placed on it by the Community, Health and Leisure department, or to argue a higher value for the land. Therefore, whilst it is recognised that Huish Episcopi Parish Council have a desire to obtain the land in

question for the community, the £373,455.77 offset sought by the applicant is not considered reasonable by the Community, Health and Leisure department of SSDC. As such, the full contribution will be sought.

- Affordable Housing - whilst the housing officer requests 28 affordable houses this is an outline application with all matters reserved. The application seeks permission for approximately 80 dwellings, however the actual number would be finalised at the reserved matters stage. At this point the S106 agreement should oblige the developer to provide at least 35% of the dwellings as affordable with a tenure split of 67:33 in favour of rented accommodation over other intermediate types.
- Travel Plan - the developer needs to agree the content of the Travel Plan as part of a S.106 agreement.
- Education - A contribution of £196,112 (£2451.40 per dwelling) towards primary school places is sought towards the shortage of places that the proposed development would generate.
- A monitoring fee of 20% of the application fee is sought

Accordingly, should the application be approved a Section 106 agreement will be necessary to:-

- Secure the agreed contribution towards strategic and local outdoor playing space, sport and recreation facilities.
- Secure the agreed contribution towards education.
- Ensure that 35% of the dwellings units are affordable and remain so in perpetuity.
- Provide an appropriate Travel Plan.
- Secure the agreed monitoring fee.

The applicant has agreed to these obligations, and the proposal would therefore comply with saved policies ST5, ST10, CR2 and HG7 of the local plan.

### **Trees and Hedges**

Much concern has been raised regarding the potential loss of the double row of beech hedges that currently traverses the site. However, firstly, it should be noted that the whilst the submitted layout plan show the removal of this feature, the layout is only indicative and the loss of the hedgerow is by no means certain if the current application was approved. Secondly, the SSDC Tree Officer and the SSDC Landscape Architect were consulted directly about the possible loss of beech hedges. Both confirmed that the hedges are structurally poor and neither raised an objection to their loss. The landscape architect pointed out that there is no evidence that the trees were planted for any sort of commemorative purposes and therefore puts little store in the cultural significance argued by the objectors. He further argues that their retention could significantly compromise the urban design of the site, thereby detracting from the setting of the nearby listed buildings and the wider character of the area. Finally, it must be taken into account that, as the beech trees have been considered for but concluded as not worthy of a tree preservation order, they could removed tomorrow with no further reference to the planning system. It must therefore be concluded, notwithstanding the concerns of the objectors and parish council, that the potential removal of this landscape feature should

not constrain the development of the site. A neighbour has raised similar concerns regarding the historical significance of the perimeter hedge. However, there is no evidence to suggest that the perimeter hedge is of any historic or cultural significance.

The tree officer is content with the approach taken to the trees and hedges on site, subject to a condition to secure suitable protection measure for the retained trees and hedges, including the three with preservation orders at the northern end of the site.

### **Infrastructure and Facilities**

A number of concerns have been raised regarding whether Langport/Huish Episcopi has the necessary infrastructure and facilities to cope with the proposed development. However such concerns are not supported by technical consultees or service providers and, where necessary, details can be conditioned. No service supply issues (e.g. education, healthcare etc.) have been identified in Langport/Huish Episcopi by the local plan process and the emerging local plan indicates that at least 85 houses can be provided in Langport/Huish Episcopi without significant adverse impact on the settlement's infrastructure. Indeed no critical infrastructure issues relevant to this development are identified by the Council's Report on Infrastructure Planning in South Somerset. As discussed above a contribution towards education provision has been sought and agreed by the applicant.

### **Archaeology**

The County Archaeologist has reviewed the submitted information in relation to archaeology and indicated that further evaluation of the site was required prior to determination, involving trial trenching and a metal detecting survey. On inspection of the further work, the County Archaeologist confirmed that he had no objection to the proposal being granted permission and confirmed that no further archaeological work is required.

### **EIA**

The requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 have been considered. A screening and scoping assessment was carried out in accordance with the regulations. The screening opinion issued by the LPA was that, given the nature of the site and the type of development proposed, the development will not have significant environmental effects and that no environmental statement is required for the purposes of environmental impact assessment.

### **Other Matters**

The application site is classified as Grade 2 agricultural land, which, along with Grade 1 and Grade 3a, is considered to be the best and most versatile agricultural land. Paragraph 112 of the NPPF states that:

*"Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality."*

In this case, although the fact that the land is of a higher quality tells against the scheme, it is only one consideration amongst many, and is not considered to outweigh the benefits of the scheme.

A concern has been raised the new houses will be to provide a dormitory to Yeovil, Taunton and Bridgwater. However, Langport/Huish Episcopi is considered to be sustainable location for new development in its own right with access to employment opportunities and public transport. As such, there is no reason to assume that new development would automatically serve as dormitory accommodation to the nearby larger settlements. It has been further argued that there is a limited market for new houses in the local area. However, it is clear that there is national and district wide shortage of housing that this development would help to alleviate.

A concern has been raised that there will be no benefits to the residents of Huish Episcopi and Langport from the proposed scheme. However, the scheme will consist of 35% affordable housing and will attract significant contributions towards local and strategic leisure facilities.

A concern has been raised that the offer of land is a 'bribe' to the parish council to accept the scheme, and the land in question could later be sold to Railtrack, which would be threat to the nearby Cricket Club. However, the parish council have still objected to the proposed development despite the offer of land. In any case, such an offer cannot be considered as a 'bribe' but instead a perfectly legitimate planning matter if it offered a tangible community benefit. In this case the recommendation is not to accept the offer, as the value of the land is not considered to outweigh the substantial offset being sought by the applicant. It would depend on the use of the land as to whether it posed any sort of threat to the functioning of the nearby Cricket Club, and the use of the land in question cannot be determined as part of this scheme regardless of whether the offer of land is accepted.

It has been argued that as the permission is outline only the developer would not be restricted to just 80 houses, and that it is likely that development would be at a higher density to maximise developer profits. A condition to ensure that the development is not carried out a higher density than currently indicated is considered to be appropriate in this case, due to the sensitive location of the site.

A concern has been raised that the development could lower adjoining property values. However, in this instance any effect on property values is not a material consideration.

A neighbour has raised a concern that the submitted plans have been plotted incorrectly as they do not show the presence of a large extension to the rear of 17 Garden City. It is not considered that this omission is significant to the consideration of this outline scheme.

The parish council have indicated that the provision of bungalows for the elderly or infirm would be welcome if the application was to be approved. This is a matter best considered at the reserved matters stage, but can be drawn to the applicant's attention by way of informative on any consent issued.

Finally an objector has pointed out that no Planning Statement, detailed Heritage Impact Statement, or Statement of Community Involvement were submitted with the application. However, both a Planning Statement and a Statement of Community Involvement were submitted. They were posted to the public file sometime into the application process, but a new consultation process was carried out to ensure that all interested parties were aware of their existence. No detailed Heritage Impact Statement has been submitted, but heritage aspects are considered to be adequately discussed in the Planning Statement and the Design and Access Statement.

## Conclusion

Given the Council's lack of a five year housing land supply and the site's location adjacent to the settlement limits of Langport/Huish Episcopi, it is considered that, in principle, it is a sustainable location for development. No adverse impacts on the landscape, ecology, drainage, residential amenity or highway safety have been identified that justify withholding outline planning permission and all matters of detail would be adequately assessed at the reserved matters stage or by the agreement of details required by condition. The applicant has agreed to pay the appropriate contributions.

Therefore, notwithstanding the various concerns raised, the proposed development is considered to be in accordance with policies EH5, ST3, ST5, ST6, ST7, ST9, ST10, EC3, EC8, EU4, TP1, TP2, TP4, TP7, CR2, CR4, EH12 and HG7 of the South Somerset Local Plan and the aims and provisions of the NPPF. As such the application is recommended for approval.

## RECOMMENDATION

That application reference 13/03483/OUT be approved subject to:-

- a) The prior completion of a section 106 agreement (in a form acceptable to the Council's solicitor(s)) before the decision notice granting planning permission is issued to:-
  - 1) Secure a contribution of £4,668.20 per dwelling towards the increased demand for outdoor playing space, sport and recreation facilities to the satisfaction of the Assistant Director (Wellbeing).
  - 2) Ensure at least 35% of the dwellings are affordable with a tenure split of 67:33 in favour of rented accommodation over other intermediate types, to the satisfaction of the Corporate Strategic Housing Manager.
  - 3) Provide for Travel Planning measures to the satisfaction of the County Highway Authority with the agreement of the Development Manager and fully implemented in accordance with the agreed details.
  - 4) Secure a contribution of £2451.40 per dwelling towards primary school places to the satisfaction of Somerset County Council.
  - 5) Provide for a S.106 monitoring fee based on 20% of the outline application fee.
- b) The following conditions:

## Justification

01. Notwithstanding the local concerns, the provision of approximately 80 houses in this sustainable location would contribute to the council's housing supply without demonstrable harm to the setting of the nearby listed building, archaeology, residential amenity, highway safety, ecology or visual amenity, and without compromising the provision of services and facilities in the settlement. As such the scheme is considered to comply with the saved policies of the local plan and the aims and objectives of the NPPF.

**SUBJECT TO THE FOLLOWING:**

01. The site hereby approved for development shall be as shown on the submitted location plan A081486[C]drg01 revision B received 16 September 2013.

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

02. Details of the appearance, landscaping, layout and scale (herein after called the "reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

Reason: As required by Section 92(2) of the Town and Country Planning Act 1990.

03. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development shall begin no later than 3 years from the date of this permission or not later than 2 years from the approval of the last "reserved matters" to be approved.

Reason: As required by Section 92(2) of the Town and Country Planning Act 1990.

04. The development hereby permitted shall not commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority (in consultation with Somerset County Council). The plan shall include construction vehicle movements, construction operation hours, construction vehicular routes to and from site, construction delivery hours, expected number of construction vehicles per day, car parking for contractors, specific measures to be adopted to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice and a scheme to encourage the use of public transport amongst contractors. The development shall be carried out strictly in accordance with the approved Construction Management Plan.

Reason: In the interests of highway safety and in accordance with policy ST5 of the South Somerset Local Plan.

05. No work shall commence on any dwelling on the development site hereby permitted until the access/off-site highway works shown generally in accordance with Drawing Number LGPS/Lloyd/Langport/RTB/SK04 and LGPS/Lloyd/Langport/PR/SK02 (Annex G) have been carried out in accordance with a design and specification to be approved in writing by the Local Planning Authority and to be fully implemented in accordance with the approved details, unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interests of highway safety and in accordance with policy ST5 of the South Somerset Local Plan.

06. The development hereby permitted shall not be brought into use until that part of the service road that provides access to it has been constructed in accordance with the approved plans.

Reason: In the interests of highway safety and in accordance with policy ST5 of the South Somerset Local Plan.

07. No part of the development site hereby permitted shall not be commenced until details of proposed parking spaces for any proposed dwelling and properly



consolidated and surfaced turning spaces for vehicles have been provided and constructed within the site in accordance with details which shall have been submitted to and approved in writing by the Local Planning Authority. Such parking and turning spaces shall be kept clear of obstruction at all times and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted.

Reason: In the interests of highway safety and in accordance with policy ST5 of the South Somerset Local Plan.

08. No development shall take place until detailed plans have been submitted to and approved in writing by the Local Planning Authority (in conjunction with the local highway authority) relating to line, level and layout of the access road junction and its means of construction and surface water drainage. The approved access road junction shall be laid out constructed in accordance with the requirements of a Section 278 Agreement under the provisions of the Highway Act 1980.

Reason: In the interests of highway safety and in accordance with policy ST5 of the South Somerset Local Plan.

09. No development shall commence until a surface water drainage scheme for the site, based on the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

Reason: To prevent the increased risk of flooding, to improve and protect water quality, improve habitat and amenity, and ensure future maintenance of the surface water drainage system.

10. No development approved by this permission shall be occupied or brought into use until a scheme for the future responsibility and maintenance of the surface water drainage system has been submitted to and approved by the Local Planning Authority. The approved drainage works shall be completed and maintained in accordance with the details and timetable agreed.

Reason: To ensure adequate adoption and maintenance and therefore better working and longer lifetime of surface water drainage schemes.

11. Prior to the commencement of the development, site vegetative clearance, demolition of existing structures, ground-works, heavy machinery entering site or the on-site storage of materials, a tree & hedgerow protection plan and an arboricultural method statement relating to retained trees & hedgerows within or adjoining the site, shall be submitted to and agreed in writing with the Council and they shall include the following details:
- the installation and locations of protective fencing, root protection areas & construction exclusion zones clearly detailed upon a tree & hedgerow protection plan and;
  - details of special tree & hedgerow protection measures for any required installation of built structures, below-ground services and hard surfacing within the root protection areas of retained trees & hedgerows.

Upon approval by the Council, the measures specified within the agreed tree protection plan and the arboricultural method statement shall be implemented in

their entirety for the duration of the construction of the development and the required terms of the tree planting scheme.

Reason: To secure the planting and establishment of new trees and shrubs, and to preserve the health, structure and amenity value of existing landscape features (hedgerows & trees) in accordance with the objectives within saved Policy ST6 (The Quality of Development) of the South Somerset Local Plan 2006 and those statutory duties as defined within the Town & Country Planning Act, 1990 (as amended)[1].

12. Details of a dormouse mitigation plan shall be submitted with any future reserved matters application. The works shall be implemented in accordance with the approved details and timing of the mitigation plan, as modified to meet the requirements of any 'European Protected Species Mitigation Licence' issued by Natural England, unless otherwise approved in writing by the local planning authority.

Reason: For the conservation and protection of legally protected species of recognised nature conservation importance in accordance with Policy EC8 of the South Somerset Local Plan, and to ensure compliance with the Wildlife and Countryside Act 1981 and The Habitats Regulations 2010.

13. The measures with regard to tree removal detailed in section 4.2 (Bat Roost Assessment Of Trees, WYG, 9 September 2013) shall be fully implemented if any trees are to be removed to accommodate the development hereby approved.

Reason: To protect protected species in accordance with policy Ec8 of the South Somerset local Plan.

14. The development shall not commence (specifically including any site clearance or ground works) until a scheme for the eradication of Japanese Knotweed from the site has been submitted to, and approved in writing, by the local planning authority. The approved scheme shall be implemented in full unless otherwise agreed in writing.

Reason: For the protection of amenity of future owners/occupiers of the site and neighbours, and to ensure compliance with The Wildlife and Countryside Act 1981 (as amended).

15. As part of any reserved matters application details of measures for the enhancement of biodiversity shall be submitted to and approved in writing by the Local Planning Authority. The biodiversity enhancement measures shall be implemented in accordance with the approved details unless otherwise approved in writing by the local planning authority.

Reason: For the enhancement of biodiversity in accordance with NPPF.

16. The residential development hereby approved shall comprise no more than 80 dwellings.

Reason: To ensure that the level and density of development is appropriate to the location and commensurate with levels of contributions sought in accordance with ST5, EH5, ST6, ST10 and EC3 of the South Somerset Local Plan.

**Informatives:**

01. You are reminded that the County Highway Authority have requested that a Condition Survey of the existing public highway will need to be carried out and agreed with the Highway Authority prior to any works commencing on site, and any damage to the highway occurring as a result of this development will have to be remedied by the developer to the satisfaction of the Highway Authority once all works have been completed on site.
  02. You are reminded of the contents of the Parrett Drainage Board's letter of 08 October 2013 which is available on the council's web-site.
  03. You are reminded of the contents of the Environment Agency's letter of 15 October 2013 which is available on the council's web-site.
  04. You are reminded of the comments of the Council's Climate Change Officer dated 27 September 2013 which is available on the council's web-site.
  05. You are reminded of the comments of the parish council indicating that the provision of bungalows for the elderly or infirm would be welcome.
  06. Before this development can commence, a European Protected Species Mitigation Licence (under The Conservation (Natural Habitats, &c.) Regulations 2010) will be required from Natural England. You will need to liaise with your ecological consultant for advice and assistance on the application for this licence. Natural England will normally only accept applications for such a licence after full planning permission has been granted and all relevant (protected species) conditions have been discharged.
  07. Reptiles (particularly slow worms) are present on the site and could be harmed by construction activity, contrary to legislation (Wildlife and Countryside Act 1981), unless appropriate precautionary measures are employed. Suitable measures could include appropriate management of the vegetation to discourage reptiles away from areas of risk, reptile exclusion fencing, and/or translocation of animals from the site. An ecological consultant should be commissioned to undertake further reptile specific survey and provide site specific advice.
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# Appendix 1



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16 April 2014

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BY POST AND BY EMAIL

## Without Prejudice

Dear Mr Heath-Coleman

**The Trial Ground, Somerton Road, Langport**

## Introduction

I have been asked to write to you on behalf of our client, the Lloyd Family, in respect of the application for residential development at the above site for which you are the planning officer.

Further to the meeting of the Area North Committee on 26 March 2014, we understand that the outline application for residential development and the provision of access from Wincanton Road (application reference 13/03483/OUT) has been recommended for approval subject to the provision of a Section 106 Agreement to address education contributions, affordable housing, travel planning measures and the retention of an existing hedge running through the centre of the site.

Our clients have asked me to write to you regarding the requirement to retain the hedge, which we believe would be detrimental to the development of the site and beyond the scope of regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the "**CIL Regulations**").

In spite of officer advice that the hedge is not worthy of retention and its retention would put a significant restraint on the development of the site (the Council's landscape architect having observed that retention of the hedge would compromise potential urban design), members voted to add a planning obligation requiring the hedge to be retained. The members then proceeded to vote to approve your recommendation that planning permission should be granted but on the basis of the additional planning obligation requiring the retention of the beech hedge.

It is clear to us that the members of the planning committee have misunderstood the significance of the beech hedge and attributed to it a significance which cannot be justified in planning terms. The beech hedge is neither ancient nor commemorative, but is understood to have been planted in the

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1930s - according to a family member - in order to give shelter to a strip of herbaceous borders on either side of a path.

### **CIL Regulation 122**

By way of background, the CIL Regulations, which came into effect on 6 April 2010, set the Government's policy tests for planning obligations, then contained in Circular 5/05, on a statutory footing.

Regulation 122 states that "A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is -

- a) *necessary to make the development acceptable in planning terms;*
- b) *directly related to the development; and*
- c) *fairly and reasonably related in scale and kind to the development.* (our emphasis)

These statutory tests are reiterated as policy tests in paragraph 204 of the National Planning Policy Framework.

The National Planning Policy Guidance (**NPPG**) published on 6 March 2014 (paragraph: 004 Reference ID: 23b-004-20140306), states "*In all cases [...], the Local Planning Authority must ensure that the obligation meets the relevant tests for planning obligations in that they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind. Planning obligations should not be sought ...which are clearly not necessary to make a development acceptable in planning terms. The Government is clear that obligations must be fully justified and evidenced.*"

The decision of members of the Planning Committee to resolve to grant planning permission on the basis that the hedge is retained is unlawful. The retention of the hedge does not meet the statutory test for planning obligations contained in CIL Regulation 122.

We refer to your report prepared for the Area North Committee meeting held on 26 March 2014, which recommended the application for approval without the requiring the hedge to be retained. In recommending the application for approval, your report fully considered the consultation responses in respect of the application. Many of the consultation responses referred to the central hedges and whether or not they are required to be retained. Certain of these responses from Council officers highlighted in the report are listed below.

- *SSDC Trees - has no objection to the removal of the parallel double beech hedgerows*
- *SSDC Landscape Architect - agrees to the removal of the central beech trees, which he states are structurally poor...he thinks it unlikely that the hedge was planted as a commemorative feature and in order for it to flourish it would have to be reduced to the point that it would have minimal visual impact. He is also concerned that its retention would compromise the potential urban design.*
- *SSDC Ecologist - notes the local objection to the removal of the central beech hedges, but concludes that such a single species hedge is likely to be of limited value in terms of*

*providing food and supporting dormice. Given the other limitations on the site, he does not regard the presence of dormice as justifying the retention of the beech hedge.*

*When addressing Trees and Hedges, your reported noted that "much concern has been raised regarding the potential loss of the double row of beech hedges that currently traverses the site. However, firstly, it should be noted that whilst the submitted layout plan show the removal of this feature, the layout is only indicative and the loss of the hedgerow is by no means certain if the current application was approved. Secondly, the SSDC Tree Officer and the SSDC Landscape Architect were consulted directly about the possible loss of beech hedges. Both confirmed that the hedges are structurally poor and neither raised an objection to their loss. The Landscape Architect pointed out that there is no evidence that the trees were planted for any sort of commemorative purpose and therefore puts little store in the cultural significance argued by the objectors. He further argues that their retention could significantly compromise the urban design of the site, thereby detracting from the setting of nearby listed buildings and the wider character of the area. Finally, it must be taken into account that, as the beech trees have been considered for but concluded as not worthy of a tree preservation order, they could be removed tomorrow with no further reference to the planning system. It must therefore be concluded, notwithstanding the concerns of the objectors and the Parish Council, that the potential removal of this landscape feature should not constrain the development of the site."*

Your findings accord with the findings of our client's application documents, in particular the Hedgerow Survey dated September 2013. This survey, carried out in July 2013, analysed whether the hedgerows on the application site should be considered important under the wildlife and landscape criteria set out in the Hedgerow Regulations 1997. It found that neither of the central hedgerows met the criteria that meant they should be considered "important". That is to say, they do not need to be protected on grounds that they contain certain species of hedge, plant or bird and that they do not have a historical or archaeological significance.

#### **Conditions versus planning obligations**

A further consideration concerning the unnecessary nature of the proposed planning obligation is the guidance contained in the NPPG. The NPPG indicates that, where either a planning obligation or a condition could be imposed to regulate development, the local planning authority should use a condition rather than seeking to deal with the matter by means of a planning obligation (please refer to NPPG paragraph 011 Reference ID: 21a-011-20140306).

Draft condition 11 proposed in your report already addresses hedgerow treatment stating:

*"Prior to the commencement of the development, site vegetative clearance, demolition of existing structures, ground-works, heavy machinery entering site or the on-site storage of materials, a tree & hedgerow protection plan and an arboricultural method statement relating to retained trees & hedgerows within or adjoining the site, shall be submitted to and agreed in writing with the Council and they shall include the:*

- Installation and locations of protective fencing, root protection areas & construction exclusion zones clearly detailed upon a tree & hedgerow protection plan and;*



- *Details of special tree & hedgerow protection measures for any required installation of built structures, below ground services and hard surfacing within the root protection areas of retained trees and hedgerows.*

*Upon approval by the Council, the measures specified within the agreed tree protection plan and the arboricultural method statement shall be implemented in their entirety for the duration of the development and the required terms of the tree planting scheme.*

*Reason: To secure the planting and establishment of new trees and shrubs, and to preserve the health, structure and amenity value of existing landscape features (hedgerows & trees) in accordance with the objectives within saved Policy ST6 (The Quality of Development) of the South Somerset Local Plan 2006 and those statutory duties as defined within the Town and Country Planning Act, 1990 (as amended)."*

Thus, a condition has been used to afford the protection necessary in planning terms to existing trees and hedgerows and a section 106 obligation is not needed in addition.

#### **Conclusion**

Your report is clear, the development is acceptable in planning terms without the retention of the central hedge.

To grant planning permission on the basis of a section 106 agreement that contains an item that is neither necessary to make the development acceptable in planning terms, nor directly related to the development, nor fairly and reasonably related in scale and kind to the development is unlawful as it is contrary to the statutory requirements of Regulation 122 and policy contained in paragraph 204 of the NPPF.

As such, it could open the planning permission to legal challenge. Such a challenge could be brought on grounds that the Council would have acted unlawfully by taking into account an immaterial consideration when deciding whether to grant planning permission, i.e., the planning obligation requiring the retention of the hedge. If our clients were to become involved in a legal challenge to the application on account of the retention of the hedge, they would seek to recover their costs from the Council.

#### **Next steps**

Please would you consider this letter with your legal department. I should then be grateful if you would confirm you agree with us that it would be unlawful to require our clients to enter into a planning obligation to secure the retention of the hedge.

Following this, it should be explained to the members of the Area North Planning Committee why it is not permissible on planning grounds to seek to retain the central hedge through a planning obligation. We then request that the application be taken back to committee without the amendment to the Section 106 requirements to require the retention of the beech hedge.

If it would be of assistance, please do not hesitate to telephone me. Further, we would be happy to attend a meeting with you and / or your legal department should you wish to discuss this letter further.

Yours sincerely \*

**Clare Mirfin**  
**Ashfords LLP**

cc. Nigel Jones - Chesterton Humberts (BY EMAIL)