

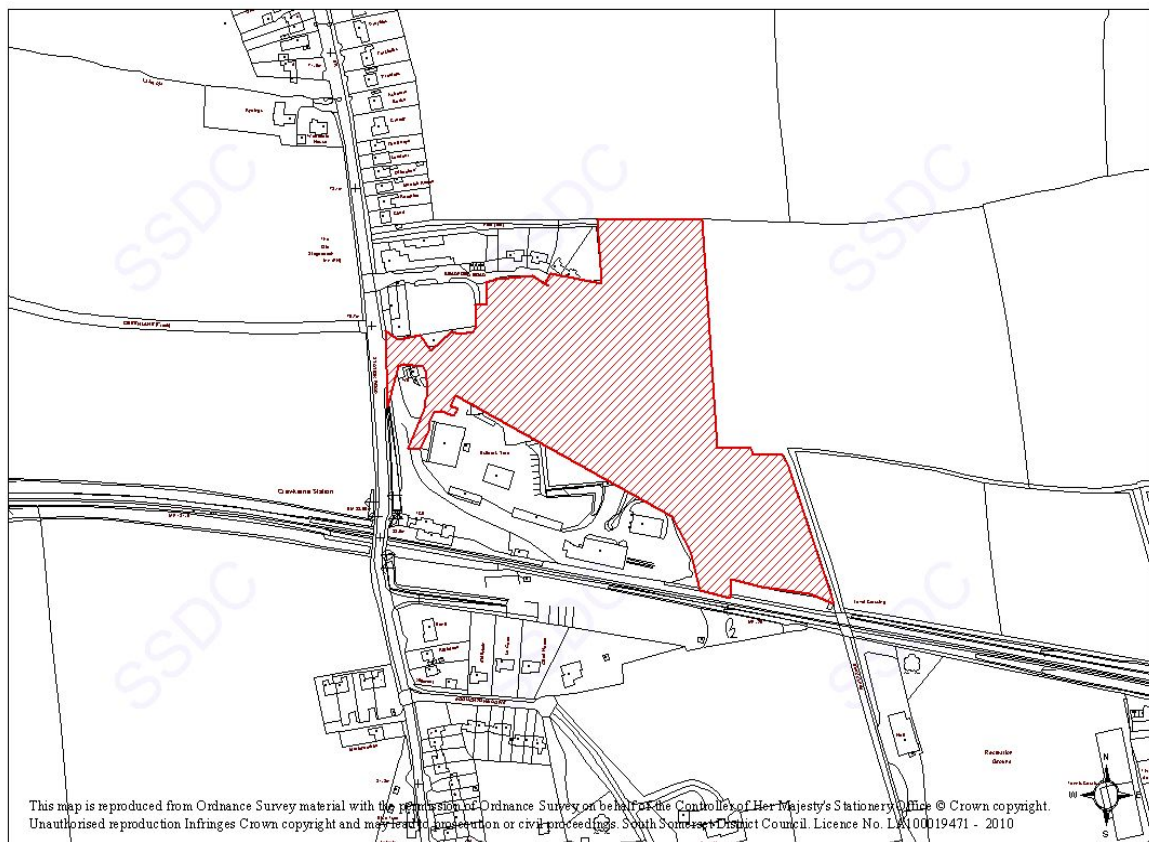
**Officer Report on Planning Application: 08/04348/FUL**

<b>Proposal :</b>	The erection of 100 no. dwellings together with associated roads, parking, sub-station, open space and affordable housing provision (GR 345407/108646)
<b>Site Address:</b>	Bradfords Site Station Road Misterton
<b>Parish:</b>	Misterton
<b>Ward :</b>	CREWKERNE - Cllrs. Mike Best, Geoff Clarke, Angie Singleton
<b>Recommending Case Officer:</b>	Adrian Noon Tel: 01935 462370 Email: adrian.noon@southsomerset.gov.uk
<b>Target date :</b>	28th April 2009
<b>Applicant :</b>	Betterment Properties (Wey) Ltd
<b>Agent: (no agent if blank)</b>	
<b>Application Type :</b>	Major Dwlgs 10 or more or site 0.5ha+

**REASON FOR REFERRAL TO COMMITTEE**

This application is before Committee at the request of the Development Manager with the agreement of the Chairman due to its significance.

**SITE DESCRIPTION AND PROPOSAL**



This 3.17 hectare site is located on the east side of Station Road, to the rear of the builders merchants and to the north of Crewkerne Railway station and is wholly in the parish of Misterton. It comprises a former agricultural feed mill site, now largely cleared, and former

agricultural land. The site is within development limits, apart from the south-eastern part which falls outside the boundary. Where the site adjoins countryside it is bounded by hedgerows.

A public footpath runs across the northeast part of this site, although this is currently subject to an application to divert it along the eastern side of the site. This path then proceeds south via a foot crossing over the railway line to the playing fields and the main part of the village, including the village hall and school. Another footpath, the Monarch's Way, runs along the northern side of the site. The nearest and only neighbouring residential properties are nos. 1-7 (odd) Bradford Road to the north of the site; all other adjacent properties are commercial (offices and builders merchant to the west and railway station to south) with open countryside to the east.

This is a full application for residential development of 100 units at a density of 31 per hectare comprising:-

- A three storey apartment block on the south-west boundary containing 4 one-bedroom and 10 two-bedroom flats;
- 47 two-bedroom houses;
- 36 three-bedroom houses
- 3 four-bedroom houses
- 198 parking spaces;
- associated open space including a LEAP within the development and a substantial area of informal open space in the southeast part of the site adjacent to the railway line.

The houses would be a mix of 2-storey detached, semi-detached and terraced properties fronting onto a series of internal roads with parking courts to the rear. The access, which would be shared with the builders merchants and the railway station, would be direct from the A356. There would be no direct access to the site via Bradford Road.

The application has been amended (14/10/09) to address concerns raised by the landscape architect and conservation manager in relation to the detail of the apartment block, the detail of the internal layout and the position of the LEAP. A revised FRA has also been provided (01/05/09) to address technical concerns.

The proposal is supported by a Design and Access Statement, a Flood Risk assessment, a Transport Assessment, a Wildlife Survey Report, a Reptile Translocation Report, a Statement of Community Involvement, a Green Travel Plan, a Sustainability Statement, a Landscape Proposal and a Ground Investigation Report. The applicants have also, at the request of Network Rail, provided a census (June 2009) of existing usage of the foot crossing.

The applicants have offered 17 'affordable' units and have provided a draft S.106 agreement to secure this. No other obligations are offered as it is claimed that these would render the scheme unviable. An 'open book' appraisal of the finances of the development has been provided on a confidential basis. This has been referred to the District Valuer for appraisal.

## **HISTORY**

There is a long history of consents for the development of the feed mill, warehousing and builders depot. Of more relevance are previous outline consents for development dating back to 1995, namely:-

95/05714/OUT Outline permission granted for Access improvements, formation of builders merchant's premises and residential development (26/05/95).

97/02437/OUT Renewal of 95/05714/OUT approved (06/01/98).

00/03190/OUT Renewal of 95/05714/OUT approved (21/06/01).

04/00446/OUT Outline permission granted for residential development and associated access improvements (07/04/05).

06/01654/REM Reserved matters approved for new access (21/08/06).

08/02511/FUL Planning permission granted for formation of new access (01/09/08)

This site, which is identical to the 2004 application (04/00466/OUT), includes the land within the 1995 (95/05714/OUT) proposal and additional land to the southeast.

The original mixed use proposal was not subject to any S.106 planning obligations, however the 2004 application (which was solely for residential development) agreed the provision of 16.97% affordable housing. This figure was based on a multiplier derived from the increase in site area and equates to 35% on the additional residential area above that approved in 1995.

## **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 accords significant weight to the emerging Regional Spatial Strategy for the South West (RSS10) due to its highly advanced state. The view is therefore taken that the relevant development plan comprises the Draft Regional Spatial Strategy for the South West (Proposed Changes June 2008), the saved policies of the Somerset and Exmoor National Park Joint Structure Plan Review and the saved policies of the South Somerset Local Plan.

The policies of most relevance to the proposal are:

National Guidance  
PPS1 – Sustainable Development  
PPS3 – Housing  
PPG13 – Transport  
PPG17 – Planning for open space, sport and recreation  
PPS25 – Flooding

Draft Regional Spatial Strategy for the South West (Proposed Changes June 2008):

Development Policy D – Required Infrastructure for Development  
Development Policy E - High Quality Design  
Development Policy G - Sustainable Construction  
Development Policy H - Reusing Land  
TR1 – Demand Management and Public Transport in the SSCTs  
H1 – Affordable Housing  
H2 – Housing Densities  
RE5 – Renewable Energy and New Development

Saved policies of the Somerset and Exmoor National Park Joint Structure Plan (April 2000):

STR1 - Sustainable Development  
STR2 - Towns  
STR4 - Development in Towns  
Policy 33 – Provision for Housing  
Policy 35 - Affordable Housing  
Policy 37 - Facilities for Sport and Recreation within Settlements  
Policy 39 - Transport and Development  
Policy 40 - Town Strategies  
Policy 42 - Walking

Policy 48 - Access and Parking  
Policy 49 - Transport Requirements of New Development  
Policy 50 – Traffic Management

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

ST3 – Development Limits  
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  
EP6 – Demolition and Construction Sites  
TP1 - New Development and Pedestrian Movement  
TP2 – Travel Planning  
TP3 – Cycle Parking  
TP4 - Road Design  
TP7 – Residential Car Parking Standards  
HG1 – Provision of New Housing Development  
HG4 – Density  
HG6 – Affordable Housing Targets  
HG7 – Affordable Housing Thresholds  
CR2 - Provision for Outdoor Playing Space and Amenity Space in New Development  
CR3 – Off-site provision  
CR4 - Amenity Open Space

South Somerset Sustainable Community Strategy

Goal 1 – Safe Communities  
Goal 3 – Healthy Environments  
Goal 4 – Quality Public Services  
Goal 7 – Distinctiveness  
Goal 8 – Quality Development  
Goal 9 – Homes within a Balanced Housing Market

#### *Policy-Related Material Considerations*

It is considered that the previously granted permissions constitute a material consideration. Most recently the approval of application 04/00446/OUT has established the principle of the residential use of the whole site, as opposed to earlier mixed use of the site. Whilst this permission has now lapsed it is considered relevant.

Also relevant is the position the District Council took in relation to the impact on the foot crossing over the railway when considering the 2004 application. Despite Network Rail requesting improvements, namely a footbridge, it was recommended to the Committee (15/12/04) that “*the conditions of the planning permission do not include any requirement that the existing pedestrian crossing over the railway be altered or otherwise improved*” on the grounds that:-

*“For this to be justified it would have to be demonstrated that the potential increase in the use of the public footpath attributable to future residents of the proposed development changes the situation from being presently acceptable to unsafe. Given the existing use of the path and the increase in pedestrian traffic that would result from the proposed development it is not considered that it would be reasonable for the Committee either to refuse planning consent or to require that a condition be attached to the consent preventing the commencement of the development until such time as the footway crossing has been improved.”*

The recommendation was adopted without dissent.

*Other Relevant Documents:*

None.

## **CONSULTATIONS**

*Misterton Parish Council* – Initially supporting subject to:-

- The use of an effective Drainage scheme that would cope with storms;
- Confirmation from the Highways Agency that there will be no detrimental effect from increased traffic in Misterton;
- Confirmation from the County Council that a solution to traffic congestion in Misterton is now a necessity. The developer should pay a substantial sum toward the cost of alleviation, preferably the purchase of land to provide traffic lights;
- Measures to minimise disruption during construction;
- Action to reduce the unsightly effect of the site if there is a delay of more than 12 months;
- Affordable housing remaining at 18%. Any increase should be owned/part owned housing;
- Improvements to the foot crossing (bridge or tunnel) over the railway to accommodate increase foot traffic;
- No use of new roads by HGVs using Bradford's entrance.

In relation to the revised scheme comment that they:-

- Support the inclusion of flats and play area;
- Need assurance that surface water drainage is adequate;
- Do not support the exclusion of a bridge across the railway or the squeezing of space around existing houses.

It is noted that the site fencing is not secure and the site has become subject to fly-tipping. Furthermore there are sewerage problems, which may be the result of blockages arising from the demolition works. A site meeting was subsequently held with the Parish Council, the County Councillor, the case officer and the applicant at which these issues were resolved.

*Crewkerne Town Council* – raise concern about the increased number of houses, flooding issues, increased traffic, safety issues at the rail crossing. The Town Council feels that an underpass or bridge over the railway should be provided and that consideration should be given to the provision of a shop.

*County Highways Officer* – no objection to the proposed access arrangements or internal layout, the technical detail of which could be agreed by condition. It is recommended that, given the likely increase in pedestrian movement towards the village, it is appropriate that this development provides a pedestrian crossing facility within Misterton in close proximity to the primary school.

*County Travel Planning Co-ordinator* – considered the submitted travel plan to be inadequate. Unless further information and a revised plan is received the application should be resisted. If an acceptable travel plan is received it should be the subject of a s.106 agreement.

*Highways Agency* – accepts that the proposal will have no material impact on traffic flows on the A303 or A35 junctions. Although a number of issues are raised with the submitted travel plan it is supported in principle. No objection raised subject to a condition to require the agreement of a Construction Management Plan.

*Network Rail* – initially did not wish to comment. Following discussions with the case officer, and liaison with their 'Level Crossing Risk Control Coordinator', the applicant was asked to provide survey data of the existing level of use which would be used in conjunction with "a specific assessment tool for measuring and assessing risk at level crossings." After



consideration of this data Network Rail maintained their position that improvements were not required.

At this stage it became apparent that new staff at Network Rail were unaware of the organisation's previous stance; accordingly previous correspondence was forwarded. This triggered a reconsideration of Network Rail's position and, although at the time of writing the detailed outcome of their deliberations is awaited, informally it is understood that they have reverted to their previous position and will suggest that improvements are necessary.

*Rights of Way Officer* – No objection and notes that no objections have been received to the diversion application.

*Environment Agency* – have considered the submitted flood risk assessment and raise no objection subject to safeguarding conditions to agree the detail of the drainage scheme.

*Wessex Water* – Considers there is sufficient capacity in the existing public sewerage system. Raises no objection subject to no surface water being discharged to the foul system and clarification of existing surface water flows.

*Area Engineer* – No objection in principle to proposed drainage strategy subject to clarification of the detail and how water from the station car park is dealt with. Satisfied with revised FRA.

*Environmental Protection Unit* – recommend conditions in the event that permission is granted.

*Climate Change Officer* – originally raised concern about the lack information about the use of renewables.

*Conservation Manager* – initially raised a number of concerns about the detail of the scheme, particularly the apartment block. No objection raised to the revised drawings.

*Landscape Architect* – initially concerned about the detail of the landscaping scheme. In relation to the revisions, raises no objection.

*Ecologist* – no objection subject to safeguarding conditions.

*Economic Development Officer* – no objection. Requests that additional car parking for railway station be considered.

*Open Spaces Officer* – initially raised concerns about the amount and layout of the on-site open space.

*Leisure Facilities Officer* – recommends that a contribution of £278,693.89 (£2,815.09 per dwelling) be sought towards the provision of playing pitches and strategic community facilities to meet the demands arising from the occupiers of the additional houses.

*Play & Youth Facilities Officer* – recommends a contribution of £178,483.87 (£1,358.08 per dwelling) be sought towards the provision of youth facilities and play facilities to meet the demands arising from the occupiers of the additional houses.

*County Education Authority* – recommends a contribution of £340,591 be sought towards the provision of 14 additional primary school and 11 additional middle school places to meet the demands arising from the occupiers of the additional houses.

*Strategic Housing Manager* – objects to the low level of affordable housing proposed – would expect 35% affordable housing with a tenure split of 67/33 in favour of rented accommodation

*District Valuer* – considers that the development is viable, albeit with reduced obligations. It is suggested that 10% affordable housing without grant plus c. £800,000 in contributions would

still deliver a reasonable developer profit. A trade off between affordable housing and financial contribution could raise the affordable element, as could the receipt of grant.

## **REPRESENTATIONS**

9 letters received from local residents making the following comments:-

- Significant increase in use of inadequate and unsafe foot crossing over railway which leads to the recreation ground, particularly by children;
- Impact of increased traffic on Misterton would be unmanageable and dangerous;
- Lack of frequent buses and cost of train travel would contribute to increased traffic, car use and carbon footprint;
- Increase use of entrance would dangerous;
- Impact of surface water on locality;
- Adequacy of existing sewers and drains, which are the applicant's responsibility;
- Impact of additional dwellings on town parking, health facilities, schools, sports facilities etc;
- Noise from new road junction;
- Concern about position of boundary with Bradford Road and implications for future rights of access to properties on Bradford Road;
- Need for signage to Bradford Road for emergency vehicles.
- Garages to plots 7 & 8 would unacceptably overhang boundary to 7 Bradford Road; the development would restrict parking in Bradford Road.

## **CONSIDERATIONS**

It is considered that the principle of the residential development of this site has been established with the previous outline grant of permission. Whilst this was approved under the emerging local plan, the development boundary remains substantially the same and there is not therefore considered to be any conflict with policy ST3 and the site could potentially deliver housing that would contribute to the need and targets identified by policies HG1 and HG6.

Accordingly the relevant issues are considered to be the detailed layout and potential impacts of the proposal and the provision for developer obligations that are necessary under the now adopted local plan.

### *Design and Layout*

As a result of amendments and revised supporting information it is considered that the design, detailing, layout, provision of on site open space and landscaping are now acceptable. No local objections have been received to these aspects of the proposal which are supported by specialist officers and any outstanding details (e.g. materials, boundary treatments etc.) could be covered by conditions. This aspect of the proposal is therefore consider to comply with policies ST5, ST6, ST7, EC3, CR4, HG4 and the on-site criteria of policy CR2.

### *Access and Drainage*

The access arrangements are identical to those agreed by applications 06/01654/REM and 08/02511/FUL and, along with the parking provision, are considered acceptable by the highways officer, with technical matters appropriate for condition. Similarly the surface water drainage is considered acceptable in principle by the Environment Agency, Wessex Water and the District Council's engineer, with any outstanding issues being resolvable by condition. Accordingly concerns that have been raised in these respects are considered to have been adequately addressed. Accordingly policies EU4, TP4, TP7, TP3 and the relevant criteria of policies ST5 and ST6 are satisfied.

### *Residential Amenity*

It is not considered that the proposal would trigger any concerns for residential amenity. The outlook of the properties in Bradford Road would be maintained and arguably improved with the cessation of the feed mill use and removal of the redundant buildings. The proposed buildings nearest to these properties, plots 1, 4, 5, 6, 7, 8 and 9, would be sufficiently separated from the existing dwellings to prevent any adverse impacts. The garage to plots 7 & 8 have been omitted. Any permission could be subject to a condition requiring the agreement of a Construction Management Plan to safeguard residential amenity.

Within the development adequate amenity space and parking would be provided to meet the needs of future occupiers. It is considered that the layout provides for well overlooked public spaces – indeed the scheme has been specifically amended to ensure that the proposed LEAP would benefit from natural surveillance. The layout of the parking courts would also allow for 'passive' surveillance and the 'designing out of crime'.

It is not considered that the proposal poses any immediate threat to residential amenity through overlooking. Nevertheless any permission would need to be subject to a condition to remove permitted development rights that would allow the subsequent insertion of additional windows to sensitive elevations.

On this basis it is considered that the proposal would comply with policies ST5, ST9 and EP6.

### *Planning Obligations*

The District Council has sought the provision of affordable housing and contributions towards off-site sports, arts and leisure facilities as required by policies HG7, CR2 and CR3. The County Council has sought travel planning measures, education contributions and the provision of a road crossing in Misterton. It should be noted that wider 'traffic' issues in the village are clearly an existing problem and therefore not attributable to this development. The highways officer considers a crossing to be a reasonable improvement that could be sought from this development. Network Rail suggests that a footbridge over the railway line is necessary. Policy ST10 provides the basis for seeking measures to reasonably mitigate the impacts of development.

The applicant has resisted all requests beyond the provision of 17 affordable units, that being the sole obligation placed on the 2004 permission. In line with the District Council's standard approach an independent appraisal of the viability of the development has been sought from the District Valuer.

Setting aside for the moment the issue of the foot crossing it is common ground that the scheme would be unviable should all other obligations be sought, nevertheless the District Valuer is of the opinion that with the provision of 10% affordable housing the scheme would be viable with the requested sports, arts and leisure and education contributions. A higher proportion of affordable housing could be achieved with grant funding.

The applicant has therefore been invited to enter into negotiations on all requested District and County Council obligations but has declined. Whilst this is regrettable, it is not considered reasonable for them to base their fall back position on lapsed permission granted under a previous policy regime. This failure to negotiate or to provide any further evidence to counter the District Valuer's conclusions is considered to justify a recommendation of refusal on the grounds that the proposal would neither promote a sustainable and balanced community nor adequately mitigate its impact on the community and local infrastructure. As such the proposal would be contrary to policies ST10, TP2, TP1, HG7, CR2 and CR3.

Turning to the foot crossing over the railway, Network Rail have now reversed their position and suggest that improvements to the rail crossing, i.e. a footbridge, are necessary. This is consistent with their previous position and reflects the very strong local feeling on this matter. Clearly there is a safety issue that is a material consideration in the determination of this application.



Policy 42 of the County Plan supports safe pedestrian route between residential areas and community facilities/schools. It suggests that local planning authorities should seek improvements to provide for safe use. Policy TP1 of the local plan echoes this requirement for the "improvement and provision of facilities for pedestrians".

Previously such concerns were over-riden by the District Council on the basis that this rail crossing is 'intrinsically' unsafe and is an existing problem. The Committee resolved that:-

*"it be suggested to Network Rail that the payment to be made to them, for the release of land in their ownership to enable visibility splays to be provided as part of this development, be utilised to fund any improvements to the pedestrian crossing of the railway;"*

The District Council is now in the same position it faced in December 2004, namely would the impact on the rail crossing be so bad that it would be reasonable to withhold planning permission? The starting point is the use of planning obligations. It is a longstanding principle that a developer should not be expected to bear the entire cost of fixing an existing problem. If a problem already exists and development would exacerbate the situation then it is reasonable that the developer contributes to the cost of resolving the problem.

The only situation where the District Council would be justified in asking a developer to shoulder the entire cost would be where the existing situation was 'safe' but the development would make it 'unsafe'. It seems to be accepted that the existing situation is less than ideal, indeed in the report to Committee in December 2004 the crossing was referred to as "intrinsically unsafe". The resolution clearly indicates that, at the time, it was not considered reasonable to expect the developer to either wholly or partly fund improvements to the crossing.

Unless there has been a material change in circumstance, or the previous recommendation/resolution is questioned, it would be questionable for the District Council to now conclude differently. In this respect, the current full application establishes the number of dwellings – information not previously available. Additionally this application has provided a survey of the existing levels of use of the crossing.

With the benefit of hindsight it could be argued that the difficulties the previous applicant claimed to have experienced when dealing with Network Rail may have clouded the matter. Certainly the strength of local feeling and the application of a degree of common sense now indicates that there is a problem which needs to be balanced against the precedent that the 2004 resolution sets.

The applicant however is adamant that there have been no material changes that would justify either a part or full contribution towards the cost of any improvements and refuse to negotiate on the matter.

Whilst there may have been a change in circumstance, much depends on Network Rail's final comments, and crucially their justification for seeking improvements. These will be posted on the Council's website and circulated to Members prior to the Committee, and an oral update, in light of a legal opinion, will be necessary.

#### *Other Issues*

The Council's ecologist and environmental health officers raise no objections. It is not therefore considered that there would be any conflict with policies EC8 and EP5 subject to the recommended safeguarding conditions. With regard to the outstanding comments of local residents it is not considered that any undue noise would result from the new access; any signage required in relation to Bradford Road is not a planning issue and access via Bradford Road for existing residents would be unaffected.

Finally the economic development officer's comments are noted. Parking at the railway station is not relevant to the planning merits of this application, however it is understood that Network Rail and the applicant have agreement that the latter will upgrade the parking and improve the access as part of their landowner agreement.

## **CONCLUSION**

Notwithstanding the general acceptability of the layout, relationship with existing dwellings, parking, landscaping, drainage and access arrangements it is considered that the failure to make provision for contributions towards off-site sports, arts and leisure facilities, primary and middle school education facilities, a road crossing in Misterton and lack of robust travel planning justifies withholding planning permission in this instance. Furthermore the applicant's refusal to provide for more than 17% affordable housing is contrary to policy HG7.

An additional reason for refusal based on the failure to provide for improvements to the foot crossing may be justified on the basis of Network Rail's final comments. However an oral update will be necessary.

## **RECOMMENDATION**

Refuse planning permission.

## **REASONS**

1. This development of 100 residential units with 17 affordable units would fail to adequately provide for affordable housing. It has not been satisfactorily demonstrated that the development cannot provide nearer to 35% affordable housing justified by the evidence available to the District Council. As such the proposal would fail to contribute to a sustainable and balanced community and is therefore contrary to policy HG7 of the South Somerset Local Plan and Goal 9 of the South Somerset Sustainable Community Strategy.
2. This development of 100 residential units makes no provision for infrastructure improvements necessary to reasonably mitigate the impact of the development on the community. No acceptable justification has been put forward for this failure to make provision for:-
  - a) a road crossing within the village
  - b) improvements to local education facilities,
  - c) improvements to sports, arts and leisure facilities
  - d) robust travel planning

and as such the proposal would fail to contribute to a sustainable community contrary to policies ST5, ST10, TR2, CR2 and CR3 of the South Somerset Local Plan, Goal 3 of the South Somerset Sustainable Community Strategy and policies 49 and 50 of the Somerset and Exmoor National Park Joint Structure Plan.

Possible additional reason due to failure to make provision for improvements to the foot crossing.

---