

Area West Committee – 15<sup>th</sup> May 2013

**Officer Report On Planning Application: 12/04194/FUL**

<b>Proposal:</b>	Formation of an agricultural access and installation of gate. (GR 333357/108568)
<b>Site Address:</b>	Land Rear Of Nursery Gardens And Fordham Grange Nursery Gardens Chard
<b>Parish:</b>	Chard
<b>JOCELYN (CHARD) Ward (SSDC Member)</b>	Cllr D M Bulmer
<b>Recommending Case Officer:</b>	John Millar Tel: (01935) 462465 Email: john.millar@southsomerset.gov.uk
<b>Target date:</b>	3rd January 2013
<b>Applicant:</b>	Mr & Mrs R Trott
<b>Agent: (no agent if blank)</b>	Miss Sarah Hall Hawkridge House Chelston Business Park, Wellington Somerset, TA21 8YA
<b>Application Type:</b>	Minor Other less than 1,000 sq.m or 1ha

**REASON(S) FOR REFERRAL TO COMMITTEE**

The application is to be considered by Area West Committee, having been deferred at the meeting of 20th February 2013. It is before Committee at the request of the Ward Member, with the agreement of the Area Chair. It is felt that the application should be given further consideration by members, to consider the potential impact on local amenity.

**SITE DESCRIPTION AND PROPOSAL**





The application relates to a small square-shaped field, which adjoins a number of larger fields on the east edge of Chard, just to the south of the A30. It is within the proposed CEDA (Chard Eastern Development Area), which forms part of the Chard Regeneration Scheme. The land is owned by the occupiers of Fordham Grange, a residential dwelling, also adjoining the application site. The west boundary is alongside Nursery Gardens, with the road and turning head stopping just short of the field boundary. The two properties at the end of the cul-de-sac, one of which is a bungalow and the other a house, immediately adjoin the site. There is a small strip of land between the site and the existing carriageway, which is suggested to be in the ownership of these two neighbouring properties, 31 and 32 Nursery Gardens. It is also noted that this strip of land is indicated as being part of the adopted public highway and is shown as such in the County Council's records.

The application is made to create a vehicular access into the site from Nursery Gardens and install a gate, as well as associated engineering operations comprising grading of soil to create the access into the field.

## HISTORY

12/03170/AGN: The formation of an access and installation of a gate - Planning permission required.

03/02050/FUL: Erection of 16 dwellings and associated road - Refused.

## POLICY

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

### Relevant Development Plan Documents

Somerset and Exmoor National Park Joint Structure Plan:  
 STR1 - Sustainable Development  
 Policy 5 - Landscape Character  
 Policy 49 - Transport Requirements of New Development

South Somerset Local Plan 2006:  
 ST5 - General Principles of Development  
 ST6 - The Quality of Development  
 EC3 - Landscape Character  
 EC8 - Protected Species  
 EP9 - Control of Other Potentially Polluting Uses

### Policy-related Material Considerations

National Planning Policy Framework (March 2012):  
 Core Planning Principles - Paragraph 17  
 Chapter 7 - Requiring Good Design  
 Chapter 10 - Climate Change and Flooding  
 Chapter 11 - Conserving and Enhancing the Natural Environment

South Somerset Sustainable Community Strategy (2008-2026):  
 Goal 11 - Environment: Protection and enhancement of our material environment and biodiversity.

## **CONSULTATIONS**

### **Parish Council:**

Recommend refusal on highway safety grounds as it is not considered that the access is suitable for agricultural vehicles.

### **SSDC Technical Services:**

Looking at the site using Google 'Street View' I note that the agricultural land falls in a general North/South direction and is about 0.75m above the road which is situated to the west. I would not expect any issues to do with surface water run-off from the agricultural land but to safeguard against this the applicant could be required to install a stone-filled drain across the entrance. To be honest I'm surprised that the County Council haven't requested this as it is fairly standard practice where access onto the highway is being proposed. There could of course be an issue to do with depositing mud on the highway when the access is in use but this is a highway enforcement matter rather than a planning issue.

### **County Highway Authority:**

Initial Comment: The County Highway Authority consider that the proposal would result in an increase in vehicle movements on Nursery Gardens however they conclude that this is unlikely to be significant enough to warrant an objection by the Highway Authority on these grounds.

In regard to the detail, it is noted that the proposed access would be higher than the existing carriageway and as a consequence the applicant would be required to re-grade the proposed access so it is at the same level as the road. The application detail also shows that the access would be gated for which the Highway Authority would require the entrance gates to be open inwards and set back from the carriageway edge. The Highway Authority are content for these details to be attached as a pre commencement

condition, however amended plans have been supplied with these some details included. It is noted that there have been questions raised over whether the section of land between the back edge of the highway and the fence and its ownership. This matter was due to be investigated with further comments attached below.

To conclude, the proposal is considered unlikely to generate a significant increase in vehicle movements on Nursery Gardens and therefore no objection is raised by the Highway Authority, subject to the imposition of conditions relating to re-grading of the access, it's surfacing and position of the proposed gate.

Further Comment: The Highway Authority requires the gradient of the access to be no steeper than 1:10 (applicant has indicated 1:20) and also confirmed that the road record shows that the highway is adopted all the way to the boundary with the field. This has also been confirmed by checking the original adoption papers. In regard to the register of title provided by adjacent neighbours, it is advised that it may be that their ownership would go to the centre line of the highway, however the Highway Authority has adopted the top, which should also be their responsibility to maintain.

## REPRESENTATIONS

The application has been advertised by site notice for the requisite period. Letters of objection have been received from 16 local residents and a petition has also been received with 66 signatures on it. The main issues raised are as follows:

- There is no need for agricultural access. The site is a paddock, which is not used for grazing any livestock and there are already several access points.
- Nursery Gardens is a quiet cul-de-sac, unsuitable for use as a through route. It is narrow in places and has restricted visibility at the junction onto the A30, where road users often exceed the speed limit. As such any additional traffic (particularly as a result of large agricultural vehicles) is likely to be detrimental to highway and pedestrian safety, particularly children who play in the street.
- Increased traffic will cause disturbance to residents (i.e. noise and mud on the roads), which will be detrimental to their residential amenity.
- The strip of land between the public highway and the site is owned by the residents at the end of the cul-de-sac and has been maintained to a high standard, being grassed and planted with a high hedge and flower beds. There has never previously been any access via the cul-de sac, in the forty years that the estate has existed.
- Permission was refused in 2003 for the erection of houses on this site. The creation of an access may set a precedent for approving a future application. In addition, it is noted that the revised application makes reference to Summerfield Development (SW) Ltd, which further exacerbates the concerns that this application will lead to development of the adjoining land.
- The removal of the hedge would be detrimental to wildlife in the area.
- When the A30 Crewkerne Road was resurfaced, part of the works involved the road at the top of Nursery Gardens being replaced. There is concern that the required depth of substrate was not met, increasing the likelihood of erosion of the road, if heavy agricultural vehicles use Nursery gardens for access.

## CONSIDERATIONS

### Principle of Development

The proposal relates to the provision of a new access, and associated gate, from Nursery Gardens into the application site. The site itself is a small field, referred to as a

paddock on previous planning application 03/02050/FUL. As such, it is agricultural land in open countryside. The site is however within the defined development area of Chard, despite being beyond the existing developed limits of the town. Furthermore, it is within the proposed CEDA (Chard Eastern Development Area), which forms part of the agreed phased growth plan for Chard, as identified by the Chard Regeneration Scheme.

There is existing access to the field from the applicant's property and other adjoining fields and it would appear that there is no formal agricultural business being carried out. At the time of visiting the site, no animals were present on site. Several of the objections have made reference to a lack of use of the site for agricultural purposes, highlighting a lack of need or justification. It is noted that no justification has been provided for the new access, however it is acknowledged that there is no need for the applicant to justify the proposal. It is for the Local Planning Authority to assess the proposal on its own merits and in this case, the main considerations will be impact on local landscape character and visual amenity, highway safety and the residential amenity of local residents.

### Scale and Appearance

The proposal is relatively small-scale, in terms of appearance, involving the removal of a section of hedge 3m wide and the insertion of a 6 bar metal field gate, consistent with the type used on agricultural land. There is a difference of levels between the carriageway and the application site, however required excavations would be limited. The field to the north of the hedge is at the same level as the top of the grass bank, as seen from Nursery Gardens. In terms of visual impact, it is not considered that the proposal would have any adverse impact on the character of the built environment or local landscape character.

### Highway Safety and Local Amenities

The main areas of concern relate to the impact the scheme may have on highway safety and residential amenity due to increased and potential larger vehicle movements. Objectors refer to the junction of Nursery Gardens and the A30 having restricted visibility, along with cars exceeding the speed limit, making this unsuitable for agricultural vehicles, as well as the cul-de-sac being narrow in places and difficult for larger vehicles to manoeuvre. It is also pointed out that the cul-de-sac is currently relatively quiet and safe and as a result, there is potential for increased traffic to pose a risk to the safety of highway users and pedestrians, as well as increased disturbance to local residents. It is noted that permission for a new housing development in 2003, which would have also derived access at this point, was refused with one of the reasons being impact on highway safety and loss of residential amenity.

In terms of impact on highway safety, the County Highway Authority have considered the proposal and raised no objections. They acknowledge that there may be an increase in vehicle movements but these will not be significant enough to recommend refusal. County Highways have requested that the gate be set back 4.5m from the carriageway edge, which has been agreed by the applicant. Amended plans have since been received and consulted on showing the gate set 4.5m back from the field boundary and the extent of the re-grading works required to provide access with a gradient less than the 1:10 requested by the County Council.

In regard to residential amenity, it is not considered that the proposal will cause any unacceptable harm. Even though it is not a through road to any further development, Nursery Gardens is a residential area, with regular vehicle movements expected. As with the issue of highway safety, the proposed development is unlikely to create any significant increase in traffic movements and as a result increased disturbance is likely to

be minimal. Notwithstanding this, it should however be noted that the approved master plans within the 'Chard Regeneration Framework - Implementation Plan (October 2010)', indicate that a link will be provided at this point, into the proposed future road network between Millfield and the A30 Crewkerne Road. In approving the 'Regeneration Plan', the acceptability of the junction of Nursery Gardens and the A30 would have been considered, as well as the ability of the local road network to accommodate through traffic in relation to the future road network serving the proposed CEDA development.

Concerns have been raised that this proposal could set a precedent for future development; however this should not be the case as a result of this application. The proposal is for an agricultural scale access into this field. Any future development proposal will be considered on its own merits and the level of traffic movements would be one of the key considerations. A larger scale development, or link road as referred to above, would also require significantly greater alterations to ensure that the road is constructed to a suitable adopted standard, a level of work not proposed at this time. It is likely that there could be future development proposals coming forward, however this would be due to the application site being within the CEDA, rather than as a result of an agricultural access being provided. Ultimately the particulars of any future development, the manner in which it is accessed and also the final layout of any road network associated with the CEDA will be subject to separate applications and final consideration, separate from this process.

#### Other Issues

One objector has referred to the potential impact on wildlife as a result of the loss of a section of hedgerow. In this case, the area of hedge to be removed is approximately 5m in width and it is considered that this is a small scale loss that would have no adverse impact on local ecology. The proposed removal of this section of hedgerow would also constitute permitted work under the Hedgerow Regulations 1997 so no separate consent is required for its removal, if this application for planning permission is granted.

Consideration had been given to the potential impact of surface water run-off from the field onto the highway but the Council's Engineer does not consider that there is likely to be additional runoff than would be experienced at present. Despite this, they have suggested that a stone-filled drain across the proposed site entrance would safeguard against any potential issue. A standard condition may be imposed to request details of drainage provision to ensure that there is no run-off onto the highway.

An issue raised in relation to this application and the previous one, is that the strip of land over which the access will be derived between the highway and the application site, is within the ownership of the adjoining residents at 31 and 32 Nursery Gardens. The applicant is certain that the land is owned by the County Highway Authority and has provided a highway map indicating that the land is part of the highway. However land registry documents were provided as part of application 03/02050/FUL, which showed that the strip of land was owned by the occupiers of these two neighbouring properties. These documents have been provided again as part of this application, with further correspondence from the applicant's agent, which would seem to confirm that the land was adopted by the County Council, as part of the highway following a legal agreement entered into in 1971. The County Highway Authority have now confirmed that despite the land being laid out as garden, the road records show that the adopted highway does run right up to the boundary with the field, a point that has again been confirmed by checking the original adoption papers.

Notwithstanding these issues of land ownership, the grant of planning permission does not override any other legal requirements, for example the need to gain another land



owner's consent to carry out works on their land. In this case, there is a contentious point that the adjoining residents claim they should have had appropriate notice served on them as part of the planning process, due to their claim of ownership. The applicant contends that the works required to provide the access will take place solely within land controlled by the Highway Authority and therefore such notice is not required. The Council's Legal Services Team have considered the case and are of the opinion that it is not necessary for the applicant to serve Certificate B on the neighbours on this occasion. As such, it is deemed that the application has been made properly and all requirements have been complied with.

### Conclusion

Overall, the proposed development is considered to be acceptable. The visual impact of the proposal will be limited, with no adverse impact on the established street scene or on local landscape character. The potential increase in vehicle movements is not considered to be significant and as a result will have no detrimental impact on highway safety or cause any unacceptable harm to the residential amenity of neighbouring residents. Furthermore, it is not considered that the proposal will increase the likelihood of surface water run-off beyond the site.

### **RECOMMENDATION**

Approval with conditions

01. The proposed development, by reason of its size, scale and materials, respects and relate to the character of the area and causes no unacceptable harm to residential amenity, highway safety, landscape character or local ecology, in accordance with the aims and objectives of policies 5, 49 and STR1 of the Somerset and Exmoor National Joint Structure Plan, saved policies ST5, ST6, EC3 and EC8 of the South Somerset Local Plan 2006 and the provisions of chapters 7, 10 and 11 and the core planning principles of the National Planning Policy Framework.

### **SUBJECT TO THE FOLLOWING:**

01. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

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

02. The development hereby permitted shall be carried out in accordance with the following approved plans: drawing number '001 Rev B', received 18th March 2013 and '1:2500 location plan' and '1:500 block plans', received 16th April 2013.

Reason: For the avoidance of doubt as to the development authorised and in the interests of proper planning.

03. The layout of the access hereby approved, including the grading of the access, proposed changes in existing ground levels, position of the gate and the details of new boundary treatments shall be carried out in accordance with details as indicated on approved plan '001 Rev B'. Such details once carried out shall not be altered without the prior written consent of the Local Planning Authority.

Reason: In the interests of visual amenity and highway safety, in accordance with policies STR1, 5 and 49 of the Somerset and Exmoor National Joint Structure

Plan, saved policies ST5, ST6 and EC3 of the South Somerset Local Plan 2006 and the provisions of chapters 7 and 11 of the National Planning Policy Framework.

04. The design and finish of the field gate hereby permitted shall be carried out in accordance with the details submitted in correspondence, received 8th November 2012.

Reason: In the interests of visual amenity, in accordance with policies STR1 and 5 of the Somerset and Exmoor National Joint Structure Plan, saved policies ST5, ST6 and EC3 of the South Somerset Local Plan 2006 and the provisions of chapters 7 and 11 of the National Planning Policy Framework.

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

Reason: In the interests of highway safety, in accordance with policy 49 of the Somerset and Exmoor National Joint Structure Plan Review and saved policy ST5 of the South Somerset Local Plan.

06. Prior to the access hereby permitted being first brought into use, the section of highway between the edge of the carriageway and the entrance gate shall be properly consolidated and surfaced (not loose stone or gravel).

Reason: In the interests of highway safety, in accordance with policy 49 of the Somerset and Exmoor National Joint Structure Plan Review and saved policy ST5 of the South Somerset Local Plan.

07. Provision shall be made within the site for the disposal of water so as to prevent its discharge on to the highway, details of which shall have been submitted to and approved in writing by the Local Planning Authority. Such approved drainage details shall be completed and become fully operational before the development hereby permitted is first occupied. Following its installation such approved scheme shall be permanently retained and maintained thereafter unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of highway safety and local amenity, in accordance with policies 49 and STR1 of the Somerset and Exmoor National Joint Structure Plan Review, saved policies ST5, ST6 and EP9 of the South Somerset Local Plan and the provisions of chapter 10 of the National Planning Policy Framework.

**Informatives:**

01. Having regard to the powers of the Highway Authority under the Highways Act 1980 the applicant is advised that the creation of the new access will require a Section 184 Permit. This must be obtained from the Highway Service Manager, South Somerset Area Highway Office, Mead Avenue, Houndstone Business Park, Yeovil, Tel No. 0845 345 9155. Application for such a permit should be made at least four weeks before access works are intended to commence.
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