

6. Land adj Heather House, Alford, Lovington – Application No. 12/04730/FUL

Proposal :	Erection of a new house and garage (GR: 360433/132172)
Site Address:	Land adjacent Heather House, Alford, Lovington
Parish:	Alford
CARY Ward (SSDC Members)	Cllr Nick Weeks Cllr Henry Hobhouse
Recommending Case Officer:	Nicholas Head Tel: (01935) 462167 Email: nick.head@southsomerset.gov.uk
Target date :	6th February 2013
Applicant :	Mrs Dawn Harley
Agent: (no agent if blank)	Mr Ben Carlisle, Carlisle Jessop LLP 23 Union Street Wells Somerset BA5 2PU
Application Type :	Minor Dwellings 1-9 site less than 1ha

The report was referred to Area East Committee at the request of the Ward Member, with the agreement of the Area Chair, to enable a full discussion of the views of the local community and the Parish Council in relation to further development in this locality.

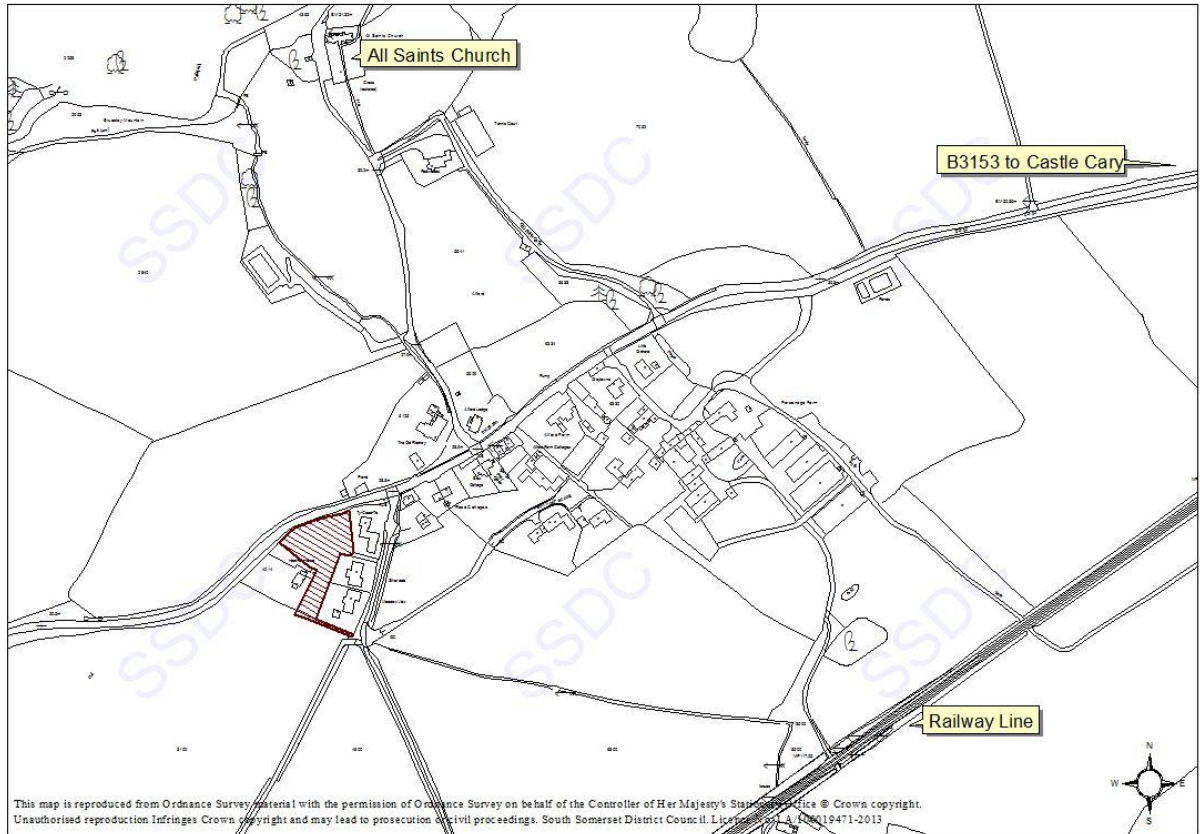
The application was '2-starred' (**) as the proposal for a new dwelling in this rural location, for which no reasonable justification has been put forward, is contrary to policy and, if approved, could have district-wide implications. Accordingly, Area East were advised that should the Committee wish to support the proposal contrary to the officer recommendation the application would need to be referred to the Council's Regulation Committee for consideration.

The report was considered by Area East Committee at its meeting on 13 March 2013 (Draft minute attached at Appendix A), when it was resolved:

*That Planning Application: 12/04730/FUL** be referred to the Regulation Committee with the recommendation that it be approved, contrary to the officer's recommendation.*

Accordingly the application is now referred to the Regulation Committee for final determination.

SITE DESCRIPTION AND PROPOSAL



The site is located outside of the defined development area at the western edge of the village of Alford, on the south side of the B3153. It is situated immediately north of the curtilage area of Heather House, a two-storey dwelling with direct access onto the B3153. The site has been used as ancillary garden area for some years, for which a certificate of lawfulness was granted in 2008. To the east of the site are three newer, single-storey dwellinghouses, fronting onto Alford Well Farm Lane. Heather House currently enjoys an additional means of vehicular access onto this same lane.

The site falls within Flood Zone 3a.

Permission is sought for a new dwellinghouse and garage, taking access via the existing access onto Alford Well Farm Lane.

HISTORY

89/00001/OUT - Outline permission refused for bungalow. Subsequent appeal dismissed.

05/01397/OUT - Outline permission refused for bungalow and double garage.

08/02810/COL - Certificate of Lawfulness issued for use of land as garden.

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 decisions must be made in accordance with relevant Development Plan Documents unless material considerations indicate otherwise.

For the purposes of determining current applications the local planning authority

considers that the relevant development plan comprises 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:

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

STR1 – Sustainable Development
STR6 – Development Outside Towns, Rural Centres and Villages
Policy 5 – Landscape Character
Policy 9 – The Built Historic Environment
Policy 49 – Transport Requirements of New Development

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

ST3 – Development Areas
ST5 – General Principles of Development
ST6 – The Quality of Development
EC3 – Landscape Character

National Planning Policy Framework (March 2012):

Achieving Sustainable Development:

- The presumption in favour of sustainable development
- Core planning principles

4. Promoting sustainable transport
6. Delivering a wide choice of high quality homes
7. Requiring good design
8. Promoting healthy communities
10. Meeting the challenge of climate change, flooding and coastal change
11. Conserving and enhancing the natural environment

Policy-related Material Considerations

Technical Guidance to the National Planning Policy Framework, Dept of Communities and Local Government, March 2012

South Somerset Sustainable Community Strategy

CONSULTATIONS

Cary Moor Parish Council: Supports the proposal and recommends approval subject to conditions, including:

- detailed planting proposal;
- existing access from Heather House onto Well Farm Lane to be closed to prevent intensification of use of this access.

Highways Authority: Recommends refusal of the application for the following reason:

The proposed development would be located where it is remote from adequate services, employment, education, public transport, etc, and will therefore increase the need for journeys to be made by private vehicles which is unsustainable in transport terms and in

conflict with government advice.

In the event of approval, it is recommended that no access be allowed from the site directly onto the B3153, and that the existing field gate be stopped up. In addition, the parking and turning area would need to be extended to allow for the parking of 3 vehicles; cycle storage would also be recommended.

Area Engineer: *Reference to the attached extracts from the PPS25 Practice Guide regarding the Sequential Test would suggest that there is some scope for flexibility in respect of this application and in my view the comments in the submitted Flood Risk Assessment are reasonable grounds for the application to be considered for approval. Likewise the Exception Test set out in the FRA seems to satisfy the requirements.*

I note the comments in the EA's letter about compensatory flood storage on a level for level basis and perhaps the applicant can respond to this – there may be an area within the owner's control where this can be provided. I would however make the point that since the EA have apparently accepted that the site is with Flood Zone 3a (at high risk of flooding) rather than Zone 3b (functional flood plain) I am uncertain about their requirement for compensatory flood plain.

The proposed floor level of the dwelling at 30.32m AOD is sufficiently above the maximum flood level of 30.00 to provide some assurance that the property will not be at risk of flooding and the incorporation of flood resilience measures in the construction is an additional safeguard. Reference to the FRA indicates that the access road is to be at 30.15m AOD.

On the basis of the above I would find it difficult to justify a refusal on the basis of flooding issues.

Landscape Officer: No objection, subject to conditions

Planning Policy Officer: *The application site is located outside of any Development Area in a location where development is strictly controlled and limited to that which benefits economic activity, maintains or enhances the environment and does not foster growth in the need to travel (Saved Policy ST3). As you are aware the validity of saved South Somerset Local Plan Policy ST3: Development Areas has recently been called into question with regards to housing supply and the Council has accepted that it does not have a 5 year supply of housing land. However, Policy ST3 seeks to direct new housing development to sustainable locations, therefore proposals for open market housing at any settlements without a Development Area (such as Alford) are considered to be unsustainable in principle. The onus in this instance is on the applicant to demonstrate why she believes the development is sustainable having regard to the National Planning Policy Framework (NPPF) paragraphs 7 -16. Alford does not have any local facilities such as a shop or a pub and I cannot see that a case has been made on this basis.*

The application site also lies within Flood Zone 3 and the supporting Flood Risk Assessment states that the Environment Agency have confirmed that it is within Flood Zone 3a (Appendix D – Letter dated October 2010). Whilst the sites location within Flood Zone 3a is implied within this letter by reference to the Sequential Test, it does not actually explicitly state that this is the case. However, assuming that it is, the Sequential Test as submitted does not appear to consider any alternative sites outside of the Flood Plain therefore, I cannot see how this test can have been met (NPPF, Paragraph 101). Paragraph 102 of the NPPF refers to the Exception Test and the need to demonstrate

that the development will bring about wider sustainability benefits to the community and to demonstrate that the development will be safe for its lifetime, again this test does not appear to have been met...

Whilst I understand the applicants desire to remain in the settlement she has lived in for many years, sympathize with her health issues and recognise that she has the support of her neighbours, due to the sites unsustainable location and flooding issues, from a planning policy perspective this application cannot be supported, therefore an objection is raised.

Tree Officer: No objections. If approved, tree protection measures required.

Environment Agency: *We note that the FRA refers to Sequential Test discussions with your Authority. Whilst we have no comments to make on the acceptability of any information submitted, your Authority should be satisfied that there are no reasonably available alternative sites at a lower flood risk prior to approving any planning permission. In the event that the sequential test is satisfied there should be the provision of a compensatory flood storage area on site.*

APPLICANT'S CASE

The application is justified on the following basis:

- the applicant has lived in the village for 36 years;
- she is a widow, living alone, and wishes to remain in the village;
- the applicant is experiencing health issues;
- a choice is faced about future care: being at home or ultimately being care (this appears to be a future scenario, not an issue currently being faced by the applicant);
- the applicant's existing house is unsuitable – a single storey new dwelling would be preferable
- provision of alternative accommodation for a local resident represents 'sustainable development' in terms of the NPPF in that it increases community cohesion and vibrancy, allows social inclusion;
- the development would sustain the communities and facilities of adjacent villages (these are not detailed);
- the proposal is in accordance with policies in the Draft Core Strategy;
- there are precedents to support the application.

REPRESENTATIONS

Two letters have been received in response to the application:

- One supporting the application, subject to controls limiting the use of the existing access onto Alford Well Lane and implementation of landscape planting;
- One observing it will be dangerous to insist on the occupants of Heather House using the access to the B3153 – which was the reason the new access to the lane was permitted.

The applicant included 13 letters of support for the application from local residents. The proposal is supported for various reasons including:

- the applicant is a long-standing resident, wishing to remain in the village;
- ill-health requires the applicant to move to a more suitable (single-storey) dwelling

- which would include space for a carer;
- the design and layout are considered appropriate;
- the additional house will increase the future viability of Alford.

CONSIDERATIONS

Principle of Development

The house is located outside of the defined development area, in a location with few local facilities and services. As clearly set out by both the Policy and Highways Officers, the proposal represents unsustainable development, requiring occupants of a new dwelling to travel for their daily needs (work, education, shops and services). In principle, therefore, there is a clear policy objection to the proposal.

Previous Decisions

This is the third application for a dwellinghouse on this site, two previous applications having been refused in 1990 (also dismissed on appeal) and 2005. The most recent application was refused for the following reasons:

1. The proposed development would constitute an unacceptable intrusion into the open countryside and as such is contrary to Policy STR6 - development outside towns, rural centres and villages, of the South Somerset and Exmoor National Park Joint Structure Plan Review and ST3 - Development Areas, of the South Somerset Local Plan (proposed modifications) 2004.

2. The proposed development site is remote from any urban area and therefore distant from adequate services and facilities, such as, education, employment, health, retail and leisure. In addition, public transport services are infrequent. As a consequence, occupiers of the new development are likely to be dependent on private vehicles for most of their daily needs. Such fostering of growth in the need to travel would be contrary to government advice given in PPG13 and RPG10, and to the provisions of policies STR1 and STR6 of the Somerset and Exmoor National Park Joint Structure Plan Review 1991-2011.

This decision is a significant material consideration. Approval of any development on the site would be dependent on overcoming these reasons for refusal.

Visual Impact

The site is large, with notable mature vegetation around most sides. It is noted that the previous application was refused on the basis that "The proposed development would constitute an unacceptable intrusion into the open countryside..." Whilst the siting of the proposed dwelling would relate to the existing character and grain of the local settlement, in that it is not isolated from other houses, the concern remains that this is a low-density area with large gaps to the road frontage, preserving an essentially rural appearance. The insertion of a new dwelling here would represent an unwelcome visual intrusion.

Comment on Applicant's Justification for Development: Policy Position

The proposal is based on the applicant's future personal circumstances, and a detailed view on the policy position. The applicant's detailed submission on policy considerations has been carefully assessed together with the Council's Policy Planning Officer. The Policy Officer has clearly set out the policy position as follows:

Alford is not a sustainable location for new development; it is not listed in saved **Policy ST2: Villages** as a settlement that is in principle a suitable location for development and is therefore located in the open countryside and as I stated in my previous response, does not have any local facilities such as a shop or a pub.

The South Somerset Local Plan 1991-2011 was adopted in April 2006; all but five of the policies and proposals within this plan were formally saved in April 2009. These policies remain saved until such time as they are replaced by any new policies adopted by South Somerset District Council. Paragraphs 214 and 215 of Annex 1: Implementation, of the National Planning Policy Framework (NPPF) address the issue of weight to be afforded to existing Local Plan policies. Clarity regarding South Somerset District Council's (SSDC) position has been sought from Communities and Local Government (CLG) regarding this issue. CLG have clarified that paragraph 214 does not apply to SSDC as our local plan policies were saved under another process. Paragraph 215 does apply in that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given).

The NPPF identifies the three dimensions of sustainable development - it is expected to perform an economic, a social and an environmental role, paragraph 8 is clear that sustainable development consists of a combination of all three elements. From an economic perspective this proposal will only bring about benefit to the applicant and those employed in the construction of that new dwelling. In terms of a social role the proposal will potentially provide an additional home in Alford and accommodation to specifically meet the needs of the applicant but in a location that is not accessible to local services. From an environmental perspective the proposal will not be contributing to protecting or enhancing the natural or built environment or minimising the impacts of climate change and is in fact located in Flood Zone 3a.

Paragraph 14 of the NPPF deals with the presumption in favour of sustainable development, for decision taking this means:

- *approving development proposals that accord with the development plan without delay; and*
- *where the development plan is absent, silent or relevant policies are out of date, granting permission unless:*
 - i) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
 - ii) specific policies in this Framework indicate development should be restricted.*

Paragraph 100 of the NPPF states:

Inappropriate development in areas of risk from flooding should be avoided by directing development away from areas at highest risk.....

The NPPF also expects the Sequential and Exception Tests to be applied and met.

I believe the Environment Agency have raised an objection to the proposal and that the requirement to carry out a Sequential Test has not been met. There are therefore specific policies within the NPPF which development should be restricted.

Saved Policy ST5: General Principles of Development states that development will be

considered against a number of criteria, criterion 6 includes:

The proposal avoids placing people and property at risk from flooding.....

As stated above in planning terms the site is located in a countryside location, paragraph 55 of the NPPF is clear that new homes in the countryside should only be allowed in special circumstances such as being essential to the needs of a rural worker, making use of a redundant or disused building, being of exceptional design or making optimal use of a heritage asset, this proposal meets none of these exceptions.

With regards to emerging Local Plan Policy SS2: Development in Rural Settlements, whilst the supporting text of the Policy does refer to the potential provision of small bungalows for elderly local people it also starts from a premise of *no development unless certain conditions are met* (para 4.35). Paragraph 4.44 of the emerging Local Plan states that *new housing development should only be located in those Rural Settlements that offer a range (i.e. two or more) of the following services.....* Alford does not have two or more of the listed services. The Local Plan has now been submitted to the Secretary of State however this is an innovative Policy which has yet to be tested at Examination therefore cannot be given full weight.

To conclude the proposal is contrary to saved Local Plan Policies ST2 and ST5; to paragraphs 14, 55 and 100 of the NPPF and Policy SS2 of the emerging Local Plan therefore a planning policy objection is maintained.

Whilst reference to the applicant's future needs are noted, it is not considered that they can be given sufficient weight to overcome the considerable policy objection to development on this site.

Impact on Residential Amenity

Concerns have been raised by local residents along the Lane that traffic of both Heather House and the new dwelling would use the existing access onto the lane. The proposal seeks use of the Lane access only by occupants of the new dwelling, which would accord with these concerns.

The design and layout of the buildings are not considered to present any other amenity issues in relation to the occupants of neighbouring houses, and there is not considered to be any amenity reason for refusal of the application.

Flood Risk

Government policy, as set out in the NPPF, Para 100, states that:

Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere.

The site falls within Flood Zone 3. In an initial consultation response, the EA has objected to the proposal. This objection has been lifted subsequent to the receipt of additional information. However, as pointed out by the EA, Government guidance requires all development to be steered towards Flood Zone 1. To achieve this, a 'sequential test' is embodied in the policy guidance:

The aim of the Sequential Test is to steer new development to areas with the lowest

probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.

Clearly there are other sites, outside of Flood Zone 3, that are reasonably available for development, even if not in the ownership of the applicant. The proposal is not considered to have passed the sequential test as required by the NPPF, and is therefore contrary to Government policy advice.

The applicant has made provision, as requested by the EA, for a compensatory retention basin on the site, as a measure to avoid the increase of flood risk elsewhere; measures are also included in the design to ensure that occupants of the dwelling would not be subjected to personal risk from flooding (i.e. raising the floor level to a suitable degree). However, neither of these measures overcomes the basic clear policy position that development should be subject to a sequential test, and that development should be avoided in Flood Zone 3.

The Council's Engineer has taken a view that the sequential test can be treated with 'some flexibility'. The EA has advised that 'reasonably available' does not restrict the exploration of sites to land owned by the applicant. In a decision dated 7 April 2009, an appeal inspector noted that:

It is not sufficient, for the purposes of the sequential test, to limit the area of search to land that is already in the appellants' ownership; that approach is too narrow. The need is to consider the availability of sites on which a bungalow could be built.

Both the EA and the Council's Policy Team advise that the sequential test has not been passed. The Council's Engineer's view is therefore not supported. Whilst it might be the case that occupants of the dwelling might not be placed in a life-threatening position, the risk of flooding and consequent amenity and property damage cannot be overlooked, and the policy guidance is clear that applications under these circumstances should be refused.

Highways Issues

The Highways Authority raises issues should the application be approved:

- the new dwellinghouse should not take any access onto the B3153;
- the existing field gate onto the B3153 should be stopped up;
- the parking and turning area should be re-configured to enable three cars to park and turn within the site.

These issues could all be covered by condition.

Previous Decision: Reasons for Refusal

As set out in this report, although there have been some policy changes in the period since the refusal of a previous application (05/01397/OUT), it is not considered that either reason for refusal has been overcome. The proposed dwelling is considered to represent an unacceptable intrusion in this countryside locality; and the locality of the site would result in unsustainable development.

Conclusion

Whilst the applicant's personal circumstances are understood, it is not considered that they would outweigh the sustainability concerns associated with the site, which is remote from services and facilities, and would make the future occupants dependent of private motor vehicle transport for their day-to-day needs. In addition, the site is within Flood Zone 3, where erection of a dwellinghouse without clear compliance with both the sequential and exception tests set out in the NPPF would be contrary to Government policy and the aims of the local plan in steering development away from high flood risk areas. As determined at the time of the previous refusal, the proposal represents an unacceptable intrusion into the open countryside. Neither reason for the refusal of the previous application has been satisfactorily addressed or overcome. Refusal of the application is accordingly recommended.

RECOMMENDATION

Refuse Planning permission.

SUBJECT TO THE FOLLOWING:

01. The erection of a new dwelling in this rural location, remote from adequate services, employment, education and public transport, has not been justified on the basis of any exceptional circumstance or community benefit that would outweigh the longstanding policy presumption to protect the countryside from unwarranted and unsustainable development. As such the proposal is contrary to the aims and objectives of the NPPF (in particular paragraphs 14 and 55), and saved Policies ST2, ST3 and ST5 of the South Somerset Local Plan, 2006.
02. The proposed dwelling would be located within Flood Zone 3 where residential development that would result in people and property being at risk from flooding is only acceptable in exceptional circumstances. No such circumstances have been demonstrated and furthermore it has not been demonstrated that, sequentially, there are no other suitable sites available that would not be at risk of flooding. Accordingly the proposal is considered to fail the required Sequential Test and in these respects, the proposal is contrary to the aims and objectives of the NPPF (in particular paragraphs 14, 55, 100 and 101), and saved Policy ST5 of the South Somerset Local Plan, 2006.
03. With the loss of this open gap and the increase of built density adjacent to the public highway, the proposal would constitute an unacceptable intrusion in this countryside locality, contrary to the countryside protection aims of Policy STR6 of the Somerset and Exmoor National Park Joint Structure Plan Review, 2000 and Policies ST3 and ST6 of the South Somerset Local Plan, 2006.

Informatives:

01. In accordance with paragraphs 186 and 187 of the NPPF the council, as local planning authority, takes a positive and proactive approach to development proposals focused on solutions. The council works with applicants/agents in a positive and proactive manner by;
 - offering a pre-application advice service, and
 - as appropriate updating applications/agents of any issues that may arise in the processing of their application and where possible suggesting solutions.

In this case there were no minor or obvious solutions to overcome the significant concerns caused by the proposals.