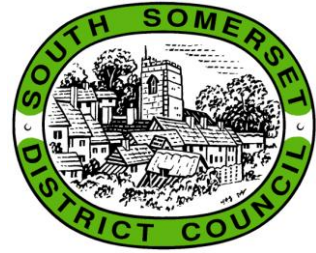


# South Somerset District Council

*Notice of Meeting*



## Regulation Committee

*Making a difference where it counts*

### Tuesday 16<sup>th</sup> July 2013

### 10.00 am

**Council Chamber  
Council Offices  
Brympton Way  
Yeovil**

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The public and press are welcome to attend.

Disabled Access is available at this meeting venue.



If you would like any further information on the items to be discussed, please ring the Agenda Co-ordinator, **Jo Boucher** on Yeovil (01935) 462462

email: [democracy@southsomerset.gov.uk](mailto:democracy@southsomerset.gov.uk), website: [www.southsomerset.gov.uk](http://www.southsomerset.gov.uk)

This Agenda was issued on Monday 8<sup>th</sup> July 2013

*Ian Clarke, Assistant Director (Legal & Corporate Services)*

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This information is also available on our website  
[www.southsomerset.gov.uk](http://www.southsomerset.gov.uk)



INVESTOR IN PEOPLE

# Regulation Committee

**Chairman** Peter Gubbins

Mike Best  
Tim Carroll  
Nick Colbert  
Tony Fife  
Ian Martin

Terry Mounter  
Shane Pledger  
Ros Roderigo  
Sylvia Seal  
Gina Seaton

Angie Singleton  
Paul Thompson  
William Wallace

(The Quorum of this Committee is 5 Councillors)

Please remember to car share whenever possible

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# Information for the Public

## **Public Participation at Committees**

This is a summary of the Protocol adopted by the Council and set out in Part 3 of the Council's Constitution.

## **Public Question Time**

The period allowed for participation in this session shall not exceed 15 minutes except with the consent of the chairman of the committee. Each individual speaker shall be restricted to a total of three minutes.

## **Planning Applications**

Comments about planning applications will be dealt with at the time those applications are considered, rather than during the Public Question Time session.

Comments should be confined to additional information or issues, which have not been fully covered in the officer's report. Members of the public are asked to submit any additional documents to the planning officer at least 72 hours in advance and not to present them to the Committee on the day of the meeting. This will give the planning officer the opportunity to respond appropriately. Information from the public should not be tabled at the meeting. It should also be noted that, in the interests of fairness, the use of presentational aids (e.g. PowerPoint) by the applicant/agent or those making representations will not be permitted. However, the applicant/agent or those making representations are able to ask the Planning Officer to include photographs/images within the officer's presentation subject to them being received by the officer at least 72 hours prior to the meeting. No more than 5 photographs/images either supporting or against the application to be submitted. The Planning Officer will also need to be satisfied that the photographs are appropriate in terms of planning grounds.

At the committee chairman's discretion, members of the public are permitted to speak for up to 3 minutes each and where there are a number of persons wishing to speak they should be encouraged to choose one spokesperson to speak either for the applicant or on behalf of any supporters or objectors to the application. The total period allowed for such participation on each application shall not normally exceed 15 minutes.

The order of speaking on planning items will be:

County Council, Town or Parish Council Representative

Objectors

Supporters

Applicant/Agent

Ward members, if not members of the Regulation Committee, will speak after the town/parish representative.

If a member of the public wishes to speak they must inform the committee administrator before the meeting begins of their name and whether they have supporting comments or objections and who they are representing. This must be done by completing one of the public participation slips available at the meeting.

In exceptional circumstances, the Chairman of the Committee shall have discretion to vary the procedure set out to ensure fairness to all sides.

**If a Councillor has declared a Disclosable Pecuniary Interest (DPI) or a personal and prejudicial interest**

In relation to Disclosable Pecuniary Interests, a Councillor is prohibited by law from participating in the discussion about the business on the agenda that relates to this interest and is also required to leave the room whilst the relevant agenda item is being discussed.

Under the new Code of Conduct adopted by this Council in July 2012, a Councillor with a personal and prejudicial interest (which is not also a DPI) will be afforded the same right as a member of the public to speak in relation to the relevant business and may also answer any questions, except that once the Councillor has addressed the Committee the Councillor will leave the room and not return until after the decision has been made.

# Regulation Committee

Tuesday 16<sup>th</sup> July 2013

## A g e n d a

1. Minutes of the meeting held on Tuesday 16<sup>th</sup> April 2013
2. Apologies for Absence
3. Declarations of Interest
4. Public Question Time

Page No.

5. Land adj Heather House, Alford, Lovington – Application No.  
12/04730/FUL ..... 1
6. Date of Next Meeting

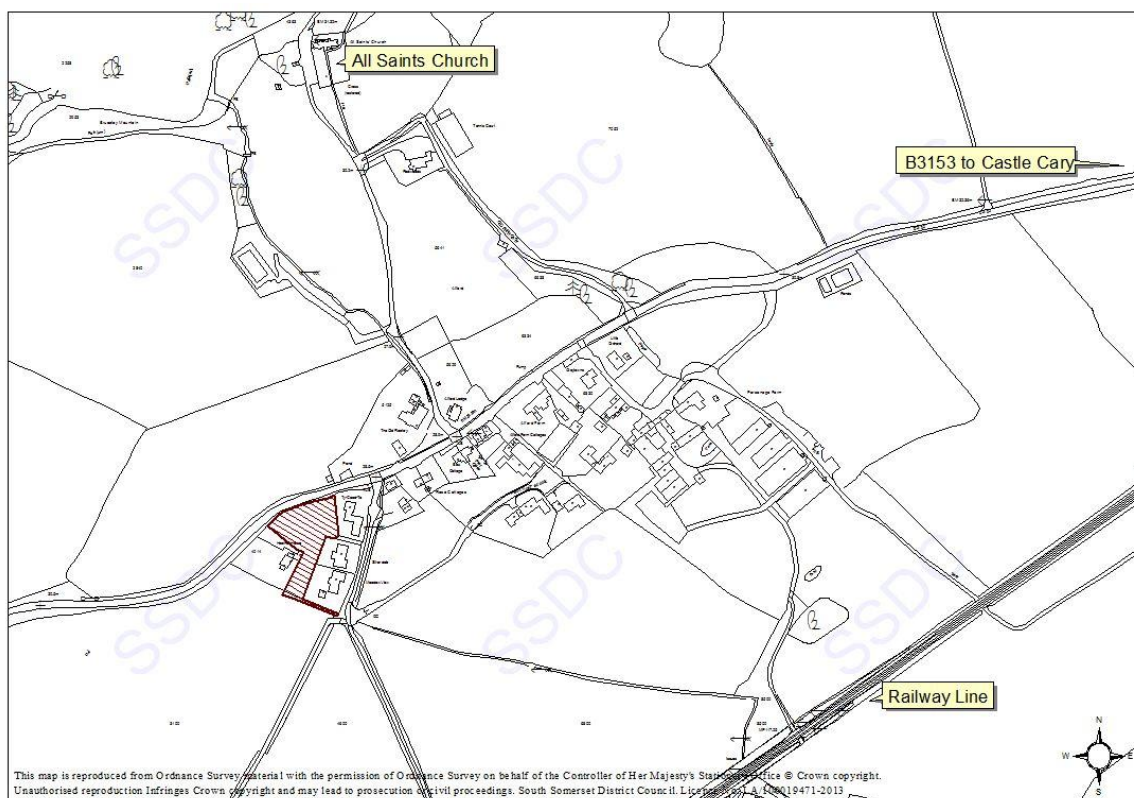
The date of the next meeting is scheduled for Tuesday, 20<sup>th</sup> August 2013 in the Council Chamber, Brympton Way at 10.00 a.m.

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

**ADDENDUM REPORT**

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

**SITE LOCATION**



At its meeting on 16 April 2013, Regulation Committee considered the attached report (Appendix A) and resolved that the application be deferred to:

1. Allow agent to clarify the suggested occupancy restrictions that would ensure that the

- amended proposal meets the intended need in perpetuity
2. Request an updated comment from the EA and invite them to attend the next meeting.

The applicant was approached, through her agent, to provide:

1. A draft unilateral undertaking, setting out in legal terms what exactly was proposed by way of restrictions on any dwelling to be permitted on this site, in order to retain the dwelling in perpetuity for use as a 'specialist dwelling' for the 'local community'
2. Further clarity on the flood zone issue affecting the site, and whether there is a need for the LPA to give consideration to the Sequential and Exception Tests set out in the NPPF.

Additional information challenging the site's status within Flood Zone 3 has been provided; and the applicant's agent has set out the suggested restrictions on the proposed dwelling.

In this latter respect, the applicant has suggested a mechanism whereby the value of the property would be reduced and occupancy would be restricted to those with a local connection as follows:-

- *Subsequent usage: The property at each point of sale will be offered for sale in a hierarchy beginning with a Registered Social Landlord for local use [and then if not required], a qualifying resident of Alford or member of their family [and then if not required], expanding rings of rural population. The value to be determined by the open market but with a reduction as determined by the point below:*
- *Reduced value: The sale price will be reduced by a sum equal to 50% of the plot value element of the open market value at the time of future points of sale determined by independent valuation and reviewed by the District Valuer*

*Mathematical examples of the way the reduced value will work:*

*Point of sale by Mrs Harley - open market value*

*£250,000*

*Point of sale plot value reduced by 50%*

*£40,000*

*Sale to qualifying person*

*£210,000*

*Point of sale by second owner - open market value*

*£300,000*

*Point of sale plot value reduced by 50%*

*£55,000*

*Sale to qualifying person*

*£245,000*

*The reduced plot value is to be repeated on subsequent sales.*

*The intended outcomes of these two controls are:*

- *The dwelling should be used by local rural dwellers who have a particular need for this type of housing stock [partially disabled, aged or the first time house buyer]*
- *The dwelling sale value will be held artificially low to increase the affordability of the property*

This information has been subject to consultations and is considered below.

## CONSULTATIONS

**Council's Engineer** – acknowledges the additional information and whilst it is conceded that the site may not be in Flood Zone 3 (or 2) the applicant needs to formally challenge the Council's Strategic Flood Risk Assessment (SFRA) to resolve this issue. His full comments are attached to this report at Appendix B.

**Environment Agency** – accept that the submitted information may call into question the accuracy of the Flood Map in the Alford area. However this needs to be taken up through a flood map challenge to the Council's SFRA. In the absence of an agree challenge the submitted information would suggest that the site is at worst in zone 3a rather than 3b. Accordingly the Agency have declined to amend their maps. Their full comments are attached at Appendix C.

## CONSIDERATIONS

### Flooding

Whilst there may be a case to reclassify the flood risk to this site the applicant has declined to formally pursue this avenue of challenge. Accordingly the site remains in Flood Zone 3, and the comments in the original report remain pertinent and the Sequential and Exception Tests are still considered to apply. For the reasons set out in the Officer Report, it remains the view that development should not be encouraged in Flood Zone 3. As no exceptional need is considered to have been met in this application, the recommendation remains as previously: that the proposal is contrary to the relevant Government advice in respect of flooding.

### Retention of Dwelling for 'Local Need'

No evidence has been submitted that would indicate that any RSL would be interested in acquiring a single house, of this design in this locality. It is doubtful that this would be the case, especially as the house would not be of any standard design suitable for maintenance and letting purposes.

Clarification of who would qualify as a resident of Alford' has been sought. The applicant's agent has responded:

*"Typically, qualifying purchasers/ occupiers would be people requiring this sort of accommodation but not necessarily restricted to a single group as the accommodation would be suitable for a small family or as is increasingly common: someone looking after an aged parent. Typically, they would be living in Alford [or ever increasing distances from Alford], being local rural dwellers. The Applicant has in mind that people with close links to Alford would also qualify including those with previous links to the village who would wish to return [those born in the village or who have lived there or who have familial ties to the village]."*

Unfortunately this gives little clarity and if anything raises further queries as to the definition of a 'small family'; 'local rural dwellers'; 'close links to Alford'; 'previous links to the village'. It is not clear how such terms would be resolved. Furthermore no information has to who would be responsible for monitoring and enforcing such restrictions.



## **Affordability**

As regards the 'affordability' of the property, it is not clear why the arbitrary amount of a 50% reduction (on only the plot value) has been selected. A clearer alternative would be a simple reduction of the market value of the property as a whole, to, say 70% or 80% of market value, in the manner that would be adopted by an RSL. The proposal has not in any way been related to an assessment of normal RSL plot price levels (the applicant was asked to provide this) or market values in the area. No suggested market price for this dwelling has been put forward, or for a building plot within Alford.

Whilst it is suggested that the District Valuer could over-see any agreed valuation mechanism it is not clear who would cover this cost.

## **Mechanism to Achieve these objectives**

The need for a clear, legally drafted undertaking was emphasised, so that the matter could be assessed by the Council's Solicitor for workability. The applicant has declined to submit such an undertaking. There has been an exchange of correspondence in which the applicant has set out, in broad terms, that the intention would be to impose 'two levels of control in perpetuity'.

In the absence of a clearly drafted undertaking, what appears to be proposed is a cumbersome set of parameters, requiring an unreasonable amount of assessment by future officers of the LPA each time the property changes hands. The workability of such an undertaking - and its possible relevance and enforcement under S106 of the Planning Act - cannot be assessed unless it is suitably framed in legal terms.

Of more immediate concern, the Regulation Committee is being asked to approve an application subject to an undertaking by the applicant which is extremely vague. This will place officers negotiating an agreement in a difficult position, having to make judgements on what each of these terms might mean, as compared to the intentions of the Committee - probably necessitating further referrals back to Committee.

## **Conclusion**

It is not considered that the applicant has addressed the issues raised at the previous meeting of the Regulation Committee in any way that would alter the previous recommendation. The proposal is therefore recommended for refusal, for the following reasons:

### **THE REFUSAL REASONS GIVEN IN THE REPORT:**

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.
-

## APPENDIX A

### Officer Report On Planning Application: 12/04730/FUL

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

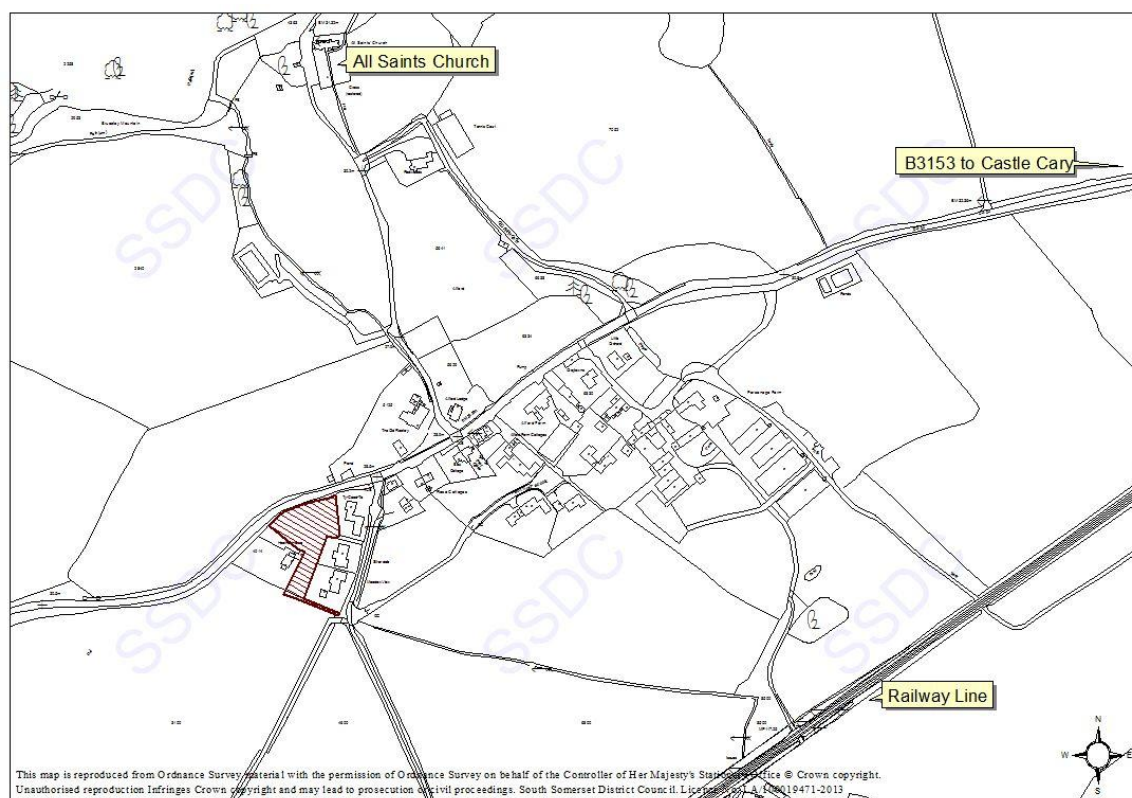
The application was '2-starred' (\*\*) as the proposal for a new dwelling in this rural location, for which no reasonable justification has been put forward, is contrary to policy and, if approved, could have district-wide implications. Accordingly, Area East were advised that should the Committee wish 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 dependant 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:*
- *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*
- *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 therefore 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.

## APPENDIX B: SSDC Engineer's Comments

**Nick Head**

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**From:** Roger Meecham  
**Sent:** 21 May 2013 14:46  
**To:** Nick Head; 'Holm, Michael'  
**Cc:** Adrian Noon  
**Subject:** RE: Planning Application 12/04730/FUL - Flooding Issues

Nick

The detailed report produced by Dr Colin Clark certainly brings into serious doubt the fact that the development site is actually within Flood Zone 3 or even Flood Zone 2 as indicated on the SFRA map. I am aware of Dr Clark's reputation and his interest, over many years, in flood risk particularly in the Bruton area and it would be extremely difficult to challenge his findings. I'm not sure how the EA derived the flood risk information, on which our SFRA is based, but I would suspect that the assessment was not as detailed as Dr Clark's.

There is an acknowledged local flooding problem in the main road which is apparently due to inadequate drainage systems. I wouldn't dispute this conclusion but a) this doesn't affect the development site and b) this type of flooding isn't what defines the flood risk zone.

The Council's SFRA is very much a 'live' document and there is in place a process for challenging it (speak to Keith Lane about this) if evidence can be provided.

Roger Meecham

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**From:** Nick Head  
**Sent:** 17 May 2013 12:58  
**To:** 'Holm, Michael'; Roger Meecham  
**Cc:** Adrian Noon  
**Subject:** FW: Planning Application 12/04730/FUL - Flooding Issues

Mike/Roger,

The application was recommended for refusal – partially – because the issue of the sequential test (and exception test thereafter) had not been addressed. The reason in the report was:

*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.*

The committee considering the matter queried the conflicting advice between yourselves. Mike, you were stressing that the LPA needs to ensure that the sequential test has been satisfied; Roger, you were saying we should be relaxed about this. As I read the advice it is clear – as set out in the reason for refusal above. It is not about safety of future occupants (which we agree can be secured). It is about the principle of placing development within Flood Zone 3 and the requirement to demonstrate that there are no other sites. I am not sure whether the submitted info is suggesting that the site is, in fact, within Flood Zone 1 – which would then obviate the need to apply the sequential test.

I would appreciate your further comments, taking into consideration this additional information which the applicants have submitted.

Nicholas Head

Planner

Council Offices  
Brympton Way  
Yeovil  
BA20 2HT

01935 462167

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**From:** Mike Harley [mailto:mike@harley1.net]

**Sent:** 13 May 2013 15:32

**To:** Nick Head; Adrian Noon

**Cc:** Colin Clark; Dawn Harley; Ben Carlisle; Henry Hobhouse; Martin Roberts; Nick Weeks

**Subject:** Planning Application 12/04730/FUL - Flooding Issues

Dear Sir

Attached you will find a copy of my letter to you together with a flood risk report prepared by Dr Colin Clark of the Chardon Hill Research Station, Bruton, that were handed to your reception at the SSDC Offices, Brympton Way at 14:30hrs today 13 May 2013.

Yours faithfully

Michael Harley

## APPENDIX C: Environment Agency Comments

Mr Nicholas Head  
South Somerset District Council  
Customer Services (Planning) East  
The Council Offices Brympton Way  
Yeovil  
Somerset  
BA20 2HT

**Our ref:** WX/2012/122831/04-L01  
**Your ref:** 12/04730  
**Date:** 07 June 2013

Dear Mr Head

### **FURTHER INFORMATION (FLOODING ISSUES) - ERECTION OF A NEW HOUSE AND GARAGE AT LAND ADJACENT HEATHER HOUSE, ALFORD, LOVINGTON, CASTLE CARY**

Thank you for consulting the Environment Agency on the above application, including the more recent emails including those from Roger Meecham and the applicant, Mike Harley.

As your Council is aware, we are not formally objecting to the current planning application on any technical flood risk grounds, subject to the various mitigation measures proposed in the Flood Risk Assessment being implemented, if permission is to be granted. We have however pointed out the Sequential Test within the National Planning Policy Framework (NPPF) needs to be considered by the your Authority, before making any decision. Section 103 of the NPPF refers to the Sequential Test.

Further to Dr Clark's observations, we believe that there are some valid points that may call into question the accuracy of our Flood Map in the Alford area. In particular, reference to the Bruton reservoir failure inundation map shows that there is clearly a discrepancy between flooded outlines, although our Flood Map simply portrays zones of flood risk, not the actual risk at any given property.

We agree that any call to change the site from Flood Zone 3 to Flood Zone 1 would effectively be a Flood Map challenge to us, rather than a Strategic Flood Risk Assessment (SFRA) challenge to your Council. However, the submitted information alone would not be sufficient to allow use to make a formal revision to our published Flood Map without further work, which would be timely and costly to the applicant. If the applicant wishes to follow our National procedures for a formal Flood Map challenge then we are happy to discuss this further with them.

In terms of your Council's SFRA without any agreed flood map challenge, the submitted

Environment Agency  
Rivers House, Sunrise Business Park, Higher Shaftesbury Road, Blandford, Dorset, DT11 8ST.  
Customer services line: 03708 506 506  
[www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)

Cont/d..

information would suggest that the site is at worst FZ3a rather than functional FZ3b.

As the Sequential Test is primarily a matter for your Authority to consider, we believe that it would be prudent for the Council to review what planning weight should be attached to this matter, if it is to be used as any grounds for refusal of the application. As the application is only for one new dwelling, we would not expect to be involved further in Sequential Test matters unless the applicant wishes to follow our National procedures for a formal Flood Map challenge.

If you or the applicant wish to discuss the above comments in further detail then they should contact Colin Taylor, Flood and Coastal Risk Management Officer, on 01278 484621.

Yours sincerely

**MR MICHAEL HOLM**

**Planning Advisor - Sustainable Places**

Direct dial 01258 483380

Direct e-mail michael.holm@environment-agency.gov.uk



## Appendix D

### Extract from Area East Committee Minutes – 13<sup>th</sup> March 2013

#### **Planning Application: 12/04730/FUL\*\* Erection of a new house and garage at Land adjacent to Heather House, Alford, Lovington for Mrs Dawn Harley**

The officer presented the report as detailed in the agenda, with the aid of a power point presentation he showed the design of the application; Google views of the secluded site and photos of the road /lane from different views.

The officer confirmed his recommendation was to refuse the application which was in an unsustainable location and in Flood Zone 3 where the erection of a dwelling house without a sequential and exception test would be contrary to Government policy. He also referred to the previous similar planning applications on this site that had been refused as detailed in the agenda report. He reminded members that this application was 2 starred and if members were minded to approve the application it would have to be referred to the Regulation Committee for determination.

Martin Roberts of Cary Moor PC addressed committee members as he did not think the reasons that the PC supported the application had been fully explained in the agenda report. He referred to Saved Policy ST3 and the supporting text that made allowance for sensitive infilling that may be acceptable depending on the character of the area. The PC believed that the design was sensitive infilling development of a single dwelling for disabled use. There had been no flooding of the site in living memory and would benefit from the recently enhanced flood works upstream of Bruton.

Mr M Harley, brother in law of the applicant, spoke in support of the application. He considered that Alford was sustainable; internet shopping was becoming the norm; the Nippy bus company ran 6 buses a day to and from the village; South West Coaches had 5 services weekly. The village of Alford would fade away if no new dwellings were ever allowed. There had never been any flooding on the site even during the recent severe flooding; the River Brue had been in no danger of flooding, even the SSDC Engineer could not see a justification to refuse the application based on flooding issues.

Ben Carlisle, the architect /agent, spoke in support of the application; although he did not wish to see building in open countryside without control he did not feel this was open country side; local consultations met a critical requirement; there were already good public transport links. He felt that the issue with this application was Planning Policy which was complicated because of the transition period between old policies and the NPPF. If this application was refused traffic movement would increase if his client moved to nearby Castle Cary as her friends and family would have to travel further to visit. Any move away from the village of Alford would make his client socially reclusive, he urged members to approve the application as this was a particular application serving a particular need.

Ward Member Cllr Henry Hobhouse understood why the application had been 2 starred as it went against the written policy but he said every policy had an exception which this application did, the applicant needed a home more suitable to her needs in the village; the flood defences in Bruton had dealt with any flooding concerns.

Ward Member Cllr Nick Weeks felt the concern was due to issues with new legislation, local communities should now be able to request small developments in their area.

In response to Cllr Colin Winders question the Development Manager explained that development areas currently still existed and would do until new the Local Plan was adopted.

During discussion members raised the following points:

- Concerned that the applicant having paid a planning fee was unaware that the application may be considered by members of the Regulation Committee who were not local to the area;
- Local people know better than anyone if an area flooded;
- One member had lived in the area all of his life and had never known it to flood;
- Applicants should be enabled to stay in the community that they were comfortable in and to be able to look after themselves for as long as possible;
- Did not understand how an application previously decided at AEC was approved outside a development area in order to preserve an historic house but may not be approved to help a person.

The Legal Services Manager corrected a point regarding the Localism Act, advising that although it did give local communities more of a say there was still a process in place that had to be followed. Both the legislation and recent cases made it clear that the requirements of a community had generally to be in accordance with the development plan. The NPPF also had to be heeded. The marking of applications as 2 starred was carried out in accordance with the requirements of the Council's Constitution. If members were unhappy with that process they would have to formally propose amendments to be agreed by Councillors at Full Council.

The Chairman commented that the recommendation to 2 star an application had already been made before he saw the reports.

A proposal was made and seconded to approve the application contrary to the officer's recommendation and as such would need to be referred to the Regulation Committee for consideration.

On being put to the vote the proposal was carried 9 in favour; 2 against and 1 abstention.

**RESOLVED:**

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

(Voting: 9 in favour; 2 against and 1 abstention.)

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