

# PLANNING APPLICATION PROPOSED TO BE DELEGATED

## Ward Member Consultation

<b>To:</b>	Cllrs Boyden and Bullen	<b>Date:</b>	23 June 2014
<b>From:</b>	Laura McKay	<b>Direct Line:</b>	01749 341520
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<b>Case Officer:</b>	Laura McKay	<b>Direct Line:</b>	01749 341520
<b>Planning Application Ref:</b>	2013/1514		
<b>Please reply no later than:</b>	8.30am on Wednesday 26 <sup>th</sup> June 2014		

You must have read the accompanying officer report before you complete this form. In addition completion of the proforma confirms that you have read and understood the notes for guidance on ward member consultations issued on 28 May 2006. **If you have any queries please telephone the case officer.**

1. Do you have any personal interest in this application? If yes please state nature of interest

No

If you answered "yes" is your interest in this application prejudicial? Yes / No

**If the answer is "yes", please return this form without completing any further sections. This application will be referred to the Chair & Vice Chair of the Planning Board for a decision as to whether it should be considered by the Board.**

2. Do you agree that this application should be determined under delegated powers?

No

3. If you answered no to Question 2, please indicate below the main grounds on which you consider the application should be referred to the Planning Board.

Issue		Access/Highway Issues	X
Policy Issues		Complexity of the nature of the proposal	
Housing Density Issues		Listed Building or Conservation Issues	X
Employment/Business Issues		Impact on neighbouring properties	X
Design	X	Environmental Impact	

**Other** - If you are a member of the Planning Board Please be mindful of the need to ensure that you do not predetermine your position

Firstly, traffic safety. Having taken advice from an independent local highways consultant I consider that a preliminary road (and pedestrian) safety assessment / audit should be required. It has not been required by Somerset Highways at this stage, but such an assessment will be required by Somerset Highways under separate legislation (for detailed Highways Act approval). There is a problem however with the condition that Somerset Highways have agreed to, which requires attention. In order that safe access is gained to the site, Somerset Highways, SCC, in their role as Local Highway Authority, has asked the Council to impose the following condition:

*'9. Notwithstanding the boundary treatment details shown on drawing C1343/115F, there shall be no obstruction to visibility above 600mm within visibility splays drawn 2.4m back from the carriageway edge on the centre line of the access and extending 43m to the right of the access and to the edge of the application site to the left of the access.'*

It is apparent from the submitted plans that this requirement cannot be met by the scheme layout for which permission is being applied and therefore the consent would be unimplementable without removal or change of the condition (subject to a separate Section 73 application). I have been advised that the maximum visibility splay achievable to the right is 2.4m x 11.5m and therefore meeting the safe requirements of visibility for a road whereby the 85%ile traffic speed was 10.5mph or less, on a 30 mph section of road.

I understand that whilst it is lawful for the LPA to grant planning permission subject to a negative condition restricting its implementation, in whole or in part, until some event has occurred the judgement in Merritt v SSETR and Mendip District Council determines that it is

not lawful to impose such a condition when there are no prospects at all of the action in question being performed within the time-limit imposed by the permission. Given that the scheme layout for which planning permission is being sought would need significant change, that would in itself require either a Section 73 variation of condition approval or a new application, in order to implement, I understand that any resulting planning permission could rightfully be subject to judicial challenge and be possibly overturned, which worries me. This can be resolved by requiring a road safety assessment to be undertaken, so that the final required visibility splay requirements can be defined for the planning application. I would ask that this matter is reconsidered. Currently, If the application progresses to Planning Board I would therefore ask that the application be deferred until such an assessment has been undertaken. Also, a road accident occurred at the junction a few weeks ago, which would have been recorded by Police, who attended the scene, and this confirms the nature of the junction.

Secondly, design and conservation. The existing building is indeed on a prominent site and a positive building within the Conservation Area, and lies adjacent to listed buildings. The site is a 'gateway' to Frome as identified in the draft Frome Neighbourhood Plan and Frome Town Design Statement. The merits of the proposed design need careful consideration, and given the differences of opinion between the Council's Conservation Officer and the Town Council and Frome Civic Society on this issue, this is a second issue which warrants referral to Planning Board in order to resolve.

Thirdly, bats and mitigation. Surveys have found that the building is a bat roost. The Council has legal duties under the Conservation of Habitats and Species Regulations 2010 which implement the Habitats Directive, particularly the need (in regulation 9, highlighted in the *Morge* case) to define mitigation measures for the loss of bat roosts, and ensure the Council is confident that the planning application is not likely to breach European law. I understand that legally, the Council needs to ensure that mitigation measures have been defined to address the impacts and needs to be confident that Natural England is likely to grant a licence to remove the roost on that basis (to allow otherwise illegal activities to take place). Currently, the Extended Phase 1 Habitat Survey and Bat Survey report does not define mitigation measures for the loss of the bat roost, but includes vague recommendations and states (para 4.6, p14) that further surveys are required. I therefore think that the mitigation measures for bats need to be specifically defined, not left vague as they are, for the Council to comply with its legal obligations and be confident NE will grant a licence. I therefore think this issue needs to be reviewed further before permission is granted.

I consider that the extent and scope of outstanding issues examined above, which require further consideration, together with the outstanding objections on road/pedestrian safety and design/conservation grounds, means that this application should be determined by the Planning Board, so that the issues arising can be debated and determined in public.

4. If you are a member of the Planning Board, please delete one of the following statements:

N/A



Signed:.....

Dated: 23 June 2014