



Appeal Decisions

Site visit made on 30 April 2024

by **R Catchpole BSc (hons) PhD MCIEEM IHBC**

an Inspector appointed by the Secretary of State

Decision date: 02 August 2024

Appeal A: APP/R3325/W/20/3247647

Former BMI Site, Cumnock Road, Castle Cary, Somerset BA7 7HR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Castle Cary (BMI) Ltd against the decision of South Somerset District Council.
 - The application reference is 18/01602/FUL.
 - The development proposed is the demolition of existing buildings, conversion of and alterations to listed buildings to form 11 No. dwellings, the erection of 70 No. dwellings (total 81 No. dwellings) and associated works, including access and off-site highway works, parking, landscaping, open space, footpath links and drainage infrastructure.
 - This decision supersedes the one issued on 11 November 2020. That decision was quashed by a Sealed Order of the High Court, dated 10 March 2021.
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Appeal B: APP/R3325/Y/20/3247652

Former BMI Site, Cumnock Road, Castle Cary, Somerset BA7 7HR

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a refusal to grant listed building consent.
 - The appeal is made by Castle Cary (BMI) Ltd against the decision of South Somerset District Council.
 - The application reference is 18/01603/LBC.
 - The works proposed comprise the demolition of existing buildings, conversion of and alterations to listed buildings to form 11 No. dwellings and associated works.
 - This decision supersedes the one issued on 11 November 2020. That decision was quashed by a Sealed Order of the High Court, dated 10 March 2021.
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Decision

Appeal A

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings, conversion of and alterations to listed buildings to form 11 No. dwellings, the erection of 70 No. dwellings (total 81 No. dwellings) and associated works, including access and off-site highway works, parking, landscaping, open space, footpath links and drainage infrastructure at the former BMI Site, Cumnock Road, Castle Cary, Somerset, BA7 7HR in accordance with the terms of the application (Ref: 18/01602/FUL) subject to the conditions set out in the schedule at the end of this decision.

Appeal B

2. The appeal is allowed and listed building consent is granted for the demolition of existing buildings, conversion of and alterations to listed buildings to form

11 No. dwellings and associated works at the former BMI Site, Cumnock Road, Castle Cary, Somerset, BA7 7HR in accordance with the terms of the application (Ref: 18/01603/LBC) subject to the conditions set out in the schedule at the end of this decision.

Procedural Matters

3. As above, the original decisions were quashed. This was not the case for the associated costs decision which remained in effect. The reasons for this were, in short, due to the fact that the previous Inspector's concerns about protected species and harm to listed buildings were not at issue between the parties and that an insufficient opportunity had been given to enable them to respond to the new points that the Inspector raised which were determinative in the outcome of the appeals. The Inspector erred in law because this led to procedural unfairness.
4. Following the successful High Court challenge, the appeals have been submitted back to the Planning Inspectorate for redetermination. I am required to determine them on a *de novo* basis, as if the previous decisions had not been issued. Consequently, I have considered the appeals on their individual merits and the evidence before me. This includes the evidence that accompanied the original application as well as responses to further consultation that was undertaken following the challenge.
5. The main parties agree that this redetermination can be carried out by way of written representations. Statements of Common Ground (SoCG) have been submitted for each appeal indicating that there are no remaining areas of disagreement in relation to the reasons for refusal or the issues raised by the previous Inspector. They include an agreed list of conditions that I have taken into account, in addition to the views of the main parties in relation to substantive changes that I have made.

Preliminary Matters

6. I have altered the description of the works associated with Appeal B because the one that was used on the application form included a number of matters for which listed building consent is not required. Accordingly, for the purpose of this appeal, both parties agree that the amended description I have used is appropriate.
7. A Unilateral Undertaking (UU), dated 2 April 2024, would ensure the nutrient neutrality of the scheme. More specifically, no development would commence until allocation certificates issued by the credit provider, confirming the full allocation of credits to offset the phosphate load, have been submitted to the Council. The agreement also requires that the proposed development is not occupied until such time as the AMP7 upgrade to the waste-water treatment works has been carried out. Neither the Council nor Natural England (NE) dispute that these measures would be effective and I have taken them into account.
8. As the proposal overlaps a conservation area and relates to listed buildings I have had special regard to sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) (the Act).
9. The Government revised the National Planning Policy Framework (the Framework) on the 20 December 2023, after this appeal was submitted. This

took effect from the day of publication and applies to all subsequent decision-making. I am satisfied that the main parties have had an opportunity to comment as part of the redetermination process and I am therefore satisfied that no prejudice would arise from these changes.

Main Issues

10. The main issues are:

- a) whether the proposal would preserve Grade II listed buildings, "Mill Building to Ansford Factory" (Ref:1056228) (the Mill) and "Offices to Ansford Factory" (Ref:1177857) (the Offices), and any of the features of special architectural or historic interest that they possess;
- b) whether it would preserve the setting, as it relates to the significance of the Grade II "Ochil Tree House" (Ref:1366388), "Beechfield House" (Ref:1056227) and "Cumnock Terrace" (Ref:1390885);
- c) the extent to which it would preserve or enhance the character or appearance of the Castle Cary Conservation Area (the CA);
- d) whether there would be an adverse effect on the integrity of the Somerset Levels and Moors Special Protection Area (the SPA) and Ramsar site; and
- e) whether potential harm to bats would be adequately mitigated with any residual harm not "unlikely to be licensed".

Reasons

11. A description of the site, surroundings and proposals are set out in the SoCG and were summarised by the previous Inspector. It is agreed that the Council is unable to demonstrate a deliverable 5-year Housing Land Supply (HLS). It considers that the current extent of its HLS is between 2.98-3.10 years. It is also common ground that the Council's previous reasons for refusal on settlement hierarchy and parking grounds have now fallen away.
12. The previous Inspector found that the development would not undermine Castle Carey's position within the settlement hierarchy, harm self-containment or the role of the settlement in any obvious way. I have no further evidence before me that would lead me to a different conclusion on this matter. Consequently, I find the proposal would not conflict with policies SD1, SS1 or SS5 of the South Somerset Local Plan 2006-2028 (2015) (the LP). Policy SS1 sets out the Council's settlement strategy, SS5 sets out the residential housing requirements and SD1 just paraphrases the presumption in favour of sustainable development set out in the Framework.
13. Turning to the parking issue, the scheme would provide 171 spaces which would be 18 spaces below the optimum range identified by the Highways Authority (the HA). The previous Inspector noted that census-based data indicated a baseline requirement of around 130 spaces and that the HA was satisfied that the reduced provision would be unlikely to significantly impact on the adjacent highways. The Town Council notes that the parking figures used by the appellant, as evaluated by the previous Inspector, are based on a 2011 census. However, despite the lack of up-to-date information, I note that the HA confirmed that the optimum levels of parking in the Somerset County

Council Parking Strategy (the SPS) were not absolute and that some flexibility needs to be applied. Furthermore, traffic enforcement matters are not a planning issue and should inappropriate overspill parking occur then established mechanisms are available to the Council to ensure road safety.

14. As above, I have no further evidence before me that would lead me to a different conclusion on this matter. Consequently, I find the proposal would not conflict with policy TA6 of the LP or would be contrary to the guidance in the SPS. Policy TA6 seeks to ensure that parking provision is based upon site characteristics, location and accessibility in accordance with the guidance set out in the SPS.

Heritage

15. The Council originally recommended that listed building consent be granted and no objections were raised either by its own Conservation Officer or Historic England (HE) at the application stage. The Council's reason for refusal of the consent was based solely on the absence of a corresponding planning permission. It remains common ground between the parties that the impact of the proposed development is acceptable bearing in mind the public benefits. They agree that, should the corresponding planning appeal be allowed, the listed building consent should also be allowed, subject to conditions. I have come to my own view on this matter, on the basis of the evidence before me.
16. Since the remitting of the appeal, the Council has not submitted further evidence regarding any of the heritage assets or the related concerns raised by the previous Inspector. However, the appellant has submitted further evidence in this respect, comprising an updated heritage statement¹ and a structural survey². Details of the full evidence bundle, which I have considered alongside the existing evidence, can be found in Annex 1 of this decision.
17. Part of the appeal site overlaps an area around the northeastern extent of the CA. Both the Mill and the Offices are located within the CA boundary whilst the rest of the site is within its setting. The CA is broadly linear and includes the historic core of the settlement, which developed around the main marketplace and intersecting roads. A castle is situated to the north of the historic, ribbon-like nucleation of this settlement.
18. The appeal site is within and adjacent to its commercial core which is characterised by a concentration of shops and other business premises. The CA appraisal³ notes that "there is a dense pattern of continuous, organic terraces, on older plots, apparently 18th and 19th century in date, interspersed with occasional larger, former gentry houses". The grounds of one such property, Ochil Tree House, was subsequently utilised for the construction of the historic mill buildings which were accessed via an inscribed entry formed within its frontage.
19. Insofar as these appeals are concerned, I find the significance of the CA lies in its historic town plan form and the close interrelationship between its historic and residential buildings. Added to this is the close juxtaposition of irregular terraces constructed from honey coloured, oolitic limestone, interspersed with

¹ Heritage Appeal Statement, Elaine Milton Heritage and Planning Ltd, Updated February 2024.

² Structural Inspection and Appraisal of Former Flax Mill Buildings and Offices at Former BMI Site, GAP Ltd, June 2023.

³ Castle Cary Conservation Area Appraisal 2010, South Somerset DC

- higher status buildings expressing polite architectural detailing within large, verdant plots.
20. The Mill was part of a horsehair and general weaving factory that was established in 1851 by John Boyd which marked the first introduction of horsehair weaving to this area which had previously had a long-established weaving tradition. It is constructed from a local oolitic limestone, known as Hadspen stone, on a blue lias plinth. The building has an unornamented, linear form comprising three storeys and 13 bays. A regular arrangement of openings with proud-set voussoirs and keystones to flat arches characterise the front and rear elevations which are surmounted by a slate roof.
 21. Original multi-pane windows, with fixed lower sashes and pivoting upper sashes, serve an open plan layout on each floor. Painted stone walls and exposed floorboards and joists are indicative of its former industrial use and an original staircase survives at the southern end of this building. As such, much of its historic fabric remains intact although some deterioration has occurred over time through water ingress as a result of dereliction.
 22. The Offices adjoin the Mill and were also constructed around 1851 using the same materials and in the same style. It rises to two storeys and has 5 bays with a later bay that links it to the main mill building. The pattern of fenestration is less regular and reflects the internal layout where the rooms are of roughly equal proportions. The interiors have been modified through, among other things, the insertion of stud partitions and modern timber panelling on the ceilings. Unlike the mill building, there are no windows on its rear elevation. Water ingress has also caused damage to the later insertion that links this building to the Mill.
 23. Additionally, there are two historic curtilage structures that have a principal and accessory relationship to the Mill which are also consequently listed. This fact is not disputed by the main parties. The first is a warehouse (the Warehouse) which is situated a short distance to the west of the Mill. It is a two storey building constructed from Hadspen stone with red brick detailing. The windows on the east elevation are cast-iron and there is a taking-in door at ground and first floor level which is consistent with its warehouse function. The first floor had a truss roof suggestive of an additional manufacturing purpose.
 24. The second is formed by what remains of two side-by-side buildings situated immediately to the north of the Mill. These comprise an engine and boiler house on the eastern side, which pre-dates a powered workshop on the western side. Available evidence suggests that it was designed to house a beam engine that was used to power a later, 19th century power loom system. The workshop abuts the western end of the engine house and previously comprised a 2 storey, 4 bay building of the same construction and design as the Offices.
 25. The condition of these structures is parlous with the roof and a substantial part of the north wall of the workshop having collapsed. An inspection by a structural engineer in 2021 suggested that there was a risk of collapse to the gable walls. Although these were still standing at the time of my visit, I observed that part of the south elevation of this building had collapsed. I also noted a partial collapse of part of the Warehouse roof, although that building still remains largely intact.

26. Insofar as these appeals are concerned, I find the special interest of the listed buildings derives from the legibility of their functional relationships, original fixtures and fittings and use of distinctive local materials as well as their historic association with John Boyd.
27. Ochil Tree House is situated immediately to the south of the appeal site. It was constructed around 1825 from finely jointed red brick with Douling stone dressings and has a hipped Welsh slate roof. It comprises two storeys with 5 bays, the easternmost of which is widened to accommodate the inscribed archway described above. The association with the historic mill buildings remains legible today through an extended undercroft and the historic gap that has been maintained in the southern boundary of the appeal site, through which, part of the southern gable of the Offices can clearly be seen. John Boyd occupied the property from around 1851 and its special interest has a strong associative link to the nearby mill buildings.
28. Insofar as these appeals are concerned, I find the setting, as it contributes to its special interest, to be the preserved through the signed historic route to the mill buildings and their close juxtaposition with the rear boundary of this property.
29. Beechfield House is situated to the southwest of the appeal site and is a detached house dating from the mid-late 18th century with later additions to the rear. It comprises two stories with an attic and five bays and is constructed from rendered limestone rubble, again with Douling stone dressings. It is set back from Upper High Street behind a high stone wall within generous, verdant grounds. The upper part of the main façade is clearly visible from the public domain. It was regularly visited by diarist Parson Woodforde and John Wesley and was purchased by John Boyd in 1864 to enable the further expansion of the adjacent mill that had been constructed in the grounds of Ochil Tree House. The Warehouse is adjacent to its northern boundary whilst the Mill and the Offices are situated immediately to the east.
30. Insofar as these appeals are concerned, I find the setting, as it contributes to its special interest, to be the visual prominence and close juxtaposition of the Warehouse, the Mill and the Offices which highlight the historic association that this property has with John Boyd and the development of the nearby mill works.
31. Cumnock Terrace is adjacent to the north-east entrance to the site, some distance from the above buildings. It comprises a terrace of twelve houses that were constructed in 1877 by John Boyd for his workers, as indicated by inscriptions that are present on this building. It is constructed from coursed Hadspen stone with freestone dressings and comprises two storeys, attics and basements. The rear elevation has small service wings with walls around small yards. The area to the rear is metalled and used for parking. An eclectic mix of modern outbuildings and garages are present behind which are situated narrow gardens that abut the appeal site.
32. Insofar as these appeals are concerned, I find the setting, as it contributes to its special interest, to be its proximity to the expanded extent of the mill site and its historic association.
33. The Mill is proposed to be converted to four residential units through vertical subdivision. The original stairs at the southern end of the building would be

- retained and three new sets of stairs would be inserted. The original door at the southern end of the western elevation would be reused to serve plot 20. A historic, second floor intake door and opening at the northern end would be removed and a window opening would be created to match existing. Three new door openings would be formed in the existing window openings at ground floor level for plots 17-19. This would also be mirrored on the eastern elevation and three new windows would also be installed in bricked-up openings at ground floor level. The existing, southernmost door opening would be filled and relocated to the right.
34. The previous Inspector found that the vertical subdivision of the Mill would fundamentally alter the historic plan form and circulation within the building and lead to the loss of the three open floors which make a significant contribution to the special interest of the building. He goes on to note that the introduction of a domestic layout and pattern of circulation would disrupt the regular pattern of external fenestration on both elevations which would significantly erode the historic design intent. Whilst he observed that the external form of the building would remain legible, as a former mill, he nevertheless concluded that the proposed changes would lead to substantial harm.
 35. The appellant accepts that the vertical subdivision would harm the open plan form which “makes a strong contribution to significance” and has submitted further evidence concerning alternatives⁴. This illustrates that a horizontal subdivision would require the construction of new party floors of significant thickness to meet the necessary acoustic insulation and fire compartmentalisation standards. This would lead to a floor-to-ceiling height of around 1.9 m instead of the 2.1 m on the ground floor and 2.2 m on the first floor, which would be the case if the proposed vertical scheme were to be implemented. The appellant contends that a horizontal scheme would lead to an unacceptable reduction of the already limited headroom which would adversely affect the living conditions of future occupants and obscure historic joists and floorboards.
 36. HE’s concerns were limited to the retention of the southern staircase and its only observation in relation to the vertical subdivision was that it would be a “fairly intensive scheme that results in the significant subdivision of the building as well as the loss of internal features”⁵. Although it only found harm in relation to the loss of the southern staircase in an earlier iteration of the scheme, this is tempered by the fact that it claimed that its remit was solely limited to that feature rather than the whole asset⁶. Whilst its opinions carry great weight, they are vague and of little practical benefit in this particular instance.
 37. In addition to the significant harm caused by the loss of its open, internal layout, I find that harm would also be caused by the loss of historic fabric associated with the insertion of the new staircases and doorways on both elevations as well as the loss of an intake doorway on the western elevation of the second floor. Whilst this might be a later addition, it has clear evidential value as an industrial feature. Added to this is the significant disruption of the

⁴ Letter to Planning Inspectorate (19 July 2021); Mill Building Conversion Floor Study (Ref: 3728-BB-XX-XXX-DR-A-SK1001); and Separating Floor Detail (3728-BB-XX-XXX-DR-A-SK1002 Rev A).

⁵ Letter to South Somerset Council (22 January 2019)

⁶ Letter to South Somerset Council (10 August 2018)

- well balanced, rhythmic architectural composition of the western and eastern elevations and the considerable domestication of its external appearance that would result from the vertical subdivision of the building.
38. Whilst this would erode its external form, I agree with the previous Inspector in that it would still be legible as a former mill building. This is because its overall massing, repetitive, albeit reduced, pattern of fenestration and consistent use of materials would remain, as would the continued juxtaposition with the Warehouse. However, I nevertheless find that significant harm would result and that this would fail to preserve the special interest of this listed building.
 39. The Offices would be converted into four residential units. The northern staircase, which evidence suggests is not in its original location, would be removed but the central stairs would be retained. Elsewhere, there would be minimal changes to the historic fabric and layout or to its external fenestration. However, the conversion of this building to residential use would nevertheless erode its former functional relationship as an office to the Mill. The main parties do not dispute that the proposal would fail to preserve the special interest of this building and I agree this would be the case for the above reasons.
 40. The Warehouse would be converted to three residential units, with one two storey house at the eastern end and a ground floor and first floor apartment at the western end. This would necessitate extensive reconstruction of the collapsed roof and floor sections. Modern casement windows and a garage door would be replaced with windows to match existing. A new door and window opening would also be formed on this much altered elevation. Whilst I find the balance of works to be neutral, given the harm caused by later interventions, the building would nevertheless be subject to domestication and the consequent erosion of its functional relationship to the Mill which would add to the harms I have already found. The main parties agree that such harm would be caused.
 41. The remaining historic curtilage structures would be demolished as a result of their advanced state of deterioration. Although this would have an adverse effect on the integrity and legibility of the mill buildings, as a functional group, the value of these curtilage structures has already been significantly weakened by the loss of the power loom mill which they served, as noted by the previous Inspector. However, an evidential loss would still occur which would add to the harm I have already found to the Mill. As above, the main parties agree that such harm would be caused.
 42. I now turn to the wider effects of the proposal on the CA and the setting of nearby assets. The proposal seeks to develop the site as a fully residential scheme, comprising a mixture of housing type, tenure and size. It would incorporate onsite parking with adopted roads and open spaces. A pedestrian route would be created through the site, linking the adjacent Nursery and Barnes Close sites with the town centre. The scheme would reflect the scale of existing buildings in and around the site, as is apparent from the varied massing and location of the new buildings which would be a combination of three storey, two and a half and two storey dwellings.
 43. The core of the scheme would comprise buildings arranged around a central courtyard with a public open space immediately to the north which would accommodate two existing, mature lime trees. Two contrasting design

approaches have been taken to the new buildings. A more industrial design would characterise dwellings along the eastern boundary, immediately to the north of the Mill. The steeply pitched, asymmetrical roofs and terraced forms would be a positive response to the existing buildings and the setting of the CA. Elsewhere, a more mixed vernacular approach would characterise the dwellings with a significant number being finished in natural stone. Buff brick would also be used to form a transition from the industrial structures that were once on the site to the natural stone dwellings and the characteristic materials of the CA.

44. The sympathetic use of materials, coherent design approach and the stepping down of scale is such that I find no harm would be caused to the setting, as it contributes to the significance, of nearby listed buildings or the CA. This is consistent with the views of HE but not those of the previous Inspector. He maintained that harm would be caused to the character of the CA from the demolition of the curtilage structures associated with the power loom as well as changes to the external appearance of the Mill and the Offices.
45. However, case law⁷ has established that proposals must be judged according to their effect on a conservation area as a whole and must therefore have a moderate degree of prominence. The previous Inspector acknowledged that limited views of the mill buildings were present. I note that this would continue to be the case given that there would be no through route onto Upper High Street from the proposed scheme. Moreover, the views of the southern end of the Offices, along the historic access through Ochil Tree House, would remain unaltered. Given the above, I find that the proposal would not cause significant harm the character or appearance of the CA, thus preserving its significance.
46. In terms of heritage benefits I find: significant benefit from the refurbishment and bringing into viable use of the Mill and the Offices; significant benefit from the rebuilding of the Warehouse and bringing it into viable use; moderate benefit from improved public accessibility to the heritage assets that would better reveal their significance; moderate benefit from improvements to the unkempt and degraded setting of the assets; and moderate benefit from the removal of risk of further collapse of the Warehouse as well as further deterioration of the Mill and the Offices.
47. Turning to the heritage harms, I find: significant harm from the loss of a curtilage structure; significant harm from the vertical subdivision of the Mill; moderate harm from the domestication and disruption of its external form; and moderate harm from the loss of historic fabric.
48. Thus, whilst it is clear that there would be significant improvements, there would also be significant negative effects arising from demolition, the reduction in the legibility of its past function, disruption of external facades and the loss of historic fabric. However, it is necessary to look at the whole package of works which include major works of restoration.
49. I am mindful that neglect of buildings is something that should be set aside according to paragraph 202 of the Framework. In that respect, the parties agree that there is no evidence of deliberate neglect or damage but that more

⁷ South Oxfordshire DC v SSE & J Donaldson [1991] CO/1440/89

active measures are now needed to be taken to prevent further deterioration⁸. The Planning Practice Guidance (PPG) also states that reducing or removing risks to a heritage asset should be considered public benefits⁹. In the absence of evidence to the contrary, I am satisfied there has been no intentional neglect. I therefore attach significant weight to the benefits advanced by the restoration works, particularly given that the proposed development results in creating viable uses for the listed buildings that are to be retained.

50. Paragraph 205 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to the asset's conservation. Paragraph 206 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets and that any such harm should have a clear and convincing justification. I am also obliged to determine if the proposal would lead to substantial or less than substantial harm under paragraphs 207 and 208 of the Framework.
51. I have identified a number of harms, some of which would be significant. The cumulative effect of such harms can tip into substantial harm to an asset which triggers a different test for the purposes of the Framework. I do not find this to be the case in this instance because I am satisfied that the assets can accommodate the proposed changes without the near or complete loss of their special interest.
52. Bearing in mind the above and considering the balance of harms and benefits, I find that there would be overall harm which would weigh moderately against the scheme. I find that the harm to be less than substantial in this instance but nevertheless of considerable importance and weight. Where a proposal would lead to less than substantial harm, paragraph 208 of the Framework advises that this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimal viable use. As this can only be done within the context of the wider planning benefits of the scheme, I shall undertake the final heritage balance as part of the overall planning balance.
53. My finding of less than substantial harm differs from the view of the previous Inspector who found that substantial harm would be caused to the Mill. The PPG advises that substantial harm is a high test that will be infrequently encountered and will only occur when an adverse impact seriously affects a key element of the special architectural or historic interest of a listed building¹⁰.
54. This is a matter of fact and planning judgement. As I have already established, it is the functional relationships, original fixtures and fittings, use of distinctive local materials and historic associations that contribute to the special interest of this building. Whilst the manufacturing function associated with the open floor plan would be lost from the internal layout, with associated consequences for the external elevations, I do not find that all evidential meaning would be drained in this respect. This is because the exposed floorboards and joists would remain visible and continue to attest to its former use.

⁸ Statement of Common Ground, 2 April 2024

⁹ Paragraph: 020 Reference ID: 18a-020-20190723

¹⁰ Paragraph: 018 Reference ID: 18a-018-20190723

55. Given the above, I conclude that the proposal would fail to preserve the special historic interest of the Grade II listed mill buildings but that it would nevertheless conserve the character and appearance of the Castle Cary Conservation Area and the setting of nearby listed buildings. The harm that would be caused to the mill buildings would conflict with policy EQ3 of the LP which states that heritage assets should be conserved and where appropriate enhanced for their historic significance.

Bats

56. Regulation 9(3) of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) requires a competent authority to have regard to the requirements of the associated Directive so far as it may be affected by the exercise of its functions. This includes any proposal that might lead to the deterioration or destruction of the breeding sites and resting places of European Protected Species (EPS) under Article 12(1)¹¹. This includes bats and the places that they roost, irrespective of whether or not they are present at the time the development is carried out.

57. The Courts¹² have established that planning permission should ordinarily be granted save only in cases where a proposed development would either be likely to offend Article 12(1) or unlikely to be licensed pursuant to the derogation powers. The duty to have regard to the requirements of the Directive, as set out in Regulation 9(1), remains but the judgement establishes that there is no need to carry out a detailed assessment as to whether there would be a breach of Article 12(1) or whether derogation from that article would be permitted and a licence granted. The previous Inspector failed to have regard to this precedent and I have consequently taken a different approach.

58. Nevertheless, I am still required to ensure that any potential harm to an EPS would be adequately mitigated and whether or not the proposed development is unlikely to be licensed. Bearing in mind the suggested mitigation measures, which are based on more recent evidence than was available to the previous Inspector¹³, I find that the proposal would not offend Article 12(1). I am satisfied that the mitigation hierarchy has been followed and that there would be no significant harm to the long-term conservation status of the bat species that are present.

59. Unlike the previous Inspector, I am satisfied that the conditions would provide the necessary detail and certainty to secure the required mitigation. As the PPG makes clear, conditions should be used to enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects. Having carefully reviewed the related conditions, and in the light of my own professional expertise, I have no reason to doubt that they would be ineffectual in this instance.

60. Turning to licensing matters, the views of NE are determinative in this matter and carry great weight. In this respect, I observe that the NE consultation responses do not object to the proposal on the basis of potential harm to bats or their roosting spaces nor are any concerns raised over licensing issues. I

¹¹ Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora (the Directive)

¹² *Morge v Hampshire County Council* [2011] UKSC 2

¹³ Ecological Impact Assessment, July 2021 and Ecological Update Email, 9 February 2022

have no reason to doubt that a mitigation license would not be issued on the basis of the evidence that is before me. Furthermore, it is not for me to determine whether the legal tests for a license would be met as this would duplicate the function of another regulatory body and would be contrary to the well-established principle that non-planning regimes are assumed to operate effectively. This is the basis for taking a different view to the previous Inspector.

61. Following my site visit and having reviewed the previous decisions and all other evidence, I agree that, subject to conditions, no significant harm to bats or their roosts would be caused. Consequently, the proposal would not conflict with policy EQ4 of the LP. This requires, among other things, that development affecting protected species should be accompanied by appropriate information and that a sequential approach is taken to avoid, mitigate and compensate any harm that would otherwise arise.

Other Matters

Habitats Regulations Assessment

62. The Somerset Levels and Moors Ramsar site (the SLMR) is located approximately 20 km northwest of the appeal site which is within its defined zone of influence. NE objected to the proposed development on the basis of an adverse effect on the integrity of the Ramsar site which is currently in unfavourable condition¹⁴. This is because NE guidance issued on 17th August 2020 states that any new development within its catchment would result in an increase in phosphate output that would have an adverse, in-combination effect with other plans or projects. The appellant's own calculations have demonstrated that there would be a net increase in phosphate output from the site of around 4.84 kg per year.
63. The SLMR is an archipelago site comprising a series of Sites of Special Scientific Interest (SSSI) within the largest area of lowland wet grassland and associated wetland habitat remaining in Britain. It covers an area of around 35,000 ha in the flood plains of the Rivers Axe, Brue, Parrett, Tone and their tributaries. The site attracts internationally important numbers of wildfowl in winter and is one of the most important sites in southern Britain for breeding waders. The network of rhynes and ditches also support an outstanding assemblage of aquatic invertebrates, particularly beetles.
64. Whilst the Ramsar site does not have formal conservation objectives, this is not the case for the overlapping SPA. The qualifying bird species of the SPA have a high degree of consistency and therefore its objectives are also relevant to securing the favourable conservation status of the Ramsar bird assemblage. Paragraph 187 of the Framework states that Ramsar sites should be given the same protection as Habitats Sites, which include SPAs. Government guidance states that any proposals with potential to affect a Ramsar site, either alone or in combination with other plans or projects, require a habitats regulations assessment¹⁵. The provisions of this assessment are set out in Regulation 63-64 of the Regulations.

¹⁴ Email to Council dated 21 December 2021

¹⁵ Habitats Regulations Assessments: Protecting a European Site, Department for Environment, Food & Rural Affairs, 6 December 2023.

65. Regulation 63(1) requires a competent authority to make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives. Given that treated effluent from the appeal site would discharge into the Parrett catchment, I find that the potential for habitat degradation, as a result of increased phosphate output from the scheme, would have a likely significant effect, through ecosystem level changes, that would adversely affect the nature of the vegetation upon which the qualifying features depend. This impact pathway contributes to regular algal blooms and the unfavourable condition of this site. This could lead to changes in the extent and distribution of supporting habitats as well as their structure and function which could, in turn, reduce or alter the distribution of its qualifying features. As such, I cannot rule out, beyond all reasonable scientific doubt, that the proposal would not lead to an adverse effect on integrity of the Ramsar site, in combination with other plans or projects.
66. I now turn to whether the adverse effects could be mitigated to ensure that they are reduced to a *de minimis* level and whether any such measures have been secured with the necessary degree of certainty. I note that the appellant has obtained phosphate credits from a market provider that would offset the full phosphate load of the proposal after a planned AMP7 upgrade to Castle Cary Waste Water Treatment Works (WwTW) is completed later this year. NE has indicated that it is satisfied that nutrient neutrality could be achieved under the circumstances provided that the identified mitigation measures are secured, in perpetuity, through appropriate planning controls¹⁶.
67. The views of NE carry great weight and I have no reason to doubt that the proposed measures would be ineffective on the basis of the evidence before me or that its views have subsequently changed. Furthermore, I note that these measures have been secured through a UU which would ensure that the development does not commence until the allocation certificates that are issued by the credit provider, confirming the full allocation of credits to offset the phosphate load, are submitted to the Council. The UU also requires that the proposed development is not occupied until such time as the AMP7 upgrade to the WwTW has been carried out.
68. Given the above, I am satisfied that the mitigation measures are appropriately secured and would reduce the adverse effects of the proposal to a *de minimis* level. This would maintain the integrity of Ramsar site and SPA insofar as its common qualifying features are concerned which I also have a duty to consider as the competent authority. I am also satisfied that the notified features of the component SSSIs would be preserved given my obligations under s28G(2) of the Wildlife and Countryside Act 1981 (as amended).

Additional Concerns

69. The Town Council and other interested parties highlighted additional concerns including the adoptability of new roads, road traffic congestion, sustainable drainage provision, lack of renewable energy, alleged breaches of planning law, footpath provision from the red house development, light pollution, overlooking, tree removal and wildlife impacts.

¹⁶ Email to Council dated 1 February 2024

70. I have read the officer report¹⁷ where most of these matters were considered and I have also carefully taken into account additional representations that have been made as part of this redetermination. I note that there were no unresolved objections from relevant statutory consultees at application stage in relation to any of these matters and that the proposal was refused, against officer recommendation, on other grounds. Having considered the issues afresh, I find that there is no further evidence before me that would lead me to a different conclusion and I am satisfied that any residual impacts would be adequately controlled through appropriately worded conditions.

Planning Balance

71. The appellant suggests that the tilted balance in paragraph 11(d) of the Framework is engaged¹⁸. I do not find this to be the case because of the policy conflict that arises from the harm that would be caused to designated heritage assets.

72. In terms of heritage impacts, the internal balance of heritage harms and benefits has already been addressed. On balance, I have found the benefits of the scheme do not outweigh the harms that would be caused and that this would lead to less than substantial harm. However, there is a further balance to be made to weigh heritage harms against public benefits which are also material considerations relating to my obligation under 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended).

73. The following public benefits have been identified by the appellant:

- Construction phase (over 3.5 years) economic benefits comprising 170 direct and indirect jobs, an annual direct gross value of £4,625,941 and an annual indirect and induced gross value of £6,522,577. Whilst significant financial benefits would be generated over this period, they are temporary in nature and it is unclear to what extent that would benefit the local economy bearing in mind the sourcing of materials and contractors generally occurs on a much wider basis. I consequently give this moderate weight.
- Operation phase economic benefits comprising an annual estimated local expenditure of £2,589,007 by future residents, annual Council Tax receipts of £144,389, a New Homes Bonus £582,361 and the creation of 20 jobs through the additional expenditure. This extent to which there might be leakage beyond the local area is equivocal given that individuals commute and may be attracted to larger settlements with a greater range of services. I also find the potential for job creation highly speculative and that the tax receipts are nothing other than what would be required to mitigate the effects of the scheme on local services. I consequently give this moderate weight.
- Increased housing provision of 81 homes comprising market and affordable housing. This would be delivered against a worsening deliverable HLS position in comparison to that which existed at the time of the previous Inspector's decision. I also note that it would help to deliver an extant planning permission on an adjacent site for a further

¹⁷ Officer Report on Planning Application 18/01602/FUL to the Regulation Committee

¹⁸ Paragraph 6.2, Letter to Planning Inspectorate, 29th July 2021

24 dwellings which is dependent on the access that would be created by this scheme. Under these circumstances, the proposal would significantly boost the supply of housing. It would also deliver an appropriate mix of housing types for the local community. I consequently give this great weight, as required under paragraph 70(d) of the Framework.

- Financial contributions towards sports facilities, education and youth facilities, as set out below. These are required to mitigate the impact of the development on local services and are no more than to be expected. I consequently give this negligible weight.
 - Sustainable location close to the town centre. I note that the location would allow future residents to access local services without the use of private motor vehicles and that public transport would be readily accessible. This would align with the Government's view that the planning system should support the transition to a low carbon future as set out in paragraph 157 of the Framework. I consequently give this moderate weight.
 - Re-use of previously developed land. The site has been derelict for a considerable period of time and its use would promote the more effective use of land to meet the need for homes under paragraph 123 of the Framework. Paragraph 124(c) goes on to state that residential development of brownfield sites within settlements attracts substantial weight. I consequently give it that weight.
74. The benefits of developing this brownfield site and the boost that this would give to the deliverable housing land supply would be considerable. The policy imperative is such that the weight to be afforded is not open to planning judgement. Added to this are the cumulative benefits of the sustainable location and potential effects on the local economy.
75. This comes at a cost in terms of the harm that would be caused to the Mill. Despite this cost, it seems to me that there is a clear and convincing justification for that harm to be accepted. This is because the scheme would secure the optimum viable use of the listed buildings bearing in mind the impracticality of a horizontal conversion of the Mill. As such, this material consideration justifies a modest departure from one LP policy against a background where all other matters are in accord. Consequently, the appeals should succeed.

Planning Obligations

76. The completed UU, outlined above, is dated 2 April 2024 and has been provided by Castle Cary (BMI) Ltd and English Rose Estates (Fitzrovia) Ltd in addition to a completed planning agreement, dated 18 September 2020, that was previously submitted. The latter is a four-way agreement between Castle Cary (BMI) Ltd, English Rose Estates (Fitzrovia) Ltd, South Somerset District Council and Somerset County Council. The agreement secures the provision of 11 affordable dwellings and makes the following financial contributions:

- £61,584 – changing rooms
- £1,791 – administrative fee

- £411,075 - education
- £100,431 – equipped play
- £17,121 – youth facilities

77. I find that the provisions of the obligations are necessary in order to make the development acceptable. I therefore conclude that the statutory tests in paragraph 57 of the Framework are met and that the provisions of the planning agreements are a material consideration in this appeal.

Conditions

78. I have considered both the wording and grounds for the conditions agreed between the Council and the appellant in accordance with the tests set out in paragraph 56 of the Framework. Subject to minor adjustment to reflect standard wording and to ensure the necessary implementation clauses, I am satisfied that they meet the necessary requirements. Furthermore, all pre-commencement conditions have been accepted by the appellant through the SoCG I have before me and are consequently compliant with the necessary legislation¹⁹.
79. I note the request for a shorter commencement period from the Castle Cary History Society due to the parlous condition of the buildings. However, the nature of some of the pre-commencement conditions is such that their discharge may be time consuming. As such, I find it reasonable to impose the usual 3-year implementation condition, as agreed with the Council. I have also noted the revised reference number for one of the drawings that has been brought to my attention by the appellant. I have otherwise relied upon the list of approved plans, as set out in the relevant SoCG.
80. I have deleted the plans condition of Appeal B because there is no provision for an application for a minor material amendment to a listed building consent and because the consent is for the works and plans as approved. As such, this plans condition fails the test of necessity. I have deleted a condition associated with surface water and the highway of Appeal A and have incorporated the associated measures into the overall drainage scheme set out in Condition 22 to ensure an integrated approach and in the interests of clarity. I have also deleted all conditions relating to the treatment of boundaries adjacent to Beechfield House and Ochil Tree House which would include the loss of an opening denoting the historic access the former mill and a reduction in the visual juxtaposition between these properties and the mill site. This would harm the setting of these buildings through the erosion of their historic relationship with the appeal site, particularly in relation to Ochil Tree House.
81. I have inserted new conditions [26] and [34] for the avoidance of doubt and in the interests of clarity, to ensure biodiversity enhancement, as required by paragraph 180(d) of the Framework and to protect the welfare of any badgers that may be present. The main parties have been given an opportunity to comment and I have taken their views into account.
82. Substantive adjustments were also made to the following conditions:

¹⁹ The Town and Country Planning (Pre-commencement Conditions) Regulations 2018

[14] Appeal A: I have deleted a reference to the need for a legal agreement with the Highways Authority to undertake the associated works as this is an unenforceable, advisory comment.

[22] Appeal A: I have replaced the wording of this condition to reflect the need to account for storm events and the accelerating impacts of climate change and the better ensure the implementation of a sustainable drainage scheme.

[24] Appeal A: I have replaced the wording of this condition to better reflect the standard wording and for the sake of clarity.

[25] Appeal A: I have included provision for self-contained bat roosts in all suitable new dwellings in the interests of providing a wider range of roosting opportunities to mitigate the potential failure of measures that seek to preserve existing roosts.

[27] Appeal A: I have added additional measures to ensure full compliance with the necessary legislation and in the interests of ensuring adequate levels of protection to nesting birds.

Conclusion

83. For the above reason and having regard to all other matters raised, I conclude that the appeals should be allowed subject to the attached conditions.

R Catchpole

INSPECTOR

APPEAL A CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

3728/001 Rev Q Site Plan
3728/002 Location Plan
3728/10 Building 1 Existing Floor Plans
3728/11 Building 1 Existing Elevations
3728/12 Building 1 Existing Elevations & Section
3728/13 Building 2 Existing Floor Plans
3728/14 Building 2 Existing Elevations & Section
3728/15 Building 3 Existing Elevations
3728/105 Rev A Plots 25-27 Proposed Plans and Elevations
3728/110 Plots 34-39 Proposed Plans and Elevations
3728/112 Plots 44-45 Proposed Plans and Elevations
3728/113 Plots 46-47 Proposed Plans and Elevations
3728/114 Plots 48-52 Proposed Plans and Elevations
3728/115 Plots 53-57 Proposed Plans
3728/116 Plots 53-57 Proposed Elevations
3728/117 Plots 58-59 Proposed Plans and Elevations
3728/123 Plots 66-67 Proposed Plans and Elevations
3728/124 Plots 68-69 Proposed Plans and Elevations
3728/125 Plots 70-73 Proposed Plans
3728/126 Plots 70-73 Proposed Elevations
3728/127 Plot 74 Proposed Plans and Elevations
3728/129 Plots 80-81 Proposed Plans and Elevations
3728/133 Sub-Station Proposed Plans and Elevations
3728/134 Bin Store Proposed Plans and Elevations
3728/BBA/SP/00/DR/L/401 Hard Landscape Details 1
3728/BBA/SP/00/DR/L/420 Hard Landscape Details 2
3728/BBA/SP/00/DR/L/501 Soft Landscape Details
3728/BBA/SP/00/DR/L/510 Soft Tree Pit Detail
3728/111 Plots 42-43 Proposed Plans and Elevations
3728/118 Plots 60-61 Proposed Plans and Elevations
3728/101 Rev A Plots 1-8 Proposed Plans
3728/102 Rev A Plots 1-8 Proposed Elevations
3728/103 Rev A Plots 17-24 Building 1 Proposed Plans
3728/104 Rev A Plots 17-24 Building 1 Proposed Elevations
3728/106 Rev A Plots 40 - 41 Proposed Plans and Elevations
3728/107 Rev A Plot 33 Proposed Plans and Elevations
3728/108 Rev B Plot 32 Proposed Plans and Elevations
3728/109 Rev A Plots 28 - 29 Proposed Plans and Elevations
3728/119 Rev A Plots 62-65, 75-79 Proposed GF Plan
3728/120 Rev A Plots 62-65, 75-79 Proposed FF Plan
3728/121 Rev A Plots 62-65, 75-79 Proposed SF Plan
3728/122 Rev A Plots 62-65, 75-79 Proposed Elevations
3728/130 Rev A Carport Proposed Plans and Elevations
3728/131 Rev A Single Garage Proposed Plans and Elevations
3728/136 Plots 30-31 Proposed Plans and Elevations
3728/137 Plots 9-16 Proposed Plans

3728/138 Plot 9-16 Proposed Elevations
3728/132 Rev B Double Garage Proposed Plans and Elevations
3728/135 Rev A Triple Garage Plans and Elevations
3728/200 Rev B Proposed Street Scenes
3728/BBA/SP/00/DR/L/001 Rev D Landscape GA 1 of 2
3728/BBA/SP/00/DR/L/002 Rev E Landscape GA 2 of 2
3728/BBA/SP/00/DR/L/201 Rev D Proposed Planting Plan 1 of 2
3728/BBA/SP/00/DR/L/202 Rev D Proposed Planting Plan 2 of 2
3728/BBA/SP/00/DR/L/290 Rev C Planting Schedule
3728/BBA/SP/00/DR/L/511 Rev A Hard Tree Pit Detail
1473.15 Rev A Proposed Site Layout Visibility Review
1473.T03 11.3 m Refuse Vehicle Tracking
1473. T04 11.3 m Refuse Vehicle Tracking
2471.01 RD A0 Access Junction Drawing @ A0
2471.01 RD A3 Access Junction Drawing @ A3

Reason: In the interests of proper planning and for the avoidance of doubt.

- 3) Excluding demolition, no development hereby permitted shall take place above ground level until details of all external materials (to be accompanied with samples and/or sample panels where deemed necessary by the Local Planning Authority) for all buildings hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed details.

Reason: To safeguard local character and the historic environment, in accordance with policies EQ2 and EQ3 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 4) No windows, doors, or other openings shall be installed in any of the buildings prior to details of their designs, materials, finishes, recessing, and levels of obscenity where relevant have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed details.

Reason: To safeguard local character, amenity, and the historic environment, in accordance with policies EQ2 and EQ3 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 5) Before any of the buildings hereby permitted are constructed above ground level, details of all eaves/fascia board detailing, guttering, downpipes and other rainwater goods shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed details.

Reason: To safeguard local character, amenity, and the historic environment, in accordance with policies EQ2 and EQ3 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 6) No development shall occur until details of the internal ground floor levels of those building(s), relative to the ordnance datum point, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed details.

Reason: To safeguard local character, amenity, and the historic environment, in accordance with policies EQ2 and EQ3 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 7) All dwellings shown on the approved plans as hosting PV panels shall not be occupied until the PV panels have been installed in accordance with the approved plans.

Reason: To secure renewable energies/sustainable construction, in accordance with policy EQ1 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order) (with or without modification) there shall be no extensions to any of the buildings hereby permitted without the prior written approval of the Local Planning Authority.

Reason: To safeguard local character, amenity, and the historic environment, in accordance with policies EQ2 and EQ3 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order) (with or without modification) there shall be no outbuildings erected for any of the dwellings hereby permitted without the prior written approval of the Local Planning Authority.

Reason: To safeguard local character, amenity, and the historic environment, in accordance with policies EQ2 and EQ3 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order) (with or without modification) there shall be no external alterations made to the buildings on plots 1-16 without the prior written approval of the Local Planning Authority.

Reason: To safeguard local character, amenity, and the historic environment, in accordance with policies EQ2 and EQ3 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 11) No development shall commence until a phasing scheme has been submitted to and approved in writing by the Local Planning Authority. This scheme shall include all works relating the demolition of the engine house and the repair and conversion of the mill building/offices and warehouse buildings. All works shall be carried out in strict accordance with the approved details.

Reason: To ensure that the listed buildings are appropriately repaired and converted as a benefit of this development, in accordance with policy EQ3

of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 12) No works relating to the conversion of the listed buildings and the warehouse shall commence until a detailed method statement and specification has been submitted to and approved in writing by the Local Planning Authority. This shall be based upon the Schedule of Works by Boon Brown Architects (Revision E) and include detailed drawings at 1:20 scale. This shall include:
- a) details of all internal and external joinery for new and repaired roof and floor structures, windows, doors and staircases;
 - b) details (including drawings) showing the extent of all new and repaired areas of stonework (including structural strengthening works); and
 - c) details of all replacement or repaired lintels.

All works shall be carried out in strict accordance with the approved details.

Reason: To ensure that the listed buildings are appropriately repaired and converted as a benefit of this development, in accordance with policy EQ3 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 13) Prior to first occupation, details of all boundary treatments and means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. All enclosures shall include small gaps to allow free passage of small mammals in the boundary of each plot. The boundary treatments and means of enclosure shall be fully erected in accordance with the agreed details and maintained for the lifetime of the development.

Reason: To safeguard local character, amenity, the historic environment, and biodiversity, in accordance with policies EQ2, EQ3, and EQ4 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 14) No work shall commence, other than demolition and site clearance, until a signalised junction in accordance with Drawing No. 2471. 01D shown in Appendix 5 of the Peter Evans Partnership Transport Assessment (March 2018) has been provided. This shall be in accordance with a design and specification to be submitted to and approved in writing by the Local Planning Authority. The works to the junction shall be fully implemented in accordance with the approved details.

Reason: In the interests of highway safety, in accordance with policy TA5 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 15) None of the dwellings hereby permitted shall be occupied until the pedestrian links to Barnes Close and to the site boundary with the Nurseries site have been constructed in accordance with details shown on

drawings 3728/001 Rev Q 3728 BBA SP 00 DR L 001 D and 3728 BBA SP 00 DR L 002 E. These shall remain unobstructed and maintained for the lifetime of the development.

Reason: In the interests of highway safety, in accordance with policy TA5 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 16) The proposed estate roads, footways, footpaths, tactile paving, cycleways, bus stops/bus lay-bys, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car, motorcycle and cycle parking and street furniture shall be constructed and laid out in accordance with details to be submitted to and approved in writing by the Local Planning Authority. Details shall include plans and sections, indicating as appropriate, the design, layout, levels, gradients, materials and method of construction. No construction of these structures shall occur prior to the written approval of the Local Planning Authority. All works shall be carried out as approved and maintained for the lifetime of the development.

Reason: In the interests of highway safety, in accordance with policy TA5 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 17) All roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that a properly consolidated and surfaced footpath and carriageway to at least base course level between a dwelling and existing highway prior to its first occupation.

Reason: In the interests of highway safety, in accordance with policy TA5 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 18) The gradients of the proposed drives to the dwellings hereby permitted shall not be steeper than 1 in 10 and shall be permanently retained at that gradient for the lifetime of the development.

Reason: In the interests of highway safety, in accordance with policy TA5 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 19) The areas allocated for parking and turning, as set out in the approved plans, shall be kept clear of obstruction and shall not be used other than for parking and turning of vehicles in connection with the development hereby permitted. They shall be retained for this purpose for the lifetime of the development.

Reason: In the interests of highway safety, in accordance with policy TA5 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 20) Prior to first occupation of any dwelling hereby permitted secure cycle parking shall be provided for that dwelling in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details and retained for the lifetime of the development.

Reason: In the interests of highway safety, in accordance with policy TA5 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 21) No development shall commence until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. All works shall be carried out strictly in accordance with the approved plan. The plan shall include:

- Construction vehicle movements;
- Construction operation hours;
- Construction vehicular routes to and from site;
- Construction delivery hours;
- Expected number of construction vehicles per day;
- Car parking for contractors;
- Specific measures to be adopted to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice;
- A scheme to encourage the use of Public Transport amongst contractors;
- Measures to avoid traffic congestion impacting upon the Strategic Road Network; and
- Measures to ensure that all vehicles leaving the site are in such condition as not to emit dust or deposit mud, slurry or other debris on the highway.

Reason: In the interests of highways safety and residential amenity, in accordance with policies EQ2 and TA5 of the South Somerset Local Plan (2008-2028) and the provisions of the Framework.

- 22) No development shall take place (excluding demolition and site clearance) until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The submitted details shall:

- a) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- b) include a timetable for its implementation;
- c) measures to prevent surface water discharge onto the highway;
- d) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by

any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The development shall be carried out in accordance with the approved details and fully implemented prior to first occupation. The sustainable drainage system shall be managed and maintained thereafter in accordance with the approved management and maintenance plan for the lifetime of the development.

Reason: To ensure that the development is served by a satisfactory system of sustainable surface water drainage and that the approved system is retained, managed and maintained throughout the lifetime of the development, in accordance with Framework.

- 23) No development shall occur, including site clearance, until a scheme of tree and hedgerow protection measures has been submitted to and approved by the Local Planning Authority following an onsite inspection. This shall be prepared by a suitably experienced and qualified arboricultural consultant in full accordance with British Standard 5837:2012. The scheme shall be fully implemented prior to the commencement of any development or the storage of any materials or heavy machinery. The approved measures shall be subject to inspection by the Council and adjusted where necessary to ensure the effectiveness of all protective fencing and signage. The approved measures shall remain for the duration of the construction phase and may only be moved or removed with prior written consent from the Local Planning Authority.

Reason: To preserve existing landscape features (trees and hedgerows) in accordance with the Council's policies as stated within The South Somerset Local Plan (2006 - 2028); EQ2: General Development, EQ4: Biodiversity and EQ5: Green Infrastructure.

- 24) All planting, seeding or turfing specified in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees, plants or swards which within a period of 10 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and/or composition.

Reason: To ensure the planting of new trees and shrubs in accordance with the Council's statutory duties relating to The Town & Country Planning Act, 1990 (as amended) and Policies EQ2: General Development, EQ4: Biodiversity and EQ5: Green Infrastructure of the South Somerset Local Plan (2006 - 2028).

- 25) No development shall commence until a Bat Mitigation Plan has been submitted to and approved in writing by the Local Planning Authority. This shall include details of timing restrictions and protective measures to avoid, mitigate and compensate for harm to all bats and their roosts that are currently on site. It shall also include details of bat roosts to be installed on all new buildings with a suitable aspect and proximity to existing

vegetation. All works shall be implemented in accordance with the approved details and timing of the mitigation plan, as modified to meet the requirements of any 'European Protected Species Mitigation Licence' issued by Natural England.

Reason: For the conservation and protection of species of biodiversity importance in accordance with Framework and Policy EQ4 of the South Somerset Local Plan, and to ensure compliance with the Wildlife and Countryside Act 1981 and the Habitats Regulations 2017 (as amended).

- 26) No development above ground level shall occur until a scheme to enhance bird nesting opportunities on the site has been submitted to and approved in writing by the Local Planning Authority. This shall include the incorporation of swift bricks in all new buildings at a suitable density and location to support a new colony and the installation of Schwegler 1MR Avianex bird boxes or similar at appropriate locations and heights in retained trees prior to first occupation.

Reason: To ensure the enhancement of biodiversity in accordance with paragraph 180(d) of the Framework and Policy EQ4 of the South Somerset Local Plan.

- 27) No removal of vegetation that may be used by nesting birds (trees, shrubs, hedges, bramble, ivy or other climbing plants) nor works to or demolition of buildings or structures that may be used by nesting birds, shall be carried out between 1st March and 31st August inclusive in any year, unless previously checked by a competent person for the presence of nesting birds. If nests are encountered, all activities that might harm the nest, cause the adults to abandon the nest or inhibit their access to the nest shall cease until young have been successfully reared and left the nest. The Council shall be notified of all instances where this occurs and written confirmation that the nest is no longer occupied shall be submitted to the Council by an appropriately qualified and accredited ecologist prior to works resuming.

Reason: To ensure compliance with the Wildlife and Countryside Act 1981 (as amended) and in accordance with Policy EQ4 of the South Somerset Local Plan.

- 28) No development shall occur until a programme of building recording work has been implemented in accordance with a Written Scheme of Investigation (WSI) to be submitted to and approved in writing by the Local Planning Authority. The WSI shall include details of the recording of the heritage assets and their curtilage structures, the analysis of evidence recovered from the site and the publication of the results. The development hereby permitted shall be carried out in accordance with the approved scheme.

Reason: To ensure a record is made of the heritage asset in accordance with the provisions of the Framework.

- 29) The development hereby permitted shall not begin until a scheme to deal with contamination of land, controlled waters and/or ground gas has been

submitted to and approved in writing by the Local Planning Authority. The scheme shall include all of the following measures, unless the Local Planning Authority dispenses with any such requirement specifically in writing:

- a. A Phase I site investigation report carried out by a competent person to include a desk study, site walkover, the production of a site conceptual model and a human health and environmental risk assessment, undertaken in accordance with BS 10175:2011.
- b. A Phase II intrusive investigation report detailing all investigative works and sampling on site, together with the results of the analysis, undertaken in accordance with BS 10175:2011. The report should include a detailed quantitative human health and environmental risk assessment.
- c. A remediation scheme detailing how the remediation will be undertaken, what methods will be used and what is to be achieved. A clear end point of the remediation should be stated, such as site contaminant levels or a risk management action, and how this will be validated. Any ongoing monitoring should also be outlined.
- d. If during the works contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed and an appropriate remediation scheme submitted to and approved in writing by the Local Planning Authority.
- e. A validation report detailing the proposed remediation works and quality assurance certificates to show that the works have been carried out in full accordance with the approved methodology. Details of any post-remedial sampling and analysis to show that the site has reached the required clean-up criteria shall be included, together with the necessary documentation detailing what waste materials have been removed from the site.

Reason: To protect the health of future occupiers of the site from any possible effects of contaminated land, in accordance with policy EQ7 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 30) Prior to commencement of any development above ground level, a comprehensive scheme showing refuse storage for each dwelling and details of collection areas for waste and recycling bins shall be submitted to and approved in writing by the Local Planning Authority. Unless a different phasing agreement is reached, the refuse infrastructure approved shall be fully implemented prior to the first occupation of any dwelling.

Reason: In the interests to providing appropriate refuse infrastructure to the development, in accordance with policy EQ2 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 31) No occupation shall occur until the AMP7 upgrade to the relevant Wastewater Treatment Works serving the site has taken place.

Reason: For the avoidance of doubt, as the phosphate mitigation for the development has been assessed based on the AMP7 upgrade and to accord with policy EQ4 of the South Somerset Local Plan and Framework.

- 32) No occupation shall occur until full compliance with the optional requirement for the potential consumption of potable water by persons occupying that dwelling in Part G of Schedule 1 and Regulation 36 of the Building Regulations 2010 of 110 litres per person per day has been achieved.

Reason: To improve the sustainability of the dwellings in accordance with the South Somerset Local Plan Policy EQ1 and Paragraphs 139, 159 and 186 of the National Planning Policy Framework.

- 33) No occupation shall occur until electric vehicle charging points (EVCP's) rated at a minimum of 16 amps have been provided for each dwelling within its associated garage and/or parking space. Such provision shall be in accordance with details indicating siting, numbers, design, rating and appearance of the EVCP's which shall be previously submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure provision of EVCP's for low emission vehicles as part of the transition to a low carbon economy, having regard to Policy TA1 of the South Somerset Local Plan and relevant guidance within the Framework.

- 34) An up-to-date badger survey and mitigation scheme shall be submitted to and approved in writing by the Local Planning Authority. The survey shall be carried out at an appropriate time of the year and during the field season immediately prior to the commencement of development. It shall either demonstrate that the development would not have an impact on any active badger sets, associated foraging areas or commuting routes or, if an impact is likely, how that would then be mitigated. The scheme shall be carried out according to the approved details.

Reason: To ensure compliance with the Protection of Badgers Act 1992 (as amended) and in accordance with Policy EQ4 of the South Somerset Local Plan.

APPEAL B CONDITIONS

- 1) The works authorised by this consent shall begin not later than 3 years from the date of this consent.

Reason: As required by Section 16(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

- 2) Excluding demolition, no works shall commence until details of all external materials have been submitted to and approved in writing by the Local Planning Authority. This shall include samples and sample panels of all stonework to be used in the conversion and repair of the listed buildings, the construction of the electricity sub-station and the bin store. All works shall be carried out in accordance with the approved details.

Reason: To safeguard the character and appearance of the listed buildings in accordance with policy EQ3 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 3) Prior to their installation, details of the design, materials, finishes and recessing of all new windows, doors and other opening treatments within the listed buildings (including the Warehouse) shall be submitted to and approved in writing by the Local Planning Authority. All works shall be carried out in accordance with the approved details.

Reason: To safeguard the character and appearance of the listed buildings in accordance with policy EQ3 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 4) Prior to their installation, details of all eaves/fascia board detailing, guttering, downpipes and other rainwater goods shall be submitted to and approved in writing by the Local Planning Authority. All works shall be carried out in accordance with the approved details.

Reason: To safeguard the character and appearance of the listed buildings in accordance with policy EQ3 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 5) No works shall commence until a phasing scheme has been submitted to and approved in writing by the Local Planning Authority. This scheme shall include all works relating to the demolition of the engine house and the repair and conversion of the mill building/offices and warehouse buildings. All works shall be carried out in strict accordance with the approved details.

Reason: To ensure that the listed buildings are appropriately repaired and converted in a timely manner in accordance with policy EQ3 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 6) No works relating to the conversion of the listed buildings and the warehouse shall commence until a detailed method statement and specification has been submitted to and approved in writing by the Local Planning Authority. This shall be based upon the Schedule of Works by Boon Brown Architects (Revision E) and include detailed drawings at 1:20 scale. This shall include:

- a) details of all internal and external joinery for new and repaired roof and floor structures, windows, doors and staircases;
- b) details (including drawings) showing the extent of all new and repaired areas of stonework (including structural strengthening works); and
- c) details of all replacement or repaired lintels.

All works shall be carried out in strict accordance with the approved details.

Reason: To safeguard the character and appearance of the listed buildings in accordance with policy EQ3 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

- 7) No works relating to the conversion of the listed buildings shall commence until a detailed specification of all physical works to the fabric of the listed buildings, as set out in a Bat Mitigation Plan, is approved under Condition 25 of Appeal A. This shall include details of the location of all new bat roosts, the materials used in their construction and details of the entry points to the roosts. Such details shall be submitted to and approved in writing by the Local Planning Authority. All works shall be carried out in accordance with the approved details.

Reason: To safeguard the character and appearance of the listed buildings in accordance with policy EQ3 of the South Somerset Local Plan (2006-2028) and the provisions of the Framework.

ANNEX 1 – Appellant Submissions 14 March 2024

- Boon Brown’s letter dated 14th March 2024
- Ecological impact Assessment by Ecosa (Updated February 2024)
- Heritage Appeal Statement by Elaine Milton Heritage and Planning Ltd (Updated February 2024)
- Schedule of Works by Boon Brown Architects (Rev E – February 2024)
- Structural Inspection and Appraisal by GAP (June 2023)
- The Council’s 5 Year Housing Land Supply Paper (October 2023)
- Somerset Council’s Planning Policy Response to planning application 23/03017/OUT (January 2024)
- Burrow Environmental Phosphates Credit Table
- Burrow Environmental Nutrient Mitigation Order
- Burrow Environmental Shadow Habitats Regulations Assessment
- Somerset Ecological Services Consultation Response 31st July 2023
- Somerset Council’s Adoption of the Shadow Habitats Regulations Assessment
- Natural England Response 1st February 2024
- Somerset Council’s List of 3rd Party Phosphate Mitigation Schemes 1st February 2024
- Appellant’s email to Planning Inspectorate dated 14th February 2022