

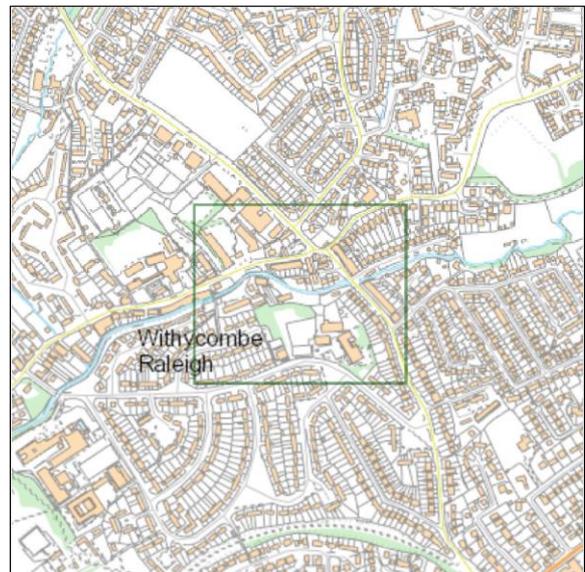
Ward Exmouth Withycombe Raleigh

Reference 18/2261/FUL

Applicant Mr & Mrs McMaster

Location 198 Withycombe Village Road Exmouth EX8 3BD

Proposal Proposed new dwelling



RECOMMENDATION:

1. That the Habitat Regulations Appropriate Assessment Approval within the report be adopted;
2. That the application be APPROVED subject to conditions.



		Committee Date: 9th July 2019
Exmouth Withycombe Raleigh (EXMOUTH)	18/2261/FUL	Target Date: 05.12.2018
Applicant:	Mr & Mrs McMaster	
Location:	Land Rear Of 198 Withycombe Village Road Exmouth	
Proposal:	Proposed new dwelling	

RECOMMENDATION:

- 1. That the Habitat Regulations Appropriate Assessment Approval within the report be adopted;**
- 2. That the application be APPROVED subject to conditions.**

EXECUTIVE SUMMARY

This application is before members as the officer view is contrary to that of the Ward Members.

The site is located within the built-up area boundary of Exmouth in a sustainable location close to essential services and infrastructure required for daily living together with good transport links by public transport. As such the principle of residential development is considered to be acceptable under the provisions of Strategies 6 (Development within Built-Up Area Boundaries) and 22 (Development at Exmouth) of the East Devon Local Plan.

As a partially cleared and flat area of land, the site where the 2 ½ storey dwelling would be sited would lend itself to a residential development and is unlikely to result in any harm to the character and appearance of the area because of its position set back from the road and the amount of vegetation on the boundaries, together with localised topography.

Concerns have been raised by the occupiers of neighbouring dwellings regarding impact on living conditions, however, due to topography, orientation and the distance between dwellings it is not considered that there would be a detrimental impact to an extent that could justify refusal of permission.

There is a mature tree covered by a tree preservation order adjacent to the site, subject to appropriate safeguarding conditions the tree officer raises no objections to the proposed development.

Parts of the site lie within flood zones 2 and 3, however, where the dwelling and garden are proposed lie in flood zone 1. The Environment Agency raise no objections to the revised flood risk assessment.

Accordingly, and subject to appropriate conditions, it is considered that the proposal is considered acceptable.

CONSULTATIONS

Local Consultations

Exmouth Withycombe Raleigh - Cllr B Taylor

Both Cllr. Brenda Taylor and myself undertook a site visit today Monday 5th November, 2018.

We would both like to object to this application on the following grounds.

Over development of the site.

Size of building too large 3 storey's.

Overlooking of neighbours.

Loss of trees will affect the wildlife on the plot. Tawny Owls and Badgers have been seen on properties in Brackenwood and come from the proposed site.

Withycombe Brook runs between the adjoining residents and any works could undermine the Brooks safety.

Vehicles would have to use the service road off Withycombe Village Road to access the site which we feel is too narrow.

Stability of the site.

Not enough parking provided.

If our views differ from Officers recommendation we ask that this application goes before the Full DMC.

Exmouth Withycombe Raleigh - Cllr S Gazzard

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We would both like to object to this application on the following grounds.

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Vehicles would have to use the service road off Withycombe Village Road to access the site which we feel is too narrow.

Stability of the site.

Not enough parking provided.

If our views differ from Officers recommendation we ask that this application goes before the Full DMC.

Parish/Town Council
Meeting 29.10.18

No objection subject to SWW's and Environmental Health's comments.

Further comments 11.06.19:

Objection to the proposed development on the grounds of overdevelopment of the site. Concern was raised about wildlife in the area as bats had been sighted in the vicinity. It was felt that the application in its current form did not meet East Devon LP Policy requirement EN5 (Wildlife Habitats and features). A habitat survey should be carried out. The site was reported to be steep and difficult to access. Concern was raised about the potential for heavy construction vehicles damaging the access bridge. Members requested that the proposal included an electric charging point for electronic vehicles.

Technical Consultations

Natural England
SUMMARY OF NATURAL ENGLAND'S ADVICE

DESIGNATED SITES [EUROPEAN] - FURTHER INFORMATION REQUIRED

Habitats Regulations Assessment - Recreational Impacts on European Sites

This development falls within the 'zone of influence' for the East Devon Pebblebed Heaths SAC, East Devon Heaths SPA and Exe Estuary SPA as set out in the Local Plan and the South East Devon European Sites Mitigation Strategy (SEDEMS). It is anticipated that new housing development in this area is 'likely to have a significant effect', when considered either alone or in combination, upon the interest features of the SAC/SPA due to the risk of increased recreational pressure caused by that development.

In line with the SEDEMS and the Joint Approach of Exeter City Council, Teignbridge District Council and East Devon District Council, we advise that mitigation will be required to prevent such harmful effects from occurring as a result of this development. Permission should not be granted until such time as the implementation of these measures has been secured.

Natural England's advice is that this proposed development, and the application of these measures to avoid or reduce the likely harmful effects from it, may need to be formally checked and confirmed by your Authority, as the competent authority, via an appropriate assessment in view of the European Site's conservation objectives and in accordance with the Conservation of Habitats & Species Regulations 2017.

This is because Natural England notes that the recent People Over Wind Ruling by the Court of Justice of the European Union concluded that, when interpreting article

6(3) of the Habitats Directive, it is not appropriate when determining whether or not a plan or project is likely to have a significant effect on a site and requires an appropriate assessment, to take account of measures intended to avoid or reduce the harmful effects of the plan or project on that site. The ruling also concluded that such measures can, however, be considered during an appropriate assessment to determine whether a plan or project will have an adverse effect on the integrity of the European site. Your Authority should have regard to this and may wish to seek its own legal advice to fully understand the implications of this ruling in this context.

Natural England advises that it is a matter for your Authority to decide whether an appropriate assessment of this proposal is necessary in light of this ruling. In accordance with the Conservation of Habitats & Species Regulations 2017, Natural England must be consulted on any appropriate assessment your Authority may decide to make.

EDDC Trees

The principle issue relating to trees on this site is the juxtaposition of the dwelling on the mature oak tree growing on elevated ground immediately to the southwest of the proposed dwelling. The tree is visible from Withycombe Village Road, Brackenwood, Bradham Lane and Marpool County Primary School. It is of significant size for an urban tree and as such considered locally notable. The Arboricultural report has graded the trees as BS5837:2012 B2 tree, I would suggest that is more appropriately an A2 tree.

An "area" tree preservation has been made on the site following a pre-application attempt to remove this tree, I propose to update this order in the coming days to protect specific individual trees and not the whole property.

My comments on the pre-application were as follows:

"There are no scanned documents within Civica [Missing word in text inserted for clarity] however from memory and our conversation the other day:

There is a large mature native oak tree, growing in an elevated position above the proposed dwelling and within falling distance of the fabric of the building

The indicative layout plan appears to have tried to locate the building as far from the tree as possible (within the constraints of the site).

I would expect to see a number of measures to be taken to make this relationship as arboriculturally sustainable as possible, such as:

- o a reinforce roof and wall design to withstand tree failure onto the building
- o arrangement of rooms within the dwelling, so that the main living and sleeping rooms are located away from the tree"

The proposed dwelling is within the theoretical root protection area of the oak tree, however I am inclined to agree with the arboricultural report that the root protection area of this tree can be offset, as indicated, due to the topography of the site, proposed

protection measures and precautions. The Arboricultural report also addresses issues relating to shading and due to the trees elevated position, its high crown clearance and removal of most upper windows looking out onto the tree, I agree with this assessment.

What has not be addressed in the application is the two specific points raised during the pre-application consultation, relating to the spatial relationship between the tree and the dwelling. BS5837:2012 states that "Where tree retention or planting is proposed in conjunction with nearby construction, the objective should be to achieve a harmonious relationship between the trees and structures that can be sustained in the long term". This should not only recognise the issues of shade, but also future growth and management of the trees and the impact this may have on the proposed structures. Section 5.3 goes on to address the issues of future pressure for removal when buildings are located too close to retained trees. Section 5.2.4 makes particular reference to the retention of large mature, over-mature and veteran trees "Where such trees are retained, adequate space should be allowed for their long term physical retention and future maintenance" The location of the building so close to this tree will inevitably lead to future pressure to prune and reduce the canopy or to fell the tree.

Using tradition construction methods there is likely to be considerable pressure to prune or remove the oak tree due to its proximity to the dwelling which is likely to be difficult to resist. However, if the dwelling was construction using a means of strengthening and reinforcing the building's roof, south and west walls would in part address this. Additionally if the main living and sleeping rooms were located further from the tree, for example the main bedroom is currently shown within the roof space closet to the tree, this would be more appropriate as a bathroom or simply empty roof space.

The tree is approximately 20 metres in height with substantial stem and branch structure. It is growing on elevated ground, approximately 12 metres from the dwelling a relationship which is not sustainable and lead to pressure to lop, or remove the tree.

Further comments 5.3.2019:

On the basis of the en-suite being moved on the second floor to nearest the TPO'd tree I have no objections to the design and location of the dwelling, and recommend approval subject to a tree protection condition and the re-enforcing of the building's roof and wall closest to the tree.

Environmental Health

I have considered the application and note that this site is close to nearby residents who may be impacted during the construction process. We would request the applicant to consult and follow the council's Construction Sites Code of Practice prepared by Environmental Health and adopted by the council in order to ensure that any impacts are kept to a minimum. This is available on the council's website: <http://eastdevon.gov.uk/noise/noise-guidance-and-advice/guidance-and-advice-for-developers-builders-and-contractors/>

Environment Agency

Environment Agency position

In the absence of a Flood Risk Assessment (FRA), we object to this application and recommend that the application is not determined until a satisfactory FRA has been submitted.

Reasons - Flood Risk

Access and egress to the the site lies within Flood Zones 2 and 3 defined by the Environment Agency Flood Map as having a medium / high probability of flooding. Paragraph 163, footnote 50 of the National Planning Policy Framework (NPPF) requires applicants for planning permission to submit an FRA when development is proposed in such locations.

An FRA is vital if the local planning authority is to make an informed planning decision. In the absence of an FRA, the flood risk resulting from the proposed development are unknown. The absence of an FRA is therefore sufficient reason in itself for a refusal of planning permission.

Overcoming our objection

The applicant can overcome our objection by undertaking an FRA which demonstrates that the development is safe from flooding over its lifetime without increasing risk elsewhere and where possible reduces flood risk overall. If this cannot be achieved we are likely to maintain our objection to the application. Production of an FRA will not in itself result in the removal of an objection.

Advice - Flood Risk

Further advice on FRAs can be viewed on our website:

<https://www.gov.uk/flood-risk-assessment-for-planning-applications>

To inform the FRA and to obtain relevant data for the site it will be necessary to submit an Information Request to our communications team DCISEnquiries@environment-agency.gov.uk for an 'FRA Product 4'.

Further comments 19.11.18

Please could you pass the following information on to the applicant/agent.

Having the reviewed the documents and plans within the application we are able to confirm that the location for the development is on land partly owned by the Environment Agency. It has been concluded that the access to the dwelling is being built on Environment Agency land.

At present, we have no information or confirmation that the applicant has sought prior consent or consultation with our Estates Team.

Please could they confirm if they have consulted with the Environment Agency regarding this matter.

Further comments 13.06.19

Thank you for re-consulting us on this planning application.

Environment Agency position

Following review of the revised Flood Risk Assessment (FRA) ref. J-950-Rev.01, dated May 2019, we remove our objection to the proposed development and consider that it will be acceptable subject to the inclusion of a condition regarding the implementation of the FRA on any permission granted. The reason for this position and suggested wording for the condition is provided below.

Before determining the application your Authority will need to be content that the flood risk Sequential Test has been satisfied in accordance with the National Planning Policy Framework (NPPF) if you have not done so already. As you will be aware, failure of the Sequential Test is sufficient justification to refuse a planning application.

Reason - The revised FRA has demonstrated that the development is proposed to be above the design flood level. It is noted that the assessment does not specifically refer to the impacts of climate change on increased fluvial flows over the lifetime of the development. However, the assessment adopts a conservative approach in using levels attributable to the 1-in-1000 year AEP event, which is deemed acceptable.

The assessment does refer to the potential for the access to the property to be subject to flooding, and the Environment Agency would agree that vehicular access to/from the property may not be feasible for short durations (several hours) during extreme fluvial flood events. We recommend that you consult with the emergency planners at your authority to decide whether this is acceptable.

Condition - Implementation of the FRA

The development shall be carried out in accordance with the submitted flood risk assessment (ref J-950-Rev.01 dated May 2019) and the following mitigation measures it details:

- Ground floor Finished Floor Level (FFL) at 17.42mAOD as stated in section 2.0, Fluvial Flood Risk.
- Residents to sign up for Flood Warning System as stated in section 4.0.

Reason - To ensure that the proposed development remains safe from flooding over its lifetime, in line with the NPPF.

Advice - Environmental Permitting

Given the proximity of the site to the 'Main River' Withycombe Brook, the applicant is reminded of the Environmental Permitting Regulations for Flood Risk Activities. These act as a mechanism to regulate any activity in close proximity (8m) to the watercourse, to ensure that there is no detriment to flood risk. Further information can be found on the Gov.UK website.

Advice to the applicant

Separate to our planning remit, we are also aware of a land ownership issue at this location. We advise that we are not aware that the Environment Agency has received an application regarding right of access. We recommend that the applicant resolves this issue by contact us directly.

County Highway Authority

The application sits on the C595, Withycombe Village Road. The proposed development has also recently undergone a pre-application enquiry, 18/0141/preapp, in which the County Highway Authority reviewed and found no overwhelming concerns.

The proposed plan 7754-03 shows the ability for vehicles to enter and egress in forward gear. In addition to off-carriageway dedicated parking. I do not believe the creation of one extra dwelling in this vicinity will cause an undue impact upon the highway network. Although the access bridge to the plot is not ideal visibility once over the bridge is acceptable and the area is of a low speed environment.

I would recommend the installation of cycle parking to encourage sustainable travel.

Recommendation:

THE HEAD OF PLANNING, TRANSPORTATION AND ENVIRONMENT, ON BEHALF OF DEVON COUNTY COUNCIL, AS LOCAL HIGHWAY AUTHORITY, HAS NO OBJECTION TO THE PROPOSED DEVELOPMENT

South West Water

With reference to the planning application at the above address, the applicant/agent is advised to contact South West Water if they are unable to comply with our requirements as detailed below.

Asset Protection

Please find enclosed a plan showing the approximate location of a public sewer in the vicinity. Please note that no development will be permitted within 3 metres of the sewer, and ground cover should not be substantially altered.

Should the development encroach on the 3 metre easement, the sewer will need to be diverted at the expense of the applicant. The applicant/agent is advised to contact the Developer Services Planning Team to discuss the matter further.

Clean Potable Water

South West Water is able to provide clean potable water services from the existing public water main for the above proposal.

Foul Sewerage Services

South West Water advises a Planning Condition to emphasise that: Foul drainage from the Development (and no other drainage) shall be connected to the public foul or combined sewer.

Reason: To ensure the discharge of drainage from the Development shall not be prejudicial to the public sewerage system and ensure there are adequate public foul sewerage facilities to receive foul water flows, in order to safeguard the public and environment.

Surface Water Services

The statutory Water and Sewerage Undertaker supports the Planning Policy Guidance for Flood Risk & Coastal Change statement. To accompany its planning application, the applicant must demonstrate how its proposed development will have separate foul and surface water drainage systems and not be detrimental to existing infrastructure, the public and environment (and that any provisions for protecting infrastructure have been agreed with SWWL as service-provider). The applicant should demonstrate to your LPA that its prospective surface run-off will discharge as high up the hierarchy of drainage options as is reasonably practicable (with evidence that the Run-off Destination Hierarchy has been addressed, and reasoning as to why any preferred disposal route is not reasonably practicable):

1. Discharge into the ground (infiltration); or where not reasonably practicable, Provide written evidence as to why Infiltration devices, including Soakaways, Swales, Infiltration Basins and Filter Drains do not meet the design standards as specified in either H3 Building Regulation standards for areas less than 100m². Soakaways serving larger areas must meet the design standard specified in BS EN 752-4 (para 3.36) or BRE Digest 365 Soakaway Design.
2. Discharge to a surface waterbody; or where not reasonably practicable, Provide written evidence for refusal of discharge consent from owner of water body (Environment Agency, Local Authority, Riparian Owner etc)
3. Discharge to a surface water sewer, highway drain, or another drainage system; or where not reasonably practicable, Provide written evidence for refusal of discharge to drainage system (Highway Authority, Environment Agency, Local Authority, Private ownership)
4. Discharge to a combined sewer.(Subject to Sewerage Undertaker carrying out capacity evaluation)
South West Water will carry out a hydraulic capacity review of the combined sewerage network before permission will be granted to discharge to the combined sewer.

It should be noted South West Water have no record of any public surface water sewers in the vicinity and discharge to the public combined system will not be permitted in the absence of clear evidence why other methods of surface water disposal have been discounted.

I trust this clarifies the water and drainage material planning considerations for your LPA, however if you have any questions or queries, please do not hesitate to contact me either via e-mail: developerservicesplanning@southwestwater.co.uk or direct line: 01392 443983.

Please quote reference number MPP241018 EX8 3BD in all communications and correspondence.

Other Representations

Four representations have been received raising the following concerns:

- Integrity of the bank to the rear of the dwelling between the site and the school;
- Will the trees remain?;
- Overlooking;
- Flood risk;
- Impact on wildlife;
- Building would be needlessly tall;
- Construction noise;
- Deciduous trees won't provide sufficient screening all year round.

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 6 (Development within Built-up Area Boundaries)

D1 (Design and Local Distinctiveness)

D2 (Landscape Requirements)

D3 (Trees and Development Sites)

TC2 (Accessibility of New Development)

TC7 (Adequacy of Road Network and Site Access)

TC9 (Parking Provision in New Development)

EN14 (Control of Pollution)

Strategy 22 (Development at Exmouth)

Exmouth Neighbourhood Plan

Government Planning Documents

NPPF (National Planning Policy Framework 2019)

National Planning Practice Guidance

Site Location and Description

The site currently comprises the garden area of a semi detached dwelling accessed by a narrow access track over a bridge to a site that is split over two levels - an excavated area for the dwelling and a raised area for the garden. There is an oak tree protected by a preservation order (TPO) on the south western boundary. It is surrounded to the north, east and west by residential properties and a school to the south.

Proposed Development

This application seeks full planning permission for the erection of a split-level detached three storey dwelling with undercroft parking. Access is via Withycombe Village Road with the layout proposing the retention of the TPO tree on the site.

ANALYSIS

The main considerations in the determination of this application concern the following:

- Principle of development
- Character and appearance
- Residential amenity
- Impact on trees
- Highway safety
- Flood risk
- Habitat mitigation

Principle of development

The site is located within the built-up area boundary of Exmouth in a sustainable location close to essential services and infrastructure required for daily living together with good transport links by public transport. As such, the principle of residential development is acceptable under the provisions of Strategies 6 (Development within Built-Up Area Boundaries) and 22 (Development at Exmouth) of the East Devon Local Plan.

Character and appearance

The site is set well back from the public highway on land to the side of no 198 Withycombe Village Road and is set at two different levels - The proposed garden area sits at a higher level than the land where the proposed dwelling would be sited. The site benefits from an existing shared vehicular access and driveway onto Withycombe Village Road.

Policy D1 (Design and Local Distinctiveness) of the Local Plan states that proposals will only be permitted where they respect the key characteristics and special qualities of the area in which the development is proposed and ensure that the scale, massing, density, height, fenestration and materials of buildings relate well to their context.

The design and height of the dwelling (2 ½ storey) with undercroft garaging would be appropriate for the site given the limited amount of space available within the site and the constraints posed by root protection area of the protected tree. The garden amenity space set at a higher level is likely to be dominated by the canopy of the protected tree albeit at a considerable height above the level of the garden.

As a partially cleared and flat area of land, the site where the dwelling would be sited would lend itself to a residential development and is unlikely to result in any harm to the character and appearance of the area because of its position set back from the

road and the amount of vegetation on the boundaries, together with localised topography.

Accordingly the proposal is considered acceptable in relation to Policy D1 of the EDDC Local Plan.

Residential amenity

The site, whilst well screened from its surroundings by mature vegetation and the localised topography, does have adjoining residential properties that have the potential to be impacted upon as a result of this proposal.

To the east of the site lies a property known as '12 Bradham Lane', this is situated 23 metres from the boundary of the site and would have a view towards the side elevation of the proposed dwelling. Whilst there is a window proposed on the side elevation at first floor facing the aforementioned dwelling, due to land levels and the fact that the proposal site is effectively dug into the land level (as existing), the majority of this window would be below the level of the existing fence line. Accordingly due to the separation distance and levels it is considered that the proposal would not detrimentally impact on the living conditions of this property.

To the north of the site on the boundary there are mature trees and a dense hedgerow beyond this lies Withycombe Brook at a lower level and beyond that lie two residential properties known as '226b Withycombe Village Road' and '4 Brackenwood' which lie 29 metres and 27 metres respectively from the proposal site. Whilst the proposal site is elevated and would contain windows on its front elevation on the first and second floors, due to the dense vegetation and respective distance between dwellings, it is considered that an objection on overlooking grounds could not be maintained.

To the east of the site lies the applicant's dwelling (198 Withycombe Village Road), with a separation distance of 40 metres it is considered there would be no detrimental impact on the occupiers' living conditions.

To the south of the site, set at a higher level lies Marlpool Primary School which would be 33 metres from the proposal site, however, due to the topography and dense vegetation the proposal would not be visible from the school.

Therefore, it is considered that the proposal would not detrimentally impact on the living conditions of surrounding properties or the school in accordance with Policy D1 of the EDDC Local Plan.

Impact on trees

There is a mature tree with a tree preservation area (TPO) close to the boundary of the site which overhangs the proposed garden area of the dwelling applied for. Policy D3 (Trees and Development Sites) of the Local Plan states that permission will only be granted for development where appropriate tree retention and/ or planting is proposed in conjunction with the proposed nearby construction. The Council will seek to ensure, subject to design considerations, that there is no net loss in the quality of

trees or hedgerows resulting from an approved development. The development should deliver a harmonious and sustainable relationship between structures and trees.

Pre-application advice was given regarding reducing the dwelling to two storeys in height to limit the impact of the tree on the proposed dwelling in terms of strikes from falling branches; however, the application has been submitted as three storey. Advice has been sought from the Council's Tree Officer who has advised the following:

The indicative layout plan appears to have tried to locate the building as far from the tree as possible (within the constraints of the site). I would expect to see a number of measures to be taken to make this relationship as arboriculturally sustainable as possible, such as:

- o A reinforced roof and wall design to withstand tree failure onto the building*
- o Arrangement of rooms within the dwelling, so that the main living and sleeping rooms are located away from the tree*

During the determination of the application amendments regarding the relocation of the bathroom on the second floor have been secured so that it would be in the area of the dwelling most at risk of branch strikes. The re-enforcement details can be secured by an appropriately worded condition, together with tree protection provision.

The Tree Officer is content to support the application, subject to the conditions referenced above, as such the proposal is considered acceptable in relation to Policy D3 of the EDDC Local Plan.

Highway Safety

The site is accessed from Withycombe Village Road by and access shared with 198 Withycombe Village Road, the access requires crossing a road/bridge off of the C596 which is in a residential area. Devon County Highways have commented that 'although the access bridge is not ideal for vehicle use, the proposed development includes at least two off road parking spaces, which need to be designed to at least 2.4m by 4.8m. The proposal also includes the ability to turn vehicles in forward gear, this generally requires a length of 6m'.

With this in mind, the County Highway Authority have advised that there would be no further impact on the access bridge and associated area from this one extra dwelling and as such they do not raise any objections to the proposal.

Accordingly, with 2 spaces and on-site parking/turning provided so that car can enter and leave in a forward gear, the proposal is considered to be acceptable in accordance with Policies TC7 and TC9 of the EDDC Local Plan.

With regard to the comments from the Town Council, there is currently no policy upon which to seek provision of an electrical charging points for all new residential development, and if the assess proves difficult for large construction vehicles, smaller vehicles will need to be used.

Flood risk

The Council's mapping system indicates that parts of the access track to the dwelling are in flood zones 2 and 3 and that the site for the dwelling and its garden lie in flood zone 1.

The Environment Agency originally objected to the application on the basis that the flood risk assessment (FRA) submitted with the application was not satisfactory. An FRA is vital if the local planning authority is to make an informed planning decision. In the absence of an FRA, the flood risk resulting from the proposed development are unknown. A revised FRA has been submitted which the Environment Agency consider is acceptable subject to appropriate implementation conditions.

The revised response from the Environment Agency also recommends that the Local Planning Authority undertake a sequential test. In this instance the site for the dwelling lies outside of the flood vulnerable areas and in flood zone 1 such that a sequential test is not required.

Accordingly, the proposed development is considered to be acceptable not increasing the risk of flooding to third parties or placing the occupants of the dwelling in an area where they would be vulnerable to flooding in accordance with Policy EN21 of the EDDC Local Plan and advice contained in the NPPF.

Habitat Mitigation and Appropriate Assessment

The site is located in close proximity to the Exe Estuary and the East Devon Pebblebed Heaths Special Protection Areas (SPA's) which provide an important recreational resource for the local community. However, these are sensitive environments which are important to nature conservation and are subject to European wildlife site designations.

Despite the introduction of the Community Infrastructure Levy (CIL) where a proportion of CIL goes towards infrastructure to mitigate any impact upon habitats, contributions towards non-infrastructure mitigation are also required as developments that will impact on a protected habitat cannot proceed under an EU directive unless fully mitigated. Evidence shows that all new dwellings and tourist accommodation within 10 kilometres of the Exe Estuary and/or the Pebblebed Heaths Special Protection Areas (SPA's) will have a significant effect on protected habitats which is reflected in Strategy 47 (Nature Conservation and Geology) of the Local Plan. This proposal is within 10 km of the Exe Estuary and the Pebblebed Heaths and would therefore attract a habitat mitigation contribution towards non-infrastructure at a rate of £201.61 per dwelling. More information about this can be found on the Council's website.

Whilst bats may have been viewed in the area, the proposed development seeks to retain the existing tree and surrounding vegetation, as such there will be no harm to bats using the area.

CONCLUSION

The proposed dwelling lies in a sustainable location, its impacts on its surroundings and residential amenity have been found to be acceptable. Whilst the proposal would

take place close to a mature tree covered by a preservation order and close to flood zones 2 and 3, subject to appropriately worded safeguarding conditions the proposal is considered acceptable.

RECOMMENDATION

1. That the Habitat Regulations Appropriate Assessment Approval within the report be adopted; and,

2. That the application be APPROVED subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission and shall be carried out as approved.
(Reason - To comply with section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice.
(Reason - For the avoidance of doubt.)
3. Notwithstanding the details provided prior to any works above foundation level details of a reinforced roof and wall design to withstand tree failure onto the building shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
(Reason – To ensure that the dwelling is protected from potential falling branches in accordance with Policy D3 (Trees and Development Sites) of the East Devon Local Plan)
4. The development shall be carried out in accordance with the submitted flood risk assessment (ref J-950-Rev.01 dated May 2019) and the following mitigation measures it details:
 - Ground floor Finished Floor Level (FFL) at 17.42mAOD as stated in section 2.0, Fluvial Flood Risk.
 - Residents to sign up for Flood Warning System as stated in section 4.0.

Reason - To ensure that the proposed development remains safe from flooding over its lifetime, in accordance with the National Planning Policy Framework and Policy EN21 (River and Coastal Flooding) of the East Devon Local Plan.

5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no works shall be undertaken within the Schedule 2 Part 1 Classes A, B, or E for the enlargement, improvement or other alterations to the dwelling hereby permitted, other than works that do not materially affect the external appearance of the buildings, or for the provision within the curtilage of any building or enclosure, swimming or

other pool, [other than any enclosure approved as part of the landscape management scheme]
(Reason - The space available would not permit such additions with detriment to the character and appearance of the area or to the amenities of adjoining occupiers in accordance with Policy D1 – Design and Local Distinctiveness of the Adopted New East Devon Local Plan 2016.)

NOTE FOR APPLICANT

Informative:

In accordance with the requirements of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 in determining this application, East Devon District Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved.

Advice - Environmental Permitting

Given the proximity of the site to the 'Main River' Withycombe Brook, the applicant is reminded of the Environmental Permitting Regulations for Flood Risk Activities. These act as a mechanism to regulate any activity in close proximity (8m) to the watercourse, to ensure that there is no detriment to flood risk. Further information can be found on the Gov.UK website.

Advice to the applicant

Separate to our planning remit, we are also aware of a land ownership issue at this location. We advise that we are not aware that the Environment Agency has received an application regarding right of access. We recommend that the applicant resolves this issue by contact us directly.

Plans relating to this application:

7754-02 REV F	Proposed Combined Plans	05.03.19
7754-LP	Location Plan	02.10.18
7754-03 REV B	Proposed Site Plan	02.10.18

List of Background Papers

Application file, consultations and policy documents referred to in the report.