

**Agenda for Planning Committee
Friday, 28th July, 2023, 10.00 am**



Members of Planning Committee

Councillors B Bailey, I Barlow, C Brown, A Bruce,
F Caygill, S Chamberlain (Vice-Chair),
S Gazzard, A Hall, J Heath, M Howe,
Y Levine, H Riddell, E Rylance, S Smith,
D Wilson and E Wragg (Chair)

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(or group number 01395 517546)
Issued: Wednesday, 19 July 2023

This meeting is being recorded for subsequent publication on the Council's website and will be streamed live to the [East Devon District Council Youtube Channel](#)

[Speaking on planning applications](#)

In order to speak on an application being considered by the Planning Committee you must have submitted written comments during the consultation stage of the application. Those that have commented on an application being considered by the Committee will receive a letter or email detailing the date and time of the meeting and instructions on how to register to speak. The letter/email will have a reference number, which you will need to provide in order to register. Speakers will have 3 minutes to make their representation.

The number of people that can speak on each application is limited to:

- Major applications – parish/town council representative, 5 supporters, 5 objectors and the applicant or agent
- Minor/Other applications – parish/town council representative, 2 supporters, 2 objectors and the applicant or agent

The revised running order for the applications being considered by the Committee and the speakers' list will be posted on the council's website (agenda item 1 – speakers' list) on the Friday before the meeting. Applications with registered speakers will be taken first.

Parish and town council representatives wishing to speak on an application are also required to pre-register in advance of the meeting. One representative can be registered to speak on behalf of the Council from 10am on Tuesday *** up until 12 noon on Friday *** by leaving a message on 01395 517525 or emailing planningpublicspeaking@eastdevon.gov.uk.

Speaking on non-planning application items

A maximum of two speakers from the public are allowed to speak on agenda items that are not planning applications on which the Committee is making a decision (items on which you can register to speak will be highlighted on the agenda). Speakers will have 3 minutes to make their representation. You can register to speak on these items up until 12 noon, 3 working days before the meeting by emailing planningpublicspeaking@eastdevon.gov.uk or by phoning 01395 517525. A member of the Democratic Services Team will contact you if your request to speak has been successful.

1 **Elect a Chair and Vice Chair for the meeting**

Due to apologies from the Chair, Councillor Wragg and Vice Chair, Councillor Chamberlain.

2 **Speakers' list for the applications**

Speakers' list removed.

3 **Apologies**

4 **Declarations of interest**

Guidance is available online to Councillors and co-opted members on making [declarations of interest](#)

5 **Matters of urgency**

Information on [matters of urgency](#) is available online

6 **Confidential/exempt item(s)**

To agree any items to be dealt with after the public (including press) have been excluded. There are no items that officers recommend should be dealt with in this way.

Applications for Determination

7 **22/2533/MOUT (Major) WEST HILL & AYLESBEARE** (Pages 4 - 49)

Land north of Oak Road, West Hill. EX11 1SJ.

8 **23/0116/FUL (Major) YARTY** (Pages 50 - 61)

Land at Parricks Lane, Hawkchurch, EX13 5XB.

9 **23/0624/FUL (Minor) NEWTON POPPLEFORD & HARPFORD** (Pages 62 - 76)

Luscombes, Back Lane, Newton Poppleford, EX10 0EZ.

10 **23/0890/FUL (Minor) SEATON** (Pages 77 - 84)

29 Poplar Tree Drive, Seaton, EX12 2TW.

11 **23/0459/CPE (Minor) COLY VALLEY** (Pages 85 - 90)

Gibbons Farm, Wilmington, EX14 9JQ.

12 **23/1124/MFUL (Major) YARTY** (Pages 91 - 134)

Pound Road Bess, land north east of Axminster National Grid Substation, Pound Road, Hawkchurch.

This application was deferred at the Planning Committee on 18 July 2023 for further information from the Fire Authority about the fire safety measures.

The receipt of the fire safety measures information is expected by Thursday 27 July and if received the application will be considered at the Planning Committee on Friday, 28 July. If it is not received the application will be deferred to Tuesday, 22 August.

Under the Openness of Local Government Bodies Regulations 2014, members of the public are now allowed to take photographs, film and audio record the proceedings and report on all public meetings (including on social media). No prior notification is needed but it would be helpful if you could let the democratic services team know you plan to film or record so that any necessary arrangements can be made to provide reasonable facilities for you to report on meetings. This permission does not extend to private meetings or parts of meetings which are not open to the public. You should take all recording and photography equipment with you if a public meeting moves into a session which is not open to the public.

If you are recording the meeting, you are asked to act in a reasonable manner and not disrupt the conduct of meetings for example by using intrusive lighting, flash photography or asking people to repeat statements for the benefit of the recording. You may not make an oral commentary during the meeting. The Chair has the power to control public recording and/or reporting so it does not disrupt the meeting.

[Decision making and equalities](#)

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Ward West Hill And Aylesbeare

Reference 22/2533/MOUT

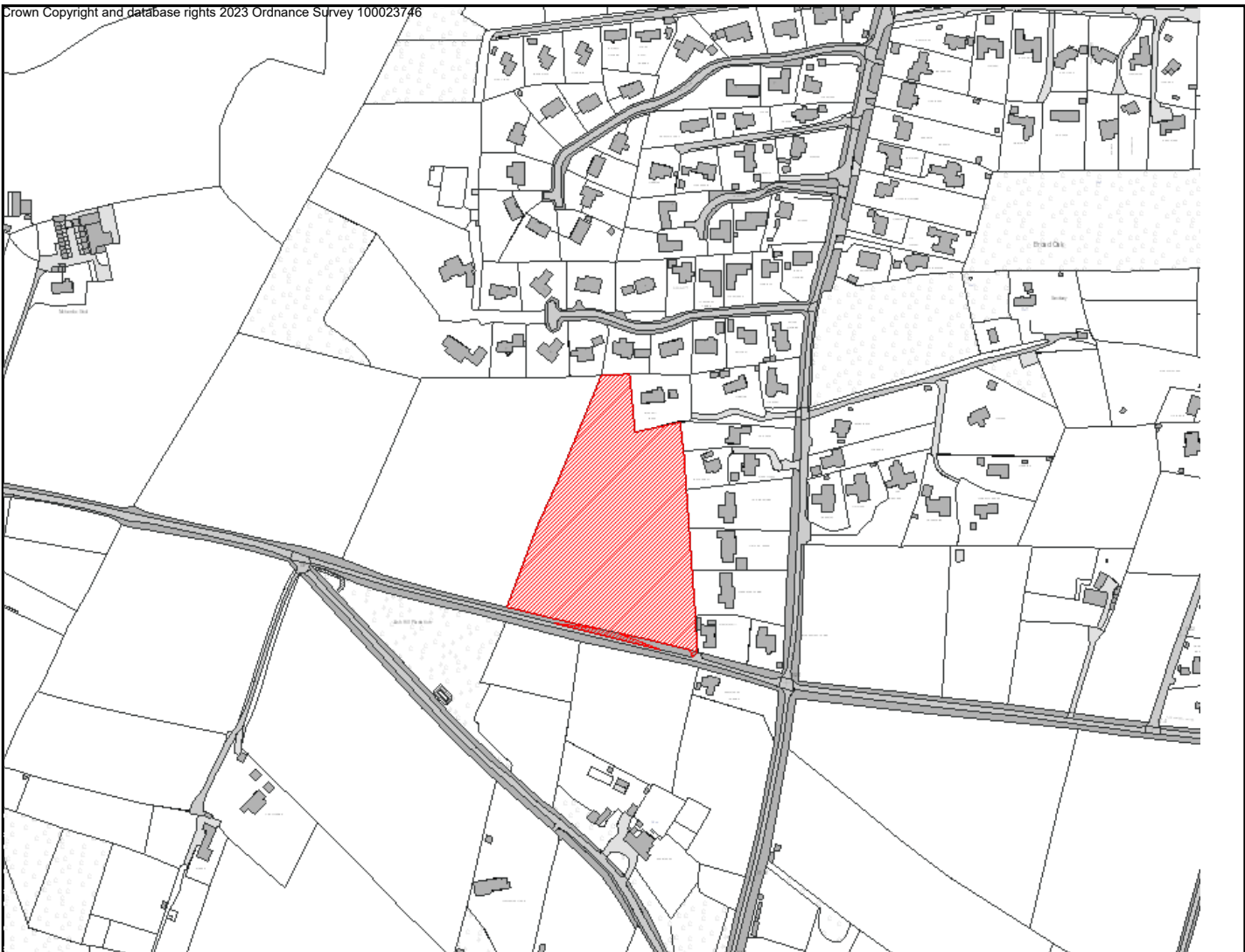
Applicant Morrish Homes & Messrs Compton,
Stephenson, Olliff & Sanders

Location Land North Of Oak Road West Hill EX11 1SJ

Proposal Outline application for the erection of 23no.
dwellings with all matters reserved save for
formation of vehicular and pedestrian access.



RECOMMENDATION: To advise the Secretary of State that had the planning authority been able to determine this planning application then this would have resulted in a refusal for the reasons stated, and to adopt the Appropriate Assessment.



		Committee Date: 18.07.2023
West Hill And Aylesbeare (West Hill)	22/2533/MOUT	Target Date: 27.02.2023
Applicant:	Morrish Homes & Messrs Compton, Stephenson, Olliff & Sanders	
Location:	Land North Of Oak Road, West Hill, EX11 1SJ	
Proposal:	Outline application for the erection of 23no. dwellings with all matters reserved save for formation of vehicular and pedestrian access.	

RECOMMENDATION: To advise the Secretary of State that had the planning authority been able to determine this planning application then this would have resulted in a refusal for the reasons stated, and to adopt the Appropriate Assessment which identified that it could not be concluded that significant effects would be avoided.

EXECUTIVE SUMMARY

The proposal seeks outline planning consent for the erection of 23 dwellings. All matters are reserved except for access which is for consideration at this stage. The proposal concerns a triangular parcel of land to the south of West Hill.

A planning appeal for this development has been lodged against its non determination. As such it is necessary to put forward to the Planning Inspectorate what decision the Planning Authority would have made, had it been able to make one. In this instance one of the applicants is a member of staff and therefore this report needs to be considered at the Development Management Committee.

This report identifies that the site would not provide an easily accessible location relative to local services and facilities and so would not maximise opportunities to reduce the need to travel or encourage active travel modes and public transport.

Furthermore the site constraints, in terms of significant protected trees around the perimeter are at risk and these contribute greatly to the character of the area. Ground conditions are such that a robust SuDs scheme, featuring above ground attenuation, would be required. The existing indicative layout does not demonstrate that the quantum of development can be accommodated and so these contextual matters also weighs against the scheme.

The information submitted with this proposal seeks to demonstrate that because of the cost prohibitive nature of the development a suitable profit would not be

realised. Therefore the amount of affordable housing should be diminished to ensure that the scheme is viable to provide additional housing and some amount of affordable housing. However, when assessed the assumptions within the viability report have been found to be flawed and therefore are not agreed. Without agreed evidence to demonstrate that a reasonable amount of affordable housing is to be provided this lack of suitable affordable housing weighs against the scheme.

Mitigation of the scheme to account for impacts such as the requirements to protect and maintain/provide open space, secure affordable and ensure habitat mitigation are not secured as there is no completed s106 legal agreement. This also has to feature as a reason for refusal.

Taking all of the evidence into account, the adverse impacts of the proposed development in terms of location, lack of suitable affordable housing, harmful impact on trees, lack of a suitable SuDs scheme and suitable mitigation securing contributions are so harmful as to significantly and demonstrably outweigh its benefits, when assessed against the policies of the Framework as a whole. As a consequence even though the Council are not able to demonstrate a 5 year supply of housing the proposal should nevertheless not be granted consent.

CONSULTATIONS

Local Consultations

Parish/Town Council

05.01.23

This application was considered at the West Hill Parish Council meeting on 4th January 2023.

The Parish Council strongly objects to the outline planning application for the following reasons:

At the WHPC Extraordinary meeting on 3rd January 2023 over 50 West Hill residents made clear their concerns with regards this substantial and significant planning application. WHPC has taken heed of the wide-ranging concerns this application causes and these are summarised below. Through a vote it was identified there were no supporters of the scheme present. Residents also expressed concern that the developers had as long as they wished to compile the application and associated reports, whilst residents have had a very short time in which to assess that information, have time to counter the content and submit comments/objections. Further, WHPC has noted the over 90 objections currently logged on the East Devon District Council (EDDC) Planning Portal. Those objections expand upon our below comments and should be read in conjunction with this consultee response.

Key issues:

5 year housing land supply - National Planning Policy Framework (NPPF) Paragraph 11d is engaged - presumption of the granting of planning permission should not be invoked as the adverse impacts of the proposal significantly and demonstrably outweigh the benefits (see objection submitted by Dr M Hall 19/12/2022)

The East Devon Local Plan Strategies and Policies require developments to be sustainable and weight must be given to these policies. Whilst the NPPF recognises the need to boost the supply of housing, such should not be at the expense of other considerations.

Strategy 7 of the East Devon Local Plan sets out that proposed development in the countryside will only be permitted where it is accord with a specific Local or Neighbourhood Plan policy that permits such development. There is no such policy that would explicitly permit the proposed dwellings in this location.

Oak Road is a publicly valued view (Neighbourhood Plan Policy 6) (NP6) - the creation of a vehicular and pedestrian access to the proposed site would be damaging to that rural location, requiring the removal of a Devon bank and creating access onto a lane with restricted width, leading to dangerous junctions. Approval of the Outline application would establish the principle for development that would be unacceptable on this site.

The vehicular and pedestrian access is the prime purpose of this application but is very scant on detail regarding visibility splays, concerns regarding large vehicles negotiating the turning into the estate, absence of data on the narrowness of and capacity of Oak Road, safety issues especially regarding pedestrians leaving the estate onto unpaved and unlit roads.

The development site is outside the Built Up Area Boundary (BUAB) and outside the proposed new settlement boundary (draft East Devon Local Plan). It is in open countryside. The Local Plan Strategy 35 makes clear the criteria to permit mixed affordable and open market housing outside a BUAB - this application does not meet the requirements for 60% of houses built to be affordable housing, is not supported by a robust up to date housing needs survey, the development is not close to community facilities (school, village hall, shop/post office, place of worship etc), it would not have satisfactory highways access nor be sympathetic to the character of the settlement (ie detached properties on large plots) and there are no plans for restricting who can live in the houses.

East Devon District Council's own Housing and Economic Land Availability (HELAA) assessment published in November 2022 on this site (WH05) assessed the site as 'rejected'. The HELAA report indicated that only 0.02 hectares is suitable for housing needs due to safety reasons due to the high pressure gas pipeline (and related consultation zone) beneath 90% of the site, the site is within the Mineral Safeguarding Area, the extensive Tree Preservation Order and within the Exe Estuary and Pebble-bed Heaths mitigation zone, etc

Residents raised many issues related to what they considered misleading/contradictory interpretations of information/data/observations, unsupported assertions and/or erroneous data provided in the planning application. Examples of this can be seen in the Objections submitted by Mr Robert George with regard the 'Transport Statement and Sustainability Assessment' and the submission of Mr Richard Green with regard ecology.

Previous planning application outcomes:

These can indicate constraints/concerns regarding development of the site. If things have not changed since prior considerations then surely the rationale still stands?

1988 application refused.

EDDC rejected a development application by Mr Compton and in its Refusal of Planning Permission letter it stated... "The proposed development involves an incursion into a previously undeveloped and attractive rural area beyond the existing fringes of West Hill and as such is

contrary to the provisions of the Devon County Structure Plan. The proposal will result in an extension of development along a road which because of its narrow width, poor alignment and lack of footways is considered to be totally inadequate to serve further vehicular and pedestrian traffic which is likely to be generated by this proposal, and furthermore, if this proposal were submitted then it would create a precedent for yet more developments to be served by this road."

1994 application refused.

In 1994 the planning inspector P.E. Dunleavey made the following comment in the appeal decision... "Fears have been expressed by interested persons that allowing this appeal would set a harmful precedent. I consider that allowing the appeal would make it more difficult for the Council to resist future applications for similar development, with a consequent progressive deterioration in the character and appearance of the area. I accept the Council's view that the appeal site is smaller than the sites of other dwellings in the area, but in my opinion there is no possibility of the proposal being made acceptable by making the site larger. I have considered all other matters mentioned in the written representations, including your reference to other long drives in the area, but find nothing which outweighs the considerations which have led me to my decision."

2012 EDDC Strategic Housing Land Availability Assessment (SHLAA).

In 2012 the EDDC SHLAA deemed the site 'un- developable' with specific reference to the highways being unsuitable to support development.

Other planning applications refused (and some appeals dismissed) on grounds of an unsustainable location and distance from the village facilities. Each of these applications were for sites closer to the settlement centre than in this current application:

15/253/OUT - Harley Thorne, Higher Broadoak Rd
15/2952/OUT and appeal 3157166 - Land adjacent to White Farm Lane
17/0872/OUT and appeal 3191009 - The Birches. Lower Broadoak Rd
17/0190/OUT -The Reddings, Higher Broadoak Rd

Residents raised concerns in respect of how the sewage from the site would be handled, if a tank and pumping would be necessary, regarding the capacity of sewage works etc. Further residents referred to the level of spring water/surface from the site and how such could be effectively handled. .

The application is contrary to the Neighbourhood Plan :

NP1 - if development in the countryside is permitted, it must maintain the rural character of the area including the mature trees, hedgerow boundaries and hedge rows should be protected and retained.

The proposal is for a housing estate on a green field site outside the BUAB and totally out of character for a rural location.

The proposal is for development within the 'zone of influence' for the East Devon Pebble Bed Special areas of conservation (SAC), Exe Estuary Special Protection Area (SPA) etc. Natural England state, "It is anticipated that new housing development in this area is "likely to have a significant effect", when considered alone or in combination, upon the interest features of the SAC/SPA due to the risk of increased recreational pressure caused by the development."

Concerns have been expressed regarding the impact on the wildlife supported by the land proposed for development. With some 10 bat species identified and other wildlife, the loss of habitat should not occur. There are further concerns that the developers surveys had been conducted following cutting back of the growth on the land.

NP2 - all proposals for development should demonstrate a high quality of design, which has regard to the local context, is appropriately scaled and makes an overall positive contribution to the area, including protecting the amenity of neighbouring properties, providing well designed off-road parking spaces etc.

The proposal of an estate on the far fringe of the village is out of keeping with the nearby existing detached properties on large plots.

The report of the Devon and Cornwall Police Designing Out Crime Officer expresses disappointment that the applicants Design and Access Statement makes no reference to designing out crime. The Officer makes specific mention of accessible space to the rear of plots not subject to natural surveillance, which should be avoided, being included in the application. The Officer further highlights that vehicle parking from a crime prevention point of view is best in locked garages or on a hard standing within the dwelling boundary. The Officer states that rear parking courts should be discouraged as they provide legitimate access to the rear of plots and are often unlit with little surveillance, such communal parking should be in view of active rooms of properties.

NP6 - publicly valued views should be protected and any proposals for development that would affect the views should demonstrate that design has taken this into consideration and public views can be protected for public enjoyment.

The identified View Point WH2 is an exceptional avenue of trees that the creation of the estate entranceway would interrupt/destroy. The proposed dense development of the site would significantly impact on the rurality of the area.

NP9 - encourage walking and cycling and reduce reliance on cars, proposals for new development must provide for pedestrian and cycle connections to nearby services, facilities and bus stops.

The proposed site is some 1590m from the one shop, 1720m to the school/Village Hall, 2000m to the British Legion and main village bus stop, 2200m to the Church and 2330m to the dentist, hairdresser, garage. Access is via Higher Broadoak Road that is hilly, unlit, without footpaths etc

The proposal the dwellings would suit elderly, disabled etc would necessitate use of motor vehicles as access to village is unsuitable for mobility chairs and presents challenges to pedestrians due to narrow lanes, no pavements, lack of lighting and steep sections of road.

The indicated bus stop on Higher Broadoak Road is serviced by the Sidmouth/Whimple bus southbound once a day (10:27 hrs) and northbound once a day (13:46 hrs). So in the morning a journey option to go to Sidmouth for max two and a half hours before catching the only bus back. This is not conducive to any employment opportunities.

Concerns have been expressed that the developers traffic surveys were conducted during the school holidays when a reduction in traffic occurs and when access through to Tipton St John was unavailable.

NP12 - All residential developments should include a mixture of dwellings reflecting local need ... and justified within the submission.

Indicative information has been included by the applicants. Their Design and Accessibility statement includes: "it is proposed the site will be developed for 23 no. Dwellings to include designated affordable homes, along with off-site contribution for any outstanding percentage of an affordable home to be provided at the Council's calculated rate. All of the affordable homes, and a round 20% of the market homes, will be accessible and adaptable for occupation by elderly or disabled persons."

Any shortfall in housing land supply in East Devon relates to Cranbrook and the west end of East Devon, and such is very short term and occurred through delays in planning permissions at Cranbrook. The rest of East Devon, including West Hill, has a healthy 15 year land supply and so any lack of the 5 year land supply should not be given much weight.

There appears not to have been any recent Housing Needs Assessment undertaken for West Hill.

NP14 - applications are required to demonstrate how the infrastructure needs of the development are addressed.

West Hill is already negatively impacted by increasing pressure on the existing infrastructure. With local schools at or near capacity already and with local primary healthcare stretched to deliver, these are matters of major concern to the community that could only be exacerbated by such significant development as proposed. The only recreational facility within West Hill is a playground for younger children, some 1720metres from the proposed development. There is no football pitch or other large area available for ball games etc.

Increased traffic is also a major concern. Oak Road is an unlit, pavement-less narrow lane with limited width. The access to the B3180 at Tipton Cross is a difficult and dangerous junction to negotiate due to very limited visibility - where there has previously been a fatal road collision. Access to the settlement centre is along Higher Broadoak Road - narrow, without pavements, no lighting, with some steep gradients.

One of the pick up/drop off points for the school buses to Ottery St Mary etc is at the junction of Oak Road and Higher Broadoak Road with only a small patch of land for the students to wait as safely as possible. Increasing traffic at the junction and increased pupil numbers will constitute greater danger.

No significant development should be undertaken in West Hill until the deficit in amenities/infrastructure are resolved.

Concerns are being expressed with regards proposed arrangements for the handling of sewerage and waste water, as to the sustainability of such plans.

NP26 West Hill Design - proposals should reflect the established character and development pattern of their surroundings and should preserve key features of the village ... and individuality between properties.

There are 9 design statements that need to be met, does this application meet these? - No.

9 statements - maintain low density pattern of development, show individual variation between units, include adequate parking, access to public services, avoid harm to Devon banks/hedges, avoid loss

of trees (ancient/good arboricultural/amenity value), new boundaries including frontages should consist of Devon banks/hedges of native species, appropriate reports should development likely to affect existing trees, new development to have adequate landscaping proposals to reflect existing landscape and permeable surfaces should be used wherever possible.

Amended Plans 05.04.23

This application was considered at the West Hill Parish Council meeting on 4th April 2023. The additional documents provided in support of the application did not change Councillors views. Cllrs continued to object to the application and agreed their previous comments still applied.

West Hill And Aylesbeare - Cllr Jess Bailey

I wish to register my very strong OBJECTION to this planning application for the following reasons:

1. The site is in an unsustainable location

The site is a considerable distance from village facilities in the centre of West Hill - being at least 1600m from the village shop and even further from West Hill Primary School, the Village Hall, and the Royal British Legion. Future occupants would be heavily car reliant and to suggest otherwise is simply a fiction. The introduction of significant additional cars travelling along Higher Broad Oak Road will have a detrimental impact on pedestrians and other vulnerable road users and is likely to deter active travel - making walking and cycling conditions less favourable. This is precisely the opposite of what planning policy should be seeking to achieve.

Not only is the distance from the village facilities excessive but the qualitative experience for walkers and cyclists unfavourable. Higher Broad Oak Road is very steep in places, unlit and without a pavement. In appeal dated 28/12/22 ref APP/U1105/W/22/3303671 (land below Treetops, Toadpit Lane) the key consideration was whether the site was sustainable and the Planning Inspector concluded that it was not, stating 'The propensity to walk or cycle is influenced not only by distance, but also by the quality of the experience. For some pedestrians and cyclists the distances to nearby services and facilities and the physical demands necessitated by the steep nature of the topography would mean that sustainable methods of transport would not be an option. The use of such routes during hours of darkness and in the winter during adverse weather would not be an alternative for many. Having regard to the particular circumstances of the location, it is likely that future occupants would be reliant on motor vehicles with the consequential environmental harm resulting from increased journeys'. These comments are highly relevant to the current planning application and in fact the current application site is further from the village facilities than the Toadpit Lane Appeal site and the topography equally steep. It is quite clear that, if allowed, traffic movements generated from the proposed 23 houses in this remote rural location on Oak Road would cause significant environmental harm.

It is also worth noting that the site is a significant distance outside the current built up area boundary in the existing EDDC Local Plan and also outside the boundary of the highly contentious proposed revised boundary in the emerging EDDC Local Plan.

The site in question is not a preferred allocation in the emerging EDDC Local Plan and EDDC officers recognise the many issues arising from it in particular sustainability. In the agenda papers for EDDC's Strategic Planning Committee Meeting of 6 September 2022 the following

comments were made about the unsustainable nature of the site 'Negative aspects of the site are the route to facilities 1km away in settlement centre, lacks pavements, street lighting and has steep topography so would not be attractive to pedestrians/cyclists'.

2. There would be significant road safety issues arising from the proposed development

I am greatly concerned about the following road safety issues:

The proposed development would generate significant increase traffic and therefore represents dangers for the Kings School students whose bus stop is close to the junction of Oak Road/Higher Broad Oak Road. I have been advised today (9th January 2023) by my colleagues at Devon County Council that there are 27 students who use this school bus stop on a daily basis. This is a very significant number of students and so this issue is particularly concerning.

Despite pedestrians being at the top of the hierarchy of road users the Applicants have not sought to resolve difficulties for future occupants walking from the proposed development onto Oak Road and then through the Higher Broad Oak Road/Oak Road junction (Broad Oak Cross). It is important to note that the speed limit on Oak Road is 60mph (the national speed limit). The speed limit remains 60mph until beyond the property named Sundowner on Higher Broad Oak Road and also all the way down Oak Road.

Tipton Cross junction (Oak Road/B3180) is extremely dangerous. There have been numerous accidents here over the years which tragically include a fatality in 2006. The provision of 23 additional houses with associated vehicles will put considerable increased pressure on this junction.

The junction immediately to the west of the site (prior to reaching Tipton Cross) where one limb of Oak Road joins another is extremely dangerous with very poor visibility.

The highways consultants drawing (Hydrock ref 16727) which purports to show the visibility splay is strangely devoid of any real detail. Whilst Hydrock's technical note refers to speed survey being carried out in February and March 2022 with the 85th percentile vehicle speeds of 32mph (westbound) and 35 mph (eastbound) they have not actually provided the data to substantiate these claims. Given this is an outline permission where the access is a key issue it seems very strange that material data which should justify the visibility splays of between 49m and 54m has not been provided. That is unacceptable. At the West Hill Parish Council meeting on Wednesday 4th January I raised my concerns about the lack of data from the speed survey with the Applicant's representative in attendance but she was not able to provide me with any explanation.

3. There would be significant and detrimental visual harm and impact

The adopted West Hill and Ottery St Mary Neighbourhood Plan (2018) protects Oak Road as a valued view (valued view 2). The detail on page 98 of the Neighbourhood Plan describes 'The avenue of beech trees give a cathedral-like feeling, a green and enclosed feel that is a cherished feature of West Hill/Higher Metcombe. It forms a gateway to West Hill travelling from Tipton Cross. This view is particularly tranquil and contributes to the special character of the parish'.

The Neighbourhood Plan has been voted on by residents and formally adopted as planning policy and reflects what is important to the local community.

The proposed development completely disregards the valued view and will cause significant harm to this much cherished view with the huge visibility splays and tarmacked entrance cutting through an existing bank and introducing a jarring urbanising element.

The site is in the open countryside and the introduction of 23 houses will be at odds with the agricultural/rural feel, and whilst this will be noticeable all year around it this will be particularly obtrusive and harmful in the winter months when the trees are not in leaf.

4. There would be significant and detrimental harm to trees that are protected by Tree Preservation Orders.

The Applicants' Tree Survey (dated November 2020) fails to schedule, categorize and evaluate each individual tree. For example many mature roadside trees are grouped together and simply described as 'T17'. This is inadequate and a complete survey should be submitted in order that the impact of the development can be readily identified.

West Hill is a woodland village and the trees are a particularly sensitive issue on this site. On 16th January 2021 one of the landowners instructed tree surgeons to fell roadside trees. I arrived on site to find that a mature silver birch had been felled and further trees were set to be removed. The Applicant in question was however unable to complete the felling because I stood in the way. He subsequently submitted a code of conduct complaint against me, but I was eventually exonerated.

At the time (January 2021) one of the Applicants claimed in the local press 'The tree works that were being undertaken by trained tree surgeons in accordance with a professional Arborologist's Condition Survey Report which had identified several dead and dangerous trees that were a risk to public safety'. However, the survey submitted by the Applicants as part of this application (which pre dates the incident - November 2020) does not in fact show that the trees I stopped from being felled were either dead or diseased and were actually within group T17 which are 'category A' trees. The trees in question are in very close proximity to the entrance/visibility splay.

I am therefore very concerned to note from the Swept Path Analysis the new access and visibility splays are intended to pass through/over the Root Protection Areas of the roadside trees which are now protected with TPOs. The roadside trees are of extremely high amenity value and there must be no works permitted which would damage any aspect of the trees including their roots. I am concerned that the creation of the access and visibility splays and subsequent soil compaction will cause harm to the protected trees.

5. Biodiversity issues

It has been suggested that there has been destruction of habitat prior to the preliminary ecological survey. As the EDDC councillor I require a full ecological appraisal of the site and that the ecological materials submitted as part of this application be assessed by a qualified ecologist appointed by EDDC.

6. Strength of community opposition to the proposal

There is huge opposition by the community to the proposal with 50 residents attending the specially convened West Hill Parish Council meeting on Tuesday 3rd January. No meeting of West Hill Parish Council has been so well attended since the inception of the Parish Council in 2017. Many residents present voiced their robust objections and when a straw poll was taken at

the meeting, not a single person supported the proposal. Around 100 residents have submitted articulate and well-informed objections.

Conclusion

In the event that a planning authority cannot demonstrate a five year land supply, according to the Government's National Planning Policy Framework, planning permission should be granted unless the adverse impacts of a proposal significantly and demonstrably outweigh the benefits.

It is quite clear to me as a formal consultee on this application that there would undoubtedly be significant and demonstrable harm from the proposed development.

Please note that as many statutory consultees have not yet responded, I reserve my right as a formal consultee to submit further comments in due course.

Yours sincerely
Cllr Jess Bailey

Technical Consultations

Environmental Health

A Construction and Environment Management Plan (CEMP) must be submitted and approved by the Local Planning Authority prior to any works commencing on site, and shall be implemented and remain in place throughout the development. The CEMP shall include at least the following matters : Air Quality, Dust, Water Quality, Lighting, Noise and Vibration, Pollution Prevention and Control, and Monitoring Arrangements. Any equipment, plant, process or procedure provided or undertaken in pursuance of this development shall be operated and retained in compliance with the approved CEMP. Construction working hours shall be 8am to 6pm Monday to Friday and 8am to 1pm on Saturdays, with no working on Sundays or Bank Holidays. There shall be no burning on site and no high frequency audible reversing alarms used on the site.

Reason: To protect the amenities of existing and future residents in the vicinity of the site from noise, air, water and light pollution.

DCC Flood Risk Management Team

27.03.23

Recommendation:

At this stage, we object to the above planning application because the applicant has not submitted sufficient information in order to demonstrate that all aspects of the surface water drainage management plan have been considered. In order to overcome our objection, the applicant will be required to submit some additional information, as outlined below.

Observations:

The applicant has stated that the soil layers at shallow depths are not suitable for infiltration. Therefore, the applicant has proposed to assess deep borehole soakaways. If infiltration at deeper depths is unviable, then the applicant will assess pumping to a surface water sewer, or, draining via gravity to a combined sewer. A feasible method for managing surface water must be demonstrated at this stage.

Correspondence from South West Water is required to confirm whether a connection into any of their systems is feasible. If the applicant deems deep borehole soakaways to be viable, then information will be required to demonstrate the viability of them. The applicant will need to discuss the viability of deep borehole soakaways with a Geotechnical Engineer. The applicant might need to consult a Hydrogeologist.

Above-ground features should be assessed across the site to provide a SuDS Management Train. SuDS Management Train's offer opportunities for interception losses as well as treatment. The applicant should demonstrate how exceedance flows shall be managed.

Maintenance details for the proposed surface water drainage system are required.

AMENDED PLANS 05.05.23

Recommendation:

At this stage, we object to the above planning application because the applicant has not submitted sufficient information in order to demonstrate that all aspects of the surface water drainage management plan have been considered. In order to overcome our objection, the applicant will be required to submit some additional information, as outlined below.

Observations:

The applicant has completed infiltration tests at this site. However, the rates are understood to be too slow to be able to manage surface water via infiltration. This is because the surface water storage would be too high to fit within this site.

If possible, space should be provided for above-ground surface water drainage features. The applicant should consider removing 1 or 2 dwellings to provide this space. Rain gardens, tree pits, swales and filter drains should be considered. If 1 or 2 dwellings are removed, then there might be space for a basin to provide some of the required storage.

The South West Water correspondence notes that they should be reconsulted for a capacity check if infiltration is not viable. The applicant should contact South West Water for a capacity check.

Remedial maintenance should also be included within the maintenance details.

County Highway Authority

Observations:

I have reviewed the submitted planning documents and visited the site.

The access width of 5.5m wide has been reviewed as acceptable to accommodate the trip generation of 23 dwellings and the swept path of the refuse vehicle successfully operating this bell-mouth, further strengthens this.

The visibility splay is acceptable for the speed of 30mph, giving an X distance of 2.4m, a y distance of 43m and vertical height of 0.6m.

The trip generation of 23 dwellings will represent an intensification of trip generation along Oak Road.

The Travel Plan identifies this, though we not usually request a Travel Plan for applications of fewer than 40 dwellings, it is appreciated for this rural development and I would emphasise the potential for this scheme to improve visibility upon the B3180/Oak Road Junction.

The footpath onto Oak Road is appreciated, especially as this area is used for the school bus, however the visibility of angle, access and egress does limit the visibility splay. I would recommend that the access is presented upon a 90 degree angle to the carriageway, in order to produce a safer pedestrian visibility.

I would also recommend the provision of secure cycle storage to encourage sustainable travel and to help mitigate against the trip generation increase.

Recommendation:

THE HEAD OF PLANNING, TRANSPORTATION AND ENVIRONMENT, ON BEHALF OF DEVON COUNTY COUNCIL, AS LOCAL HIGHWAY AUTHORITY,

1) No development shall take place until details of secure cycle/scooter storage facilities have been submitted to and approved in writing by the County Planning Authority. The development shall be implemented in accordance with the approved details.

REASON: To promote sustainable travel in accordance with the East Devon Local Plan 2013-2031.

2) Prior to commencement of any part of the site the Planning Authority shall have received and approved a Construction Management Plan (CMP) including:

- (a) the timetable of the works;
- (b) daily hours of construction;
- (c) any road closure;
- (d) hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8:00am and 6pm Mondays to Fridays inc.; 9.00am to 1.00pm Saturdays, and no such vehicular movements taking place on Sundays and Bank/Public Holidays unless agreed by the planning Authority in advance;
- (e) the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;
- (f) the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
- (g) areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the County highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;
- (h) hours during which no construction traffic will be present at the site;
- (i) the means of enclosure of the site during construction works; and
- (j) details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site
- (k) details of wheel washing facilities and obligations
- (l) The proposed route of all construction traffic exceeding 7.5 tonnes.
- (m) Details of the amount and location of construction worker parking

EDDC Trees

10.01.23

I currently have significant concerns with the proposed access junction and whether it is possible to create a 43m visibility display in each direction without being detrimental to the health or amenity of significant protected trees either side of the

proposed junction. The trees along the southern boundary where the junction is to be located are categorised as A category trees and therefore it is essential that these are retained. These trees were recently protected in 2021 following the removal of trees / tree. Detailed information is required showing the exact location of the junction in relation to RPA, construction methods, ground levels and impact on retained trees.

The proposal also states that an Oak within T17 (a mixed group of Beech, Oak and Silver Birch) is to be felled to facilitate the construction of footpath. This is the 'A' category group. Further information on the individual tree, RPA of neighbouring trees and construction method of the footpath is required.

AMENDED PLANS 03.05.2023

In general I do not object to the proposal to develop the site. However there are significant concerns with the current proposed layout which would need to be changed to ensure that the development is sustainable from a tree perspective. The current outline proposal raises a number of concerns in relation to the proximity of plots to large mature trees and associated problems that these are likely to lead to; namely feeling of dominance, safety concerns, shading, and therefore pressure to prune or remove trees.

Shading due to the proximity of trees is likely to be a significant issue with the current proposal and is likely to result in pressure for unnecessary tree pruning. A shading analysis plan has been submitted but unfortunately it seems the plan has not been overlaid with the site planning layout, so the shading effects of the trees and their relationship with the new houses appears not to have been properly considered.

Southern boundary; plots 1,2, & 22 & 23- large mainly category A and B mature trees within falling distance of nearby proposed plots. Due to the size of the trees, it is considered that the plots are located too close to the southern boundary. To mitigate these effects the public open space next to the southern boundary should be increased in size so there is a more suitable separation distance between the proposed houses and the trees.

T29 been categorised as U within the survey (tree of poorest quality). This has been subject to a recent application to fell the tree which was refused; the tree is considered B category tree and should be shown as being retained if plans are approved. All trees along southern boundary have been plotted showing circular RPA's. However, it's likely that the road to the south and the more favourable rooting environment to the north would result in a greater proportion of roots growing to the north. Therefore the tree constraints plan should show the RPA's being offset to the north; this is likely to result in plots and footpath being located further to the north from the trees. T34, significant asymmetrical crown & lean to the north; likely to be a safety concern to nearby residents.

Prior to the trees on the site being protected by a TPO, a number of trees were felled along the southern boundary. The new access road will be located within the gap. It appears no additional trees will need to be felled to form the access or to allow for the visibility splays.

South west corner; T18 - Oak. Agree as per the tree survey, though potential valuable habitat.

T19 - Oak. Crown appears to be incorrectly plotted. Construction of footpath will occur under crown spread of tree rather than outside of it as currently shown on tree plan (5875 - TPP-02-23). The feasibility of the footpath will need to be confirmed to determine if the levels are compatible with minimal or non-dig construction.

Western boundary; plots, 3, 4, 7, (T3 - mixed species group). Proposals show a footpath and parking areas within crown spread of trees which are low and will require significant crown lifting and pruning to facilitate development. Number of trees have crowns extending up to 13m to the east rather than 8m as per the tree schedule. A large dead Sycamore was noted including a number of trees with significant basal decay. Proximity of trees to plots = feeling of dominance, safety concerns, shading, and therefore pressure to prune / fell trees. Greater distance between trees and plots is required.

Western boundary; plots 10,11, & 14 (T5 - mixed species group). Large trees, close proximity = feeling of dominance, safety concerns, shading, and therefore pressure to prune / fell trees. Greater distance from trees is required.

Northern boundary; T9, T10, T12. As per tree schedule C category trees but considered good habitats and potential screening for neighbouring property. There is a public open space/attenuation area shown in the northern most corner of the site, but there are no details of an attenuation pond on the TPP, these details would need to be included on a TPP in support of any subsequent reserved matters application.

Eastern boundary; plots 15, 18,19, 20 & 23. A category trees, T14, oak, T15, oak and mixed broadleaf group (T16).

All plots appear to have relatively small gardens, with overhanging trees, the crowns of which take up large proportion of the proposed gardens = feeling of dominance, safety concerns, shading, and therefore pressure to prune / fell trees. Plot 16 & 23 development appearing to take place within or close to RPA requiring ground protection. Greater distance from trees is required / larger gardens.

Centre of development site: T4 Oak Crown spread appears to have been incorrectly measured; up to 13m to the S and around 11/ 11.5m to N, E & W, rather than 8m as per the tree schedule. Low crown. Described as 'public open space' though with little useable area apart from to the east. There appears to be insufficient construction space outside the RPA to the north and south west sides, this will mean incursions into the RPA and potential root damage or disturbance, to the tree's detriment. In order to compensate for the incursions the construction exclusion zone (CEZ) around the tree should be extended to the east.

Economic Development Officer

We note that there are a number of weaknesses in the viability submission by Jonathan Andrew of Group West.

1. The GDV comparisons suggested appear to be low. I have found the comparison data to show sales values of between £420- £475 psf with some outliers. The GroupWest figures for the detached units are broadly similar, but surprisingly the smaller semi-detached properties are all well below this level. Therefore the GDV should be increased.
2. The Number of Affordable units listed in the text of the report does not correlate to the plan, so does appear to be confused in the viability appraisals.
3. There are additional items in the cost plan that are high, such as professional fees and legal costs etc., for such a small site.
4. The major difference is in the assessment of the Benchmark Land Value. Firstly, the Group West report suggests a BLV of close to £1m. based on an agricultural value of £20k per acre. However a number of respected rural reports state that pasture land is valued at £8,000-10,000 per acre, thus resulting in a considerable difference in BLV.

Secondly, it does appear that the subject site is outside the village development boundary, and therefore an exception site, Consequently the land value should follow the Devon and Cornwall normal practice to assess the plots at considerably less.

Thirdly the GroupWest report does not make reference to, or comply with the policies requirements laid out in the EDDC Affordable Housing SPD (Nov 2020) para 3.6.

There are also a number of smaller issues in the appraisal which require clarification

As such, I do not have enough information to determine the viability.

Natural England

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, Exe Estuary SPA and East Devon Pebblebed Heaths SSSI 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 (as amended).

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 (as amended), Natural England must be consulted on any appropriate assessment your Authority may decide to make.

Sites of Special Scientific Interest Impact Risk Zones

The Town and Country Planning (Development Management Procedure) (England) Order 2015 requires local planning authorities to consult Natural England on "Development in or likely to affect a Site of Special Scientific Interest" (Schedule 4, w). Our SSSI Impact Risk Zones are a GIS dataset designed to be used during the planning application validation process to help local planning authorities decide when to consult Natural England on developments likely to affect a SSSI. The dataset and user guidance can be accessed from the data.gov.uk website

Further general advice on the consideration of protected species and other natural environment issues is provided at Annex A.

Devon County Council, Minerals & Waste

Thank you for the consultation. Please see below Devon County Council's comments regarding minerals and waste.

Minerals

The application site lies within the Mineral Safeguarding Area for sand and gravel, with Policy M2 of the Devon Minerals Plan seeking to safeguard such resources from sterilisation or constraint by new development.

Taking previous communications regarding the circumstances of the site within the Mineral Safeguarding Area into account, Devon County Council concludes that the development would not increase the degree of constraint on the mineral resource due to the already existing development in close proximity along Oak Road, and therefore, the site is unlikely to be of economic potential for mineral extraction.

Therefore, the County Council has no objection in its role of mineral planning authority to the current proposal.

Waste

Paragraph 8 of the National Planning Policy for Waste and Policy W4 of the Devon Waste Plan requires major development proposals to be accompanied by a Waste Audit Statement. This ensures that waste generated by the development during both its construction and operational phases is managed in accordance with the waste hierarchy, with a clear focus on waste prevention in the first instance. A key part of this will be to consider the potential for on-site reuse of inert material which reduces the generation of waste and subsequent need to export waste off-site for management. It is recommended that these principles are considered by the applicant when finalising the layout, design and levels.

Section 7.15 of the planning statement addresses the management of waste in accordance with the waste hierarchy. Within this, it is noted that the applicant has stated that the development will be designed to minimise waste. It is also noted that, wherever feasible the reuse and segregation of materials for recycling will be encouraged during the construction phase of the development.

However, we would request that the following points are also addressed within the statement:

- o The amount of construction, demolition and excavation waste in tonnes.
- o The type of material the waste will arise from during construction, demolition and excavation
- o The predicted annual amount of waste (in tonnes) that will be generated once the development is occupied.
- o Identify the main types of waste generated when development is occupied (If possible)
- o It is noted that provision will be made within the design of the development for domestic waste storage. We cannot see that any information has been submitted regarding the refuse and recycling bins for the development.
- o It is noted within paragraph 7.15.1 that non-recyclable waste will be sent to landfill. We would therefore request that confirmation of the location for their disposal is provided; including the name and location of the waste disposal site.

It is recommended that a condition is attached to any consent requiring the submission of this information at reserved matters stage.

This position is supported by policy W4 of the Devon Waste Plan.

Environmental Health

A Construction and Environment Management Plan (CEMP) must be submitted and approved by the Local Planning Authority prior to any works commencing on site, and shall be implemented and remain in place throughout the development. The CEMP shall include at least the following matters : Air Quality, Dust, Water Quality, Lighting, Noise and Vibration, Pollution Prevention and Control, and Monitoring Arrangements. Any equipment, plant, process or procedure provided or undertaken in pursuance of this development shall be operated and retained in compliance with the approved CEMP. Construction working hours shall be 8am to 6pm Monday to Friday and 8am to 1pm on Saturdays, with no working on Sundays or Bank Holidays. There shall be no burning on site and no high frequency audible reversing alarms used on the site.

Reason: To protect the amenities of existing and future residents in the vicinity of the site from noise, air, water and light pollution.

Police Architectural Liaison Officer - Kris Calderhead

Thank you on behalf of Devon and Cornwall Police for the opportunity to comment on this application.

I appreciate that the layout of the site is only illustrative at this stage however, I would like to make the following comments and recommendations for consideration. They relate to the principles of Crime Prevention Through Environmental Design (CPTED) and should be embedded into the detailed design of the scheme to reduce the opportunity for crime and anti-social behaviour (ASB).

- It is disappointing that designing out crime has not been referenced within the Design and Access Statement. It is therefore difficult to ascertain if such principles have been considered in the design of the development.
- Detailed design should include a layout that provides overlooking and active frontages to the new internal streets with accessible space to the rear of plots avoided. On the whole this is the case however, there are examples where accessible space to the rear boundaries of plots has been included with limited natural surveillance opportunities such as plots 2, 5, 6 7, 8 and 23 which I do not support.
- Any existing or new hedgerow that is likely to comprise new rear garden boundaries must be fit for purpose. They should be of sufficient height and depth to provide both a consistent and effective defensive boundary as soon as residents move in. If additional planting will be required to achieve this then temporary fencing may be required until such planting has matured. Any hedge must be of a type which does not undergo radical seasonal change which would affect its security function.
- Boundary treatments to the front of dwellings are important to create defensible space to prevent conflict between public and private areas and clearly define ownership of space. The use of low-level railings, walls, hedging for example would be appropriate.
- Treatments for the side and rear boundaries of plots should be adequately secure

(min 1.8m height) with access to the rear of properties restricted via lockable gates. Defensible space should also be utilised where private space abuts public space in order to reduce the likelihood of conflict and damage etc.

- Pedestrian routes throughout the development must be clearly defined, wide, well overlooked and well-lit. Planting immediately abutting such paths should generally be avoided as shrubs and trees have a tendency to grow over the path creating pinch points, places of concealment and unnecessary maintenance.

Presumably the site will be adopted and lit as per normal guidelines (BS 5489). Appropriate lighting for pathways, gates and parking areas must be considered. This will promote the safe use of such areas, reduce the fear of crime and increase surveillance opportunities.

Vehicle parking will clearly be through a mixture of solutions although from a crime prevention point of view, parking in locked garages or on a hard standing within the dwelling boundary is preferable. Where communal parking areas are utilised, bays should be in small groups, close and adjacent to homes in view of active rooms. Rear parking courts are discouraged as they provide legitimate access to the rear of plots and are often left unlit with little surveillance.

Other Representations

98 letters of objections have been received (in summary);

- Conflicts with the local plan for allocation of housing
- Conflicts with the Neighbourhood Plan
- Conflicts with the emerging Local Plan
- Harm to protected trees
- Harm to the character and appearance of the area
- Highway safety issues from proposed visibility splay, not enough room for passing vehicles, increased traffic raising safety issues for pedestrians.
- Poor linkages to services and facilities.
- Harm to protected species and ecology, substandard surveys with flawed methodology, best practice not followed.
- Harm to the Special Area of Conservation (SAC)
- Harm to amenity of adjacent properties
- Surface water flooding outside of the site
- Foul drainage to mains needs to cross over third party land, capacity issues
- Infrastructure within West Hill is already at capacity, proposal would add pressure for community services
- Additional housing not required.
- Lack of suitable publicity for the application and amendments.
- Breach of existing covenants
- Density of development too high.

1 letter of 'support' has been received (in summary) however the content and tone of this correspondence suggests it is instead a further objection;

- This development will create a fantastic eyesore that is totally out of keeping and so based upon numerous previous poor decisions by the council the developer making this application should be supported.

PLANNING HISTORY

Reference	Description	Decision	Date
88/P1335	10 no. Houses	Dismissed	19.06.89
94/P2094	New Dwelling and Garage	Dismissed	20.12.93
23/0398/TRE	29 Beech - Fell to ground level. Plant single Beech in immediate vicinity	Refused	06.04.23

POLICIES

Ottery St Mary and West Hill Neighbourhood (Made)

Policy NP1: Development in the Countryside

Policy NP2: Sensitive, High Quality Design

Policy NP6: Valued Views

Policy NP8: Protection of Local Wildlife Sites and Features of Ecological Value

Policy NP9: Accessible Developments

Policy NP12: Appropriate Housing Mix

Policy NP13: Accessible and Adaptable Homes

Policy NP14: Demonstrating Infrastructure Capacity

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 1 (Spatial Strategy for Development in East Devon)

Strategy 2 (Scale and Distribution of Residential Development)

Strategy 3 (Sustainable Development)

Strategy 4 (Balanced Communities)

Strategy 5 (Environment)

Strategy 5B (Sustainable Transport)

Strategy 7 (Development in the Countryside)

Strategy 24 (Development at Ottery St Mary)

Strategy 34 (District Wide Affordable Housing Provision Targets)

Strategy 36 (Accessible and Adaptable Homes and Care/Extra Care Homes)

Strategy 37 (Community Safety)

Strategy 38 (Sustainable Design and Construction)

Strategy 43 (Open Space Standards)

Strategy 46 (Landscape Conservation and Enhancement and AONBs)

Strategy 48 (Local Distinctiveness in the Built Environment)

Strategy 50 (Infrastructure Delivery)

D1 (Design and Local Distinctiveness)

D2 (Landscape Requirements)

D3 (Trees and Development Sites)
EN5 (Wildlife Habitats and Features)
EN7 (Proposals Affecting Sites which may potentially be of Archaeological Importance)
EN13 (Development on High Quality Agricultural Land)
EN18 (Maintenance of Water Quality and Quantity)
EN19 (Adequacy of Foul Sewers and Adequacy of Sewage Treatment System)
EN21 (River and Coastal Flooding)
EN22 (Surface Run-Off Implications of New Development)
H2 (Range and Mix of New Housing Development)
TC2 (Accessibility of New Development)
TC7 (Adequacy of Road Network and Site Access)
TC9 (Parking Provision in New Development)

Government Planning Documents

NPPF (National Planning Policy Framework 2021)
National Planning Policy Guidance

Site Location and Description

West Hill Village Design Statement (in the form of a Supplementary Planning Guidance - SPG) describes the village as a low density "woodland village" 'within a framework of beautiful beech, oak, silver birch and pine woodland. This appraisal goes on to describes the settlement accurately: '...the glimpses of wonderful tree-framed views at every turn, and the maturity of these trees, is what makes West Hill special'. That it is a spacious, leafy character, where there are high quality, low density, and substantial detached houses in secluded plots that gives the place its distinctive identity. The application site and its immediate surrounds displays these characteristics.

The application site itself concerns a broadly triangular parcel of land to the south of the village of West Hill. Along its south border is a line of mature trees which front on to Oak Road, These trees are mature and large canopies overarch the highway producing key noteworthy viewpoints. Indeed the Neighbourhood Plan (NP) explicitly identified views along Oak Road as, 'WH2' - Narrow lane lined with hedgebanks with mature beech trees on both sides. The NP describes this as an avenue of beech trees as giving a cathedral-like feeling, a green and enclosed feel that is a cherished feature of West Hill/Higher Metcombe. It forms a gateway to West Hill when travelling from Tipton Cross. This valued view is particularly tranquil and contributes to the special character of the parish.

Oak Road itself is a single carriage width highway, the edges of which are not easily defined due to overgrowth, mud and leaves lining the carriage sides. There is no pavement along this stretch of road.

To the east of the application are several dwellings occupying central positions within generous plot sizes. The boundary treatment segregating these dwellings from the application site is mature hedging and boundary trees.

To the north of the application site are more residential properties. These dwellings vary in size and shape.

Proposed Development

The proposal seeks outline consent for 23 dwellings within the application site. All matters have been reserved except for access which is to be considered at this stage. Indicative plans have been submitted showing how 23 dwellings could be accommodated within the plot.

The access point is shown as connected to Oak Road along the southern perimeter of the site.

ANALYSIS

During the processing of this planning application an appeal has been lodged against its non-determination. Therefore the conclusion of this report will state whether the LPA would have approved or refused this application had it been able to issue a decision. The main issues for consideration are;

- The principle of the development
- Whether the position of the site would allow occupants to reach facilities and services without the reliance of private modes of transport
- Impact on the character and appearance on landscape
- Highways
- Drainage Systems
- Ecology
- Affordable Housing
- Trees
- Open space

Principle

Strategies 1 and 2 of the Local Plan set out the scale and distribution of residential development in the district for the period 2013-2031. The main focus is on the West End and the seven main towns. Development in the smaller towns, villages and other rural areas is geared to meet local needs and represents a much smaller proportion of the planned housing development.

The proposed development would comprise major development in the open countryside, outside of the defined settlement boundary of West Hill, thereby conflicting with Strategy 7 of the East Devon Local Plan (LP). Consequently, the site

would not offer an appropriate location for the development proposed having regard to the development plan's settlement strategy.

Legislation is clear that planning applications should be determined in accordance with the development plan, unless other material considerations suggest otherwise. One such consideration is the National Planning Policy Framework (NPPF). The NPPF states that plans and decisions should apply a presumption in favour of sustainable development. Explicitly paragraph 11 of the Framework, in the decision-taking section states:

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay

; and

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date,

granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed

; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

This development does not take place within a designated landscape and so the tilted balance referred in ii above should be applied where policies are not up to date.

Members should be aware of the report to strategic planning committee on the 14th September 2022. This report stated that the 5 year housing supply in the district (plus buffer) has dropped to 4.65 years. This has direct consequences with regard to paragraph 11 of the Framework as footnote 8 states 'this includes, for applications involving the provision of housing, situation where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites...'

The policies of the adopted East Devon Local plan which are directly related to the supply of housing have evidently not maintained a suitable supply of housing within the district. These policies include, amongst others, establishing settlement boundaries to control sporadic development and a hierarchy of settlements. The weight that can be attributed to these policies is therefore key to whether it is acceptable in principle.

Paragraph 11 of the NPPF is clear in that where the policies of the Local Plan are out of date, which is the case here in the absence of a 5 year housing land supply, then a so called 'tilted balance' is applied, i.e. unless any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits,

when assessed against the policies in this Framework taken as a whole then consent should be granted. This tilted balance is applicable to the determination of this planning application.

Members should also be aware that paragraph 14 of the Framework advises that the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made. In this instance the proposal takes place in West Hill. Whilst West Hill and Ottery St Mary has a 'made' neighbourhood plan this was 'made' more than two years ago from the time of writing. Accordingly, paragraph 14 of the Framework does not affect the application of paragraph 11 under this proposal.

The above noted the proposal needs to be assessed against the development plan and other material considerations to determine how the assessment of the principle sits with the tilted balance. This tilted balance is revisited at the end of the report:

Emerging Local Plan

As part of the evidence base for the emerging local plan this included identification of the site, known as West_05. For the purposes of policy formation this evidence base provides an assessment of the site constraints at a macro level. That evidence base stated;

Brief summary of the key positives and negatives of the site: Positives: No change to heritage assets. Negatives: route to facilities 1km away in settlement centre lacks pavements, street lighting, and has steep topography so would not be attractive to pedestrians/cyclists. TPO covers all of site boundary. Sensitive, rural landscape with limited context of existing built form. Adverse ecological impact. Within high pressure gas pipeline middle/outer zones.

Should the site be allocated? No

Reason(s) for allocating or not allocating: Poor pedestrian access to facilities; and site is currently a sensitive, rural landscape, including TPO covering entire site boundary.

Although the emerging local plan is at an early stage of adoption there is no information forming part of the evidence base that would suggest this site as being particularly attractive in coming forward for housing.

Whether the position of the site would allow occupants to reach facilities and services without the reliance of private modes of transport

It is necessary to consider the convenience and practicality of travel choices that people would have available. These will relate to the site's location and whether future occupiers/users have access to a private modes of transport. In doing so

regard should be had to both the development plan policies and the policies of the NPPF.

The likely use of sustainable modes of transport is closely related to the location of the development. If this location results in high car dependency, this will be difficult to change retrospectively. Providing access by sustainable modes also has health benefits. The NPPF advocates the creation of places that promote social interaction and encourage walking and cycling, thereby helping to provide inclusive and safe places which support healthy lifestyles.

Land use patterns that are most conducive to walking are where there are a range of facilities within a 10 minute walk (800m) in accordance with Manual for Streets. The attractiveness of the destination and the purpose of the journey will determine how far people will walk to reach it. The propensity to walk will not only be influenced by distance but also by the quality of the experience. Pedestrians need to feel safe when walking.

The 'village core' of West Hill can reasonably be identified as West Hill Road area which features the school, hall and shops/post office or Bendarroch road where the Church and Legion Club are sited. The submitted Transport Assessment states that this site is approximately 1000m south of the 'centre' of West Hill and this noted distance appears to be correct.

In support of this planning application several studies and guidance notes have been referenced by the applicant which aims to give weight to the view that the location is suitably located for pedestrians and, by extension, that the assessment forming part of evidence within the emerging local plan is incorrect.

The department for Transport note LTN Policy, Planning and Design for Walking and Cycling' sets out that around 25% of all journeys, and 80% of journeys of less than one mile are made on foot...and goes on to state; the majority of trips are made by non-car modes.

LTN is now of some age and provided for aims which were to have been met in 2010. Therefore the relevance of the aims in meeting an objective over 10 years ago does not necessarily weigh in favour of the locational merits of this site, or necessarily reflective of policy aims today.

The Institution of Highways and Transportation (IHT) advises that there is a direct relationship between distance travelled and propensity to take up sustainable travel modes. Therefore site locations further away and poorly connected to key trip designation would result in trip lengths being required over greater distance. The IHT 'Guidelines for Providing for journeys on Foot' (1999) suggest that the preferred maximum walking distance for commuting journeys is 2km and that approximate 80% of walks furthers in urban areas are less than 1.6km. IHT publication 'guidelines for Planning for Public transport in Developments (2002) indicated that the maximum distance to a bus stop should not exceed 400metres (or 5 mins).

The issue taken with the above assessment is that, as established previously, the proposal takes place within a rural area, and cannot accurately be described as

'urban'. Given its ordinary English meaning 'urban' relates to something in a town or city and is therefore not accurate or reflective of the village of west hill, or indeed, its setting.

The IHT suggests;

400m desirable walking distance

800m acceptable

1,200 preferred maximum

In this instance the site in terms of walking to services and facilities is considerably more than 800m which would be considered 'acceptable' in the context of the above transport note. Nevertheless these distances have been superseded by guidelines within Manual for Streets document.

The government published Manual for Streets states 'walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes (up to 800m) walking distance of residential areas which residents may access comfortably on foot. Given a range of appeal decisions this document is heavily relied upon in most assessments of this nature.

More recently a study by White Young Green (WYG) 'How Far Do People Walk' 2017 established that 85 percentile should be used as a defining criteria for accessibility of new development. As an aside this study notes that the IHT presented 'limited evidence to support the advice given', as justification for its update.

Following this WYG study the applicant submits that the following are acceptable perimeters;

- All journey purposes for residential development 1,950m
- Access to bus services - 580m - mean up to 810m 85th
- Education (escorted) - 1,000m - mean up to 1,600

This independent research has yet to make its way to any government guidance and so is attributed limited weight. There is no other research papers presented to corroborate or ratify these findings and there are no indications that its findings are generally accepted in the planning sphere or that these distances are necessarily favoured in planning decisions.

It is important not to lose sight of what is the underlying issue - are occupiers likely to travel by private modes of transport or walk to services or to the bus stop? Instead of whether a set distance is met it also depends to a great extent also on the user experience, the nature, attractiveness and safety of such routes is key.

The walking experience to the village core of West Hill from the site presents barriers for users for several reasons, aside from the sheer distance. The main walking route

to the village core would be along Higher Broad Oak Road. The route along the public highway does not benefit from pavements for a very long stretch of the route and there is a lack of designated crossing points. Nor would the installation of pavements along these distinctly verdant routes be welcomed given the unacceptable loss of trees and overly suburban appearance this would bring about. The road linkage is narrow with restricted passing places, meaning that some private drives maybe relied upon to allow passing.

There is little in the way of shelter for walkers during inclement weather and there is little in the way of street lighting to aid walkers during the night. In terms of topography the route is not flat either making it unsuitable to meet the needs of a range of different people (including, the young, elderly, and those with mobility problems). Whilst the proposal has not drawn a highway safety objection from the Highway Authority with regards to the safety of walking on the road nevertheless these routes are clearly unattractive. A combination of these qualities mean that realistically occupiers of the site whose chose the convenience of their car (or other private vehicle) in order to reach the village core. The same could also be said for cyclist in that the topography of the route could present difficulties. The pedestrian (and cycle) route from the application site to the village core is unattractive and so this weighs heavily against the proposal.

Public Transport

The submitted transport assessment indicates there is a bus services along Higher Broad Oak Road (near the junction with Hawkings Lane);

382 - Sidmouth - Tipton St John - Ottery St Mary -Feniton - Whimble (once a day)

The following two bus stops and services on School Lane, West Hill, are considered to be too far away from the site to be a suitable option;

44 - Exeter - Honiton (Hourly between 0932 and 1836)

44A Exeter - Axminster/Honiton (Twice daily at 0730 and 0826)

The closest bus stops serving the 382 is within approx. 650 m from the site. However it is significant that this bus services only stops once a day. The area of this bus stop is unsheltered with no signage declaring a bus stop or evidence of the time table. There is a distinct lack of information about this service and its routes present 'on the ground'. This arrangement does not engender wider public knowledge of this bus stop or its route. Taking the above into account this service, on its own or in combination with other factors means that there would not be adequate public transport links to provide a viable alternative.

To conclude on this matter the site is situated within a location away from services and facilities. There are poor pedestrian linkages to the core of the village and a lack

of suitable alternative methods of transport for intended occupiers. This will result in a development heavily dependent of the use of the private car. This harm is given significant weight in the planning balance as it would conflict with the aims of spatial planning for the appropriate allocation of housing.

Impact on the Character and Appearance of the Landscape

The site is located in Landscape Character Type 1C: Pebble Bed Heaths and is described as;

AONB 472m to south but no intervening views due to thick tree cover. Fields to west and south. Existing dwellings adjoin to east and north, but little perception of these due to thick mature tree-lined boundary. TPOs cover entire boundary of site, with a large tree in the centre also subject to TPO. Feels remote, rural.

Appearance, scale and layout are all reserved matters and therefore this assessment is confined to the principle of the development and the impact of the access point. At present the site is that of an attractive field with perimeter noteworthy protected trees establishing a high quality rural aesthetic. The centrally positioned protected Oak provides a focal point for passers-by and also contributes greatly to the scenic qualities of the area. The landscape qualities noted within the NP for West Hill are on display in and around this site. When approaching the settlement from the south this field parcel is read as providing a distinctive setting to the village.

Developing the site for residential use would result in an intrinsic change to the character of this field. The introduction of residential development would extend the built form of the village in this direction with the perceptible change from tranquil rural setting to a suburban one evident. However, provided the perimeter trees are retained this would provide dense screening of the site so that much of the visual impact is likely to be localised.

With other contextual matters which directly affect the ability to accommodate this number of units on the site put aside the density displayed would not appear discordant in relation to the existing built form beyond the confines of this site.

The access along the south perimeter of the site has the potential to harm a noted viewpoint within the NP. However, the council's tree officer is satisfied that no more trees need to be felled in order to accommodate this access point and so views up and down Oak Road would be retained to a satisfactory degree. The access point itself would interrupt a Devon bank and would open up views to the development beyond but such views would only be available from immediate vantage points along a stretch of Oak Road itself.

On balance therefore whilst the development would result in the introduction of built form the impact on the character and appearance would be localised. The development would visually be read as an extension to the village framed within a woodland settlement thereby maintaining the distinctive character of West Hill.

Accordingly, this issue does not weigh against the proposal.

Highways

A report conducted by Hydrock states that “*We undertook a speed survey as it was thought (and the data proves) that vehicle speeds are significantly under the 60mph posted speed limit. These vehicle speeds fall within Manual for Streets thresholds and as such we have shown that we can achieve the required MfS visibility splays for the recorded vehicle speeds.*” The most recent Devon County Council document “Highways Development Management Advice for the Determination of Planning Applications” (August 2008) applies MfS standards and therefore the proposal accords with both local and national requirements.

Hydrock asserts that the junction design showing 8m turning radii is in accordance with the MfS principles of downsizing where possible – this junction radius reflects the rural lane nature of the Oak Road and is based on accommodating a refuse vehicle.

Devon County Highways have reviewed this proposal. The access width of 5.5m wide has been considered acceptable to accommodate the trip generation of 23 dwellings and the swept path of the refuse vehicle successfully operating this bell-mouth, further strengthens this. The visibility splay is acceptable for the speed of 30mph, giving an X distance of 2.4m, a y distance of 43m (with a vertical height of 0.6m). In the event of an approval such splays could be maintained via condition.

The trip generation of 23 dwellings will represent an intensification of trip generation along Oak Road. The Travel Plan identifies this, although not usually required for this amount of dwellings. Further, the Transport Statement prepared by Hydrock seeks to demonstrate that there are sufficient opportunities on Oak Road and Higher Broad Oak Road where two vehicles may pass without encroachment onto the highway verge.

DCC Highways have not raised an issue with regards to the increased traffic numbers that the development would bring.

Drainage Systems

Policy EN22 of the local plan states that surface water in all major commercial developments or schemes for 10 homes or more should be managed by sustainable drainage systems, unless demonstrated to be inappropriate. Further that the surface water run-off implications of the proposal have been fully considered and found to be acceptable, including implications for coastal erosion. The NPPF also provides guidance for such considerations;

169. Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should:

a) take account of advice from the lead local flood authority;

- b) have appropriate proposed minimum operational standards;
- c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development; and
- d) where possible, provide multifunctional benefits.

Surface Water - During consideration of this application an untypical significant down pour event occurred which appeared to exceed the infiltration capacity leading to some flooding. Whilst this would appear to be a one off irregular event it nevertheless highlights the importance of securing appropriate drainage of the site.

The DCC lead flood team object to the above planning application because the applicant has not submitted sufficient information in order to demonstrate that all aspects of the surface water drainage management plan have been considered. Rates are understood to be too slow to be able to manage surface water via infiltration. This is because the surface water storage would be too high to fit within this site.

As a result it is suggested that space should be provided for above-ground surface water drainage features. Accordingly, the lead flood team suggest that the applicant should consider removing 1 or 2 dwellings to provide this space for this. Rain gardens, tree pits, swales and filter drains should be considered. If 1 or 2 dwellings are removed, then there might be space for a basin to provide some of the required storage. As such this outline consent would require the omission of units in order to accommodate the 23 dwellings proposed. The proposal as it stands does not demonstrate this or what the impact of accommodating such features would have on the principle of the development.

Given the harm flooding (of any form) can bring about, as well as potential damage to third parties, this weighs strongly against the scheme.

Foul Drainage

Local Plan policy EN19 - Adequacy of Foul Sewers and Adequacy of Sewage Treatment Systems states new development will not be permitted unless a suitable foul sewage treatment system of adequate capacity and design is available or will be provided in time to serve the development. Development where private sewage treatment systems are proposed will not be permitted unless ground conditions are satisfactory and the plot is of sufficient size to provide an adequate subsoil drainage system or an alternative treatment system.

The preferred method of disposal is via a gravity system to the existing public foul and combined sewers to the north and east of the site. In order to achieve this and connect it would be necessary to cross third party land and this would most likely be undertaken via a requisition procedure with South West Water.

South West Water have been consulted on this proposal but have not responded. Nevertheless this requisition procedure is a separate process from the planning

process. If, for whatever reason, this is not possible alternative options have been presented, including pump led drainage.

What is evident is that there is a potential option for the disposal of foul water and that SWW have not submitted any evidence to say this is not feasible.

It may be possible, in the event of an approval, to produce a negatively worded Grampian style condition which would ensure that development does not commence until the requisition procedure is completed. The condition would concern action to be taken outside of the site, and authorised by another body – thereby meeting the key features qualifying use of a Grampian condition.

The PPG advises that Grampian conditions should not be used where there are ‘no prospects at all’ of the action being performed within the time-limit imposed by the condition’. No evidence has been submitted by SWW to establish that this would be the case.

Therefore given that there are prospects of the foul drainage being remedied this should not weigh against the proposal.

Ecology

Circular 06/2005 states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to say that it, “... *is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision*” (paragraph 99).

European Designated Ecology Sites

The site is located approximately just over 400m to the north of the East Devon Pebblebed Heaths Special Area of Conservation (SAC), and the East Devon Pebblebed Heaths Site of Special Scientific Interest (SSSI). This ‘buffer zone’ was to prevent residential development, and in particular cat predation, from harming the features within protected area. However, as the site is not within this buffer zone this specific ecological issue does not weigh against the scheme.

An Appropriate Assessment is required for development as it is within 10k of these designated sites the proposed development and could give rise to recreation activity. The Appropriate Assessment must consider the conservation objectives for the affected European site(s) and the effect the proposed development would have on the delivery of those objectives. In the light of the conclusions about the effects on the delivery of the conservation objectives the competent authority must decide if the integrity of the site would be affected. There is no definition of site integrity in the Habitats Regulations - the definition that is most commonly used is in Circular 06/2005 which is ‘(...) the coherence of its ecological structure and function, across

its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified'.

The report shall return to the issue of an appropriate assessment after the conclusion section.

Site Specific Ecology

Paragraph 180 of the Framework includes a number of principles that should be applied by decision-makers when planning applications are being determined with a view to conserving and enhancing biodiversity.

One of these principles is that, “if significant harm from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused”. Proposed development should be designed and constructed in a way which avoids effects altogether; if this is not possible then mitigation measures should only be employed where it is not possible to avoid effects altogether, and compensation should only be used where mitigation is not possible.

A site specific ecology survey has been conducted and dated 15th October 2020. This was a preliminary assessment of the site followed by more indepth phase 2 habitat surveys. These Phase 2 habitats surveys took place between March and November 2022. It is clear from the resulting literature that the site is of high ecological value with protected species present with the potential to be effected by the proposal.

Birds – As the aim is to retain the existing hedgerow as well as create new hedgerow, nesting bird habitat is expected not be negatively impacted. Domestic pet predation would result in ‘minor adverse’ impact resulting in shift in species assemblage.

Badgers – No sets were recorded within the site, however, it is understood that Badgers commute across the site.

Bats – Pipistrelle bats were recorded roosting in the trees, including the central Oak. With ten bat species recorded the site was judged to merit moderate to high bat species diversity. Mitigation measure are identified as being required with increased lighting causing shift in species assemblage. Therefore mitigation during construction and significant inclusion of roosting features would, according to the submitted survey ‘would result in minor adverse impact in the mid to long term and may remain a residual minor adverse effect a local level’. The scheme is proposed to be a “dark” development whereby there will be no street lighting. All remaining lighting would be retained to that only necessary for the purposes of health and safety.

Dormice – Recorded within the Hedgerows. Mitigation is required in order to avoid a ‘major adverse’ impact. The impacts upon this species would be minor adverse short to mid-term resultant of the removal of habitat. The ecological report states that despite this overall impacts would remain negligible if suitably mitigated.

Reptiles – Common reptilians were recorded at the site including a good population of slow worm, lizard and grass snake. With the implementation of mitigation, these species will be disturbed with minor adverse direct effect in the short term as they are moved from harm's way from the site to a receptor site (lizards) or the boundary (snakes).

Insects – One UK BAP species identified, amongst others resulting in moderate value. With the implementation of mitigation, these species will be disturbed with minor adverse direct effect in the short term as they are moved from harm's way from the site to a receptor site (lizards) or the boundary (snakes).

Given the identified presence of protected species within the site is likely that a licence from Natural England (NE) would be required.

Natural England can only issue a licence if the following tests have been met:

- the development is necessary for preserving public health or public safety or other imperative reasons of overriding public interest;
- there is no satisfactory alternative; and
- the action will not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range.

Whilst decision makers should have regard to the 3 tests above it should be noted that the LPA is not expected to duplicate the licensing role of NE (as per *Morge v Hampshire County Council (2011, UKSC 2)*). Instead an LPA should only refuse permission if the development is *unlikely* to be licensed pursuant to the derogation powers *and* Article 12 of the Habitats Directive was likely to be infringed.

In terms of public interest there are some aspects of this proposal, as a matter of principle, which accords with the national level of significantly boosting housing supply from which some economic and social benefits could accrue (temporarily setting other issues aside). Alternative scenarios are not easily discernible however improving the biodiversity of the site has been referenced in the accompanying statement suggesting ecological benefits for this location. Further, it is generally accepted that Greenfield sites would have to be developed to provide for housing within the district.

Natural England have been consulted on this proposal and whilst concern was raised regarding the impact with regards to the European Designated Site no conflict with Article 12 (protection of European Designated Species) was explicitly cited with

regards to European Protected Species within the site, despite having the ability to review all relevant documents.

It can also be seen from the above that mitigation measures are to be put in place in order to prevent an adverse effect. As a consequence there is no reason to suggest that, from the LPA's perspective, the proposal would be likely to offend article 12 of the Habitat Directive or that a licence would be withheld by Natural England as a matter of principle.

An Ecological Clerk of Works (ECoW) will be appointed to over see all works and all new home owners would be provided information packs upon the ecology present and how to support, care and cater for any encounters with fauna.

Although at the time of writing not a policy requirement, a biodiverse net gain of in excess of 10% achieved for each habitat category.

Concern has been raised from third parties (including a qualified ecologist) that the methodology is flawed, for example inappropriate reptile mats, data collection during inappropriate weather and placing of dormice survey tubes. Recent flailing and clearing of the land have also been alleged thereby significantly reducing ecological capacity with destruction of habitat prior to surveys being taken, in breach of best practice guidelines. Despite being reference as an agricultural field it is alleged that it has not been in active use and has been allowed on several occasions to 'rewild'. It is put forward that bat surveys were not conducted in line with best practice and that there is a lack of information regarding recording equipment. The HEA report does not state who undertook the botanical survey or level of expertise.

LP Policy EN5 seeks to support important wildlife habitats and states mitigation will be required to reduce the negative impacts, and where this is not possible provide compensatory habitat enhancement. Whilst the challenges to the reliability of the ecological survey work is noted the evidence submitted in support of the proposal does indicate that ecological impacts can be suitably mitigated and therefore meet the requirement of LP policy EN5.

Affordable Housing

For the proposal to be compliant with the existing local plan and given that it is outside of any identified BUAB then under strategy 34 an affordable housing target of 50% applies.

In this instance development within the settlement of West Hill itself would require 50 % affordable, and development in the countryside requires 50% affordable. Given that there is no longer weight placed upon the BUAB a sensible position to adopt is for this development to provide 50% affordable.

A viability assessment has been submitted to justify a lesser figure and this has been assessed by an in house economic development officer. This viability assessment is

based on two appraisals, these being a policy compliant 50% affordable and a 13% affordable housing provision (equivalent to three dwellings).

The Gross Development Value (GDV), which forecast the anticipated revenue resulting from the development, appear to be low. Comparison data to show sales values of between £420- £475 psf with some outliers. The GroupWest figures for the detached units are broadly similar, but surprisingly the smaller semi-detached properties are all well below this level. Therefore the LPA consider that the GDV should be increased.

There are additional items in the cost plan that are also high, such as professional fees and legal costs etc., for such a small site. However, the major difference is in the assessment of the Benchmark Land Value (BLV).

Firstly, the Group West report suggests a BLV of close to £1m. based on an agricultural value of £20k per acre. However, a number of respected rural reports state that pasture land is valued at £8,000-10,000 per acre, thus resulting in a considerable difference in BLV.

Secondly, it does appear that the subject site is outside the village development boundary, and therefore an exception site. Consequently, the land value should follow the Devon and Cornwall normal practice to assess the plots at considerably less.

Thirdly, the GroupWest report does not make reference to, or comply with the policies requirements laid out in the EDDC Affordable Housing SPD (Nov 2020) para 3.6.

Even the difference in fundamental assumptions officers do not consider the information provided robustly demonstrates that it is not viable to provide a higher amount of affordable housing.

The lack of policy complaint or suitable provision of affordable housing weighs heavily against the scheme, as such provision is one of the main objectives of the local plan.

Trees

Part of the established strong character are the tree lined roads and well defined boundary hedging and trees. The perimeter boundary of the site is formally protected with notable Oaks, Beech and, Birch and Cherry trees features and forming the boundary with these residential properties to the east. Centrally position within the field itself is a protected oak.

Whilst layout within the site is a reserved matters the councils tree officer has raised significant concerns in relation to the proximity of plots to large mature trees and associated problems that these are likely to lead to; namely feeling of dominance, safety concerns, shading, and therefore pressure to prune or remove trees.

A shading analysis plan has been submitted but the plan has not been overlaid with the indicative site planning layout, so the shading effects of the trees and their relationship with the new houses appears not to have been properly considered.

Southern boundary; plots 1,2, & 22 & 23- large mainly category A and B mature trees within falling distance of nearby proposed plots. Due to the size of the trees, it is considered that the plots are located too close to the southern boundary. To mitigate these effects the public open space next to the southern boundary should be increased in size so there is a more suitable separation distance between the proposed houses and the trees.

T29 been categorised as U within the survey (tree of poorest quality). This has been subject to a recent application to fell the tree which was refused; the tree is considered B category tree and should be shown as being retained if plans are approved. All trees along southern boundary have been plotted showing circular RPA's. However, it's likely that the road to the south and the more favourable rooting environment to the north would result in a greater proportion of roots growing to the north. Therefore the tree constraints plan should show the RPA's being offset to the north; this is likely to result in plots and footpath being located further to the north from the trees. T34, significant asymmetrical crown & lean to the north; likely to be a safety concern to nearby residents.

It appears no additional trees would need to be felled to form the access or to allow for the visibility splays.

The Oak in the centre of the field parcel crown spread appears to have been incorrectly measured; up to 13m to the S and around 11/ 11.5m to N, E & W, rather than 8m as per the tree schedule. There appears to be insufficient construction space outside the RPA to the north and south west sides, this will mean incursions into the RPA and potential root damage or disturbance, to the tree's detriment. In order to compensate for the incursions the construction exclusion zone (CEZ) around the tree should be extended to the east.

Whilst the layout of the development is a reserved matter it nevertheless a requirement of the outline application to satisfactorily demonstrate that the quantum of the development can accommodate the 23 dwellings (note description does not state 'up to 23 dwellings') or similar. Without the protected trees properly identified as a constraint this would mean that if 23 dwellings are allowed this could result in encroachments into RPA's or result in increased pressures to chop/lop or significantly prune to prevent harm to amenity of residents.

The scheme runs counter to the thrust of the Tree Protection Order system of making 'provision for the preservation of trees' as Section 198 of the Act. If a development would result in tree loss, then they are not being 'preserved' in the ordinary meaning of the word of keeping safe from harm or injury; to take care of, to guard.

It is a requirement of LP policy D3 that permission will only be granted for development where appropriate tree retention is proposed in conjunction with nearby construction. Without sufficient evidence to demonstrate otherwise the potential loss

of noteworthy and protected trees would harm their own intrinsic health and value, as well as greatly diminish one of the defining characteristics of this area. Therefore this identified harm weighs heavily against the scheme.

Open Space

Strategy 43 of the local plan requires the on site provision of open space for some developments. 10 – 49 dwellings will be required to provide amenity open space on-site and the indicative plan appear to show allocation of this. A reserved matters application would provide further details of this. The allocation, maintenance and any features of the open space provision should be controlled within a completed s106 agreement. Without this legal agreement in place this weighs against the proposal.

Other Matters;

The five year housing land supply and the current state of any shortfall

The extent of the shortfall does not affect the operation of footnote 8 and its triggering of paragraph 11(d). However, this and other matters connected with it, must be determined so that the exercise of planning judgement is properly carried out. This is because the degree of any shortfall will inform the weight to be given to the delivery of new housing in general, alongside other factors such as how long the shortfall is likely to persist, the steps being taken to address it and the contribution that would be made by this development.

It is common ground that the council cannot demonstrate a five year land supply at present. The applicant has submitted an assessment of the current 5 year land supply within the document 'CLP - Initial Stage 1 Five Year Supply Review Assessment' document, inferring that this situation has not improved since the last monitoring report painting a pessimistic picture of performance thereby aiming to lend weight to the alleged severity of a shortfall in the decision making exercise. The Chapman Lily Planning (CLP) document is challenging the EDDC 5YLS figure of 4.68 years. The CLP document asserts that "the Council's approach does not appear to follow the standard methodology required for a plan more than 5 years old". The CLP document then goes on to apply the 1.43 ratio adjustment to an incorrect "baseline" figure of 599.6 pa. This would lower the annual "requirement" down to 857.428 pa.

The council's policy team have reviewed the submitted CLP document and have disputed the findings.

Paragraphs 2.11, 3.7 and 3.9 of CLP's assessment state that the current East Devon Local Plan indicates that provision will need to be made for a minimum of 17,100 new homes in the 2013-2031 period, which "equates to 855 homes per annum".

The CLP figure of 855 would appear incorrect. It appears to have been calculated by dividing the total requirement by 20 years. However, the plan period is only 18 years. In reality, 17,100 dwellings divided by 18 years equates to 950 per annum, which the

Local Plan makes clear. This "requirement" figure has been superseded by the 946 dpa (calculated by the standard method) which is used to calculate the 2022 5YLS position in the 2022 HMU.

The policy team do not agree with the CLP baseline figure. It is erroneous. Applying the standard methodology and the policy team conclude that the baseline figure plus adjustment (i.e. 946 dpa) used in the 2022 HMU is correct.

Seven sites were identified within this CLP report as not predicated to deliver the required housing. For several reasons identified within the policies teams response these alleged shortcomings were discounted.

The difference between 1,035 and 980 is 55 (rather than CLP's suggested reduction of 334 - the difference between 1,035 and 701). So, rather than reducing the HLS from 4.68 to 4.35 years, these revisions would only change the figure to 4.62 years. The reduction of 0.08 years supply is not significant (it equates to less than one month of supply). Therefore when considering the lack of five year housing land supply and the weight to give this in the overall planning balance there is not a significant deficit which would weigh in favour of the scheme.

Agricultural Land Classification

Policy EN13 of the EDDC Local Plan and advice contained in the NPPF suggest that agricultural land falling in Grade 1, 2 or 3a should not be lost where there are sufficient areas of lower grade land available or the benefits of development justify the loss of the high quality land.

The site is provisionally classified as grade 3. The best and most versatile agricultural land (Grades 1, 2 and 3a) will be protected from development not associated with agriculture or forestry. Planning permission for development affecting such land will only be granted exceptionally if there is an overriding need for the development.

Whilst it is considered that the potential loss of the higher quality land is regrettable, where it is not physically connected to land of a similar quality and there are large amounts of other land in the locality of higher quality it is considered that the loss would not significantly harm agricultural interests or the national food supply. Therefore, whilst the potential loss of quality agricultural land would not justify a refusal on this basis it nevertheless weighs negatively in the planning balance.

Amenity

With regards to amenity the main issue is the likely impact of the development of the living conditions on the properties which adjoin the site to the north and to the east. The indicative layout shows that there would be some separation between these adjoining properties with the footprint angled to avoid front on overlooking. If the hedgerow and trees which form the boundaries are retained this would prevent direct overlooking of garden areas. At this outline stage there is no reason why a layout and scale of development could not be brought forward that would prevent

overlooking. The appearance of these dwellings could be configured so that windows are positioned to avoid harmful overlooking.

It is a requirement of LP policy D1 that the amenity of occupiers of adjoining residential properties are not adversely affect and at this stage the proposal would comply with this at outline stage.

Consideration of the potential benefits in favour of this proposal

The NPPF seeks to significantly boost the supply of housing. The proposal would provide for up to 23 dwellings to bolster the needed supply of housing in the district. This would bring about economic benefits through the construction phase as well as social benefits in making housing available at a time when this much needed. This provision of housing, in accordance with one of the main thrusts of the NPPF, is given significant weight in the planning balance. However, such weight is tempered due to the identified lack of affordable housing submitted and the short term economic benefits accrued during constructions phase.

Whether the proposal conflicts with the development plan, taken as a whole.

As can be seen from the forgoing sections there has been conflict with the individual policies of the adopted local plan. Footnote 8 of the Framework 'triggers' the need for a development proposal to be considered against paragraph 11 d) ii. but this, in itself, does not determine the weight to be attached to the conflict with any development plan policies relevant to that proposal. If there is no 5 year housing land supply the most important policies are deemed to be out-of-date for the purpose of paragraph 11 d). However, the NPPF does not prescribe the weight which should be given to the conflict with those development plan policies in such circumstances.

At the time of writing the housing supply deficit is approximately half a year behind meeting its 5 year target. Although this deficit is not considered a 'significant' shortfall it nevertheless has direct bearing on this proposal.

The paragraph 11 d) balance

It can be seen from the above that paragraph 11 d of the NPPF is engaged because of the 5 year housing land supply position within the district. There are no land designations concerning this application site, as stipulated in the exhaustive footnote of the same paragraph, preventing the application of this so called 'tilted balance'

In terms of the social benefits, the scheme would deliver some additional housing, adjacent to a sustainable village and in line with the Framework's aim to significantly boosting the supply of housing. There is a general acceptance that the release of additional greenfield sites will be necessary to meet the Council's housing shortfall.

Economic benefits that would arise from the development include from construction jobs and future spending from new households on local shops and services. However, there was little in the way of an assessment of the likely contribution that these dwellings would make or whether any such contribution would directly benefit West Hill itself in terms of sustaining the shops and services that currently exist. These benefits are therefore attributed limited weight.

It has been identified that the site would not provide an easily accessible location relative to local services and facilities. Further it would not maximise opportunities to reduce the need to travel and encourage active travel modes and public transport and as such would rely heavily on use of the private car.

The site constraints, in terms of significant protected trees around the perimeter are at risk and these contribute greatly to the character of the area. Ground conditions are such that a robust SuDs scheme, featuring above ground attenuation, would be required. The existing indicative layout does not demonstrate that the quantum of development can be accommodated and so these contextual matters also weigh against the scheme.

From a social perspective affordable housing is needed within the district. The information submitted with this proposal seeks to demonstrate that because of the cost prohibitive nature of the development a suitable profit would not be realised. Therefore the amount of affordable housing should be diminished to ensure that the scheme is viable to provide additional housing and some amount of affordable housing. However, when assessed the assumptions within the viability report have been found to be flawed and therefore are not agreed upon. Without agreed evidence to demonstrate that a reasonable amount of affordable housing is to be provided this weighs against the scheme.

Mitigation of the scheme to account for impacts such as the requirements to protect and maintain open space, secure affordable and ensure habitat mitigation are not secured as there is no completed s106 legal agreement. Whilst during an appeal these elements maybe agreed upon the lack of any completed legal agreement to date means that this also has to feature as a reason for refusal.

Taking all of the evidence into account, the adverse impacts of the proposed development in terms of location, lack of suitable affordable housing, harmful impact on trees, lack of a suitable SuDs scheme and suitable mitigation securing contributions are so harmful as to significantly and demonstrably outweigh its benefits, when assessed against the policies of the Framework as a whole. As a consequence, the proposed development does not benefit from the presumption in favour of sustainable development.

Final planning balance - S38(6) of the Planning and Compulsory Purchase Act

Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise, in accordance with section 38(6) of the Planning and Compulsory Purchase Act (2004). The

Framework is only one such material consideration and even where paragraph 11 applies, it remains necessary to reach a final conclusion against section 38(6).

The NPPF indicates that where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites the policies in the development plan are to be considered out of date. In such cases planning permission should be approved without delay unless any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of the scheme. It has been established that even after applying this tilted balance that there would be significant and demonstrable harm, which would outweigh the benefits.

There are no material considerations indicating that a decision should be taken otherwise than in accordance with the development plan. Consequently, since the proposed development is contrary to the development plan were the LPA to determine this application it would have been refused.

Appropriate Assessment

The nature of this application and its location close to the Pebblebed Heaths and their European Habitat designations is such that the proposal requires a Habitat Regulations Assessment. This section of the report forms the Appropriate Assessment required as a result of the Habitat Regulations Assessment and Likely Significant Effects from the proposal. In partnership with Natural England, the council and its neighbouring authorities of Exeter City Council and Teignbridge District Council have determined that housing and tourist accommodation developments in their areas will in-combination have a detrimental impact on the Pebblebed Heaths through impacts from recreational use. The impacts are highest from developments within 10 kilometres of these designations. It is therefore essential that mitigation is secured to make such developments permissible. This mitigation is secured via a combination of funding secured via the Community Infrastructure Levy and contributions collected from residential developments within 10km of the designations. A legal agreement securing the contribution has not been provided. On this basis it cannot be concluded that significant effects would be avoided.

Statement on Human Rights and Equalities Issues

Human Rights Act:

The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation

RECOMMENDATION

To advise the Secretary of State that had the planning authority been able to determine this planning application then this would have resulted in a refusal for the reasons stated below, and to adopt the Appropriate Assessment which identified that it could not be concluded that significant effects would be avoided;

1. The proposed development site is considered to be in a location with limited transport options and accessed via an unlit narrow lane lacking in footways, passing spaces, with no refuge for pedestrians, with a significant distance to facilities and services. As such it is considered that cycling or walking to the shops, school and transport links would be difficult and undesirable, such that it would fail to comply with Policy TC2 (Accessibility of New Development) of the East Devon Local Plan, and the guidance contained within the National Planning Policy Framework.
2. Due to the position and amount of development proposed the provision of on-site affordable housing would be required, and in line with policy objectives this should seek 50% of the units proposed to be a form of affordable housing. Viability information has been submitted to justify an amount of affordable housing less than this policy requirement. However, this viability information is considered to be flawed in its assumptions and calculations meaning that this information does not justify a less than policy compliant amount of affordable housing. Therefore, and without viability constituting a material consideration to outweigh the affordable housing policy, the proposal would fail to meet this social objective. Therefore the proposal is considered to conflict with Neighbourhood plan policy NP12, strategy 34 of the East Devon Local Plan and guidance within the National Planning Policy Framework.
3. The key characteristics of the site are typical of its locality, in that it comprises a field, largely open to public view, with native mature trees. As a result of the scale and density of the tree cover within and around the site, it makes a prominent and positive contribution to the sylvan character of the area, which is both visible from public vantage points and important in the aspect and outlook of other surroundings properties. In order to construct the quantum of development indicated in the submitted documents, a number of mature trees would fall under pressure, which would have a significant and damaging effect

on the contribution to the streetscene that the site currently makes. Furthermore, any development of residential units on the site would be likely to involve pressure to remove trees because of future growth impact (shading, limb loss etc). The proposed development would not re-inforce the key characteristics and special qualities of the area, but would adversely affect trees worthy of retention and consequently, without evidence to the contrary damage the streetscene and landscape of the locality. The proposed development would conflict with the terms and objectives of Policies D1 (Design and Local Distinctiveness) and D3 (Trees and Development Sites) of the adopted Local Plan and Neighbourhood plan policies NP26 (West Hill Design), NP3 (Infill, Backland and Residential Garden Development)

4. The proposal seek planning consent for development which falls within a 'major development' category. As such it is a requirement for the proposal to demonstrate that surface water drainage can be dealt with adequately to ensure proper drainage and to ensure that that implications are fully considered. Insufficient information has been submitted to demonstrate that all aspects of the surface water drainage management plan have been considered. Drainage rates are understood to be too slow to be able to manage surface water via infiltration as surface water storage would be too high to fit within this site. Accordingly, the proposal has not demonstrated that a Sustainable Urban Drainage system could be accommodated within the site with the quantum of development proposed. Therefore the proposal is considered to conflict with policy EN22 (Surface water drainage implications of new development) of the East Devon Local Plan, and guidance within the National Planning Policy Framework.
5. No mechanism has been provided to secure a contribution towards measures to mitigate the effects of recreational use of the East Devon Pebblebed Heaths Special Area of Conservation and Special Protection Area by residents of the proposed development. Without such a mechanism the proposal is considered to conflict with the Conservation of Habitats and Species Regulations 2017. In addition the proposal is considered to be contrary to guidance in the National Planning Policy Framework 2021 and to Strategies 47 (Nature Conservation and Geology) and 50 (Infrastructure Delivery) of the East Devon Local Plan 2013-2031 and Policy NP14 - Demonstrating Infrastructure Capacity of the Neighbourhood Plan for the Parishes of Ottery St Mary and West Hill 2017-2031.
6. No mechanism has been submitted to secure the necessary affordable homes and public open space that would arise as a result of the proposed development. In the absence of such a mechanism, it is considered that the development would have an unreasonable and unaddressed impact on this infrastructure contrary to guidance in the National Planning Policy Framework and Strategies 34 - District Wide Affordable Housing Provision Targets, 43 - Open Space Standards and 50 - Infrastructure Delivery) of the East Devon Local Plan 2013-2031 and Policy NP14 - Demonstrating Infrastructure Capacity of the Neighbourhood Plan.

Plans relating to this application:

0021 P03	Location Plan	28.11.22
S16727-HYD- XX-XX-DR-TP- 101 P05	Other Plans	07.03.23
S16727-HYD- XX-XX-DR-TP- 201 P05	Other Plans	07.03.23

List of Background Papers

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

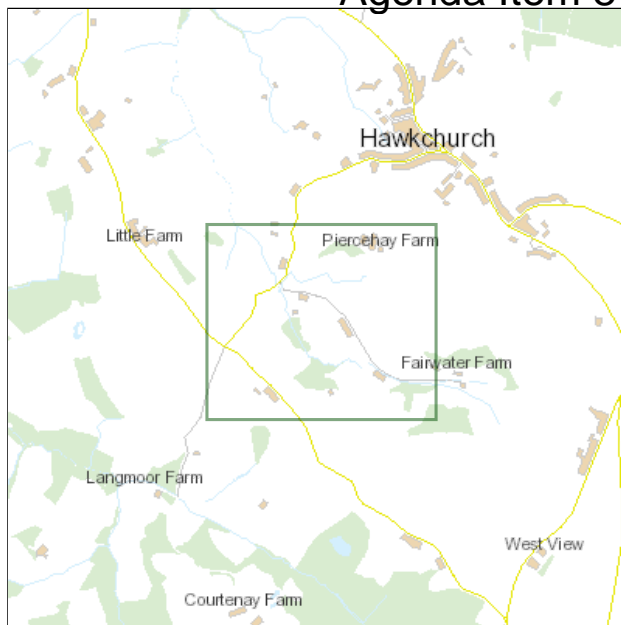
Ward Yarty

Reference 23/0116/FUL

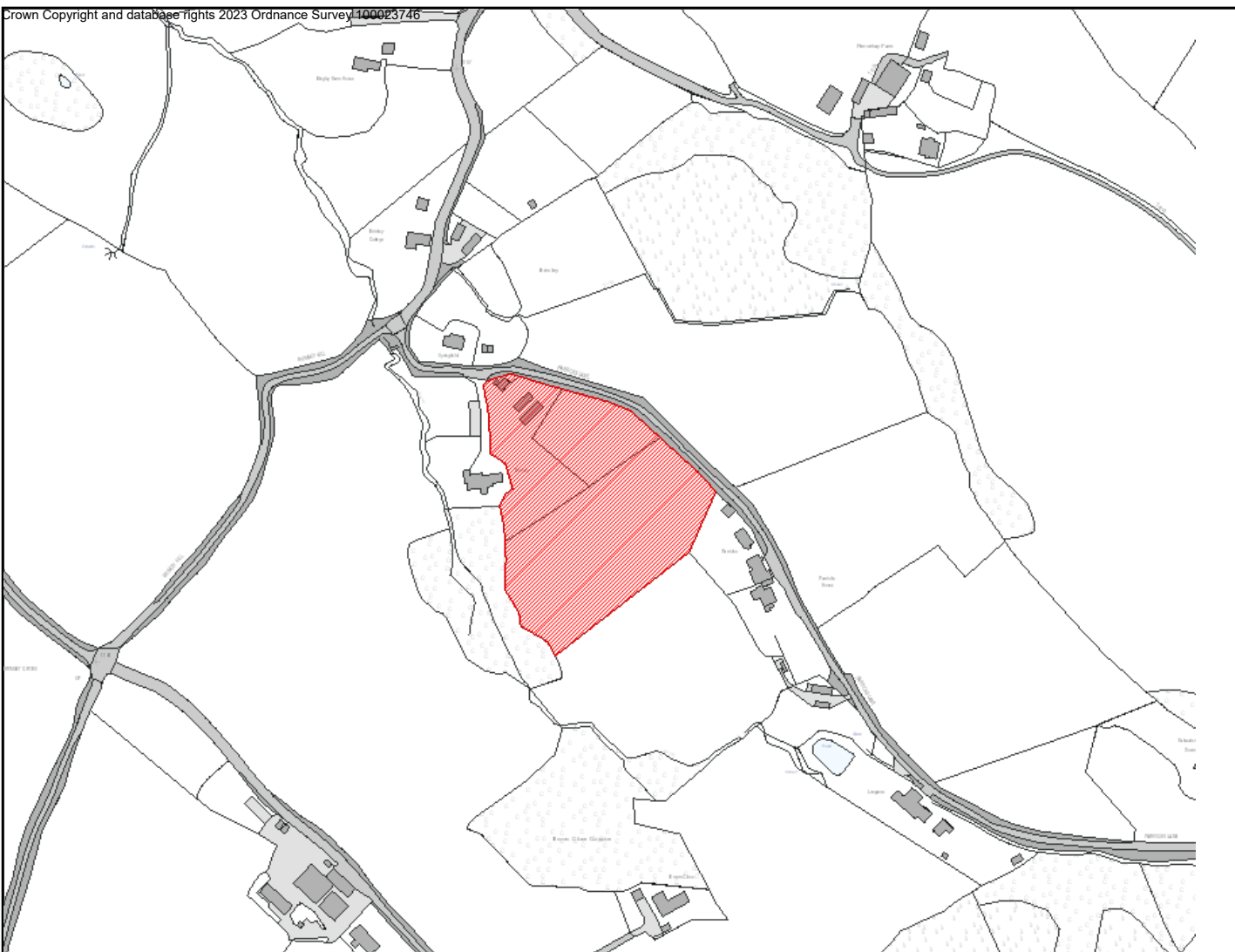
Applicant Mrs Ann Barrett

Location Land At Parricks Lane Hawkchurch EX13 5XB

Proposal Change of use of agricultural land and buildings to private equestrian use, construction of a manège and construction of a replacement for building 2 (retrospective). Building 1 to be used as a feed store and shelter for visiting vets, farriers, etc., Building 2 to be used as a hay barn and Building 3 to be used as a field shelter



RECOMMENDATION: Retrospective Approval (conditions)



		Committee Date: 18.07.2023
Yarty (Hawkchurch)	23/0116/FUL	Target Date: 06.04.2023
Applicant:	Mrs Ann Barrett	
Location:	Land At Parricks Lane Hawkchurch	
Proposal:	Change of use of agricultural land and buildings to private equestrian use, construction of a manège and construction of a replacement for building 2 (retrospective). Building 1 would be used as a feed store and shelter for visiting vets, farriers, etc., Building 2 would be used as a hay barn and Building 3 would be used as a field shelter	

RECOMMENDATION: Retrospective Approval (conditions)

EXECUTIVE SUMMARY

This application is before the Planning Committee because the recommendation is contrary to the views of the former and current Ward Members.

This proposal is for equestrian development that requires a countryside location and would be small in scale. It can be accommodated without adversely affecting the agricultural character of its surroundings. Whilst there would be some visual impacts, these would be modest and additional landscaping has been secured to provide an enhancement.

Whilst diversification activity is supported by policy E4 of the Local Plan, including the keeping of horses, this proposal would not support the viability of a farming enterprise and therefore there would be some policy conflict. However, the proposal would provide benefits to the rural economy in other ways and therefore the conflict is not considered to be material.

Matters including wildlife impacts, pollution, drainage and impact on trees have been considered and found to be acceptable. Many of the concerns raised by objectors are controlled by legislation outside the planning regime.

The proposal is appropriately sited on lower grade agricultural land in a non-designated landscape where environmental impacts can be suitably controlled by way of conditions and through other control regimes. In the absence of any material conflict with policy or harm to the local environment, the proposal is acceptable.

CONSULTATIONS

Local Consultations

Former Ward Member for Yarty - Cllr Paul Hayward

I am concerned over the nature of this application. It is evidently retrospective and whilst that is not a reason to refuse per se, it has resulted in EDDC landscape and environmental officers being unable to carry out thorough biodiversity and landscape assessments of the land prior to the development taking place.

There are issues with drainage as yet unresolved as I understand the field to be extremely waterlogged in wet weather. The addition of new outbuildings would seem out of place and I do have reservations about the need for this facility in such a remote location.

On that basis, I regret that I oppose this development and would propose REFUSAL and the reinstatement of the land to its former condition by way of the enforcement process.

Ward Member for Yarty – Cllr Duncan Mackinder

I would like to record that I very much agree with the comments of made by Cllr Paul Hayward, my predecessor as district councillor for the Yarty ward, on this application. I find the lack of opportunity to perform any form of meaningful landscape and ecological assessment to inform decision on this application highly regrettable. Therefore I too oppose this development and would recommend REJECTION and the reinstatement of the land to its former condition by way of the enforcement process.

Clerk To Hawkchurch Parish Council

Hawkchurch Parish Council cannot support this application. We are concerned about the possible environmental damage that has been done but cannot now be properly evaluated as this is a retrospective application.

There is some visual impact and we are not clear why such extensive facilities are needed for just three horses. we are very concerned about the impact on drainage and the possibility of environmental contamination, especially as there is a bore hole (and by default therefore a source protection zone (SPZ)) near the site.

We recommend that this application should not be approved unless and until:

- the applicants can demonstrate drainage will be dealt with to ensure that there is no significant impact from surface water run off from the manège surface on neighbouring land and watercourses;
- that there will be no contamination of water supplies particularly with reference to any SPZs in the area. If necessary the environment agency should be consulted;
- the applicants can demonstrate how waste products will be dealt with safely and not result in environmental health issues; and

- a landscaping plan is agreed (including screening and any changes to the post-rails etc. that would reduce visual impact).

If approved we recommend that this is conditional on the following:

- no lighting
- ongoing drainage management
- ongoing waste control management
- ongoing landscaping maintenance
- restricted to private use only (no commercial use at all as this would impact access and local amenity)
- no further expansion or changes without additional permission

Other Representations

Eleven objections and one representation have been received raising the following concerns:

- Harm to wildlife and lack of a survey
- Failed to follow planning rules
- Burning on site
- Use of weed spray
- No lighting should be allowed
- The access rights are not being followed
- The fencing should be removed
- It is visually harmful
- Drainage detail is lacking
- Run-off could cause pollution
- The ground is unsuitable for an arena
- There is insufficient land for three horses
- The proposed landscaping would not address the harm
- Overlooking

One letter of support has been received commenting that the horses and the site are well cared for.

Technical Consultations

None.

PLANNING HISTORY

Reference	Description	Decision	Date
86/P0526	Erection Of 2 Bungalows.	Refusal	29.04.1986
89/P0838	Conversion Of Livestock Building With Dairy To Bungalow.	Refusal	29.06.1989

18/0955/FUL	Retention of widened field entrances and hardstanding	Approval with conditions	20.06.2018
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POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 7 (Development in the Countryside)

Strategy 46 (Landscape Conservation and Enhancement and AONBs)

Strategy 47 (Nature Conservation and Geology)

D1 (Design and Local Distinctiveness)

D2 (Landscape Requirements)

D3 (Trees and Development Sites)

E4 (Rural Diversification)

EN14 (Control of Pollution)

EN18 (Maintenance of Water Quality and Quantity)

EN22 (Surface Run-Off Implications of New Development)

TC2 (Accessibility of New Development)

TC7 (Adequacy of Road Network and Site Access)

Government Planning Documents

NPPF (National Planning Policy Framework 2021)

National Planning Practice Guidance

Site Location and Description

The site is located about 600 metres to the south west of Hawkchurch amongst a low density string of dwellings along Parricks Lane and Brimley Road. It is not within an AONB and there are no heritage assets nearby. The site is not in a flood zone but part of the field to the east of the neighbouring dwelling, Brimley Farmhouse, as well as land around Brimley Farmhouse itself, is at risk of surface water flooding.

Parricks Lane is an unclassified single track no through road and connects with public footpaths leading to Hawkchurch. Trees and hedgerows surround much of the field but the site is on a slope and there are views from Brimley Hill, the nearest road to the west and from parts of the footpath network. At the entrance to the site there are three buildings and a yard. A manège has been constructed within the field and tape fencing has been used to divide the field.

ANALYSIS

Planning permission is sought for the change of use of a 1.5ha field to private equestrian use as well as for the construction of a manège and a replacement building. All of the development has already taken place. In total there are three buildings on the land and they would all be used for purposes associated with the equestrian use of the land, such as stabling and feed storage.

Strategy 7 (Development in the Countryside) of the Local Plan supports development that is in accordance with a specific local or neighbourhood plan policy. Although there is no neighbourhood plan, policy E4 (Rural Diversification) of the Local Plan

supports an expansion of the range of activities traditionally undertaken in the countryside. This includes "The keeping of animals which are not traditional agricultural livestock, including horses and donkeys", as set out in the preamble to the policy.

Policy E4 is subject to a number of conditions and these are addressed in turn below.

1. The proposal is complementary to, or compatible with, the agricultural operations in the rural area or on a farm and is operated as part of an overall holding.

Given that the development is small in scale (currently accommodating three horses), it has no material effect on the agricultural activity taking place in the surrounding countryside.

Addressing the second part of this criterion, the equestrian activity in this case is not operated as part of a farm holding and therefore is not contributing to the viability of a farm business. Nor does it comprise "the development and diversification of agricultural and other land-based rural businesses" as supported by paragraph 84b of the NPPF as it is not operated on a commercial basis.

Notwithstanding this conflict, the use requires a rural location and contributes to the rural economy in other ways through, for example, the need for veterinary services, feed supplies and tools and equipment to maintain the land and buildings. On that basis there is not considered to be a material conflict with local or national policy.

2. The character, scale and location of a proposal are compatible with its landscape setting and any area of nature conservation importance.

The local landscape is characterised in the East Devon Landscape Character Assessment as 'upper farmed and wooded valley slopes' and is in a transitional area between the Axe valley and Lamberts Castle, part of the Wootton Hills. Whilst not designated as an AONB, it is an attractive landscape of irregular fields, woodland and winding lanes with an intimate feel away from high ground. Traditional farming activity is the dominant use of the land.

From Brimley Hill the application site is between and behind two quite prominent dwellings (Springfield and Brimley Farmhouse) on a shallow hillside dominated by hedgerow trees and small areas of woodland. Notwithstanding the tree cover, there are glimpses of fields amongst the trees, including uninterrupted views of parts of the application site.

The three buildings on the site are not particularly prominent between the neighbouring dwellings and are an established feature of the landscape. In particular, the replacement building is very similar in scale and appearance to the original building and those either side and is therefore an appropriate replacement.

From outside the site, both from Brimley Hill and the lane which wraps around the north and east of the site, the manège and the tape fencing are quite visible and

have a minor detrimental visual impact when seen in the context of surrounding agricultural fields. However, the site is comprised of a single field and is a small component of the surrounding, more open, landscape. Whilst it would not be possible (or appropriate in landscape terms) to completely screen the field, some of the visual effects could be reduced with a landscaping scheme to enhance the boundaries. This would be in line with the Landscape Character Assessment management guidelines which suggest implementing measures to "Promote traditional hedgerow management techniques, and repair gaps in degraded hedgerows."

In terms of character, equestrian uses do not feature strongly in the local landscape. This is positive in relation to the proposed development because it means that there is scope for small scale equestrian development to be introduced without changing the character of the wider landscape.

To address the landscape impacts, a landscaping scheme has been provided which shows suitable infill planting and new trees and hedgerows within the site. This will not hide the development but it would provide an appropriate degree of landscape enhancement to offset the visual effects of the use. Subject to implementing this landscaping scheme, the effect on the character and visual appearance of the landscape would be acceptable.

Addressing the final part of this criterion, the site is not within or near any designated areas of nature conservation importance, other than the River Axe SAC which is addressed separately below.

3. The proposal would not use the best and most versatile agricultural land.

The land is grade 4 agricultural land and is therefore not classed as best and most versatile. There would be no conflict with this criterion or Policy EN13 as a result.

4. The likely amount of traffic generated by the proposal could be accommodated on the local highway network without harming road safety and without adverse visual impact upon the surrounding countryside.

Although the lanes are narrow leading to the site, the amount of traffic generated would be comparable to an agricultural use and can be accommodated on the road network without endangering other road users.

5. Any new building (and associated parking and other structures/storage) does not detract from the historic environment is modest in scale and is sited in or adjacent to an existing group of buildings and is of a compatible design and will blend into the landscape in terms of design, siting and materials.

The replacement building is sited between two retained buildings and is similar in scale and appearance to the original building. It is compatible with its surroundings in all respects.

The manège is about 30m to the south west of the nearest building and is therefore reasonably well related. Although a manège is not a traditional feature of the farming

landscape, it is a common enough site in the countryside that it would not appear out of place. Moreover, it is modest in area and height and has been constructed without excessive changes to ground levels. Any encroachment into the root protection area of the nearby tree would be minimal and unlikely to affect the health of the tree. Additional tree planting would be secured through the proposed landscaping scheme.

Concerns have been raised about the effect of external lighting and it is agreed that this has the potential to be intrusive in the local landscape in the hours of darkness. A condition controlling lighting is therefore reasonable.

6 The proposal would not cause noise, air or water pollution or flooding nor harm the amenity of local residents.

The level of noise associated with the use is unlikely to be materially higher than if the field were used for keeping livestock. Whilst it is accepted that there will be times when conversations between people in the field would take place, for example between the applicant and their vet or other advisors, these would be infrequent and would not create intrusive levels of noise. Likewise in respect of the manège. Similarly, the use of the land for equestrian purposes would not result in overlooking of neighbouring land that would be intrusive or harmful to amenity.

The use would not give rise to abnormal levels of air pollution that require specific measures to be put in place to avoid environmental harm. Smoke from bonfires could qualify as a statutory nuisance and there are adequate protections under Environmental Health legislation to deal with any issues that might arise.

There are no source protection zones near the site (the nearest is 1.8km to the north west), nor any drinking water protected areas or safeguard zones. Groundwater vulnerability is classed as 'low' (defined as areas that provide the greatest protection to groundwater from pollution). While some dwellings in the locality may have private water supplies, the risk of contamination is considered to be low based on the information available. Furthermore, it is the applicant's responsibility to manage the land and waste from the land to ensure the protection of private water supplies and this is supported by other legislation and guidance beyond the planning regime.

In respect of flooding, Soilscales data indicates that the site and surrounding land has impeded drainage (corroborating some of the comments made on the application). However, the proposed use would not inevitably raise the risk of flooding to land below the site and good land management practices can be helpful in this regard. An informative can be included within the decision to direct the applicant to relevant advice from Devon County Council, the Lead Local Flood Authority (<https://www.devon.gov.uk/floodriskmanagement/document/land-management-guidance/>).

More generally, the Government has provided advice to horse owners on dealing with waste (and other related matters) at www.gov.uk/keeping-horses. Given that there are protections already in place, there is no need for other measures to be put in place through the planning process.

7. All new agricultural and agricultural related buildings within 1 kilometre of sighting of barn owls or signs of their activity with a ridge height of 3 metres or more shall make suitable provision for the nesting of barn owls, whether or not they have been observed at the site.

The National Biodiversity Network Atlas includes a record of a barn owl sighting about 1.3km to the north west of the site in 2007. One of the public comments on this application has also made reference to sightings of a barn owl on or near the site more recently. Although the recent sighting is not verified (for example, through the British Trust for Ornithology), it is reasonable to require the installation of a barn owl box. Responding to this point the applicant has advised "An owl box has been in situ for a number of years in a mature tree behind Brimley Farmhouse and on the border between the two properties." Notwithstanding the existing provision, the applicant proposes to install two further barn owl boxes in appropriate locations and this would be secured as part of the landscaping scheme.

Other matters

The site is within the catchment of the River Axe SAC which is subject to the advice issued by Natural England on nutrient neutrality. In broad terms the advice is that agricultural development which could lead to an increase in herd size should consider the effects of nutrient pollution. There is no specific advice in relation to equestrian uses but there is nothing to indicate that the proposed use would be more polluting than if the land were used for keeping traditional livestock, which could be carried out without the need for planning permission. Furthermore, the building is a replacement and would not increase the amount of accommodation available for livestock. It is therefore concluded that a likely significant effect on the SAC can be ruled out in this case.

Concerns have been raised about the clearance of the site and loss of wildlife habitats. Removing vegetation does not require planning permission but it is the applicant's responsibility to comply with the law protecting wildlife in doing so. Whilst the concerns of the objectors are appreciated, they are not directly relevant to the development for which permission is sought.

A comment has been made about the use of the access but this is a private matter between the applicant and the relevant land owner.

It has also been suggested that there is insufficient land for the number of horses. This is not a relevant planning consideration and it is up to the applicant to determine what is appropriate having regard to guidance and legislation on the welfare of animals.

CONCLUSION

The proposed development is compatible with most aspects of Strategy 7 and Policy E4. Where conflicts exist, they are minor owing to the small scale of the development. The proposal requires a countryside location, is appropriately sited on lower grade agricultural land in a non-designated landscape where environmental impacts can be suitably controlled by way of conditions and through other control

regimes. In the absence of any material conflict with policy or harm to the local environment, the proposal is acceptable.

RECOMMENDATION

APPROVE subject to the following conditions:

1. 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.)
2. The landscaping scheme described in the Landscape Enhancement Plan and shown in the accompanying Landscape Plan hereby approved shall be implemented in accordance with the timetable contained therein unless any variation is first submitted to and approved in writing by the Local Planning Authority. The landscaping shall be maintained for a period of 5 years. Any trees or other plants which die during this period shall be replaced during the next planting season with specimens of the same size and species unless otherwise agreed in writing by the Local Planning Authority.
(Reason - In the interests of preserving and enhancing the character and appearance of the area in accordance with Strategy 46 - Landscape Conservation and Enhancement and AONBs and Policies D1 - Design and Local Distinctiveness and D2 - Landscape Requirements of the East Devon Local Plan 2013-2031.)
3. Within six months of the date of this decision at least one barn owl box shall be erected in one or more of the locations specified in the Landscape Enhancement Plan hereby permitted. The box shall thereafter be retained and maintained for the lifetime of the development.
(Reason - To improve nesting provision for barn owls in accordance with Policy E4 - Rural Diversification of the East Devon Local Plan 2013-2031.)
4. No external lighting shall be erected to illuminate the manège or land/buildings to which this permission relates unless details of such have first been submitted to and approved in writing by the Local Planning Authority. Any lighting installed shall comply with those approved details.
(Reason - To prevent light pollution in order to protect the character and appearance of the countryside in accordance with Strategies 7 - Development in the Countryside and 46 - Landscape Conservation and Enhancement and AONBs and Policies D1 - Design and Local Distinctiveness and EN14 - Control of Pollution of the East Devon Local Plan 2013-2031.)
5. The development hereby approved shall be used for private equestrian purposes only and shall not be used for any commercial or business purpose, such as livery or riding stables.
(Reason - The application site in the open countryside is distanced from centres of population and a business use would require further assessment in terms of traffic movements, hours of use and disturbance from increased activities on the site in accordance with Strategy 7 - Development in the Countryside and

policies EN14 - Control of Pollution and TC2 - Accessibility of New Development of the East Devon Local Plan 2013-2031).

Statement on Human Rights and Equalities Issues

Human Rights Act:

The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

NOTE FOR APPLICANT

Informative: Confirmation - No CIL Liability

This Informative confirms that this development is not liable to a CIL charge.

Any queries regarding CIL, please telephone 01395 571585 or email cil@eastdevon.gov.uk.

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.

Informative:

The applicant's attention is drawn to the Government advice on keeping horses, particularly the section on dealing with waste, which can be accessed here: www.gov.uk/keeping-horses.

Informative:

The applicant's attention is drawn to the advice from the Lead Local Flood Authority, Devon County Council, on managing land to reduce flood risk which can be accessed here: www.devon.gov.uk/floodriskmanagement/document/land-management-guidance/.

Plans relating to this application:

Landscaping Enhancement Plan	Landscaping	16.06.23
Landscape plan	Landscaping	16.06.23
	Location Plan	07.02.23
Building 2	Other Plans	09.03.23

List of Background Papers

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

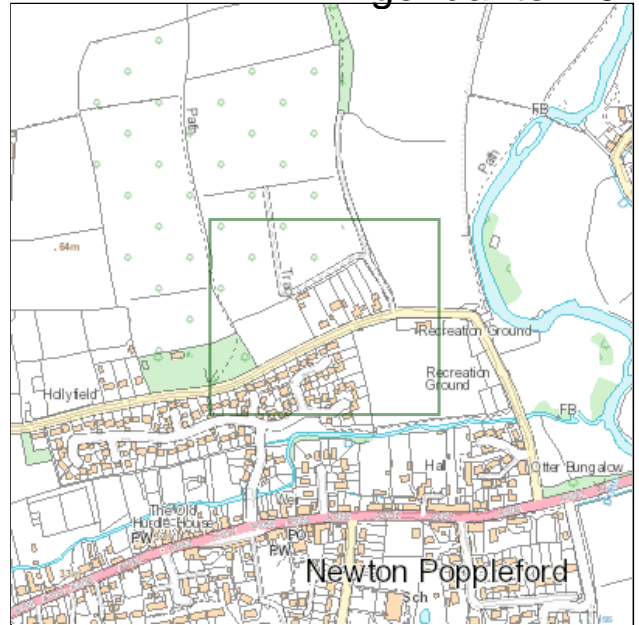
Ward Newton Poppleford And Harpford

Reference 23/0624/FUL

Applicant Mr D Welch

Location Luscombes Back Lane Newton Poppleford Sidmouth EX10 0EZ

Proposal Replacement of 5no outbuildings associated to one dwelling, with 3no new outbuildings for workshop/store and stables.



RECOMMENDATION: Approval with conditions



		Committee Date: 18.07.2023	
Newton Poppleford And Harpford (Newton Poppleford And Harpford)	23/0624/FUL	Target	Date:
		17.05.2023	
Applicant:	Mr D Welch		
Location:	Luscombes Back Lane Newton Poppleford		
Proposal:	Replacement of 5no outbuildings associated to one dwelling, with 3no new outbuildings for workshop/store and stables.		

RECOMMENDATION: Approval with conditions

EXECUTIVE SUMMARY

This application is brought before the Committee owing to a difference of opinion between officers and the ward member.

Luscombes is a detached dwelling set within a large sloping plot, around 0.2 hectares in area, located on the northern side of Back Lane just outside of the Built-up Area Boundary of Newton Poppleford as defined in the adopted Villages Plan and made Neighbourhood Plan. The area is within the designated East Devon Area of Outstanding Natural Beauty (AONB).

The application proposal involves the removal of five ancillary structures positioned close to the rear boundary, on the most elevated part of the site, and the construction of three replacement outbuildings in the form of two workshop/storage buildings and a further building housing 2no stables. The scheme also includes the laying out of a concrete yard within the north eastern corner of the site and the continuation of an existing driveway that extends alongside the eastern boundary to create vehicular access to the proposed workshop/storage buildings.

It is accepted that the increase in aggregate floor area (approximately 80%) and volume of building, when compared with the existing outbuildings, that would result from the development would not be insignificant. However, it is considered that the extent of the additional impact upon the AONB that would result, taking that already created by the present structures into account, would not be unduly harmful to its rural landscape character or landscape or scenic beauty or to the amenities of neighbouring residents.

The development would be viewed from the main point of public vantage locally, namely the nearby playing field, in the context of the ribbon of properties along Back Lane of which Luscombes forms part. It would be visible against a backdrop of rising land, hedges and trees and would avoid both breaking the skyline and, owing to the generous plot size, appearing as an overdevelopment of the site.

Moreover, it is considered that the similarity of the proposed built forms and intended use of the same palette of wall and roof finishes (timber effect walls with metal roof sheeting, subject to details to be agreed) for all three buildings would be acceptable.

It is not agreed that the proposal would be in conflict with the various local and neighbourhood plan policies referred to by the parish council, ward member and interested third parties or that the various recommended grounds for opposing it could be readily substantiated in the event of an appeal. The overall balance of considerations is considered to weigh in favour of the development.

CONSULTATIONS

Local Consultations

Parish/Town Council

This application was discussed by Council at an Extraordinary Meeting on Tuesday, 18th April. Whilst Council acknowledges that the applicant has responded to objections to the previous application 22/2424/FUL (withdrawn) by reducing the height of the buildings, proposing two buildings where there was originally one and making changes to the materials to be used. However, on review this application remains substantially the same as the earlier application and there are fundamental issues that the applicant cannot alter:

1. This property is in an Area of Outstanding Natural Beauty
2. The property is situated in the countryside outside the village Built Up Area Boundary.
3. The property is on a sloping site highly visible from many parts of the village.
4. The land is Grade 1 Agricultural land.
5. The height of the buildings will be visible against the skyline and the aspect will be further compromised by the removal of existing, mature tree*.

This application contravenes a number of NPHPC Neighbourhood Plan policies ' namely: HQD1, H3, EP1, EP6, EP7 and TH1 for exactly the same reasons as were stated in Council's response to application 22/2424/FUL. The application also contravenes Strategy 7 and Policy EN13 of the East Devon Local Plan.

To allow this substantial development would result in the permanent loss of over 400 square metres of protected East Devon AONB. Council does not believe that the applicant has provided any mitigation for this or proved the 'exceptional need' required to justify such a loss. The proposed development is inappropriate in size, location and setting. On that basis Council voted by majority to object to this application.

* We note that the application form states that no trees are to be removed which is patently incorrect as the plans indicate the removal of 5 trees and their replacement with new trees which will take some years to reach maturity.

Newton Poppleford and Harpford - Cllr Chris Burhop

This application replaces 22/2424/FUL which was withdrawn by the applicant following significant objections from neighbours, the Parish Council and myself.

I note the change in design from one huge building to several smaller buildings. I am pleased that the original metal cladding design has been replaced with a timber clad proposal. However the proposed roof is stated to be in metal cladding which would be unacceptable under policy HQD1.

However the proposed principle structures appear to be located once again at the highest point on the plot, towering over the existing house and surroundings from the steeply sloping site. The change in height from the original application appears to be a mere 5cm, an almost insignificant reduction.

In contrast to the applicant's design and access statement (2.0 planning policies) I honestly cannot agree that the concerns raised in the original application have been addressed. In particular (NHP EP1) this does not "give great weight to the conservation and enhancement of the natural environment", "not... degrade the visual quality... of the rural landscape", "...appear dominant when viewed against skylines or significant lines or groups of large mature trees" (the applicant's location is directly in front of a prominent row of poplar trees which forms the skyline of the locale), "maintain and where appropriate extend tree cover" (despite not stated in the formal application form (presumably in error) the application actually calls for the removal of mature trees to facilitate building, to be replaced with newly planted trees. This cannot comply with this policy).

Furthermore I can only see the proposed increased facility of the site from this application leading to an adverse effect on the levels and frequency of noise in the area, in contrast to policy EP6.

The site is classed on EDDC's own register as being within the classification of best and most versatile agricultural land.

This application does not conserve or enhance the AONB.

There is a suspicion that this application has at least a semblance of an industrial workshop complex given the applicant's trade within the fishing industry and history of vehicular and storage access to the site. If this application is approved there must be an absolute condition that no outbuildings can be used for any form of trade or works.

The applicant is blessed with living in a beautiful location, in a prominent position on the edge of the village in the AONB. With that comes responsibilities to preserving the environment that they are custodian of. In my opinion the location is totally unsuited to the location and scale of buildings proposed, nor the nature of the expected storage.

Unfortunately, in my opinion, this latest submission fails to address the key issues identified in the previous application. I remain convinced that the application is flawed in respect of both the EDDC local plan and the Newton Poppleford neighbourhood plan.

Technical Consultations

None.

Other Representations

Two representations of objection have been received.

Summary of Grounds of Objection

1. Contravenes Local Plan (LP) Strategy 7 and Policy EN13; no over-riding need has been shown for non-agricultural or forestry development.
2. Doesn't meet requirements for development within the AONB, in the countryside outside of the Built-Up Area Boundary and within Grade 1 agricultural land.
3. Permission would set a dangerous precedent for future similar applications.
4. No exceptional need demonstrated to justify irreversible loss of AONB land.
5. No exceptions are made in either the LP or the NHP for private gyms, trailer parks, boat parks, classic car restoration, household tools & storage, lawn mowers, horses or car parking.
6. Equestrian use (i.e. stables and hay storage) is specifically not supported by NHP policy EP1 h) which requires developments within the ED AONB to "avoid causing damage from leisure use (e.g. equestrian)."
7. The land could be used for agriculture in the future; therefore irrelevant that it is not so used at present. Existing temporary buildings could be removed to return the land to agricultural use but proposed permanent development could not.
8. New buildings would not be subservient to the main dwelling.
9. Contravenes NHP policy EP1 f) as the height of the new buildings will be visible against the tree line, preventing a 'soft edge' to the ED AONB, especially as this site is on a hill and the existing screening trees will be removed.
10. No reasonable justification for the height of the new buildings
11. The development site is far too big with approx. 400 sq. m. of AONB permanently lost to buildings and hardstandings.
12. Removal of trees contrary to NHP policies TH1 3a), 3b) and 3d), EP1 a), b), e) g) and EP7 a),
13. Replacement tree planting will not provide effective screening or the same ecological benefit for many years, possibly decades.
14. Application contravenes NHP policies EP1 a), b) and c); the proximity of the new buildings to ancient hedges will adversely affect the environment, habitats and wildlife.
15. Applicant's lifestyle choices, resulting in storage and space issues, are not a valid justification for sacrificing AONB or Grade 1 agricultural land.
16. Night time light from the roof lights could affect bats.

PLANNING HISTORY

Reference	Description	Decision	Date
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22/2424/FUL	Erection of workshop/store and stable	Withdrawn	17.03.2023
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POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 7 (Development in the Countryside)

Strategy 46 (Landscape Conservation and Enhancement and AONBs)

D1 (Design and Local Distinctiveness)

D2 (Landscape Requirements)

EN14 (Control of Pollution)

EN19 (Adequacy of Foul Sewers and Adequacy of Sewage Treatment System)

EN22 (Surface Run-Off Implications of New Development)

Made Newton Poppleford and Harpford Neighbourhood Plan 2020-2031 Policies

EP1 (Conservation and enhancement of the East Devon AONB and Natural Environment)

EP2 (Minimising damage to existing properties)

EP4 (Surface Water Run-off)

EP6 (Local Amenity)

HQD1 (Maintain the built character of our parish through High Quality Design)

TH1 (Trees and Hedgerows)

Government Planning Documents

NPPF (National Planning Policy Framework 2021)

ANALYSIS

Site Location and Description

Luscombes is a detached two storey dwelling that occupies a sizeable plot, approximately 0.22 hectares in area, located on the northern side of Back Lane to the north of Newton Poppleford village centre.

It is located at the western end of a ribbon of six residential properties and almost opposite the Newton Poppleford Playing Field.

The site occupies a hillside position and therefore slopes down relatively steeply from north to south with the dwelling itself positioned nearer to the road frontage, albeit still comparatively elevated above the level of the highway.

A group of five ancillary single storey outbuildings to the rear occupies the highest part of the site close to its northern boundary, which is defined by an established hedge. An access driveway extends alongside the eastern site boundary with the neighbouring property Applegarth and connects these buildings with the principal dwelling.

The whole area forms part of the designated East Devon Area of Outstanding Natural Beauty (AONB).

Proposed Development

The application proposal involves the removal of all five outbuildings and the construction of two workshop/storage buildings (of different sizes) and a further building incorporating two stables.

The submitted details show the two proposed workshop/storage buildings to be positioned adjacent to one another alongside the rear site boundary. Both would be of identical gabled form, design and appearance, featuring vertical 'timber like' cladding with shallow pitched roofs finished with metal sheeting.

The larger building would measure 10.5 metres squared whilst the smaller building would measure 10.5 metres by 5.4 metres. Both would have roof eaves and ridge heights of 3.1 metres and 4.5 metres respectively.

The stables, which would be positioned to the south of the workshop/storage buildings, would exhibit a matching built form and external wall and roof finishes. However, it would be oriented at right angles to them and of smaller scale, measuring 7.7 metres in length by a depth of 4.8 metres (excluding a front roof overhang) with roof eaves and ridge heights of 2.1 metres and 3 metres respectively.

The workshop/storage buildings would be used for a variety of storage purposes ancillary to the use and occupation of the property, currently proposed to include storage for a boat and brake trailer and associated safety equipment and other miscellaneous items, two ride-on lawn mowers and, as and when required, a pick-up truck, 2no trailers and a car.

The larger building would also incorporate floor space for the carrying out of restoration work on classic cars (on a hobby basis only) while the smaller building would also house a gym.

It is proposed to remove five young trees to enable the extension of the existing driveway so as to serve the buildings and lay a concrete yard within the north eastern corner of the site. Mitigation in the form of compensatory tree planting is proposed to the south of the extended driveway with the objective of it in time screening the two proposed replacement workshop/storage buildings.

The application is a revised submission following the withdrawal of a previous scheme - subject of application ref. 22/2424/FUL - relating to the construction of a considerably larger single workshop/storage building and separate stables on the same part of the site. The decision to withdraw the application was made in the light of advice as to a likely officer recommendation to refuse on the basis of the excessive scale, and lack of subservience, of the workshop/storage building in relation to the main dwelling as well as its inappropriate design and appearance, principally on account of the intention to use metal wall sheeting; these objections being accentuated by both the elevated nature of the siting of the buildings and the absence of any robust justification for the scale of the workshop/office building, in particular.

Considerations/Assessment

The proposal falls to be considered having regard to the following material considerations that are discussed in turn.

Principle of Development

There is no objection to the fundamental principle of the replacement of ancillary domestic outbuildings.

There is therefore a need to consider the proposal against the more detailed contextual issues set out below.

Design/Appearance and Impact upon AONB

The main material detailed consideration in the assessment of the proposal once again relates to the impact of the proposed development upon the rural landscape character and appearance and landscape and scenic beauty of the designated AONB.

Comparison has been drawn, within the applicant's agents' design and access statement, between the footprint areas and heights of the buildings proposed under application 22/2424/FUL, those proposed under the current application and the existing outbuildings that are to be replaced.

These show the proposed aggregate footprint areas of the two proposed workshop/storage buildings to have been reduced by around 64 square metres (from 221 sq. m. to 157 sq. m.) from the single building proposed under application 22/2424/FUL. This equates to an approximate reduction of 29% in footprint area.

Moreover, although these would still result in an increase of around 85 sq. m. when compared against the aggregate footprint area of the five existing outbuildings (106 sq. m.) to be replaced, representing an approximate 80% increase, the original proposals - submitted under application 22/2424/FUL - envisaged the single building incorporating an area in excess of double this area that would have extended across the plot right up to its eastern boundary with Applegarth. The current proposals would therefore involve more than 20% less floor space overall than before.

Furthermore, neither workshop/storage building would exceed the height of the tallest of the existing outbuildings on the site, which measures 4.6 metres.

It is also considered that the intended use of 'timber like' cladding (the precise detail of which could be secured by condition in the event of a grant of permission; indeed, a natural timber finish would be most appropriate) would represent an improvement, in visual terms, over the metal wall sheeting proposed for the larger single building under application 22/2424/FUL on the basis that this would present a more agricultural, and less commercial, appearance that would be more in keeping with the largely agricultural character of the surrounding countryside to the north of Back Lane.

In addition, it is also contended that the consolidation of the floor space and volume of the existing outbuildings, all of which are of a variety of sizes, forms and appearances, into a smaller number of buildings of similar form and appearance to one another would also improve, to some extent, the appearance of this part of the application site, notwithstanding the appreciable increase in the total overall footprint and volume of building that is still being proposed.

Indeed, when viewed from the main - and, it is considered, only significant - point of public vantage that is available of the site, namely the nearby playing field, it is thought that the overall visual impression that would be created would not be entirely dissimilar to the cumulative impact arising from the existing buildings. From the views available from the playing field, these are spread across the site from west to east and it is not anticipated that the visual effect of the proposed replacement buildings would be so markedly different to the cumulative impact arising from the existing cluster of buildings as to result in materially greater harm to the character or appearance of the area, even allowing for their greater aggregate volume and the overall heights of the two workshop/storage buildings.

Although cumulatively continuing to lack the subservience of the present structures in relation to the main dwelling, it is thought that the combination of the disaggregation of the previously proposed workshop/storage building into two smaller buildings (whose aggregate footprint area would be smaller than before), an improved palette of external finishes that would be more in keeping with the rural setting of the site, the view that the site is sufficiently large in area to accommodate the development without the scheme amounting to overdevelopment of the site and the intention to undertake screen planting represent material factors weighing in favour of this revised proposal.

Whilst the comments made by the parish council, ward member and interested third parties are duly acknowledged, the following points are also drawn to Members' attention.

The fact that the site is within the AONB is not, of itself, reason to withhold a grant of planning permission. Although it is recognised that such areas carry the highest status of protection in relation to the conservation and enhancement of their landscape and scenic beauty within relevant guidance set out in the National Planning Policy Framework (NPPF), this does not equate to a moratorium on development within them. It remains necessary to consider proposals on their individual merits and, in this case, having regard to the balance of the material considerations set out above, it is not thought that the development would result in a

level of harm to the landscape or scenic beauty of this part of the AONB that would justify refusal on such grounds.

The development would be viewed from limited points of public vantage amidst a group of buildings in the form of the ribbon of development of which Luscombes forms part. It is not accepted that it would be visible from 'many' parts of the village as has been claimed. Furthermore, whilst recognising that it would occupy the most elevated part of the site, it is highlighted that, as now, the development would be viewed against the backdrop of a hedge and mature trees beyond, in relation which it is not thought that it would appear unduly dominant to the extent that harm to the rural landscape character or landscape or scenic beauty of the AONB would result.

Furthermore, although the site is located just outside of the Built-up Area Boundary (BuAB) of the village as defined in the adopted Villages Plan and made Neighbourhood Plan, and therefore in policy terms forms part of the countryside beyond it, this does not itself preclude the principle of ancillary development in relation to existing dwellings such as that to which the application relates. Again, it is necessary to consider such proposals on their individual merits.

The design, siting and scale of the buildings is considered to be acceptable in terms of its appearance and impact on the landscape character of this part of the AONB.

Loss of Agricultural Land

Although the site is technically within an area of land that is classified as Grade 1 agricultural land according to the Agricultural Land Classification map, there are two points to highlight. First, as well as the other residential properties within the ribbon of development of which Luscombes is part, this classification also washes over properties in Lark Rise and Hazel Close to the south of Back Lane that are within the BuAB. Secondly, the application site forms part of the land associated with Luscombes and is not agricultural land. The proposed development would not therefore result in any loss of best and most versatile agricultural land as implied by the objection or, therefore, conflict with Local Plan Policy EN13 (Development on High Quality Agricultural Land) which seeks to protect such land.

Furthermore, it is not considered that an argument that the site, which forms part of the applicant's private land holding and is even arguably part of the recognisable curtilage attached to Luscombes, could revert to agricultural use at some future stage would justify opposing the principle of ancillary development.

Indeed, in terms of the intended uses for the buildings, it has been advised that these would be solely ancillary to the use and enjoyment of the dwelling as such and, on this occasion, it is accepted that sufficiently robust justification for the size and scale of development proposed has been provided. As such, it is not thought that an 'exceptional need' for the development needs to be demonstrated in this case.

A condition is recommended to require that the development be used for no other than ancillary purposes and any future proposals to use it for any other purposes would trigger a requirement for a further application to remove this condition or seek a change of use, both of which would be considered on their respective merits.

Impact on Neighbour Amenity

Subject to control being exercised over the uses for the replacement buildings, there are not considered to be any grounds upon which the proposals could reasonably be resisted on the grounds of any substantive adverse impact upon the living conditions of the occupiers of the neighbouring property Applegarth through being unduly physically overbearing, dominating or intrusive or as a result of any impacts arising from their use solely for purposes ancillary to the occupation of the main dwelling.

Furthermore, with the repositioning of the development further from the site boundary with this property from that previously shown under application 22/2424/FUL, it is thought that this argument would be strengthened.

Highways

In view of the nature of the intended uses for the proposed buildings it is not considered that the proposed development would give rise to any adverse effects in relation to traffic generation on the local highway network or highway safety conditions.

Drainage

The application advises that no foul drainage would be generated by the proposed development and that surface water drainage would be discharged via soakaways. This is considered to be acceptable.

Impact upon Heritage Assets

There are no designated or non-designated heritage assets either within, or in the vicinity of, the application site. As such, the proposal would not result in any impact upon heritage significance.

Trees

The inaccuracy of the information set out within the application in regard to the intended felling of trees is acknowledged, as is the likely timescale for the proposed compensatory tree screening to mature in order to take effect.

However, it is not considered that the specimens proposed for removal provide significant value to the general amenity of the area, either individually or cumulatively, that would justify formal protection in the form of a tree preservation order.

As such, and given that the site does not occupy a conservation area location, there would be no control over their removal, regardless of the outcome of the application.

Conclusion

Although the submitted proposals, including the extension to the existing driveway and additional hardstanding area, would increase the presence of built development within the application site, it is considered that the level of impact or harm to its character or appearance or that of the wider AONB would be insignificant and as such the impacts are acceptable.

Paragraph 176 of the NPPF requires that great weight be given to the conservation and enhancement of landscape and scenic beauty in defined designated areas, including AONBs, which have the highest status of protection in relation to these objectives. Paragraph 177 expands upon this to require that the scale and extent of development should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas

In this case, and having regard to the balance of the various material considerations set out above, it is thought that these objectives would be met and, therefore, the proposed development is considered to be in conformity with the various policies within the made Newton Poppleford Neighbourhood Plan that have been cited.

However, the need to ensure that the uses of the buildings remain ancillary to the use and enjoyment of the main dwelling as such, and not for any unrelated commercial purpose, is duly recognised. A condition is therefore recommended to restrict the permitted uses accordingly. Further conditions are also recommended to secure the submission of details of materials and the proposed tree planting for approval.

RECOMMENDATION

APPROVE 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. No development above foundation level shall take place until a schedule of materials and finishes, and, where so required by the Local Planning Authority, samples of such materials and finishes, to be used for the external walls and roofs of the proposed development has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
(Reason - To ensure that the materials are sympathetic to the character and appearance of the area, which forms part of the designated East Devon Area of Outstanding Natural Beauty, in accordance with Strategy 46 (Landscape Conservation and Enhancement and AONBs) and Policy D1 (Design and Local Distinctiveness) of the adopted East Devon Local Plan 2013-2031 and Policies EP1 (Conservation and enhancement of the East Devon AONB and Natural Environment) and HQD1 (Maintain the built character of our parish through High Quality Design) of the made Newton Poppleford and Harpford Neighbourhood Plan 2020-2031.)

4. The development hereby approved shall be used solely in conjunction with, and for purposes ancillary to, the use and occupation of the dwelling known as Luscombes, Back Lane, Newton Poppleford EX10 0EZ.
(Reason - A commercial use could cause undue noise to adjoining occupiers and detract from the character of the surrounding area, which forms part of the designated East Devon Area of Outstanding Natural Beauty, contrary to Strategy 46 (Landscape Conservation and Enhancement and AONBs) and Policies D1 (Design and Local Distinctiveness) and EN14 (Control of Pollution) of the adopted East Devon Local Plan 2013-2031.)
5. No development above foundation level shall take place until details as to the size(s) and species of the tree planting shown on drawing no. 8277-07 have been submitted to and approved in writing by the Local Planning Authority. The approved tree planting shall be carried out in the first planting season after commencement of the development, unless any alternative phasing of the planting is agreed in writing by the Local Planning Authority, and shall thereafter be maintained for a period of 5 years. Any trees which die during this period shall be replaced during the next planting season with specimens of the same size and species, unless otherwise agreed in writing by the Local Planning Authority.
(Reason - In the interests of amenity and to preserve and enhance the character and appearance of the area, which forms part of the designated East Devon Area of Outstanding Natural Beauty, in accordance with Strategy 46 (Landscape Conservation and Enhancement and AONBs) and Policies D1 (Design and Local Distinctiveness) and D2 (Landscape Requirements) of the adopted East Devon Local Plan 2013-2031 and Policies EP1 (Conservation and enhancement of the East Devon AONB and Natural Environment) and HQD1 (Maintain the built character of our parish through High Quality Design) of the made Newton Poppleford and Harpford Neighbourhood Plan 2020-2031.)
6. Notwithstanding the submitted details, no development shall take place until a surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. Unless it is demonstrated that it is unfeasible to do so, the scheme shall use appropriate Sustainable Urban Drainage Systems. The drainage scheme shall be designed so that there is no increase in the rate of surface water runoff from the site resulting from the development and so that storm water flows are attenuated. The development shall be carried out in accordance with the approved scheme.
(Reason: The details are required prior to commencement to ensure that they fit efficiently within the site layout, protect water quality and minimise flood risk in accordance with Policy EN22 (Surface Run-Off Implications of New Development) of the adopted East Devon Local Plan 2013-2031 and guidance contained with the National Planning Policy Framework (2021).)
7. All existing buildings/structures shown on the approved plans to be replaced shall be demolished and removed from the site prior to the first use of any of the replacement buildings hereby permitted.
(Reason - In the interests of the character and appearance of the area, which forms part of the designated East Devon Area of Outstanding Natural Beauty, in accordance with Strategy 46 (Landscape Conservation and Enhancement and

AONBs) and Policy D1 (Design and Local Distinctiveness) of the adopted East Devon Local Plan 2013-2031 and Policies EP1 (Conservation and enhancement of the East Devon AONB and Natural Environment) and HQD1 (Maintain the built character of our parish through High Quality Design) of the made Newton Poppleford and Harpford Neighbourhood Plan 2020-2031.)

Statement on Human Rights and Equalities Issues

Human Rights Act:

The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

NOTE FOR APPLICANT

Informative:

In accordance with the aims of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 East Devon District Council works proactively with applicants to resolve all relevant planning concerns; however, in this case the application was deemed acceptable as submitted.

Plans relating to this application:

8277-04: stable	Proposed Plans	Combined	22.03.23
8277-07	Proposed Site Plan		21.03.23
8277-08	Proposed Plans	Combined	21.03.23
8277-LP	Location Plan		21.03.23

List of Background Papers

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

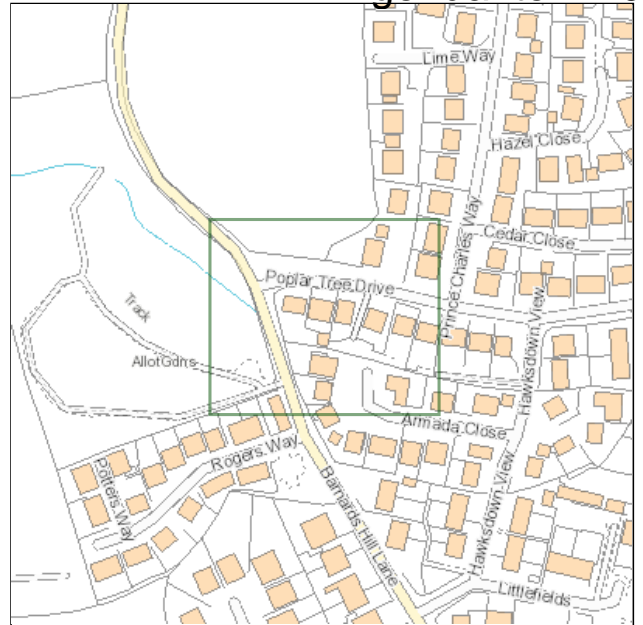
Ward Seaton

Reference 23/0890/FUL

Applicant Mr Daniel Ledger □ Mrs Abigail Down

Location 29 Poplar Tree Drive Seaton Devon EX12 2TW

Proposal Raising of roof, conversion of roof space to habitable space including front and rear dormers and balcony.



RECOMMENDATION: Refusal

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		Committee Date: 18.07.2023
Seaton (Seaton)	23/0890/FUL	Target Date: 16.06.2023
Applicant:	Mr Daniel Ledger & Ms Abigail Down	
Location:	29 Poplar Tree Drive Seaton EX12 2TW	
Proposal:	Raising of roof, conversion of roof space to habitable space including front and rear dormers and balcony	

RECOMMENDATION: Refuse

EXECUTIVE SUMMARY

This application is to be determined at Planning Committee as one of the applicants is an elected member of the District Council.

The scope and details of the proposals have been amended during the course of the application's assessment.

Full planning permission is sought for the enlargement of an existing bungalow by the raising of its roof ridge and pitch, incorporating an enlarged forward return gable with raised eaves, and two flat roofed dormer windows (front and rear), together with the installation of a solar panel array above the rear south-facing dormer structure. A projecting balcony is proposed at the western end of the rear façade, to be accessed from a new bedroom by glazed sliding doors, and a juliet balcony is shown at the eastern end of the rear elevation to prevent access through similar full height glazing from the second of three new upper floor bedrooms. The enlarged forward gable return is designed to provide an open canopy above the existing front entrance to the dwelling. The scheme does not include any increase in the ground floor footprint of the existing building, but would add just under 70 sqm as new upper floor area to the dwelling.

A new vehicular access from Poplar Tree Drive and works to create a level parking space for two cars in the sloping front garden, shown on the initially submitted application, have now been omitted.

An obscured glass screen has been added at the western end of the proposed balcony.

The form, scale, design and position of the proposed extensions to the bungalow are considered not to be acceptable as alterations to the existing host dwelling, nor to fit comfortably with the development pattern and appearance of

surrounding development. Although micro-generation apparatus would normally be welcomed within a scheme, the proposed array of solar panels, to be placed conspicuously on the roof of the rear dormer, would worsen the poor impact of the development on the street scene.

It is considered that the proposed development could be required, by condition, to include a second screen on the eastern side of the proposed balcony, which would prevent an otherwise unacceptable degree of additional overlooking of neighbouring residential property from the site.

However, as the proposal as a whole includes development that is considered not to be acceptable in terms of adopted Local Plan policy, refusal of the application is recommended.

CONSULTATIONS

Parish/Town Council

16.05.2023 Seaton Town Council have no objections to this application.

05.06.2023 Seaton Town Council have no objections to the amendments submitted for this application.

Ward Members

No comment received

Devon County Highways

No comment received

Other Representations

17.05.2023 Neighbour (to east)

We support this planning application in principle. We have been unable to find details of materials/drainage solutions to be used for the proposed vehicle access.

As our property lies below number 29, we have concerns about surface water issues in the local vicinity similar to those mentioned in the officer's report/comments in application 18/1510/FUL.

If the proposed vehicle access is to be greater than 5 metres squared/driveway legislation limits we would appreciate it if details of materials/drainage solutions could be submitted so that drainage can be assessed as part of the wider application.

PLANNING HISTORY

81/P0459 Construction of 28 bungalows and chalet bungalows Approved
28.04.1981.

On adjacent property – 31 Poplar Tree Drive

20/2104/FUL Construction of two storey side extension, two storey front extension and rear gable dormer window including balcony. Insertion of first floor side window and provision of cladding. Approved 10.05.2021

POLICIES

National Planning Policy Framework National Planning Policy Guidance

Adopted East Devon Local Plan (2013 – 2031)

Strategy 3: Sustainable Development

Strategy 5: Environment

Strategy 6: Development within built-up area boundaries

Strategy 38: Sustainable design and construction

Strategy 39: Renewable and low carbon energy projects

Strategy 47: Nature conservation and geology

Strategy 48: Local distinctiveness in the built environment

Policy D1: Design and local distinctiveness

Policy EN5: Wildlife habitats and features

Policy EN22: Surface run-off implications of new development

Policy TC9: Parking provision in new development

SITE LOCATION AND DESCRIPTION

29 Poplar Tree Drive is a detached early 1980's bungalow on the south side of this unclassified residential road, just to the east of its junction with Barnards Hill Lane, and to the north of later 1980's single and two storey housing in Armada Close. The eastern neighbour to the site (no. 27) is a bungalow, and to the west is a chalet bungalow (no. 31), of steeper roof pitch and correspondingly higher ridge line, for which permission has been granted for ground floor and roof space extensions, to the front, the rear and the side closest to no. 29, together with the construction of a rear first floor balcony near to the eastern end of its altered rear elevation. The application site slopes down to the south east, such that as with its neighbouring dwellings the ground floor level of the building is set below that of the footway and road, and of the dwelling and garden to its north and east, but is set above the level of residences to its south and east. Bungalow and chalet bungalow slab levels are staggered downhill all along the curving length of Poplar Tree Drive from its western beginning at Barnards Hill Lane to its eastern terminus with Harepath Road.

Full planning permission is sought for the enlargement of the existing bungalow by raising its roof ridge by 1.35m, with a consequent increase in the pitch of its main roof planes. Also proposed are an enlarged forward return gable with raised eaves, and two flat roofed dormer windows (front and rear), together with the installation of a solar panel array above the rear south-facing dormer structure. A projecting balcony is proposed at the western end of the rear façade, to be accessed from a new bedroom by glazed sliding doors, and a juliet balcony is shown at the eastern

end of the rear elevation to prevent access through similar full height glazing from the second of three new upper floor bedrooms. The enlarged northern (forward) gable return is designed to provide an open-sided canopy above the existing front entrance to the dwelling. The scheme does not include any increase in the ground floor footprint of the existing building, but would add just under 70 sqm as upper floor area to the dwelling.

Responses are awaited at the time of the preparation of this report to a second round of consultations made following the amendment of the initially submitted scheme. The amendments comprised the addition of a 1.8m high obscured glazed privacy screen at the western end of the proposed rear balcony, and the omission of proposals for a new vehicular access and parking spaces at the front of the property. An update on any comments received will be put before the committee.

ASSESSMENT

Principle of development.

Strategy 6 of the East Devon Local Plan states that

“within the boundaries development will be permitted if:

1. It would be compatible with the character of the site and its surroundings”

Policy D1 of the Local Plan expects applications to demonstrate that

“new development, including the refurbishment of existing buildings to include renewable energy, is of a high quality design and locally distinctive”.

The Policy states (among other text)

“Proposals will only be permitted where they:

1. Respect the key characteristics and special qualities of the area in which the development is proposed.

2. Ensure that the scale, massing, density, height, fenestration and materials of buildings relate well to their context.

3. Do not adversely affect:

a) the distinctive historic or architectural character of the area.

b) the urban form, in terms of significant street patterns, groups of buildings and open spaces.

e) the amenity of occupiers of adjoining residential properties.

4. Have due regard for important aspects of detail and quality and should incorporate:

c) use of appropriate building materials and techniques respecting local tradition and vernacular styles, as well as, where possible, contributing to low embodied energy and CO₂ reduction.”

The site lies within the Built-up Area boundary of Seaton, and is surrounded by residential development. There is no objection in principle to development of this single dwelling, as no additional units are proposed that would result in a change to the grain or density of the residential land use in this part of Seaton.

Design

Generally, the roof scape in the western part of Poplar Tree Drive close to the application site is characterised by simple roof planes, with either eaves or gable ends parallel to the road. Although some homes close to the site have flat roofed dormer windows, these are evident on dwellings with a higher ridge and steeper roof pitch than that of the application building, and on Poplar Tree Drive are confined almost exclusively to the rear elevations of the buildings, being proportioned to show a significant area of roof plane all around the dormer structures. These rear elevations are also visible in places from the south (from Barnards Hill Lane and from Armada Way), but clearly here the context is of secondary, not principal, façades, viewed mainly above intervening private garden areas.

In contrast, the proposed development would introduce a substantial flat roofed dormer structure on the principal elevation of the dwelling (directly facing Poplar Tree Drive), which, in combination with the proposed enlarged and asymmetrical forward gable would disrupt the relatively uncluttered appearance of the street scene.

The proposed flat-roofed extension on the upper rear elevation of the building would cover most of the plane, leaving less than a metre of roof slope between its top surface and the ridge, with none at all to the sides or below the dormer. Because of the scale of the enlargement of the building, this new extension would be highly visible in north / north-eastward views from Barnards Hill Lane and north-westward views from Armada Way. Its over-large design, compounded by full height glazed fenestration, and a projecting balcony, would dominate its context and would jar with the more modest, standard dormer window arrangements of other properties with which it would be read.

It is acknowledged that the proposed installation of a solar panel array on the property would contribute towards the desired movement away from fossil fuel-based energy production on an individually small but cumulatively important basis, in line with Local Plan Strategies 3, 38 and 39, and Policy D1. However, the proposed position of the panels, standing proud of the flat roof of the rear dormer structure, would be visually prominent and at odds with the pattern of installation of similar panels, flush with their host roof slopes, on nearby properties, and would draw further attention to the incongruous design of the rear box dormer. As the scheme shows only a very short inclined roof plane between the top of the proposed dormer flat roof and the new (raised) ridge of the building, there is no opportunity to amend the proposal, by re-positioning the solar panels in a less conspicuous arrangement.

The form, scale, design and position of the proposed extensions are considered not to complement the existing host bungalow nor to fit comfortably with the appearance of surrounding development. The conversion of the building into a chalet bungalow per se would not be alien to the type of development in the vicinity, and there is no objection in principle to the increase in roof ridge and pitch proposed, as the resultant form would follow that of other buildings nearby, and would still be appreciably below the height of the property on its western, uphill flank, so maintaining the stepped effect of housing along Poplar Tree Drive. However, the development proposed would not follow the dormer window proportions and style typical of existing chalet bungalows in the area, nor the arrangement of solar panel installations. It is considered that the scheme would not be compatible with the character of the site and its surroundings, would not respect or relate well to the

scale, massing and fenestration of contextual built forms and would force the inappropriate positioning of micro-generation apparatus. The proposed development would therefore not accord with the objectives of Strategies 3, 6 and 48, nor with the criteria for granting permission set out in Policy D1 of the adopted Local Plan.

Amenity

From the proposed upper floor level of the dwelling new vantage points would be created for users of the site that would enable additional views towards and over adjoining properties compared to those currently possible. As was required for the approved rear balcony on the neighbouring property (no. 31), to safeguard the privacy of occupiers of the house immediately adjacent, the proposal has been amended to show the installation of an obscured glazed screen on the western side of the proposed balcony. With a further such screen also added to the eastern side of the proposed balcony it is considered that, on balance, no harmful additional overlooking of private amenity areas of nearby residences would be enabled, and therefore the scheme could be amended so that it would not conflict with criteria in Local Plan Policy D1 in this regard.

Conclusion

It is considered that while harmful overlooking of neighbouring residential amenity spaces could be prevented with a requirement to install a second screen on the eastern side of the proposed balcony, overall the proposed development would have an unacceptable impact on the character and appearance of the area. The proposed development is considered to conflict with local and national planning policy and guidance, therefore, and is recommended for refusal.

RECOMMENDATION

REFUSE for the following reasons:

The proposed front flat roofed dormer and enlarged asymmetrical return gable would disrupt the roof scape in this part of Poplar Tree Drive. The proposed rear full width flat roofed dormer, extending from eaves height almost to the new raised ridge height, and accentuated by the projecting balcony, full height fenestration, and conspicuous, awkwardly-positioned solar panel array, would be an over-large and incongruous addition to the host structure, which would not be compatible with the character of the site and its surroundings, and would not respect or relate well to the scale, massing and articulation of contextual built forms. The proposed development would therefore not accord with the objectives of Strategies 3 (Sustainable development), 6 (Development within built-up area boundaries) and 48 (Local distinctiveness in the built environment), nor with the criteria for granting permission set out in Policy D1 (Design and local distinctiveness) of the adopted East Devon Local Plan 2013 – 2031, nor with advice contained in the National Planning Policy Framework.

Plans relating to this application:

Combined plans 389 001 rev C received 22.05.2023

List of Background Papers

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

Statement on Human Rights and Equalities Issues

Human Rights Act

The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance

Equalities Act

In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation

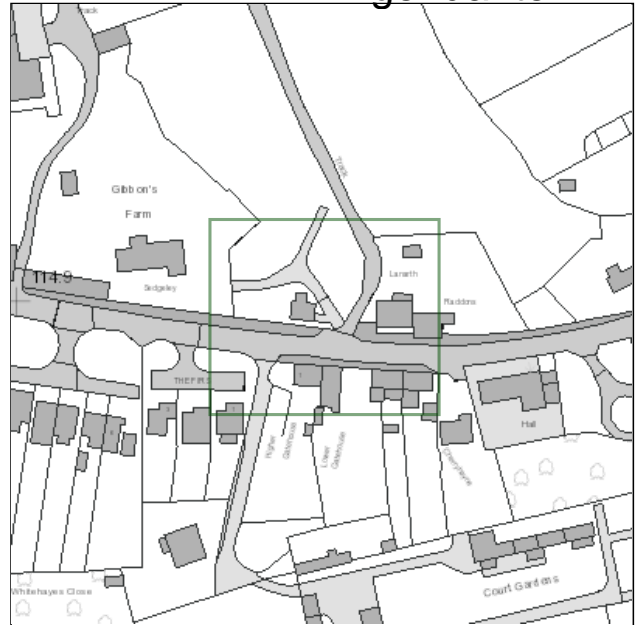
Ward Coly Valley

Reference 23/0459/CPE

Applicant Patricia Warrick

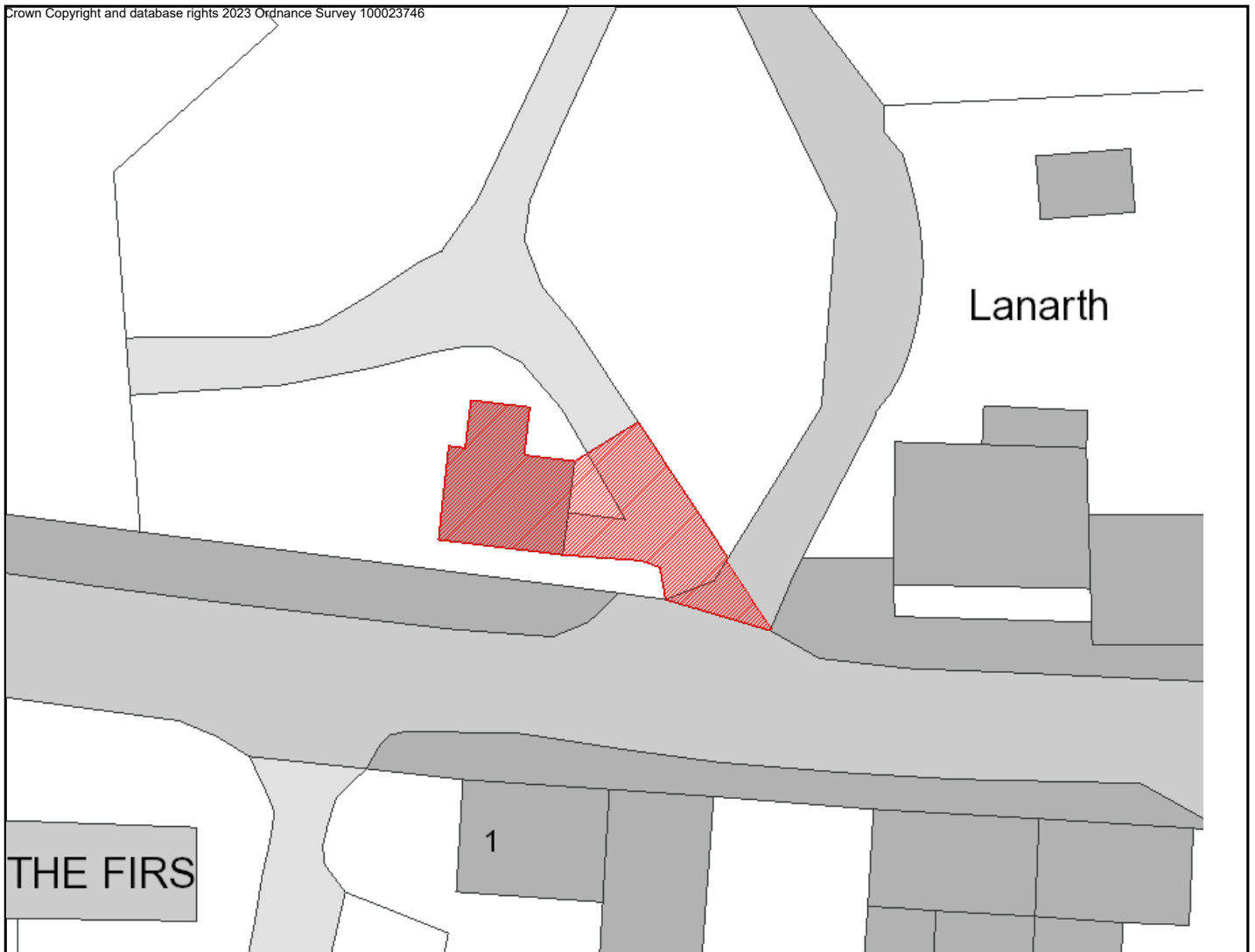
Location Gibbons Farm Wilmington Devon EX14 9JQ

Proposal Application for a lawful development certificate (CLUED) to establish the lawful use of existing vehicular access and adjacent building for domestic garaging and parking of cars



RECOMMENDATION: To grant a certificate of lawful use and development

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		Committee Date: 18.07.2023
Coly Valley (Widworthy)	23/0459/CPE	Target Date: 27.04.2023
Applicant:	Patricia Warrick	
Location:	Gibbons Farm Wilmington	
Proposal:	Application for a lawful development certificate (CLUED) to establish the lawful use of existing vehicular access and adjacent building for domestic garaging and parking of cars	

RECOMMENDATION: To grant a certificate of lawful use and development

EXECUTIVE SUMMARY

This application is before members as the applicant is related to an EDDC Councillor.

The application seeks the granting of a certificate to establish the lawful use of a barn as a domestic garage and creation of a vehicular access onto the A35.

The Planning Practice Guidance highlights that the onus of proof is firmly on the applicant and is therefore responsible for providing sufficient information to support an application. If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate 'on the balance of probability'.

The aerial imagery available to both parties suggests that the barn was constructed between 1951 and 1961. Having also reviewed the Local Authority's GIS mapping, Google Earth & Streetview the access onto the A30 appears to have been constructed prior to 1999 where it has remained.

The submitted statutory declarations provide an insight into the timeline of the building. Mr Griffin, the former owner of Sedgley, purchased the barn with his brother in June 2004 before becoming the sole owner in 2012. Mr Avery, who resides at Raddons, states that it was around this time that an arrangement was made for him to store their car within the barn.

The statutory declaration from Mrs Patricia Warwick, who owns Marton Developments Ltd, states that this arrangement has continued since their

purchase of the site in 2014. Mr Avery also asserts within his own declaration that use of the building for garaging purposes has continued uninterrupted since 2012.

Having considered the submitted evidence and in the absence of any evidence to contradict or doubt the applicant's claims, the LPA cannot reasonably resist the issuing of the certificate. However, the submitted planning statement details that the application seeks lawful use of the building for domestic purposes despite the building being outside the residential curtilage of Sedgely, Raddons and Lanarth. Whilst Mr Avery has used the building for garaging purposes whilst residing at Raddons, the evidence suggests that the use of the building has been for garaging purposes only. The planning class use order makes a clear distinction between residential uses and those for storage purposes (B8), therefore, it is deemed appropriate in this instance for the LPA to exercise their right as per Section 191, (4) and omit the term 'domestic' from the final wording of the certificate.

As such, it is the position of the LPA that the application has only demonstrated that lawfulness for the purposes of garaging, the storage of cars and the formation and use of the access onto the A30. Notwithstanding this, the application is recommended for approval and a certificate should be issued in accordance with the wording provided at the end of this report.

CONSULTATIONS

None

Other Representations

None

Grounds Upon which the Certificate is Submitted

The site consists of a stone and timber clad barn with a corrugated sheet roof. The building is slightly set back from the A35 and largely screened by the stone and hedging that lines the southern boundary. The buildings location, appearance, form and materials suggest that it was at some point used for agricultural purposes, likely associated with Gibbons Farm.

The application seeks the granting of a certificate to establish the lawful use of a barn as a domestic garage and creation of a vehicular access onto the A35.

Analysis

Section 191 of the Town and Country Planning (T & CP) Act 1990 (as amended by the Planning and Compensation Act 1991) allows a person to apply to a Local Planning Authority (LPA) seeking a lawful development certificate to determine the lawfulness for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition.

The T & CP Act sets out that lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force.

Section 171B of the T & CP Act sets out the time limits under which local planning authorities are able to take planning enforcement action:

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

The Planning Practice Guidance highlights that the onus of proof is firmly on the applicant where the applicant is responsible for providing sufficient information to support an application. Further, case law under *F W Gabbitts v SSE* and *Newham LBC [1985] JPL 630* held that the applicant's own evidence does not need to be corroborated by 'independent' evidence in order to be accepted. If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate 'on the balance of probability'.

Evidence Submitted by the Applicant

- Review of historical OS mapping within the Planning Statement.
- Review of Aerial Imagery and Google Earth & Street View.
- Statutory Declaration from Richard Griffin former owner of Sedgeley and Gibbons Farm.
- Statutory Declaration from Patricia Ann Warwick, Director of Marton Developments.
- Statutory Declaration from Patrick Avery, owner of Raddons and current user of the barn.

Evidence Available to the Local Planning Authority

- Aerial Imagery
- Historical OS maps
- Google Earth and Street View.

Review of the Evidence

The aerial imagery available to both parties suggests that the building was constructed between 1951 and 1961. It is also acknowledged that GIS mapping and Google Earth & Streetview show the access being in-situ prior to 1999 where it has remained.

The submitted statutory declarations provide an insight into the timeline of the building. Mr Griffin, the former owner of Sedgley, purchased the barn with his brother in June 2004 before becoming the sole owner in 2012. The submitted declarations indicate that Mr Avery, who resides at Raddons, state that it was around this time that an arrangement was made for him to store their car within the barn.

The statutory declaration from Mrs Patricia Warwick, who owns Marton Developments Ltd states that this arrangement has continued since their purchase of the site in 2014. Mr Avery also asserts within his own declaration that the use of the building for garaging purposes has continued uninterrupted since 2012.

CONCLUSION

Having considered the submitted evidence and in the absence of any evidence to contradict or doubt the applicant's claims, the LPA cannot reasonably resist the issuing of the certificate. However, the submitted planning statement details that the application seeks lawful use of the building for domestic purposes despite the building being outside the residential curtilage of Sedgely, Raddons and Lanarth. Whilst Mr Avery has used the building for garaging purposes whilst residing at Raddons, the evidence suggests that the use of the building has been for garaging purposes only. The planning class use order makes a clear distinction between residential uses and those for storage purposes (B8), therefore, it is deemed appropriate in this instance for the LPA to exercise their right as per Section 191, (4) and omit the term 'domestic' from the final wording of the certificate.

As such, it is the position of the LPA that the application has only demonstrated that lawfulness for the purposes of garaging, the storage of cars and the formation and use of the access onto the A30. Notwithstanding this, the application is recommended for approval and a certificate should be issued in accordance with the wording provided at the end of this report.

RECOMMENDATION

A certificate is to be granted confirming lawful use of the barn as a garage and the formation and use of the access onto the A30.

NOTE FOR APPLICANT

Informative: Confirmation - No CIL Liability

This Informative confirms that this development is not liable to a CIL charge.

Any queries regarding CIL, please telephone 01395 571585 or email cil@eastdevon.gov.uk.

Informative:

In accordance with the aims of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 East Devon District Council works proactively with applicants to resolve all relevant planning concerns; however, in this case the application was deemed acceptable as submitted.

Plans relating to this application:

Location Plan	02.03.23
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List of Background Papers

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

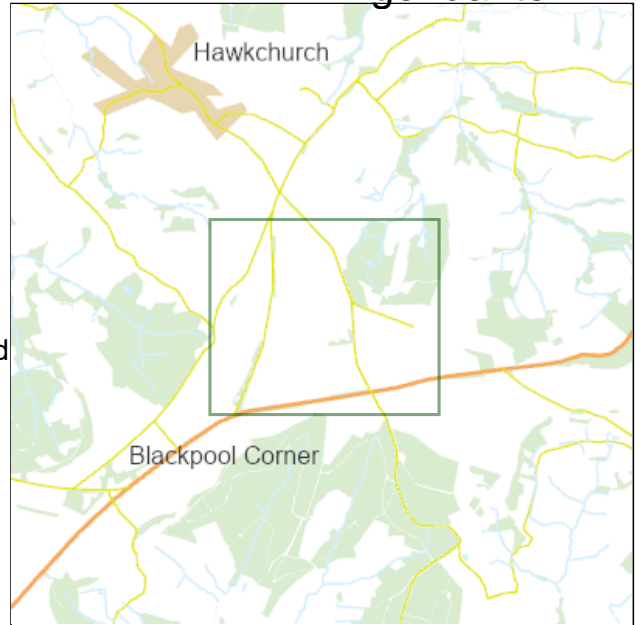
Ward Yarty

Reference 23/1124/MFUL

Applicant C/o Agent

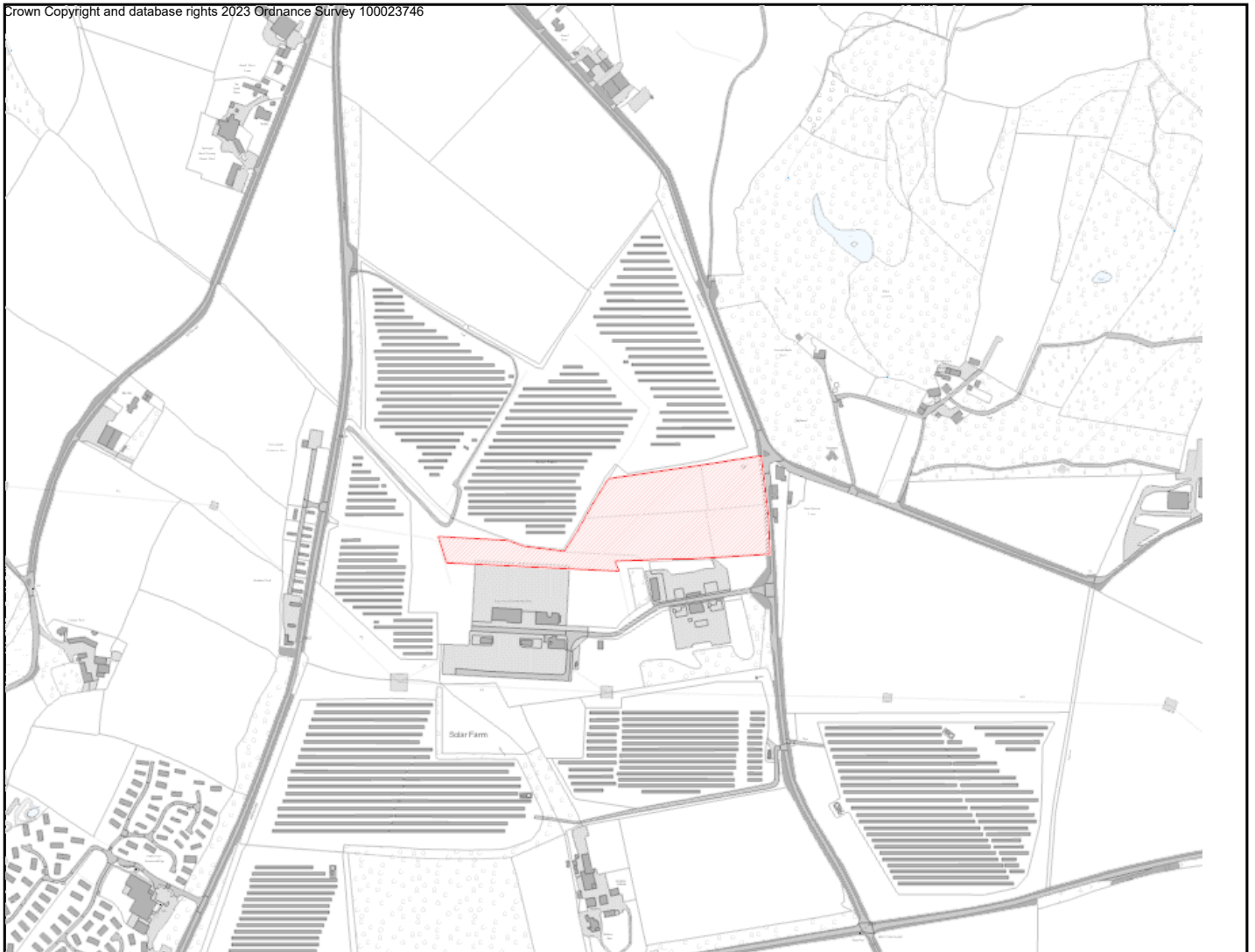
Location Pound Road Bess Land North East Of Axminster National Grid Substation Pound Road Hawkchurch

Proposal The installation of a battery energy storage system with associated infrastructure and works.



RECOMMENDATION: Approval with conditions

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		Committee Date:
Yarty (Hawkchurch)	23/1124/MFUL	Target Date: 24.08.2023
Applicant:	C/o Agent	
Location:	Pound Road Bess Land North East Of Axminster National Grid Substation	
Proposal:	The installation of a battery energy storage system with associated infrastructure and works.	

RECOMMENDATION: Approval with conditions

EXECUTIVE SUMMARY

This application is being considered by the Planning Committee because the recommendation is contrary to the views of the Ward Member.

This application is a re-submission of the proposal refused permission under application 22/2216/MFUL, which is now subject of a planning appeal by way of a Public Inquiry. The application includes additional supporting information that attempts to address the lack of evidence cited in the previous reasons for refusal.

The application seeks permission for a Battery Energy Storage System (BESS) and associated equipment (substations, inverters etc.) in a field adjacent to a solar farm and electricity distribution site. The site is located in the open countryside but is considered to meet the definition of ‘low carbon technology’ as defined in the Local Plan. As such it is acceptable in principle under Strategy 39 (Renewable and Low Carbon Energy Projects) subject to other considerations.

The development would include a number of different plant and equipment being installed in a rural area. However, this would be sited in and near an existing solar farm, has good existing landscaping/screening and therefore the effect on the character and appearance of the area (which has no landscape designations) would be limited.

The site would use grade 3a (Best Most Versatile) agricultural land although the usefulness of the land for meaningful agricultural production is considered to be limited due to its size, shape and lack of association with other fields in agricultural production. The loss of BMV land is considered to be outweighed by the benefits of the proposal which are the contribution the installation would

make to towards reduction in greenhouse gas emissions, grid balancing capabilities and the associated projected savings in energy production costs for consumers.

There are a number of objections to the scheme including matters regarding safe operations of the site but it is considered that the proposal is acceptable and that many of these concerns are either regulated by other regimes or can be addressed through appropriate planning conditions.

CONSULTATIONS

Local Consultations

Yarty - Cllr Duncan Mackinder

I am unable to support this application for many reasons, primarily:

1 significant risks to the local environment, local population and first responders in the event that a malfunction caused thermal runaway leading to fire or explosion.

2 the industrial nature of such sites is not in keeping with the adjacent rural and unspoilt landscape

3 the impact of noise from necessary cooling systems on local residents, visitors and wildlife in the surrounding area

4 BESS increase the carbon emissions associated with the electricity supply so are not truly green.

5 BESS generally store energy for a matter of hours not the longer periods required to enable our power infrastructure to accept renewably generated power at times it can be most efficiently generated and supply power at times when it is most in demand.

I do not think that BESS make much sense as part of a low-carbon power infrastructure in general, and in particular make even less sense in remote, rural locations with high environmental, ecological and amenity value.

I therefore recommend this application be REJECTED.

Hawkchurch Parish/Town Council

June 2023

It is the decision of Hawkchurch Parish Council to OBJECT to this application and respectfully request that it is refused at determination for the reasons set out below:

Environmental pollution and community health and safety

We believe there is a risk of major accident, with resulting significant risks to the local population, impact on water supplies, and risk of pollution of rivers and farmland.

The risks to the population in the event of a fire, possible explosion, and release of toxic fumes, cannot be overstated. Multiple properties in the vicinity are not on mains supply and take their water from bore holes or springs. In addition, this area drains via the Blackwater River into the River Axe. We are seriously concerned about the environmental contamination risk in the event of a fire and alarmed by the risk to local residents who are dependent on natural water sources.

The most common deployment of energy storage installations is industrial lithium batteries. These make up more than 90% of the UK's storage capacity. On 7th September 2022, a Private Members Bill was introduced by Dame Maria Miller (Con) to the House which highlights the safety issues surrounding large scale Lithium-ion battery installations and calls for them to be categorized as hazardous.

This would bring the HSE controls of hazardous substances into play for all such installations. Some argue that developers are responsible for doing the proper assessments as part of the planning application and demonstrate whether the proposal should be classified under COMAH or not.

There are several well documented safety risks with large-scale lithium-ion battery storage:

- If charging or temperature controls fail, or if they get damaged, lithium-ion batteries are susceptible to a process called thermal runaway – essentially a fire that generates its own oxygen supply so cannot be put out by suppressants, water etc as it can re-ignite itself. The accepted way to deal with a lithium-ion battery fire is to cool it with water and allow it to burn out completely. With large-scale installations cooling is essential to prevent spread to other battery containers.
- When water is mixed with either the electrolyte or gases emitted because of the chemical reaction taking place as thermal runaway progresses, toxic compounds are generated, including hydrofluoric acid – one of the most corrosive acids. Very large volumes of water are needed as the thermal runaway reaction can take several days to exhaust the chemical supply
- Toxic gases are released because of the fire and can lead to explosion –there have been instances where firefighters have been killed or seriously injured.

In the context of Hawkchurch, these issues are exacerbated due to the location and geology:

The site is located on an aquifer which supplies bore holes, springs and drinking wells to many properties in the Parish. Unless there is a requirement for a vast storage tank for wastewater from firefighting, toxic water would penetrate contaminate water supplies, potentially spreading some distance via the greensand. **This would be catastrophic for residents in the Parish.**

The sheer volume of water needed to cool batteries while they burn out is a key issue, both from the perspective of containment of contaminated firewater runoff and in relation to the availability of supply.

The volume of water required to adequately cool BESS in the event of thermal runaway is vast. The Liverpool BESS fire was cooled for 59 hours predominantly by two fire engines and with the use of a high-volume pump). The recently published guidance from the UK Fire Chiefs indicates that a flow rate of at least 1900 litres per minute is required. They deem that at least 2 hours supply should be immediately available as a minimum and that minimum is dependent on how quickly the fire service could deploy high-volume pumps. Note that it took more than six hours to extinguish the Liverpool fire and that cooling has to continue once the fire is extinguished as lithium-ion battery fires are known to re-ignite. In Australia, the report of the Victoria fire showed that **900,000 litres of contaminated firewater runoff** were removed and disposed of after the event.

The water supply network in Hawkchurch is fragile and we have regular mains failures. There is no point of access to water supplies specified in the proposals and no storage facilities indicated in the plans.

Another factor is the time it would take to deploy the fire service to Hawkchurch. The nearest fire service is 20 minutes away and the nearest one is a co-responder station with volunteer firefighters. Fire could well have spread beyond a single container before firefighters arrive, making the situation more dangerous. Multiple fire engines and a high-volume pump were deployed to the Liverpool fire and arrived five minutes after they were called. That level of immediate support is hard to imagine here.

As a result, we are seriously concerned about any proposed installation of industrial-scale battery storage solutions that includes lithium-ion batteries or any other chemical battery that represents a hazard to human health or extensive environmental contamination in the event of a major accident.

We understand there may be a temptation to expect technical aspects of such developments to be resolved at a later stage, but we note that experts advise that fire services should be engaged much earlier with such hazardous proposals.

The volumes of firewater involved are vast and the consequences of these should be considered as part of the planning process because of the impact that including suitable containment or separation would have on:

- the scale of the development and groundworks.
- the impact of the development locally.
- the likelihood of being able to return the site to agricultural use in the future.

Furthermore, the Fire Chief's guidance contains recommendations for spacing and clearance from surrounding vegetation around the storage containers that are in no way adequate in any version of the proposals. In addition, they recommend more than one access point, a perimeter road and space for fire fighting vehicles, none of which is evident and may prove difficult to achieve on this site.

Environment Agency Guidance requires places where residents access natural water supplies through boreholes or springs should be treated as Source Protection Zones. There is no mention of any SPZs in any of the documentation.

Environment Agency Guidance requires contaminated firewater to be contained or separated and subsequently safely disposed of. Again, there is no provision for such contingency in any of the plans and as explained above the volumes would be vast. Note that the contaminated land officer's indication of containment volume would not be adequate for containment of contaminated run-off from a thermal runaway event.

Risks from BESS fires are real and need to be dealt with accordingly. A letter from HSE NI, submitted to the planning inspectorate examination of the Sunnica Energy Farm application, shows that they consider the risks of fire and explosion to be real:

'An explosion from a single BESS container can cause an overpressure resulting in the partial demolition of a house up to 45 meters away. A hydrogen fluoride plume generated by a fire can cause serious injury up to 45 meters away.'

'A BESS with the capability of 21.3 MWH, using the work by Larsson et al. (2017), a fire involving all batteries would produce 4.26 tonnes of hydrofluoric acid and 469 tonnes of POF3. If a fire generates other hazardous substances, the threshold for COMAH and HSC could be exceeded using the aggregation rule.'

Bear in mind that the likely fire service response will be very slow compared with the Liverpool incident. Hawkchurch is remote and even the most local volunteer fire service would take 20 minutes to arrive. The fire service was on site in Liverpool within 5 minutes. Given the potential explosion hazard, we question the proposed siting of this installation so close to the distribution substation. There are no thermal barriers or other protective measures included in the proposal.

Residents views

As part of our Neighbourhood Planning work, we have consulted with the Parish regarding the position of the Parish Council in relation to battery energy storage schemes. We had a response rate of more than 50% from households in the parish, of which **85% regard Lithium-ion battery storage on this scale as unsafe.** Furthermore **85% of households also felt that such installations were industrial in nature and should only be permitted with strong controls on safety and impact.** We ask you to take note of this and the fact that we have been bombarded with planning applications for industrial 'renewable' energy applications over the last few years, including multiple revisions and requests for supplementary comments. Not surprisingly residents are becoming fed up with having to repeatedly make an objection and it is causing planning blight for some residents. Please take account of the overwhelming and strong feeling there is that was demonstrated by the survey results and attendance at Parish meetings.

We urge you to take seriously the possibility of a foreseeable event which is likely to be harmful to both people and the environment. **This is not a suitable site for such**

a development, especially if the battery type is lithium-ion, in which case it would be grossly negligent to permit it. It is worth noting a comment made by Deputy Fire Safety Commissioner of the London Fire Brigade, Charlie Pugsley, in discussions about BESS fire safety that:

'If we know some things could fail catastrophically or it could have those effects," he said, "it's going to be a difficult day if one of us is standing there in court saying we knew about it, but we didn't do anything.'

We also note that Defra have published legally binding principles which include:

- The prevention principle means that government policy should aim to prevent environmental harm.
- The rectification at source principle means that any environmental damage should, as a priority, be addressed at its origin to avoid the need to remedy its effects later.
- The precautionary principle states that where there are threats of serious or irreversible environmental damage, a lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

All these point to the need not to take the issue of large-scale battery storage lightly. Given Grenfell as an example of how it is incumbent on authorities to assess risk themselves and take appropriate action, rather than go with the flow, it would be negligent of all of us not to ensure that any battery storage schemes are developed without the appropriate level of containment in the event of a major accident. In this case we believe the River Axe catchment area and the health of residents who draw water from the natural supplies in Hawkchurch would be at risk in the event of a battery fire at this site.

Siting of the proposal and alternatives

The guidance that goes alongside the National Planning Policy Framework states:

“There are no hard and fast rules about how suitable areas for renewable energy should be identified, but in considering locations, local planning authorities will need to ensure they take into account the requirements of the technology and, **critically, the potential impacts on the local environment, including from cumulative impacts. The views of local communities likely to be affected should be listened to.”**

“...protecting local amenity is an important consideration which should be given proper weight in planning decisions.”

“Cumulative landscape impacts and cumulative visual impacts are best considered separately. The cumulative landscape impacts are the effects of a proposed development on the fabric, character and quality of the landscape; it is concerned with the degree to which a proposed renewable energy development will become a significant or defining characteristic of the landscape.

Cumulative visual impacts concern the degree to which proposed renewable energy development will become a feature in particular views (or sequences of views), and the impact this has upon the people experiencing those views. Cumulative visual impacts may arise where two or more of the same types of renewable energy development will be visible from the same point or will be visible shortly after each other along the same journey. Hence, it should not be assumed that, just because no other sites will be visible from the proposed development site, the proposal will not create any cumulative impacts.”

The Planning Committee recently refused permission for a similar development in the immediate vicinity and agreed that there would be a cumulative impact.

The developer should be asked to consider other sites – there is no evidence that they have done so adequately.

Renewal energy and low carbon developments

We recognise the need for energy storage to support the national strategy. We believe EDDC should be considering what the district can do to encourage good development. By encouraging storage, and where possible generation, to be co-located with heavy consumers (be it industry, residential, hospital etc) it would make certain that the benefit is within the district and is much more likely to be supporting renewable energy (which energy arbitrage does not!).

We do not believe this proposal constitutes a renewable energy or low carbon development. It is not directly connected to the adjacent PV solar farms. It is likely that it will store more energy from fossil fuel sources than either wind or solar sources. The source of stored energy may be from plants in the UK or, via interconnectors, from other countries. The batteries would draw power at times of low demand (usually at night) and sell it back to the grid at times of peak demand through price arbitrage or balancing contracts. Only 2/3 of the power stored is likely to be returned to the grid due to degradation, AC and DC loss. Power can only be stored for a matter of hours, not days or months. The batteries are likely to have to be replaced within 10 years leading to issues with recycling. At present there are unclear routes for recycling lithium-ion batteries from grid scale storage, making them unsustainable. Battery storage units have been shown to have a high carbon footprint.

Scotland’s centre of expertise connecting climate change research and policy (climatexchange.org.uk) states:

“To provide some context, it is important to note that battery storage is not of itself ‘green’ in any way: it uses substantial quantities of materials, and around 15% of the energy imported is wasted as heat.”

The EDDC Planning Committee determined that a previous proposal for this site (planning application 22/2216/MFUL) was not considered to be a renewable or low carbon energy project as there was no evidence that it would be used to store energy from low carbon sources and therefore represented inappropriate development in the countryside. There is similarly no evidence to support this application as a renewable or low carbon project.

Visual, landscape and amenity impact

We agree with the EDDC landscape officer in his assessment of the proposals: 'The site will have a major adverse impact on the site itself introducing incongruous industrial infrastructure into an undeveloped field in open countryside'.

We feel that there will be a significant and unacceptable impact on the character of the landscape as screening will take many years to establish and we know from the visibility of extensive local solar farms that in winter the screening is wholly inadequate. Solar farms are one thing, industrial containers are totally unacceptable and out of place - there are 48 very large shipping containers in addition to the cooling and electrical systems for each container. Please stop and think about what that really looks like.

The application is contrary to Strategy 7 (Development in the Countryside), Strategy 39 (Renewable and Low Carbon Energy Projects) and Strategy 46 (Landscape Conservation and Enhancement and AONBs) and EN14 (Control of Pollution) of the East Devon Local Plan. It is also contrary to the guidance on the interpretation of renewable energy developments with respect to cumulative impact. We also believe that the applicant should have consulted both with HSE and EA in relation to the risks associated with the possible loss of control of operations (COMAH/ SEVESO legislation).

It is the decision of Hawkchurch Parish Council that we continue to object to this application and respectfully request that it is refused at determination.

**Hawkchurch Parish Council
June 202**

Technical Consultations

EDDC Landscape Architect
1 INTRODUCTION

This report forms the EDDC's landscape response to the full application for the above site.

The report provides a review of landscape related information submitted with the application in relation to adopted policy, relevant guidance, current best practice and existing site context and should be read in conjunction with the submitted information.

2 REVIEW OF SUBMITTED DETAILS

Landscape and Visual Appraisal

The assessment is the same as submitted with the previous application (22/2216/MFUL) and does not reflect subsequent changes to the site layout including the omission of the previously proposed 4m high earth bund. The description of the proposed works and associated effects should be amended to reflect the current site layout.

Preliminary Site Layout (dwg. no. AR-01-L16 rev. 4)

The revised layout is generally acceptable but a minimum 2m width access corridor should be provided between the face of the proposed hedgebank on the eastern edge of the battery compound and the adjacent acoustic fence, to allow light to the western face of the hedgebank and provide an adequate maintenance corridor between it and the acoustic fence.

The extent of woodland planting to the frontage of the site is limited by requirements for underground attenuation in the northeast corner of the site. However to the south of the site access road the proposed width of woodland planting should be extended to within 3m of the existing roadside hedgebank.

The proposed woodland mix should be amended to include a mix of tree species such as birch, holly, crab apple, oak supplied as both transplants and featherds.

Soft landscape proposal (dwg.no. BLA 146-01 revision D)

The layout should be amended to reflect comments above regarding the width between the proposed acoustic fence and hedgebank and increased area of woodland.

Reference is made on the drawing to Devon Hedge Group hedgebank detail 'Hedge Creation 1'. For the avoidance of doubt the actual detail proposed should be submitted as part of the application.

The planting notes should be expanded to cover, soil depths and quality, weed clearance, mulching, tree pits and staking and means of protection during establishment period.

A method statement for the construction of the hedgebank should be provided by condition should the application be approved.

Drainage strategy (dwg. no. D100 revision P2)

The layout shown on the drainage strategy is based on the previous site layout and should be amended to reflect the change in the site access road alignment shown on the preliminary site layout plan as this may affect the layout of the attenuation crates.

Consideration should be given to changing the internal access roads from tarmac to bound gravel surface which would be more in keeping and increase site permeability.

A further increase in site permeability could be achieved by raising the container units slightly above finished ground level, with shallow attenuation pits beneath and providing an open ditch between the proposed acoustic fence and Devon hedgebank.

The above measures could help to reduce the volume of attenuation crates required as well as providing additional bio-diversity benefit.
Battery Fence and Gate Details dwg. no. AR—P10

The gates are shown as up to 6m wide. As the access road is only 4m wide the gate width should be amended to match.

Acoustic fence

A detail for the acoustic fence including colour finishes is required. This could be provided by condition.

CONCLUSIONS & RECOMMENDATIONS

3.1 Acceptability of proposals

The application will have an adverse impact on the site itself introducing incongruous industrial infrastructure into an undeveloped field in open countryside and altering the topography, notwithstanding the existing electricity and renewable infrastructure to the south, west and north. The visual impact will be greatest during construction and at completion of installation works. However, views into the site are limited and development would not be visible in long views across the landscape. Whilst there would be some harm initially to local landscape character and the appearance of the area in close views from Pound Road, these are capable of mitigation in the medium term with appropriate site design and planting.

There are some issues with the submitted details as noted at section 2 above which should be resolved prior to determination or, where noted, by condition should the application be approved.

3.2 Conditions

Should the application be approved the following conditions should be imposed:

1) No development work shall commence on site until the following information has been submitted to and approved by the LPA:

a) Soft landscape specification covering soil quality and depth; soil preparation; planting and sowing; mulching; means of plant support and protection during establishment period and 5 year maintenance schedule.

b) Tree pit and tree staking/ guying details.

c) Method statement for creation and maintenance of species rich grassland and wetland habitats.

d) Details of proposed colour finishes to fencing and housings for inverters, storage units and batteries, including relevant BS/ RAL reference.

e) Details of proposed under and over ground cable routes together with method statements for taking underground cables through any hedgebanks.

f) Construction details for proposed hardstandings, trackways and associated kerbing and edgings.

g) A soil resources plan prepared in accordance with Construction Code of Practice for the Sustainable use of Soils on Construction Sites - DEFRA September 2009, which should include:

- a plan showing topsoil and subsoil types based on trial pitting and laboratory analysis, and the areas to be stripped and left in-situ.
- methods for stripping, stockpiling, re-spreading and ameliorating the soils.
- location of soil stockpiles and content (e.g. Topsoil type A, subsoil type B).
- schedules of volumes for each material.
- expected after-use for each soil whether topsoil to be used on site, used or sold off site, or subsoil to be retained for landscape areas, used as structural fill or for topsoil manufacture.
- identification of person responsible for supervising soil management.

h) A phasing plan for construction. This should identify the early construction and planting of Devon hedgebanks to ensure that turves from site excavations are available for construction of the banks themselves and to enable associated planting to establish as soon as possible.

i) Method statement for construction of Devon hedgebanks including construction detail, details of proposed specialist sub-contractor demonstrating relevant experience experienced in traditional hedgebank construction, method of turf cutting and placement, supply and compaction of soil fill.

2) Notwithstanding the landscape details submitted, no site works shall begin until a site specific Landscape and Ecology Management and Maintenance Plan has been submitted to and approved in writing with the Local Planning Authority. This shall set out responsibilities for maintenance within the site and cover the construction, establishment, management and ongoing maintenance of landscape elements and bio-diversity measures.

The Plan shall set out the landscape and ecological aims and objectives for the site along with the specific management objectives for each landscape/ ecological component, and the associated maintenance works required on an Annual and Occasional basis. Details of inspection, monitoring and reporting arrangements shall also be provided.

The plan shall include an as-existing condition survey for each length of hedge, identifying its position on the Hedgelink hedge management cycle, any initial works required to bring to good condition, such as gapping up, removal of invasive species etc. and requirements for cutting including intended height range, cutting height and frequency.

The Plan shall cover a period of not less than 30 years following the substantial completion of the development and shall be reviewed every 5 years and updated to reflect changes in site conditions and management prescriptions in order to meet the stated aims and objectives.

Management, maintenance inspection and monitoring shall be carried out in accordance with the approved plan for the duration of the operational phase of the development.

3) No site works shall begin until a detailed decommissioning plan has been submitted for reinstatement of the site at the termination of the consent period or in the event that the proposed development ceases to operate prior to that. The plan should cover the removal of all site infrastructure and identify any areas of new habitat creation/ planting to be retained. The plan should show how the site will be returned to agricultural use and shall include a demolition and restoration programme.

4) The works shall be carried out in accordance with the approved details. Any new planting or grass areas which fail to make satisfactory growth or dies within five years following completion of the development shall be replaced with plants of similar size and species to the satisfaction of the LPA.

(Reason - In the interests of amenity and to preserve and enhance the character and appearance of the area in accordance with Strategy 3 (Sustainable Development), Strategy 5 (Environment), Policy D1 (Design and Local Distinctiveness), Policy D2 (Landscape Requirements) of the East Devon Local Plan.

EDDC Trees

It is noted that it appears that arboricultural impact assessment accompanying the new proposal, which includes a tree survey, tree constraint plan and tree protection plan is the same as for the previous application though for a slightly amended scheme. The new scheme is considered an improvement on the previous from a tree perspective and no concerns are raised. I therefore have no objection. However if consent is granted, an up to date tree protection plan will be required.

The following condition should be put in place to ensure the retained trees are afforded protection during construction.

(a) Prior to the commencement of any works on site (including demolition and site clearance or tree works), an up to date scheme for the protection of the retained trees, hedges and shrubs shall be produced in accordance with the principles embodied in BS5837 :2012, which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, [including trees which are the

subject of a Tree Preservation Order currently in force], shall be submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in complete accordance with the approved protection scheme.

(b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.

c) No burning shall take place in a position where flames could extend to within 5m of any part of any tree to be retained.

(d) No trenches for services or foul/surface water drainage shall be dug within the crown spreads of any retained trees (or within half the height of the trees, whichever is the greater) unless agreed in writing by the Local Planning Authority. All such installations shall be in accordance with the advice given in Volume 4: National Joint Utilities Group (NJUG) Guidelines For The Planning, Installation And Maintenance Of Utility Apparatus In Proximity To Trees (Issue 2) 2007.

(e) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.

(f) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.

g) No trees, shrubs or hedges within the site which are shown as being planted or retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed without the prior written consent of the Local Planning Authority. Any trees, shrubs or hedges removed without such consent, or which die or become severely damaged or seriously diseased within five years from the occupation of any building, or the development hereby permitted being brought into use shall be replaced with trees, shrubs or hedge plants of similar size and species unless the Local Planning Authority gives written consent to any variation.

(Reason - To ensure retention and protection of trees on the site prior to and during construction in the interests of amenity and to preserve and enhance the character and appearance of the area in accordance with Policies D1 - Design and Local Distinctiveness and D3 - Trees and Development Sites of the Adopted New East Devon Local Plan 2013-2031).

Contaminated Land Officer

I recommend approval with the following condition:

A containment mitigation scheme must be in place in order to minimise the risks in the event of a battery leak or thermal runaway event taking place on the site. The

secondary containment must be impermeable to the specific chemicals contained within the batteries. The minimum volume of the secondary contaminant should be at least equivalent to the capacity of the batteries plus 10% and have no opening used to drain the system. The containment mitigation scheme should be submitted to, and approved in writing by, the LPA. The scheme shall be implemented as approved.

DCC Flood Risk SuDS Consultation

Recommendation:

At this stage, we object to this planning application because we do not believe that it satisfactorily conforms to Policy EN22 (Surface Run-Off Implications of New Development) of the East Devon Local Plan (2013-2031). The applicant will therefore be required to submit additional information in order to demonstrate that all aspects of the proposed surface water drainage management system have been considered.

Observations:

The applicant have previously submitted the same application under Planning Permission 22/2216/MFUL.

The applicant have submitted Pound Road Battery Energy Storage System Land North East of Axminster National Grid Substation, Pound Road, Hawkchurch (Report Ref. 22-0428, Rev. 02, dated August 2022) together with a covering letter dated 27th February 2023 to address the comments that we made under Planning Permission 22/2216/MFUL.

Infiltration testing have been carried out and an infiltration rate of 1.9×10^{-5} m/s (0.070m/hr) was used in sizing the soakaway for an impermeable area of 0.680ha (0.533ha for the substation and battery storage facilities and 30% of 0.488ha of graveled areas). It was mentioned in Section 2.9 of the report that a deeper trial pit of 2.7m was excavated and no groundwater was encountered.

We are pleased to see that infiltration testing has been undertaken on site and that an infiltration based solution is proposed. However in the absence of groundwater monitoring, we would require an alternative attenuation based strategy to be put forward in case the results of the monitoring indicate that there is water within the required 1m of unsaturated zone between the base of the soakaway and the maximum winter groundwater level. The alternative strategy should have a feasible discharge receptor.

The covering letter mentioned that there is a drainage ditch located along the site eastern boundary which provide an alternative suitable point for surface water to be discharged. The applicant shall therefore provide a plan showing the connection to the ditch together with the calculation to identify the attenuation storage required to enable us to approve this planning application.

Yours faithfully
Hock Lee
Flood and Coastal Risk SuDS Engineer

DCC Highway Authority

Comment Date: Fri 30 Jun 2023

Observations:

I have visited the site in question and reviewed the planning documents.

Solar farms and battery energy storage systems tend to produce limited trip generation once in use due to the nature of the works and minimal maintenance required.

Therefore to assist in the time-limited construction period, I recommend the provision of a Construction and Environment Management Plan, (CEMP), to help mitigate the effects upon the local highway network.

Recommendation:

THE HEAD OF PLANNING, TRANSPORTATION AND ENVIRONMENT, ON BEHALF OF DEVON COUNTY COUNCIL, AS LOCAL HIGHWAY AUTHORITY, MAY WISH TO RECOMMEND CONDITIONS ON ANY GRANT OF PLANNING PERMISSION

1. Prior to commencement of any part of the site the Planning Authority shall have received and approved a Construction Management Plan (CMP) including:

- (a) the timetable of the works;
- (b) daily hours of construction;
- (c) any road closure;
- (d) hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8:00am and 6pm Mondays to Fridays inc.; 9.00am to 1.00pm Saturdays, and no such vehicular movements taking place on Sundays and Bank/Public Holidays unless agreed by the planning Authority in advance;
- (e) the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;
- (f) the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
- (g) areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the County highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;
- (h) hours during which no construction traffic will be present at the site;
- (i) the means of enclosure of the site during construction works; and
- (j) details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site
- (k) details of wheel washing facilities and obligations
- (l) The proposed route of all construction traffic exceeding 7.5 tonnes.
- (m) Details of the amount and location of construction worker parking.
- (n) Photographic evidence of the condition of adjacent public highway prior to commencement of any work;

Officer authorised to sign on behalf of the County Council

30 June 2023

Annex A – Additional advice

Natural England offers the following additional advice:

Landscape

Paragraph 174 of the National Planning Policy Framework (NPPF) highlights the need to protect and enhance valued landscapes through the planning system. This application may present opportunities to protect and enhance locally valued landscapes, including any local landscape designations. You may want to consider whether any local landscape features or characteristics (such as ponds, woodland, or dry-stone walls) could be incorporated into the development to respond to and enhance local landscape character and distinctiveness, in line with any local landscape character assessments. Where the impacts of development are likely to be significant, a Landscape & Visual Impact Assessment should be provided with the proposal to inform decision making. We refer you to the Landscape Institute Guidelines for Landscape and Visual Impact Assessment for further guidance.

Best and most versatile agricultural land and soils

Local planning authorities are responsible for ensuring that they have sufficient detailed agricultural land classification (ALC) information to apply NPPF policies (Paragraphs 174 and 175). This is the case regardless of whether the proposed development is sufficiently large to consult Natural England. Further information is contained in GOV.UK guidance Agricultural Land Classification information is available on the Magic website on the Data.Gov.uk website. If you consider the proposal has significant implications for further loss of ‘best and most versatile’ agricultural land, we would be pleased to discuss the matter further.

Guidance on soil protection is available in the Defra Construction Code of Practice for the Sustainable Use of Soils on Construction Sites, and we recommend its use in the design and construction of development, including any planning conditions. For mineral working and landfilling separate guidance on soil protection for site restoration and aftercare is available on Gov.uk website. Detailed guidance on soil handling for mineral sites is contained in the Institute of Quarrying *Good Practice Guide for Handling Soils in Mineral Workings*.

Should the development proceed, we advise that the developer uses an appropriately experienced soil specialist to advise on, and supervise soil handling, including identifying when soils are dry enough to be handled and how to make the best use of soils on site.

Protected Species

Natural England has produced standing advice to help planning authorities understand the impact of particular developments on protected species. We advise you to refer to this advice. Natural England will only provide bespoke advice on protected species where they form part of a Site of Special Scientific Interest or in exceptional circumstances.

<https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals>

Local sites and priority habitats and species

You should consider the impacts of the proposed development on any local wildlife or geodiversity sites, in line with paragraphs 175 and 179 of the NPPF and any relevant development plan policy. There may also be opportunities to enhance local sites and improve their connectivity. Natural England does not hold locally specific information on local sites and recommends further information is obtained from appropriate bodies such as the local records centre, wildlife trust, geoconservation groups or recording societies.

Priority habitats and Species are of particular importance for nature conservation and are included in the England Biodiversity List published under section 41 of the Natural Environment and Rural Communities Act 2006. Most priority habitats will be mapped either as Sites of Special Scientific Interest, on the Magic website or as Local Wildlife Sites. List of priority habitats and species can be found on Gov.uk. Natural England does not routinely hold species data, such data should be collected when impacts on priority habitats or species are considered likely. Consideration should also be given to the potential environmental value of brownfield sites, often found in urban areas and former industrial land, further information including links to the open mosaic habitats inventory can be found here.

Annex A – Additional advice

Ancient woodland, ancient and veteran trees

You should consider any impacts on ancient woodland and ancient and veteran trees in line with paragraph 180 of the NPPF. Natural England maintains the Ancient Woodland Inventory which can help identify ancient woodland. Natural England and the Forestry Commission have produced standing advice for planning authorities in relation to ancient woodland and ancient and veteran trees. It should be taken into account by planning authorities when determining relevant planning applications. Natural England will only provide bespoke advice on ancient woodland, ancient and veteran trees where they form part of a Site of Special Scientific Interest or in exceptional circumstances.

Environmental gains

Development should provide net gains for biodiversity in line with the NPPF paragraphs 174(d), 179 and 180. Development also provides opportunities to secure wider environmental gains, as outlined in the NPPF (paragraphs 8, 73, 104, 120, 174, 175 and 180). We advise you to follow the mitigation hierarchy as set out in paragraph 180 of the NPPF and firstly consider what existing environmental features on and around the site can be retained or enhanced or what new features could be

incorporated into the development proposal. Where onsite measures are not possible, you should consider off site measures. Opportunities for enhancement might include:

- Restoring a neglected hedgerow.
- Creating a new pond as an attractive feature on the site.
- Planting trees characteristic to the local area to make a positive contribution to the local landscape.
- Using native plants in landscaping schemes for better nectar and seed sources for bees and birds.
- Incorporating swift boxes or bat boxes into the design of new buildings.
- Designing lighting to encourage wildlife.
- Adding a green roof to new buildings.

Natural England's Biodiversity Metric 4.0 may be used to calculate biodiversity losses and gains for terrestrial and intertidal habitats and can be used to inform any development project. For small development sites the Small Sites Metric may be used. This is a simplified version of Biodiversity Metric 4.0 and is designed for use where certain criteria are met.

Natural England's Environmental Benefits from Nature tool may be used to identify opportunities to enhance wider benefits from nature and to avoid and minimise any negative impacts. It is designed to work alongside Biodiversity Metric 4.0 and is available as a beta test version.

Green Infrastructure

Natural England's Green Infrastructure Framework provides evidence-based advice and tools on how to design, deliver and manage green infrastructure (GI) . GI should create and maintain green liveable places that enable people to experience and connect with nature, and that offer everyone, wherever they live, access to good quality parks, greenspaces, recreational, walking and cycling routes that are inclusive, safe, welcoming, well-managed and accessible for all. GI provision should enhance ecological networks, support ecosystems services and connect as a living network at local, regional and national scales.

Development should be designed to meet the 15 Green Infrastructure Principles. The Green Infrastructure Standards can be used to inform the quality, quantity and type of green infrastructure to be provided. Major development should have a GI plan including a long-term delivery and management plan. Relevant aspects of local authority green infrastructure strategies should be delivered where appropriate.

GI mapping resources are available [here](#) and [here](#). These can be used to help assess deficiencies in greenspace provision and identify priority locations for new GI provision.

Access and Recreation

Natural England encourages any proposal to incorporate measures to help improve people's access to the natural environment. Measures such as reinstating existing footpaths together with the creation of new footpaths and bridleways should be

considered. Links to urban fringe areas should also be explored to strengthen access networks, reduce fragmentation, and promote wider green infrastructure.

Annex A – Additional advice

Rights of Way, Access land, Coastal access and National Trails

Paragraphs 100 and 174 of the NPPF highlight the important of public rights of way and access. Development should consider potential impacts on access land, common land, rights of way and coastal access routes in the vicinity of the development. Consideration should also be given to the potential impacts on the any nearby National Trails. The National Trails website www.nationaltrail.co.uk provides information including contact details for the National Trail Officer. Appropriate mitigation measures should be incorporated for any adverse impacts.

Biodiversity duty

Your authority has a duty to have regard to conserving biodiversity as part of your decision making. Conserving biodiversity can also include restoration or enhancement to a population or habitat. Further information is available here.

Other Representations

57 letters of objection –

- EDDC Planning Committee determined that 22/2216/MFUL was not renewable or low carbon as there was no evidence that it would be used to store energy from low carbon sources.
- It is an industrial development on a greenfield site.
- Should not be positioned so close to recently approve BESS at Wyld Meadow Farm nearby in Dorset which was approved recently.
- Draw EDDC attention to the 2010 Equality Act, section 149 Public Sector Equality Duty.
- No assessment of cumulative effect with solar farms.
- It would damage the extremely rural and beautiful landscape.
- It is purely for trading for profit taking advantage of variable prices for electricity.
- It will not benefit anyone locally.
- It is not a green development as energy to be stored in the BESS is not necessarily from renewable generation.
- The batteries are not green due to the materials required to make them require some of the most environmentally destructive extraction and processing methods.
- Should a fire break out there is a risk of water pollution.
- The fire service is not a statutory consultee which means no safety review of the site.
- There are springs in the area used for private water supplies.
- The site drains into the River Axe catchment, which is an SAC and SSSI.
- Other sites have caught fire, burned for 3 days and took 3 swimming pools' worth of water to extinguish.

- No details of battery type or capacity.
- Ecological report does not acknowledge the importance of the area for bats.
- There is grey long-eared bat maternity roost less than 2km north of the site. Hawkchurch is only one of eight confirmed maternity roosts nationally.
- Natural England has recognized the importance of the area as land 500m north of the site has been entered into a Higher Tier Countryside Stewardship agreement in recognition of the species rich meadows and rare species.
- NPPF requires that all development shows biodiversity net gain.
- Farmland should be used for growing food; food security. Site is majority grade 3a agricultural land.
- There is a preservation order on the hedge line screening the substation which would be removed.
- National Grid has major plans for expansion of the sub-station. A fire could also affect the substation and cut power in the south-west and destroy the village.
- Contravenes Strategy 7 of the Local Plan due to its location.
- Contravenes Strategy 39 of the Local Plan as the energy store is not necessarily from renewables.
- It is said due the risk of fire/explosion the site needs 4m high bunded walls and embankments, to act as a sound barrier, as well as a 6.5m tall substation, higher than a two-storey dwelling.
- They should pay business rates.
- Will adversely affect the views from the Monarch's Way.
- Local Plans are not properly coordinated.
- Hazardous Substances Regulations are being ignored.

Devon CPRE additional comments:

- Lack of explanation why there would be 57 inverters and 29 transformers.
- There are no details of the batteries.
- The applicant should provide the storage capacity of the proposal before a decision is made. It is estimated at 180MWh.
- It would store, not generate energy and is thus not a renewable energy scheme.
- It is not stated why the site was chosen. It is not necessary to use a greenfield site.
- Neither the PS or DAS describe the safety issue of the proposal.
- Experience from around the world show that BESS installations are a major risk to the local community and environment due to the storage of high density chemical energy.
- Thermal runaway events can be explosive and spread and are difficult to bring under control.
- There are not copious amounts of water available nearby to deal with a fire.
- The design should be made with guidance from the fire service.
- The applicant needs to apply to EDDC for Hazardous Substances Consent and until that is done EDDC should not consider the planning application.
- Cumulative impact with other BESS proposals on the landscape.
- Decommissioning details not provided.

PLANNING HISTORY

Reference	Description	Decision	Date
22/2216/MFUL	Installation of a battery energy storage system with associated infrastructure and works.	Refusal and appeal lodged, to be heard by Public Inquiry	03.03.2023

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 3 (Sustainable Development)

Strategy 7 (Development in the Countryside)

Strategy 39 (Renewable and Low Carbon Energy Projects)

Strategy 46 (Landscape Conservation and Enhancement and AONBs)

D1 (Design and Local Distinctiveness)

D2 (Landscape Requirements)

D3 (Trees and Development Sites)

EN5 (Wildlife Habitats and Features)

EN7 (Proposals Affecting Sites which may potentially be of Archaeological Importance)

EN13 (Development on High Quality Agricultural Land)

EN14 (Control of Pollution)

EN18 (Maintenance of Water Quality and Quantity)

EN21 (River and Coastal Flooding)

EN22 (Surface Run-Off Implications of New Development)

E4 (Rural Diversification)

E5 (Small Scale Economic Development in Rural Areas)

TC2 (Accessibility of New Development)

TC7 (Adequacy of Road Network and Site Access)

TC9 (Parking Provision in New Development)

Site Location and Description

The site lies immediately north and adjacent to the Electricity Distribution Site on Pound Road in Hawkchurch and measures 2.6 hectares in area. The western and northern boundaries abut an existing solar farm while the eastern boundary is formed by Pound Road itself. Unlike the adjacent solar farm which has a public right of way running through it there is no public access to this site.

The Pound Road boundary is comprised of mature hedge with varying depths and heights, including some mature trees in its length. The site itself is pasture land with little vegetation within it but the other boundaries also feature hedges and trees of similar character.

The site does not lie within any designated areas. The Dorset AONB is located approximately 660m to the south of the site and also 2km to the north.

There are three listed buildings within the 1km study area, with High Stonebarrow Grade II listed building located approximately 620 m east. Lambert's Castle: an Iron Age hillfort 425 m west of Nash Farm, with a bowl barrow, and the sites of a post-medieval fair and a telegraph station Scheduled Monument is located approximately 1.8 km east of the Site.

The development

The main components of the proposal comprise:

- The battery energy storage system comprises a series of linked batteries housed in shipping containers (or similar structures in appearance). The battery containers measure 12.2 m (L) x 2.4 m (W) x 2.9 m (H). Safety systems and firefighting systems, including automatic shut off and temperature monitoring of battery units, are built into the containers.
- Adjacent to the batteries are inverters (3 m (L) x 2.4 m (W) x 2.9 m (H)), transformers (4.1 m (L) x 4.1 m (W) x 2.2 m (H)), cooling systems and other electrical plant and equipment required. These will typically be housed within (or externally on) containers. The transformer will be fenced.
- Adjacent to the battery containers are a series of containers and electrical infrastructure, linking the batteries to the proposed on-site 132kV substation compound which has a maximum height of approximately 6.5 m, these include a switch room measuring 11.7 m (L) x 4 m (W) x 3.9 m (H) and control room measuring 6 m (L) x 3 m (W) x 3.9 m (H). The buildings and electrical infrastructure comprise the plant and equipment necessary to export the electricity stored onsite to the electricity network.

- A 2.4 m high metal weld mesh security-fenced encloses the battery compound and its associated plan. A 4m high acoustic fence along the eastern side of the compound but set inside (west of) the existing roadside hedge (40m away) and inside of the proposed tree planting area;
- Security and monitoring CCTV/infra-red cameras mounted on up to 3 m high posts along the internal perimeter of the Site;
- Underground cabling to connect the battery, associated containers and electrical equipment to the proposed on-site 132kV substation are included within the proposals;
- Underground cabling to link the proposed 132kV substation to the existing Axminster National Grid Substation form part of the application;
- Site access from the public highway off Pound Road running through the Site, together with the required access improvement works and visibility splays, are included within the site and proposals;
- Landscaping, planting, minor earthworks, biodiversity enhancements and surface water attenuation measures are included in the scheme having been designed as part of the proposals.

Background

The current application is a re-submission of planning application ref 22/2216/MFUL for the same development, which was refusal planning permission for the following reasons:

1. The proposal is not considered to be a renewable or low carbon energy project as there is no evidence that it would be used to store energy from low carbon sources and therefore represents inappropriate development in the countryside. Furthermore it would have a harmful impact on the landscape character and quality of the area when considered in combination with other installations in the locality and would therefore be contrary to Strategy 7 (Development in the Countryside), Strategy 39 (Renewable and Low Carbon Energy Projects) and Strategy 46 (Landscape Conservation and Enhancement and AONBs) of the East Devon Local Plan 2013 - 2031.
2. There is insufficient information on the quality of the agricultural land upon which the proposal would be located to determine whether it would lead to a loss of best and most versatile agricultural land and if so whether there is an overriding need for the development, sufficient land of a lower grade is available that could accommodate the development or the benefits of the development justify the loss of the high grade agricultural land. As a result the development is considered to be contrary to policy EN13 (Development on High Quality Agricultural Land) of the East Devon Local Plan 2013 - 2031.
3. There is insufficient information on the health and safety measures that would be put in place to control battery leakages and fire that could arise in the

event of a failure at the site and as a result it is considered that the development could lead to a significant health and safety risk to residents that would be contrary to policy EN14 (Control of Pollution) of the East Devon Local Plan 2013 -2031.

The current application includes additional information with regard to the matter of whether or not the development stores low carbon energy and how in general battery storage contributes to the goals of lowering carbon emissions. Further information on agricultural land classification is provided and a Safety Management Plan has been provided.

In considering the current application it is relevant for Members to consider if information is now available that satisfies some or all of the previous reasons for refusal and should it be considered that only some of the reasons for refusal are now satisfied whether the harm arising from any remaining issues when put into the planning balance still outweighs the benefits of the development.

ANALYSIS

The principle of development

There is no made Neighbourhood Plan for Hawkchurch despite the parish being designated as a neighbourhood area in April 2015. The relevant development plan for determining the application therefore is the EDDC Local Plan.

Strategy 7 does not permit development outside of Built-Up Area Boundaries unless permitted by some other policy in the LP. One such policy is Strategy 39 and this permits such developments in the open countryside subject to criteria.

Strategy 39 of the Local Plan states that:

Renewable or low-carbon energy projects in either domestic or commercial development will in principle be supported and encouraged subject to them following current best practice guidance and the adverse impacts on features of environmental and heritage sensitivity, including any cumulative landscape and visual impacts, being satisfactorily addressed. Applicants will need to demonstrate that they have;

- 1. taken appropriate steps in considering the options in relation to location, scale and design, for firstly avoiding harm;*
- 2. and then reducing and mitigating any unavoidable harm, to ensure an acceptable balance between harm and benefit.*

Where schemes are in open countryside there will be a requirement to remove all equipment from the site and restore land to its former, or better, condition if the project ceases in the future. Wind turbines will only be permitted where they are in accordance with a Neighbourhood Plan or Development Plan Document.

The Council has previously accepted (application 17/2318/FUL for a BESS at Hill Barton Business Park was approved at the Planning Committee of 4 January 2018) that such installations are 'low carbon energy' projects as this is defined in the Local

Plan as including technologies 'that can help reduce emissions (compared to conventional use of fossil fuels)'. In simple terms, such energy storage facilities can be used to store energy from the grid when renewable generation (not necessarily from the solar farm at the site) is in excess of demand. Prices during this time will be lower (supply exceeding demand) and can be used later when prices are higher, which typically is when renewable generation is low. The power fed back to the grid will reduce the amount of non-renewable generation required during such times and in this way is considered to reduce emissions that otherwise would have been generated. The comments of the objectors regarding emissions generated to make the BESS equipment is noted but are not specified as a consideration in Strategy 39. Of course, anything which is manufactured will likely generate emissions but this will be offset in due course by the savings in emissions a BESS (or for that matter solar panels or wind turbines) facilitates. As the electricity grid becomes greener (as it has over the last two decades) this payback period becomes even shorter. The same can never be said of fossil fuel derived energy.

The previous application (22/2216/MFUL) was refused by the Planning Committee for the following reason:

"The proposal is not considered to be a renewable or low carbon energy project as there is no evidence that it would be used to store energy from low carbon sources and therefore represents inappropriate development in the countryside. Furthermore it would have a harmful impact on the landscape character and quality of the area when considered in combination with other installations in the locality and would therefore be contrary to Strategy 7 (Development in the Countryside), Strategy 39 (Renewable and Low Carbon Energy Projects) and Strategy 46 (Landscape Conservation and Enhancement and AONBs) of the East Devon Local Plan 2013 - 2031."

The applicant has since provided evidence in relation to this matter. The following extracts are relevant:

"1.6 Battery storage is a form of storage that is currently available technology today. Battery storage schemes can be either co-located alongside intermittent renewable generation such as solar PV or wind on the same site and sharing the same grid connection; or located on a standalone basis on a separate site but still helping to balance both the supply and demand and power quality requirements of the power grid where renewable generators are connected to the same grid system. In co-location schemes battery storage can be used locally by storing excess generation from its adjacent solar PV farm or wind farm or both during periods of low demand and exporting this energy to the grid during peak demand periods. Or, if the batteries have capacity during a windy night when there is no solar generation but lots of wind power and relatively little demand, they can be charged from the grid to meet peak demand the following morning. In either case the peak use would be less reliant on fossil fuel generators coming online to meet short term demand, something which causes significant carbon emissions. For standalone battery storage, such as the proposed Axminster scheme this can also be used to store excess generation from solar PV farm or wind farm or both that are connected on the same grid system. This would occur, for example when power prices lower, or even become negative, as more solar PV or wind generates electricity on the power grid in response to periods

of more natural resource, a sunny or a windy day where supply starts to become higher than electricity demand.”

“1.7 A standalone battery storage unit sharing the same power grid as intermittent renewables such as solar PV or wind would physically also be able to capture the excess renewables generation via these power price signals and then export it back to the grid during periods of peak demand. Therefore, standalone battery storage schemes help the UK transition to Net Zero emissions. Battery storage also ensures that the simultaneous power quality requirements of the power grid are also met. For example, even when energy supply and demand balancing is met, the grid also requires that it is balanced from a power quality perspective including such requirements as the grid being required to stay within specific frequency and voltage bands. Battery storage helps to provide energy balancing but also helps to deliver power quality services such as frequency response necessary for the power grid. This need for balancing and power quality is amplified as the UK aims to transition to net zero emissions by 2050, or earlier, and more and more solar PV and wind farms are connected to power grids and historic balancing and power quality services previously from large thermal generators, such as gas and coal retire from service as part of the energy transition.”

“1.8 Currently, excess solar PV and wind in conventional power grids necessitate either curtailment of excess energy – by disconnecting renewable generators from the grid and/ or storage of this excess energy to be used later during times of peak demand. In Great Britain, qualified renewable generators are paid to be disconnected from the grid by National Grid to keep the supply and demand of electricity balanced in the grid when there is an excess of wind or solar compared to demand.”

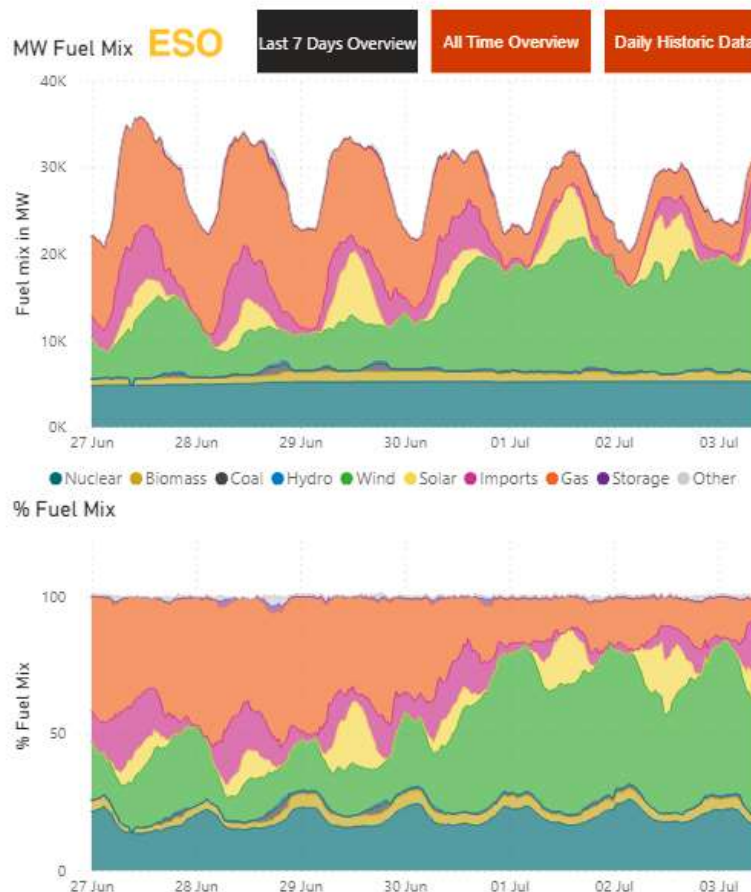
“1.9 Currently, excess solar PV and wind in conventional power grids necessitate either curtailment of excess energy – by disconnecting renewable generators from the grid and/ or storage of this excess energy to be used later during times of peak demand. In Great Britain, qualified renewable generators are paid to be disconnected from the grid by National Grid to keep the supply and demand of electricity balanced in the grid when there is an excess of wind or solar compared to demand.”

“1.10 Therefore, various forms of storage and flexibility provision are required in power grid systems. Battery storage is a common and growing choice among them. The battery storage development pipeline is now around over c 24GW in the GB system awaiting construction or with planning applications submitted according to The Government’s Department for Business, Energy and Industrial Strategy (BEIS) Renewable Energy Planning Database (January 2023 - [Renewable Energy Planning Database: quarterly extract - GOV.UK \(www.gov.uk\)](#)). Energy storage, including battery storage, helps to avoid curtailment and therefore increases the production of green energy; and the consumption of it. This is good as the UK is faced with an expected increase in electricity consumption, for example in charging EV cars in transportation and with increasing use of heat pumps in the heating sector.”

“1.14 In the US, Ken-Ichi Hino, Director of Energy at National Grid Renewables, says: “Storage enables further renewable generation, both from an operational and

reliability perspective. It's also a key piece of our utility customers' ongoing evolution and transition to renewables. We see significant opportunity for pairing energy storage with our solar projects moving forward."

In addition to this evidence one can easily refer to the National Grid Electricity Supply Operator website [ESO Data Portal: Historic GB Generation Mix - Dataset](https://www.nationalgrideso.com) [National Grid Electricity System Operator \(nationalgrideso.com\)](https://www.nationalgrideso.com) and obtain historic data on the generation mix in Great Britain. The following graphic shows that for the week between 27 June and 3 July 2023 there was at all times, including during the night, some form of renewable generation supplying the national grid with power. This amount obviously is variable but the graphic tells us that at most times there will be renewable power in the grid and available to charge the BESS. Clearly the deployment of a BESS installation on the grid allows excess renewable generation to be stored and so by definition a BESS system is one which can help reduce emissions and therefore falls into the forms of development permissible under Strategy 39.



The principle of development is therefore considered to be acceptable.

Landscape and visual impacts

While the site would see a significant and adverse change in its character and appearance, these effects would not be experienced beyond the site itself. Any effects that area apparent will diminish over time as landscaping becomes established to compliment the already existing mature boundary screening. Over 10

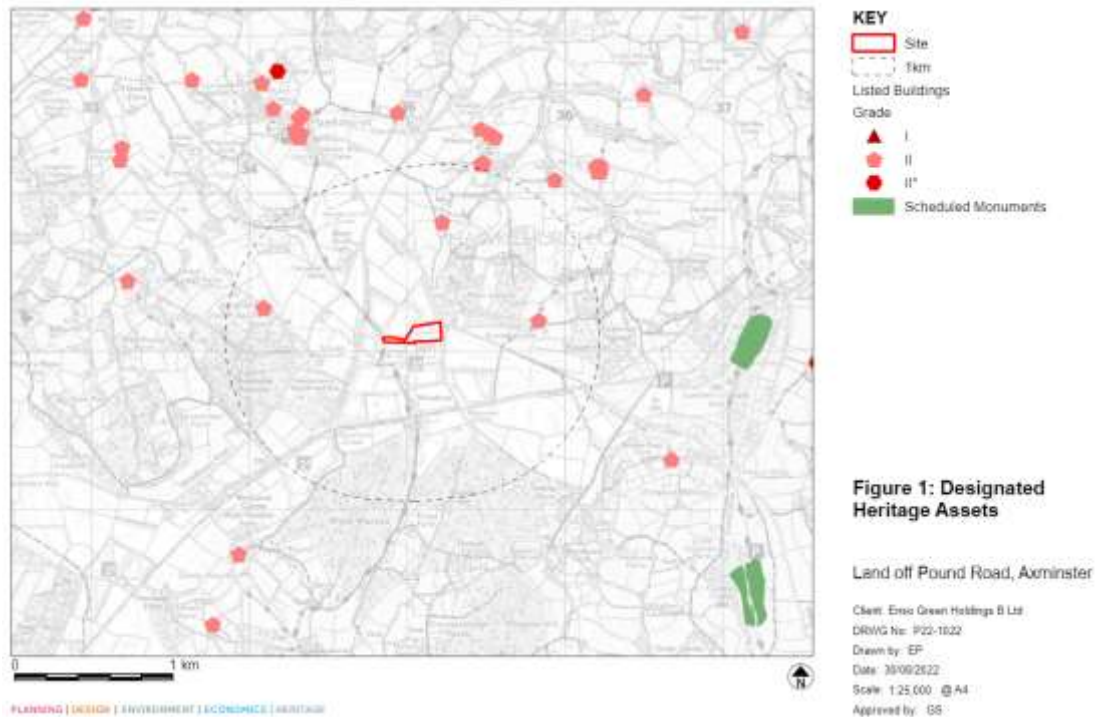
years there would be minor beneficial effect on existing trees and hedgerows. It is unlikely that there would be impacts on the Dorset AONB.

The landscape officer's comments regarding suggested changes to the proposed landscaping scheme are noted. The provision of at least 2m separation between the acoustic fence and the proposed new hedgerow to its east can easily be achieved and secured with an appropriate condition. Likewise the proposed species mix for the proposed woodland planting can be improved with a suitable condition. The extent of the proposed woodland planting can be increased on the southern side of the access road and the applicant has indicated a willingness to accede to the landscape officer's request generally via the use of appropriate conditions.

Objectors have referred to a need to assess alternative sites but cite no source for making this suggestion. There is no specific wording in S39 or its supporting text that requires assessment of alternative sites.

S39 does give a requirement to 'take appropriate steps in considering the options in relation to the location, scale and design for firstly avoiding harm'. Installations of the kind dealt with under S39 necessarily require, or at least favour, locations close to an appropriate point on the national grid where a suitable connection can be made. This is such a location (being immediately adjacent to the large electricity distribution station). Alternative locations would require an alternative willing landowner, a longer, less efficient, costly and potentially harmful means of connection (it has to be built, creating its own impacts).

The following figure show the site in proximity to heritage assets in the area. It shows that moving the site either north, east or west brings it closer to a number of heritage assets. Taking is south takes into the Dorset AONB (where incidentally a BESS was consented this summer within an existing solar farm (DCC reference P/FUL/2022/02658)).



While there is no obvious consideration of the alternative sites spelled out in such terms in the planning application, the applicant's supporting information clearly illustrates a knowledge of the constraints in the area through its technical reports which has led to the selection of the proposed site. There needs to be a proximity to the grid connection in this area. To site the development further east could bring it into conflict with heritage assets identified in the heritage impact assessment (including listed buildings and the Schedule Ancient Monument at Lambert's Castle) and the Dorset AONB. Bringing it further north would place it closer to even more listed buildings and closer to the Dorset AONB and Monarch's Way PROW. Bringing it further south would bring it very close to the Dorset AONB which is only around 500m away. Moving east brings it nearer to some other listed buildings. Hawkchurch itself lies to the north-east of the site, the source of most of the objections. It is highly probable that any such exercise would lead to the selection of the application site or one in the immediate vicinity. Therefore it is considered that appropriate analysis and steps has been undertaken in considering the options in relation to location, scale and design, for avoiding harm. There co-location of BESS installations on or near to renewable energy generation is not uncommon and there are advantages to taking this approach in respect of visual impacts; locating the BESS in this area to access the grid connection but remote from the existing solar and distribution infrastructure would of course spread the visual impacts over a wider area.

Subject to suitable conditions to further improve the landscaping mitigation the development is considered acceptable in respect of landscape and visual effects.

Trees

The supporting arboricultural impact assessment demonstrates that there would be minimal impact on trees and hedgerows. Some further information is required

however to confirm how specific trees and root protection areas will be protected during development. A suitably worded condition is suggested to address this.

Fire Safety and Pollution

Most of the objectors have raised concerns about these two matters.

One of the reasons for the refusal of application 22/2216/MFUL reads:

“There is insufficient information on the health and safety measures that would be put in place to control battery leakages and fire that could arise in the event of a failure at the site and as a result it is considered that the development could lead to a significant health and safety risk to residents that would be contrary to policy EN14 (Control of Pollution) of the East Devon Local Plan 2013 -2031.”

The applicant has provided a BESS Safety Management Plan to try an address this matter. The Plan envisages safety control measures including the following:

1. Appropriate battery chemistry selection - balancing energy density requirements against available volume and operating parameters. The preferred option under consideration being Lithium Titanate Oxide (LTO) which is in use in the public transport sector and in use on Underground and Overground Rail systems.
2. Cell level control – consideration of the use of battery technology incorporating Current Interrupt Devices (CID) and Positive Thermal Coefficient (PTC) protection, enabling the cell to disconnect from the battery in the event of cell failure.
3. Implementation in the design of an approved Battery Management System (BMS).
4. Implementation in the design of an Independent Protection System (IPS) and electronic Safety Supervisor Systems.
5. 24/7 Remote Monitoring and Control and automated shut-down.
6. Segregation of Containers.
7. Quench and suppression systems fitted to containers.
8. Site Security and Monitoring

In terms of Emergency Plan, the Plan states that “Emergency Plans will be developed in an iterative manner in parallel to technical safety requirements. This will ensure that the BESS design and Emergency Plans are properly integrated (e.g., that BESS layout ensures access for first responders) and that appropriate information can be provided to first responders (e.g., the type and meaning of external indication on containers) to include in their planning activities.”

A recent (5 December 2022) appeal decision in Mid Devon (APP/Y1138/W/22/3293104) against a refusal of planning permission for a combined solar farm and BESS facility considered the matter of safety (paragraphs 140 – 147 of the appeal decision letter). These paragraphs are copied below for reference:

The safety of the proposed BESS

140. *The issue of the safety of the proposed BESS was never a matter which was of concern to the Council in its planning considerations. For that reason it was not a reason for refusal even before the authority changed its stance.*

141. *The safety of the BESS was raised by CPRE in its evidence as a major source of concern [83, 84]. It became clear from that the evidence and from answers in cross-examination the CPRE's concern was founded on opposition to battery storage systems in general, which they consider to be a risk to local communities and to the environment generally, and was only related to this proposal to a limited extent. CPRE acknowledged at the Inquiry that their approach is not supported by policy or guidance at any level.*

142. *The appellant submitted extensive evidence on this matter, including that from an expert in the field, who explained the benefits and operation of BESS systems [64]. The rationale for a BESS system is to provide flexibility for the grid, storing off-peak energy and deploying it during peaks. Co-location with the solar farm is sensible in terms of economies of scale and minimising land take. The convincing evidence, supported by numerous policy references, was that BESS is a critical element in reaching a secure low carbon energy situation. This position is wholly in line with national policy.*

143. *CPRE was particularly concerned with the safety of such a system, and pointed in particular to two instances of catastrophic failure of such systems [84]. However the appellant correctly pointed out that these events, one of which was in the UK, were some time ago, and gave uncontested evidence to the effect that BESS technology and safety measures had moved on since those events [65]. Perhaps most tellingly, it is clear that national policy and guidance supporting that technology was produced subsequently – no doubt in full awareness of the incidents. This was accepted by CPRE.*

144. *From the evidence it is clear that this is not untested technology and although the detail of the systems is doubtless still evolving, there is very little to suggest that there is a substantial risk of thermal runaway leading to explosion or fire.*

145. *There was criticism from CPRE that no detail of the BESS has been fixed at this stage and the chemistry of the batteries has not yet been decided [80-82]. However in the context of evolving technology, this is not an unreasonable approach, and the proposal considered at the Inquiry is for solar panels to generate up to 49.9MW and a battery storage facility. It is reasonable that the final choice of technology will be fixed later.*

146. *Underlying all these matters is the fact that other regimes operate in this field to regulate the safe operation of such installations. National policy is clear that the focus of planning decisions should be on whether a proposal is an acceptable use of land, rather than the control of processes where these are subject to separate regimes. Planning decisions should assume that these regimes will operate effectively.*

147. *For the above reasons there is nothing in relation to the safety of the BESS which should weigh against the proposal in the planning balance.*

As can be seen in paragraph 144 that the Inspector considered that there was very little to suggest that there is a substantial risk of thermal runaway leading to explosion or fire. Nor was it considered problematic that the detail of the BESS was not fixed or their chemistry decided (paragraph 145). The Inspector finally states that National Policy is clear that the planning system operates to determine acceptable uses of land only rather than control of processes where these are subject to separate regimes. Planning decisions should assume that these regimes will operate effectively.

The Devon CPRE suggests that Hazardous Substances Consent is required but as it has noted itself, the type and chemistry of battery is not yet fixed (which the Inspector found acceptable above) and so this cannot be confirmed.

Noting the above considerations of the Inspector, the decision did though include a condition (24) as follows:

*Development of the battery storage compound shall not commence until a Battery Safety Management Plan (BSMP) has been submitted to and approved in writing by the Local Planning Authority. The BSMP must prescribe for measures to facility safety during the construction, operation and decommissioning of the battery storage facility, including the transport of new, used and replacement battery cells both to and from the authorised development. The Local Planning Authority must consult with the Health and Safety Executive and the Devon Fire and Rescue Service before approving the BSMP. The BSMP must be implemented as approved.
Reason: To ensure that the battery storage compound is constructed and operated in a safe manner.*

The Devon & Somerset Fire and Rescue Service has been consulted on the latest planning application. At the time of writing this report no response has yet been received. Members will be updated at the meeting if a fresh response is received but the response received in relation to application 22/2216/MFUL (which is substantially the same in relation to this matter) was as follows:

“Thank you for your consultation regarding the above, dated and received by Devon and Somerset Fire and Rescue Service (the Service) on 3 March 2023.”

“Whilst the Service is not a statutory consultee in relation to this project, we welcome opportunities to work and engage with developers to ensure projects are delivered safely and that operators meet the statutory responsibilities that we enforce.”

“The Service recognises that Battery Energy Storage Sites (BESS) pose specific hazards in the event of fire that are still not fully understood or researched. As a result, regulations, enforcement and best practice to mitigate the risk from BESS is still in development.”

“The Fire Service’s own powers of enforcement under the Regulatory Reform (Fire Safety) Order 2005 require the Responsible Person to carry out and regularly review fire risk assessments to protect relevant persons by identifying fire risks and

removing or reducing them to as low as possible. It also requires the Responsible Person to mitigate against those fire risks that remain.”

“Having reviewed the documentation issued in support of this application, the Service notes that there is limited detail regarding the risk reduction and mitigation strategies to be employed for this development. Therefore, based on the information currently available, the Service is unable to make any further comment.”

“It is the expectation of the Service that information detailing the risk reduction strategies and the protective measures to be employed on the site should be submitted in a Fire Safety Management Plan (FSMP) covering the construction, operation and decommissioning phases of the development.”

“Once a FSMP has been prepared, the Service would be more than happy to comment on the details submitted.”

While a BESS Safety Management Plan has already been submitted it is considered expedient to apply this condition again as we do not yet have the consultation response from the Devon & Somerset Fire and Rescue Service. Members will be advised at the meeting if this or an alternative condition is necessary at the Planning Committee meeting.

In relation to application 22/2216/MFUL, both the EA and NE raised no objections to the proposals. In relation to this current application NE has simply provided the Council with its standard generic advice and does not appear to want to comment in detail. Any updated response in relation to this matter on the current application from the EA before the planning committee meeting will be reported at the meeting.

EDDC’s Environmental Health team has recommended a condition for details of sufficient containment (in the event of malfunction) to be agreed and installed which is considered reasonable.

It is not considered that there are any grounds to resist planning permission on these grounds and members are reminded that other regimes operate in this field to regulate the safe operation of such installations. Acting as the local planning authority the Council should only concern itself with land use in this matter and should be able to rely on other regulatory systems to manage processes taking place on it.

Highways

DCC has not objected to the development. No conditions are suggested but given the rural nature of the roads and the amount of equipment involved, conditions are suggested to proper management during construction, which would be a limited period, and provision of the access as planned.

Biodiversity

The main habitats of interest on the site are the hedgerows, the fields themselves being mostly laid to grass. The Preliminary Ecological Appraisal accompanying the application makes various recommendations for mitigation. In short these include:

- Protection of hedgerows during construction;
- Controlled lighting to minimise lighting on site and reduce effects on bats;
- Inspection of hedgerows/trees for birds prior to any works to them. Such works to be completed between September and February if possible;
- Erecting a perimeter fence to create a protection zone prior to construction for dormice

A suitable condition can be used to secure this mitigation and also the proposed works to bring about gains in biodiversity.

Noise

There is a dwelling immediately opposite the proposed entrance to the site (New House Farm) and also another a few meters further on (Tanglewood). There are a limited number of other properties further away.

A noise impact assessment is included with the application. It identifies that it would give rise to rating sound levels that are just above the measure background sound level in the area during the daytime and night-time, thus giving rise to a 'low impact to adverse impact'.

The assessment also identifies that no significant change in ambient sound level at the identified receptor locations will be engendered as a result of the proposed development in its proposed and assessed form and that the amenity of residential receptors and operational use of the nearest non-residential receptors will not be compromised.

Consequently, the assessment demonstrates that the Proposed Development will give rise to noise impacts that would be within the range of NOEL and NOAEL of the NPPG England guidance.

For ease of reference, the definition of No Observed Adverse Effect Level in PPG Noise is reproduced below:

"Noise can be heard, but does not cause any change in behaviour, attitude or other physiological response. Can slightly affect the acoustic character of the area but not such that there is a change in the quality of life."

This would conform to British Standard and National Planning Policy requirements, provided that the plant is constructed and operated in accordance with the acoustic assumptions of the report.

Mitigation is proposed in section 5.1.4 of the assessment. The Inverter units require that the sound levels are reduced to those presented in Table 6. This could be achieved by using low-noise plant, by an acoustic enclosure or by the manufacturer providing mitigation by insulating the units and including attenuated louvres.

Furthermore, a 4-metre high, noise barrier has been included on the east side of the site, to provide screening between the Battery Units and the nearest noise-sensitive receptors. The noise barrier should be solid, continuous, sealed at all interfaces and have a surface density in the order of 20kg/m², or provide a minimum sound reduction performance of 20-25 dB. Final details of mitigation should be agreed and secured by way of an appropriate condition as set out in the recommendation.

Agricultural Land Quality

The Best and Most Versatile Agricultural Land (BMV) is classed as grade 1 - 3a. The previous application did not provide any evidence on the exact grading and following objections the following reason for refusal therefore was formed as follows:

“There is insufficient information on the quality of the agricultural land upon which the proposal would be located to determine whether it would lead to a loss of best and most versatile agricultural land and if so whether there is an overriding need for the development, sufficient land of a lower grade is available that could accommodate the development or the benefits of the development justify the loss of the high grade agricultural land. As a result the development is considered to be contrary to policy EN13 (Development on High Quality Agricultural Land) of the East Devon Local Plan 2013 - 2031.”

The site has since been surveyed. The conclusion of this assessment is that much of the site is Grade 3a agricultural land. Best Most Versatile agricultural land falls into categories 1, 2 and 3a. While it is BMV land it falls into the lower category of BMV land. It does note that the site is enclosed on most sides by solar or electricity infrastructure and forms a modest parcel of irregular shaped land not linked with other productive fields. Consequently the assessment suggests it is of limited use for intensive agricultural production involving ploughing, seed drilling or harvesting. Aerial photography of the site from 1999, 2010, 2014/15, 2017 and 2020 show no signs of cultivation but use as pasture.

Drainage

The site is in Flood Zone 1 and presents no risks in that respect. Drainage proposals are outlined in the Flood Risk Assessment but Devon County Council as the Lead Local Flood Authority has objected. It required further calculations to identify the attenuation storage required and also a plan showing the connection to the ditch located along the eastern boundary of the site which provides an alternative suitable point for surface water to be discharged. It is considered that this can be secured via a suitable planning condition although a request for this information from the agent in advance of the planning committee has been made. Members will be updated if we receive further information and DCC's response.

Other matters

There are no listed buildings within sight of the proposed development and no other heritage concerns with the proposal.

CONCLUSION

The proposal is for a battery storage scheme and associated infrastructure. The proposed location for the development is in the open-countryside and adjacent to an existing solar farm and electricity distribution development. The site has no landscape designations.

The development meets the definition of 'low-carbon energy projects' as defined in the Local Plan and is therefore permissible in principle in a rural location. The development will assist in maximising benefits from existing renewable energy schemes by providing a means of storing excess power that is generated from renewable sources at times when otherwise such generation would be curtailed (i.e. switching off wind turbines). It would also enable (along with other storage schemes nationally) the deployment of more renewables as part of the energy mix, which would further reduce the carbon footprint of the economy, a key Government objective.

The location of the site provides good screening with limited views of the proposed equipment. Further landscaping is conditioned to mitigate what limited visual impacts there are. The site represents an industrial development in its character and appearance which is at odds with its rural location, although this rural location is somewhat industrialised in its appearance already. However these changes will be mitigated to an acceptable degree with suitable landscaping and the effects will be localised to the site itself.

The development will use the best and most versatile agricultural land (grade 3a).

The risk of pollution from the construction and operation of the installation is minimal and any residual risks can be minimised by engineering solutions.

Risks of fires and resulting pollution events are regulated by other legislative regimes and the planning system must operate on the assumption that these are effective. The Planning system only regulates land use.

The site is of modest biodiversity interest but the proposal offers some modest enhancements through planting and management of existing hedgerows.

Equally there are no impacts on heritage assets associated with the development.

The site is mostly comprised of grade 3a agricultural land. However it is considered that the usefulness of the field for meaningful food production is limited by its size, configuration and lack of association with other land used for cultivation. More importantly it is considered that there is an overriding need for the development and the benefits of the development justify the loss of the BMV land. These benefits include the very necessary grid balancing services the installation would provide to the national grid, the ability to reduce the need for more carbon intensive power generation in the move towards a Net Zero economy and the associated projected reductions in costs of power to UK consumers (the UK government estimating technologies such as

and including BESS installations could save up to £10 billion a year by 2050 - [British energy security strategy - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/british-energy-security-strategy)).

On balance, the proposal is considered to be acceptable. Strategy 39 requires a condition that all equipment be removed from the site and the land restored to its former condition if the project ceases in the future. Although the visual impact upon the landscape interests identified above is considered to be limited, it is considered appropriate to use such a condition to remove the proposal when there is no longer a requirement for the installation.

Statement on Human Rights and Equalities Issues

Human Rights Act:

The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

RECOMMENDATION

APPROVE 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. A Construction and Environment Management Plan must be submitted to and approved by the Local Planning Authority prior to any works commencing on site, and shall be implemented and remain in place throughout the

development. The CEMP shall include at least the following matters: Air Quality, Dust, Water Quality, Lighting, Noise and Vibration, Pollution Prevention and Control, and Monitoring Arrangements. Construction working hours shall be 8am to 6pm Monday to Friday and 8am to 1pm on Saturdays, with no working on Sundays or Bank Holidays. There shall be no burning on site. There shall be no high frequency audible reversing alarms used on the site. (Reason - To ensure that the details are agreed before the start of works to protect the amenities of existing and future residents in the vicinity of the site from noise, air, water and light pollution in accordance with Policies D1 - Design and Local Distinctiveness and EN14 - Control of Pollution of the East Devon Local Plan 2013 to 2031.)

4. Development of the battery storage compound shall not commence until a Battery Safety Management Plan (BSMP) has been submitted to and approved in writing by the Local Planning Authority. The BSMP must prescribe for measures to facility safety during the construction, operation and decommissioning of the battery storage facility, including the transport of new, used and replacement battery cells both to and from the authorised development. The Local Planning Authority must consult with the Health and Safety Executive and the Devon Fire and Rescue Service before approving the BSMP. The BSMP must be implemented as approved.

(Reason - To minimise risks of accidents which could be harmful to the public and the environment in accordance with Strategy 39 (Renewable and Low Carbon Energy Projects) and policy EN14 (Control of Pollution) of the East Devon Local Plan 2-13 - 2033).

5. Details of chemical containment must be submitted to, and approved in writing by, the Local Planning Authority, prior to the first installation of the battery plant on site. The containment must be impermeable to the specific chemicals within the batteries. Such containment as approved shall be provided for the duration of the presence of the batteries on site. Should a new type of battery be installed on site during the life of the development the same details shall be submitted for approval again the Local Planning Authority in the same manner. (Reason - To ensure the facility minimises risks of pollution from escaping chemicals in accordance with policy EN14 (Control of Pollution) of the East Devon Local Plan 2013 -2031).

6. The development shall proceed in accordance with the detailed scheme of ecological mitigation and enhancement measures detailed in the recommendations of the submitted documentation (below):

- Preliminary Ecological Appraisal, Pound Road BESS, August 2022 (Report reference WOR-2901.2)

- Biodiversity Net Gain Plan, Pound Road BESS, September 2022 (Report reference WOR-2901.2)

(Reason: In the interests of biodiversity in the area and to ensure that enhancements forming part of the proposal are approved and implemented, in accordance with policy EN5 (Wildlife Habitats and Features) of the East Devon Local Plan 2013-2033.)

7. No development must commence until a Noise Mitigation Scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be in accordance with the recommendations set out in the Noise Impact Assessment (dated 7 September 2022). The approved scheme must be implemented as approved for the life of the development.
(Reason: In the interests of the amenity of occupants of nearby dwellings in accordance with policies D1 (Design and Local Distinctiveness) and (EN14 (Control of Pollution) of the East Devon Local Plan.)
8. No external lighting shall be installed on site until the details of the lighting, columns, including their number, type and locations, the intensity of illumination and predicted lighting contours and the details of when the lighting would be operational have been first submitted to and approved in writing by the Local Planning Authority. The scheme shall ensure the lighting remains off at all times unless necessary for access, service and maintenance. Any external lighting that is installed shall accord with the details so approved.
(Reason: In the interests of the character and appearance of the area and to minimise the effect on bats in accordance with Strategy 46 (Landscape Conservation and Enhancement and AONBs) and policy EN5 (Wildlife Habitats and Features) of the East Devon Local Plan 2013-2033.)
9. Within 40 years and six months following completion of construction of the development hereby permitted, within 12 months of the cessation of operational use, or within six months following a permanent cessation of construction works prior to the battery facility coming into operational use, whichever is the sooner, the batteries, transformer units, inverters, all associated structures and fencing approved shall be dismantled and removed from the site. The developer shall notify the Local Planning Authority in writing no later than twenty-eight working days following cessation of power production. The site shall subsequently be restored in accordance with a scheme and timescale, the details of which shall be first submitted to and approved in writing by the Local Planning Authority no later than six months following the cessation of power production. (Note: for the purposes of this condition, a permanent cessation shall be taken as a period of at least 24 months where no development has been carried out to any substantial extent anywhere on the site).
(Reason - To ensure the achievement of satisfactory site restoration in accordance with Strategy 39 (Renewable and Low Carbon Energy Projects) of the East Devon Local Plan 2013 to 2031.)
10. No development shall take place until a surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. Unless it is demonstrated that it is unfeasible to do so, the scheme shall use appropriate Sustainable Urban Drainage Systems. The drainage scheme shall be designed so that there is no increase in the rate of surface water runoff from the site resulting from the development and so that storm water flows are attenuated. The development shall be carried out in accordance with the approved scheme.
(Reason: To protect water quality and minimise flood risk in accordance with Policy EN22 - Surface Run-Off Implications of New Development of the East

Devon Local Plan 2013 - 2031 and the guidance contained with the National Planning Policy Framework.)

11. Notwithstanding the details on the plans hereby approved, no development work shall commence on site until the following information has been submitted to and approved by the LPA:

1)

a) Soft landscape specification covering soil quality and depth; soil preparation; planting and sowing; mulching; means of plant support and protection during establishment period and 5 year maintenance schedule.

b) Tree pit and tree staking/ guying details.

c) Method statement for creation and maintenance of species rich grassland and wetland habitats.

d) Details of proposed colour finishes to fencing and housings for inverters, storage units and batteries, including relevant BS/ RAL reference.

e) Details of proposed under and over ground cable routes together with method statements for taking underground cables through any hedgebanks.

f) Construction details for proposed hardstandings, trackways and associated kerbing and edgings.

g) A soil resources plan prepared in accordance with Construction Code of Practice for the Sustainable use of Soils on Construction Sites - DEFRA September 2009, which should include:

- a plan showing topsoil and subsoil types based on trial pitting and laboratory analysis, and the areas to be stripped and left in-situ.
- methods for stripping, stockpiling, re-spreading and ameliorating the soils.
- location of soil stockpiles and content (e.g. Topsoil type A, subsoil type B).
- schedules of volumes for each material.
- expected after-use for each soil whether topsoil to be used on site, used or sold off site, or subsoil to be retained for landscape areas, used as structural fill or for topsoil manufacture.
- identification of person responsible for supervising soil management.

h) A phasing plan for construction. This should identify the early construction and planting of Devon hedgebanks to ensure that turves from site excavations are available for construction of the banks themselves and to enable associated planting to establish as soon as possible.

i) Method statement for construction of Devon hedgebanks including construction detail, details of proposed specialist sub-contractor demonstrating relevant experience experienced in traditional hedgebank construction, method of turf cutting and placement, supply and compaction of soil fill.

2)

Notwithstanding the landscape details submitted, no site works shall begin until a site specific Landscape and Ecology Management and Maintenance Plan has been submitted to and approved in writing with the Local Planning Authority. This shall set out responsibilities for maintenance within the site and cover the construction, establishment, management and ongoing maintenance of landscape elements and bio-diversity measures.

The Plan shall set out the landscape and ecological aims and objectives for the site along with the specific management objectives for each landscape/ ecological component, and the associated maintenance works required on an Annual and Occasional basis. Details of inspection, monitoring and reporting arrangements shall also be provided.

The plan shall include an as-existing condition survey for each length of hedge, identifying its position on the Hedgeline hedge management cycle, any initial works required to bring to good condition, such as gapping up, removal of invasive species etc. and requirements for cutting including intended height range, cutting height and frequency.

The Plan shall cover a period of not less than 30 years following the substantial completion of the development and shall be reviewed every 5 years and updated to reflect changes in site conditions and management prescriptions in order to meet the stated aims and objectives.

Management, maintenance inspection and monitoring shall be carried out in accordance with the approved plan for the duration of the operational phase of the development.

3) No site works shall begin until a detailed decommissioning plan has been submitted for reinstatement of the site at the termination of the consent period or in the event that the proposed development ceases to operate prior to that. The plan should cover the removal of all site infrastructure and identify any areas of new habitat creation/ planting to be retained. The plan should show how the site will be returned to agricultural use and shall include a demolition and restoration programme.

4) The works shall be carried out in accordance with the approved details. Any new planting or grass areas which fail to make satisfactory growth or dies within five years following completion of the development shall be replaced with plants of similar size and species to the reasonable satisfaction of the Local Planning Authority.

(Reason - In the interests of amenity and to preserve and enhance the character and appearance of the area in accordance with Strategy 3 (Sustainable Development), Strategy 5 (Environment), Policy D1 (Design and

Local Distinctiveness), Policy D2 (Landscape Requirements) of the East Devon Local Plan 2013 - 2033.)

12. (a) Prior to the commencement of any works on site (including demolition and site clearance or tree works), an up to date scheme for the protection of the retained trees, hedges and shrubs shall be produced in accordance with the principles embodied in BS5837 :2012, which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, [including trees which are the subject of a Tree Preservation Order currently in force], shall be submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in complete accordance with the approved protection scheme.
- (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.
- (c) No burning shall take place in a position where flames could extend to within 5m of any part of any tree to be retained.
- (d) No trenches for services or foul/surface water drainage shall be dug within the crown spreads of any retained trees (or within half the height of the trees, whichever is the greater) unless agreed in writing by the Local Planning Authority. All such installations shall be in accordance with the advice given in Volume 4: National Joint Utilities Group (NJUG) Guidelines For The Planning, Installation And Maintenance Of Utility Apparatus In Proximity To Trees (Issue 2) 2007.
- (e) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
- (f) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.
- (g) No trees, shrubs or hedges within the site which are shown as being planted or retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed without the prior written consent of the Local Planning Authority. Any trees, shrubs or hedges removed without such consent, or which die or become severely damaged or seriously diseased within five years from the occupation of any building, or the development hereby permitted being brought into use shall be replaced with trees, shrubs or hedge plants of similar size and species unless the Local Planning Authority gives written consent to any variation.

(Reason - To ensure retention and protection of trees on the site prior to and during construction in the interests of amenity and to preserve and enhance the character and appearance of the area in accordance with Policies D1 - Design and Local Distinctiveness and D3 - Trees and Development Sites of the Adopted New East Devon Local Plan 2013-2031).

Plans relating to this application:

AR-01-L-16 REV 04	Proposed Site Plan	23.05.23
AR-01-P01	Location Plan	23.05.23
AR-01-P03	Other Plans	23.05.23
AR-01-P04 REV 01	Other Plans	23.05.23
AR-01-P05	Other Plans	23.05.23
AR-01-P06	Proposed Elevation	23.05.23
AR-01-P07	Other Plans	23.05.23
AR-01-P08	Proposed Elevation	23.05.23
AR-01-P09	Proposed Elevation	23.05.23
AR-01-P10	Proposed Elevation	23.05.23
AR-01-P11	Other Plans	23.05.23
BLA146-01 REV D	Other Plans	23.05.23

List of Background Papers

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