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| | | Committee Date: 26th July 2022 |
| Newbridges (Musbury) | 21/1656/MOUT | Target Date: 17.09.2021 |
| Applicant: | Ms Linda Johnson | |
| Location: | Land Off Doatshayne Lane Doatshayne Lane | |
| Proposal: | Outline application for up to 15 no. dwellings including 10 affordable (all matters reserved except for access) | |

RECOMMENDATION: 1. Adopt the appropriate assessment;
2. Refuse planning permission.

EXECUTIVE SUMMARY

The application is before committee as it represents major development and the officer recommendation differs from that of the parish council.

The site relates to part of a field which lies outside of but immediately adjoins the built-up area boundary of the village on a relatively prominent and elevated site within the designated AONB landscape. There is an unnamed ordinary watercourse running along the southern site boundary and a strip of land either side of this (including the site access) lies within the defined Flood Zone 3. There is existing residential development to the south and southwest of the site.

Outline planning permission is sought for up to 15 no. dwellings (10 of which are indicated to be affordable). The application represents a re-submission to an earlier scheme granted approval under 17/0893/MOUT. That permission has now lapsed. In determining the previous scheme the identified harm to the designated landscape was considered to be outweighed by the significant benefits that would arise from the provision of affordable housing to meet a recognised local need that would not otherwise be met. In all other respects the scheme was found to be acceptable, or could be made so by condition.

The current scheme is unchanged from the previous scheme and is largely supported by the same information albeit the Flood Risk Assessments and Drainage Strategy has been updated. However, the housing needs survey for the parish and which provided support for the earlier scheme has not been updated and is now 8 years old. Without up to date housing needs information, and bearing in mind that the site has not come forward since the grant of consent, the proposal scheme is not able to demonstrate that it is seeking to deliver against an identified local need and therefore fails to meet the requirements of Strategy 35 of the Local Plan and the guidance set out in the Council's Affordable Housing Supplementary

Planning Document. This being the case the strong weight given to the delivery of affordable housing, on the previous scheme falls away. There are no other policies of the development plan that would support development of this nature in this location and there are no other identified benefits that would outweigh the harm to the designated landscape.

An Appropriate Assessment under the Habitats Regulations has been completed for this project which concludes that the proposal is likely to negatively impact on the integrity of the River Axe SAC and that permission should be refused. This is on the basis that foul water drainage related to the site would result in an increase in phosphate levels affecting the current unfavourable status of the River Axe SSSI and SAC, and represents a reason for refusal of the application.

Furthermore, objections have been raised by the Environment Agency to the proposal on the lack of specific detail in the Flood Risk Assessment and as part of the proposed surface water attenuation measures are indicated to fall within the high risk flood zone. The applicant has been given the opportunity to address these issues but has not satisfactorily done so. The Environment Agency has also suggested that the sequential test for site selection should be undertaken, however this was not previously applied as none of the residential development proposed was indicated within the medium or high risk flood zone.

Finally, contributions have been sought from the local NHS Trust towards meeting a shortfall in funding for non-infrastructure related projects in line with an agreed methodology for securing such provision. Whilst the applicant has acknowledged this request an intimated that a reduced contribution, to reflect the level of affordable housing proposed, would be acceptable there is no mechanism provided to secure this and this represents a further reason for refusal.

CONSULTATIONS

Local Consultations

Parish/Town Council

27.05.22 - Musbury Parish Council Comments on Amended Application

Since the land off Doatshayne Lane is within the AONB and outside the village BUAB, any development must provide robust evidence of a local need for affordable housing. Although the Parish Council is in favour of affordable homes in order to ensure Musbury remains a mixed vibrant village with young families as well as retirees, there is no current evidence of need (the 2014 Housing Survey is now outdated). The strong public feelings noted in our comments of July 2021 remain unchanged: this site is not ideal, development at Baxter's Farm being the preferred option.

A summary of local objections includes - loss of a greenfield site, increase in traffic and exacerbation of existing parking problems, inadequacy of drainage and sewage infrastructure. A recent example (October 19th 2021) after heavy rain, the lower village surface water drains were overwhelmed as water from Mounthill and Yonder

Mount flooded garages and gardens in Doatsahyne Close and Axminster Road. A visit by the highways officer confirmed that under such circumstances, road drains now just act as soakaways. Foul water 'back up' was reported to SWW. Such events are further confirmation that the current infrastructure is already inadequate without the added pressure of a housing development on such an elevated site. The Parish Clerk now keeps a record of reported incidents.

The PC welcomes the recent May 2022 submissions from Natural England, the EA and the Habitat Regulation Appraisal Report.

Points 1-5 remain unchanged (PC comments July 2021).

14.07.21 - There is a general recognition of a) the need for new homes in Musbury and East Devon as a whole to bring families to the village to keep it alive and b) the desire to be able to afford a home in Musbury from people brought up here and now living elsewhere for financial expediency. However, there is also a strong feeling that this site is not ideal and many would prefer to see development at Baxter's Farm.

This is a large development for a village of this size and residents want to ensure that the issues and problems are tackled early on before it is too late to do anything about them.

A summary of the objections include issues with increased traffic and exacerbated problems with parking in the village, drainage and sewerage infrastructure and the use of a green field site.

The Council broadly supports the application with these important provisos:

- 1) That the fixed boundaries are indeed fixed, with no subsequent breach allowed for additional dwellings.
- 2) That both DCC and SW Water are asked to respond to heartOfelt concerns from residents by visiting the site and not relying on computer modelling.
- 3) That any future viability assessment will not result in a decision to alter the number or the proportion of dwelling types in this application.
- 4) The 106 agreement be upheld
- 5) 3.10d of the design and access statement be amended/ deleted.

Technical Consultations

DCC Flood Risk Management Team

06.06.22 - At this stage, we have no in-principle objections to the above planning application, from a surface water drainage perspective, assuming that the following pre-commencement planning conditions are imposed on any approved permission:

· Prior to or as part of the Reserved Matters, the following information shall be submitted to and approved in writing by the Local Planning Authority:

(a) Infiltration test results in accordance with BRE 365 and, if infiltration is viable, groundwater monitoring results in line with Devon County Council's groundwater monitoring policy.

(b) A detailed drainage design based upon the approved Flood Risk Assessment and the results of the information submitted in relation to (a) above.

(c) Detailed proposals for the management of surface water and silt run-off from the site during construction of the development hereby permitted.

- (d) Proposals for the adoption and maintenance of the permanent surface water drainage system.
- (e) A plan indicating how exceedance flows will be safely managed at the site.

No building hereby permitted shall be occupied until the works have been approved and implemented in accordance with the details under (a) - (e) above. Reason: The above conditions are required to ensure the proposed surface water drainage system will operate effectively and will not cause an increase in flood risk either on the site, adjacent land or downstream in line with SuDS for Devon Guidance (2017) and national policies, including NPPF and PPG. The conditions should be pre-commencement since it is essential that the proposed surface water drainage system is shown to be feasible before works begin to avoid redesign / unnecessary delays during construction when site layout is fixed.

Observations:

Following my previous consultation response (FRM/ED/1656/2021; dated 14th July 2021), the applicant has submitted additional information in relation to the surface water drainage aspects of the above planning application, for which I am grateful.

The applicant has moved the proposed detention basin northeastwards. This feature appears to be encroaching into the curtilage of Plot 12. The applicant will need to consider this at the next stage of planning.

The applicant has noted (within section 6.4.01 of the Flood Risk Assessment & Drainage Strategy; Rev. 02; dated 10th April 2017) that the surface water drainage system will be designed up to the 1 in 30 year rainfall event. The applicant then goes on to confirm that the surface water drainage system will be designed up to the 1 in 100 year (+40% allowance for climate change) rainfall event. Further to our comments below, the surface water drainage system will need to be designed up to the 1 in 100 year (+40% allowance for climate change) rainfall event with a 10% uplift for urban creep (the system should not flood during this event). The system will need to be modelled using FEH rainfall data and all above-ground storage features will need to have 300mm freeboard.

As noted within our previous response: FEH rainfall data must be used when modelling the surface water drainage system. a 10 % allowance for urban creep should also be included within the total impermeable area in the model.

The applicant has proposed (within section 7.5.06 of the Flood Risk Assessment & Drainage Strategy; Rev. 02; dated 10th April 2017) to assess permeable paving within private parking areas.

At the next stage of planning, the applicant should submit photographs of the existing watercourse (including culverts) to demonstrate the geometry of the watercourse.

Any proposed works to the Ordinary Watercourse will require Land Drainage Consent from Devon County Council's Flood and Coastal Risk Management Team. The applicant should assess the existing culverts and confirm their condition.

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(c) Detailed proposals for the management of surface water and silt run-off from the site during construction of the development hereby permitted.

(d) Proposals for the adoption and maintenance of the permanent surface water drainage system.

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Observations:

The applicant has proposed a storage feature within the floodplain. The applicant should keep all storage features outside of Flood Zones 2 and 3. The applicant will need to consider this when finalising the layout

of the site. Currently, plot 12 may need to move (or be altered) to allow the detention basin to be moved outside of the floodplain. The proposed trees may also need to be removed to allow the basin to be moved.

FEH rainfall data must be used when modelling the surface water drainage system. a 10 % allowance for urban creep should also be included within the total impermeable area in the model.

The applicant has proposed (within section 7.5.06 of the Flood Risk Assessment & Drainage Strategy; Rev. 02; dated 10th April 2017) to assess permeable paving within private parking areas.

At the next stage of planning, the applicant should submit photographs of the existing watercourse (including culverts) to demonstrate the geometry of the watercourse.

Any proposed works to the Ordinary Watercourse will require Land Drainage Consent from Devon County Council's Flood and Coastal Risk Management Team. The applicant should assess the existing culverts

and confirm there condition.

The applicant should discuss the proposed alterations to the levels of the floodplain with the Environment Agency.

Housing Strategy Officer

19.05.22 - This application is being brought forward under Strategy 35 which states that there must be a proven local need for affordable housing which is demonstrated through an up to date robust housing needs survey. The Affordable Housing SPD (November 2020) gives further guidance on housing needs surveys and what constitutes a robust housing needs survey. The applicant has submitted some comment on housing need but the information falls short of the requirements of both strategy 35 and in the Affordable Housing SPD guidance as the recognised methodology has not been used.

The information supplied relies on Devon Home Choice bidding data. Whilst the number of bids is an indication of demand it is not a reliable source of needs data. Many bids are generated through auto-bids. These bids could come from anyone with a connection to East Devon so it does not show the local need. Even those registered on Devon Home Choice may not meet the requirements of the local connection stated in Strategy 35 and this is what a housing needs survey will look at. The previous survey was in 2014 so is out of date.

We agree that there is a high need for affordable housing in East Devon and more affordable homes are required but these need to be in the right locations. In rural areas and on exception sites planning policy dictates that an affordable housing need has to have been identified through a robust housing needs survey.

20/07/2021:

As the 2014 Housing Needs Survey is now out of date, we would really need to see an updated one produced to ensure that the need for this affordable housing still exists given that the site is classed as a rural exception site.

For reference, the Devon Home Choice register indicates only a limited need:

5 x 1 beds
2 x 2 beds
6 x 3 beds

The number of 3 bed properties required is quite interesting as that seems quite high comparatively...

All that said, we don't accept Devon Home Choice numbers as evidence of need; it would therefore be unreasonable to use those stats to demonstrate a lack of need.

Original comments:

We are happy with the number and tenure split of affordable housing on this site.

We would expect a Nomination Agreement to be agreed that enables the Local Authority or a preferred Registered Provider to nominate individuals from the common

housing register, preference going to those with a local connection to Musbury, then cascading to immediately adjoining parishes and finally the district.
updated comments:

I am happy with the number of affordable housing units on this site as it conforms to the required percentage for this rural exception site. However, there is currently no up to date Housing Needs Survey to confirm that this amount of affordable (and indeed market priced) housing is needed in Musbury. An up to date survey will be required to confirm this before the proposed plans can be approved.

Assuming this is done and the need is identified, we would expect a Nomination Agreement to be agreed that enables the Local Authority or a preferred Registered Provider to nominate individuals from the common housing register, preference going to those with a local connection to Musbury, then cascading to immediately adjoining parishes and finally the district.

South West Water

With reference to the planning application at the above address, I would advise that South West Water have no objection subject to the surface water being managed by means of a soakaway/watercourse as detailed in the proposal.

Clean Potable Water:

South West Water is able to provide clean potable water services from the existing public water main for the above proposal. The practical point of connection will be determined by the diameter of the connecting pipework being no larger than the diameter of the company's existing network.

Foul Sewerage Services:

South West Water is able to provide foul sewerage services from the existing public foul or combined sewer in the vicinity of the site. The practical point of connection will be determined by the diameter of the connecting pipework being no larger than the diameter of the company's existing network.

The applicant can apply to South West Water for clarification of the point of connection for either clean potable water services and/or foul sewerage services. For more information and to download the application form, please visit our website:

www.southwestwater.co.uk/developers

Surface Water Services:

The applicant should demonstrate to your LPA that its prospective surface run-off will discharge as high up the hierarchy of drainage options as is reasonably practicable (with evidence that the Run-off Destination Hierarchy has been addressed, and reasoning as to why any preferred disposal route is not reasonably practicable):

1. Discharge into the ground (infiltration); or where not reasonably practicable,
2. Discharge to a surface waterbody; or where not reasonably practicable,
3. Discharge to a surface water sewer, highway drain, or another drainage system; or where not reasonably practicable,

4. Discharge to a combined sewer.(Subject to Sewerage Undertaker carrying out capacity evaluation)

Having reviewed the applicant's current information as to proposed surface water disposal for its development, please note that method proposed to discharge into the ground (infiltration) or discharge into a surface water body is acceptable and meets with the Run-off Destination Hierarchy.

I trust this provides confirmation of our requirements, however should you have any questions or queries, please contact the Planning Team on 01392 442836 or via email: DeveloperServicesPlanning@southwestwater.co.uk

Environment Agency

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

Environment Agency position:

We maintain our objection to the proposed development on the grounds that the application is accompanied by insufficient information relating to the assessment of flood risk.

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

Reason - We have reviewed the applicant's response to our previous letter. We consider that the comments within their email dated the 22/09/2021 does not appropriately address our current concerns. The following comments aim to further provide explanation and justification for our objection, while also providing advice on how the applicant may progress the application.

Previous Planning Approval:

We recognise that an application on this site obtained approval in 2017, however this has no bearing on current proposals. In our role as statutory consultee, we review each application on its own merit, and against the most up to date information and policies. For example, flood mapping and climate change allowances have been revised since 2017 and therefore any application must consider and reflect the current risks.

Flood Levels:

The flood zone maps available online are an indicative planning tool. Consistent with National Planning Policy Framework (NPPF), the applicant needs to produce a site-specific flood risk assessment (FRA), which complies with the requirements for site-specific FRAs, as set out in paragraphs 30 to 32 of the Flood Risk and Coastal Change section of the planning practice guidance, in order to demonstrate that the development will be safe over its lifetime (100 years for residential dwellings). As part of this process, the design flood level must be established and understood, taking into account the climate change allowances which could increase flood levels considerably

above the flood zone levels. Without understanding flood levels there is no way to say for sure that the residential properties will be safe from flooding. For this reason we do require information on the design flood level which is in line with NPPF guidance.

Climate Change:

The applicant should be aware that this summer climate change allowances have been updated. Please find the updated allowances on:

<https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances>.

Finished Floor Levels (FFLs):

Although only part of the site is within flood zone 3, as stated above, the flood zone maps are indicative, and the more accurate flood levels should be determined with finished floor levels 300mm above this level. Site topography might mean that this is the case without having to raise floor levels however this should be clearly set out in the FRA with FFLs marked on drawings.

Sustainable Drainage Systems/ Attenuation:

The consultant considers that the detailed design of the attenuation feature may be submitted at detailed design stage, rather than at this current outline stage. They also note that there may be the option to move the attenuation feature to be located fully in flood zone 1 (low risk). We would encourage the option for the feature to be located in flood zone 1, but the feasibility of this option must be provided at this outline stage. This is because, where the flood zone is functional floodplain, any SuDS located within this area, will fill up with fluvial flood water during a flood event, and consequently have insufficient capacity for the attenuation of surface water runoff, therefore, increasing flood risk to the properties on site. Ultimately, we take this position because the parameters within which development may be acceptable must be established at this stage.

The consultant suggests that below ground attenuation may be an option elsewhere on site whilst pointing out that below ground attenuation is not in line with local policy/best practice. We recommend that your authority consults the Lead Local Flood Authority on this matter for further advice on whether this is an acceptable approach.

Culvert:

The FRA should be updated with the information provided in the email (27/09/2021). It is not sufficient to rely on residents to inform the management company when the culvert is blocked. The culvert should be regularly checked and cleared on a set schedule alongside any additional clearance required. The FRA needs to also address the question of how much water could back up on the site before it overtops onto the road and whether this would impact the proposed properties. The consultant's email has stated "This, along with the proposed upstream works to the open watercourse as detailed on the Drainage Strategy Plan should provide an improved scenario". We request further clarity on this statement as we are unclear to what this is referring. Doatshayne Close is a residential street and although this might be the current route for water should the culvert be overtopped the situation must not be made worse from this development.

Access and Egress:

As previously stated in our last response further details of site access and egress should be provided within the FRA. The only highway access is located within the flood zone at the south of the site. Access and egress from the north of the site should be explored. A pedestrian route for emergency use only might be an option, and we would recommend that your Authority's Emergency Planners are also consulted on any proposal for access and egress.

Advice - Ownership and Maintenance:

We recommend that a 'maintenance corridor' around the watercourse of 8m distance to ensure that any future work or maintenance that needs to take place to the watercourse can be done, however, as it is an ordinary watercourse, we defer to the requirements of the Lead Local Flood Authority on this matter. The ownership and maintenance of the watercourse should not be transferred to property owners. A management company must be employed to carry out this role. It is acknowledged in the email dated 27/09/2021 that this is the intention for the culvert also. The FRA should be updated with this information.

Overcoming our objection:

We recommend that the applicant/consultants review our above comments, and those made previously in order to inform a revised FRA. We highlight that the FRA should comply with requirements set out in the Planning Practice Guidance for site-specific FRAs, as well as the specific detail provided in our responses, in order to ensure that the application is accompanied by an adequate assessment of flood risk.

Please contact us again if you require any further advice.

Original comments:

Thank you for consulting us on this application.

Environment Agency position

In the absence of an adequate flood risk assessment (FRA), we object to the proposed development. The reason for this position and advice is provided below.

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

Reason - The site is located partially within flood zones 2 and 3 which are defined by Environment Agency flood maps as having a medium to high risk of flooding respectively. We have reviewed the submitted FRA by Sands Consulting (Ref. 16.02.044_R002, dated April 2017) and consider that it does not comply with the requirements for site-specific flood risk assessments, as set out in paragraphs 30 to 32 of the Flood Risk and Coastal Change section of the planning practice guidance. The FRA does not, therefore, adequately assess the flood risks posed to and by the proposed development. Whilst it is evident that the principles of the sequential approach have been adopted by locating the residential development outside of the areas of flood risk, further in-depth analysis of flood levels is required to fully influence the extent of the undeveloped land adjoining the watercourse.

In particular, the FRA fails to derive a 'design flood level', which is a key requirement of an FRA, and which can then be used to influence the areas of development in relation to topography on the site, and the requirements for finished development levels. The 'design flood level' should reflect the level of flooding experienced during the 1-in-100 year AEP fluvial flood, with an allowance for climate change over the lifetime of the development (which would be considered as 100 years for residential development). Current guidance on climate change should be referenced on the Gov.uk website, where increases in fluvial flows of both 60% and 85% should be considered. It would be appropriate to consider these increases in flow when applied to the current-day 1-in-100 year flow quoted in the assessment and the associated extents of flooding within the site.

In addition, the following matters also require further attention:

- o Whilst attenuation features are proposed within Flood Zone 3, these need to be further considered in relation to the functionality of the floodplain and the potential to increase the extent of flooding.
- o The finished flood levels for properties within the development should be considered in relation to the design flood level. It is good practice to ensure that finished floor levels are set at least 300mm above the design flood level in combination with a requirement to be 300mm above existing site levels.
- o The scenario associated with the blockage of culverts is seen as a significant risk to the development, particularly in reference to the new access road and the existing culvert in the south eastern corner of the site. These situations should be considered.
- o Safe access and egress to the site during times of flooding is an important consideration. It is appropriate for the assessment to consider measures to reduce the risk of flooding to the access road, potentially through increasing the elevation and conveyance capacity below.
- o A 'product 4' flood report should be requested from us to provide, and confirm, baseline flooding information used in the assessment. The applicant may do this by emailing: DCISEnquiries@environment-agency.gov.uk .

Overcoming our objection

The applicant may overcome our objection by submitting a revised FRA, or further information to cover the deficiencies outlined in this letter. Please re-consult us on any further relevant information submitted.

Please contact us again if you require any further advice.

Environmental Health

I recommend approval with conditions:

A Construction and Environment Management Plan 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. 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 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 have no objection in relation to the scheme but would like to make the following comments and recommendations for consideration.

It is not clear from the proposed indicative layout which way the residential units would face. It is important that they are designed to provide overlooking and active frontages to the new internal streets and any pedestrian/cycle routes and public open spaces.

Detailed design should avoid having accessible space to the rear of residential back gardens, as this is generally accepted to assist in preventing crime.

Boundaries to the rear and side of plots must be robust enough to prevent unauthorised access whilst boundary treatments to the front should clearly define private space and avoid areas where ownership can be ambiguous and thus cause a conflict in use and activity.

If any of the existing hedgerow is likely to comprise new rear garden boundaries then it 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. Additionally, clear ownership and responsibility for the hedge must be established in order to ensure its effective maintenance and upkeep.

Vehicle parking will presumably be through a mixture of solutions. Cars parked in locked garages or on a hard standing within the dwelling boundary is preferable. Where communal parking areas are necessary, they should be in small groups, close and adjacent to homes and within view of active rooms within these dwellings. Rear parking courts are discouraged but if unavoidable then they must be very well designed to avoid the crime and anti-social behaviour issues that have often arisen when such spaces have been poorly designed. They should only serve a small number of units and surveillance opportunities should be maximised. Appropriate lighting should also be considered.

The site lighting strategy must provide proper and effective lighting for all relevant spaces which should include any pedestrian links, parking areas as well as new streets. Lighting is advised to meet BS 5489:2013.

NHS Royal Devon & Exeter NHS Foundation Trust

Introduction

Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The creation and maintenance of healthy communities is an essential component of sustainability as articulated in the Government's National Planning Policy Framework, which is a significant material consideration. Development plans have to be in conformity with the NPPF and less weight should be given to policies that are not consistent with the NPPF. Consequently, local planning policies along with development management decisions also have to be formulated with a view to securing sustainable healthy communities. Access to health services is a fundamental part of sustainable healthy community.

As the attached document demonstrates, Royal Devon & Exeter NHS Foundation Trust (the Trust) is currently operating at full capacity in the provision of acute and planned healthcare.

It is further demonstrated that this development will create potentially long term impact on the Trust ability provide services as required.

The Trust's funding is based on previous year's activity it has delivered subject to satisfying the quality requirements set down in the NHS Standard Contract. Quality requirements are linked to the on-time delivery of care and intervention and are evidenced by best clinical practice to ensure optimal outcomes for patients.

The contract is agreed annually based on previous year's activity plus any pre-agreed additional activity for clinical services. The Trust is unable to take into consideration the Council's housing land supply, potential new developments and housing trajectories when the contracts are negotiated. Further, the following year's contract does not pay previous year's deficit retrospectively. This development creates an impact on the Trust's ability provide a services required due to the funding gap it creates. The contribution sought is to mitigate this direct impact.

CIL Regulation 122 and 123

The Trust considers that the request made is in accordance with Regulation 122:

"(2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—

- (a) necessary to make the development acceptable in planning terms;*
- (b) directly related to the development; and*
- (c) fairly and reasonably related in scale and kind to the development."*

S 106

S 106 of the Town and Country Planning Act 1990 (as amended) allows the Local Planning Authority to request a developer to contribute towards the impact it creates on the services. The contribution in the amount **£10,622.00** sought will go towards the gap in the funding created by each potential patient from this development. The detailed explanation and calculation are provided within the attached document.

Without the requested contribution, the access to adequate health services is rendered more vulnerable thereby undermining the sustainability credentials of the proposed development due to conflict with NPPF and Local Development Plan policies as explained in the attached document.

Royal Devon & Exeter NHS Foundation Trust

10 September 2021

Natural England

Thank you for your consultation on your Appropriate Assessment dated 28 April 2022.

SUMMARY OF NATURAL ENGLAND'S ADVICE:

Natural England concurs with the conclusion you have drawn in your Appropriate Assessment (28.04.21) that it is not possible to ascertain that the proposal will not result in adverse effects on the site integrity of the River Axe SAC. Natural England advises that the proposal does not provide enough certainty to enable adverse effects on site integrity to be ruled out.

HABITATS REGULATIONS ASSESSMENT:

Natural England notes that your authority, as competent authority, has undertaken an appropriate assessment of the proposal, in accordance with regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process, and a competent authority should have regard to Natural England's advice.

Your appropriate assessment concludes that your authority is not able to ascertain that the proposal will not result in adverse effects on the integrity of any of the European sites in question. Having considered the assessment, and the measures proposed to mitigate for any adverse effects, Natural England concurs with the conclusion you have drawn that it is not possible to ascertain that the proposal will not result in adverse effects on site integrity. Natural England advises that the proposal does not provide enough information and/or certainty to enable adverse effects on site integrity to be ruled out.

Mitigation through nutrient neutrality is a potential mechanism to ensure no net increase in nutrient loading within this habitats site. Our guidance regarding this catchment has been uploaded onto the East Devon District Council's website <https://eastdevon.gov.uk/planning/phosphates-on-the-river-axe>

Regulation 63 states that a competent authority may agree to a plan or project only after having ascertained that it will not adversely affect the integrity of the European site, subject to the exceptional tests set out in regulation 64 of the Conservation of Habitats and Species Regulations 2017 (as amended). As the conclusion of your Habitats Regulations Assessment states that it cannot be ascertained that the proposal will not adversely affect the integrity of the European site, your authority cannot permit the proposal unless it passes the tests of regulation 64; that is that there

are no alternatives and the proposal must be carried out for imperative reasons of overriding public interest.

Your authority may now wish to consider the exceptional tests set out within regulation 64. Specific guidance about these tests can be found at: <https://www.gov.uk/government/publications/habitats-and-wild-birds-directives-guidance-on-the-application-of-article-6-4>

FURTHER ADVICE

LANDSCAPE:

The proposed development is for a site within or close to a nationally designated landscape namely East Devon AONB. Natural England advises that the planning authority uses national and local policies, together with local landscape expertise and information to determine the proposal. The policy and statutory framework to guide your decision and the role of local advice are explained below.

Your decision should be guided by paragraphs 176 and 177 of the National Planning Policy Framework which gives the highest status of protection for the 'landscape and scenic beauty' of AONBs and National Parks. For major development proposals paragraph 177 sets out criteria to determine whether the development should exceptionally be permitted within the designated landscape.

Alongside national policy you should also apply landscape policies set out in your development plan, or appropriate saved policies.

We also advise that you consult the East Devon AONB Partnership. Their knowledge of the site and its wider landscape setting, together with the aims and objectives of the AONB's statutory management plan, will be a valuable contribution to the planning decision. Where available, a local Landscape Character Assessment can also be a helpful guide to the landscape's sensitivity to this type of development and its capacity to accommodate the proposed development.

The statutory purpose of the AONB is to conserve and enhance the area's natural beauty. You should assess the application carefully as to whether the proposed development would have a significant impact on or harm that statutory purpose. Relevant to this is the duty on public bodies to 'have regard' for that statutory purpose in carrying out their functions (S85 of the Countryside and Rights of Way Act, 2000).

Other Representations

18 no. representations have been received to the application, these either object to the scheme or support the principle of affordable housing provision but raise specific objections or concerns to the proposed scheme, these comments are summarised below:

Summary of objections:

- Outside the built-up area boundary of the village on land designated as AONB

- The proposal would increase potential for ribbon development on this side of the village
- Loss of prime agricultural land
- Traffic volume and conditions have significantly worsened since the previous scheme was approved.
- The local road network in the village is effectively single lane due to on-street parking and with poor junctions with the A358
- Increased traffic through Yonder Mount
- Pedestrian and Vehicular safety concerns related to increased traffic use of Yonder Mount, Doatshayne Lane and the wider village, particularly during construction
- Surface water drainage issues, potential flood risk increase and ongoing maintenance issues and increased future risk as a result of climate change.
- Capacity of existing foul sewage and surface water drains particularly given the increased frequency of storm event as a result of the effects of climate change
- Members of the planning committee should visit the site during a period of heavy rain
- Sequential test for site selection should be applied
- Affordable housing should be appropriately dispersed throughout the site.
- The Baxter's farm site is a better option to provide this type of development, this is close to the main A-road, shop, pub, garage and bus stop
- It is unnecessary to locate an urban-style development on a green field, which will change the character of the village, when a brown field site is available
- Impact on dark skies around the village
- Loss of greenfield site when a preferred brownfield site is available
- Lack of demonstration of up-to date housing need to support the exception to the usual planning restrictions

PLANNING HISTORY

| Reference | Description | Decision | Date |
|------------------|---|--------------------------|-------------|
| 16/1026/MOUT | Outline application for up to 18 no. dwellings including 9 no. affordable dwellings with all matters reserved | Refusal | 08.09.2016 |
| 17/0893/MOUT | Outline application for up to 15 no. dwellings including 10 affordable (all matters reserved except for access) | Approval with conditions | 23.07.2018 |

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 4 (Balanced Communities)

Strategy 7 (Development in the Countryside)

Strategy 27 (Development at the Small Towns and Larger Villages)

Strategy 35 (Exception Mixed market and Affordable Housing at Villages, Small Towns and Outside Built-up Area Boundaries)

Strategy 34 (District Wide Affordable Housing Provision Targets)

Strategy 38 (Sustainable Design and Construction)

Strategy 43 (Open Space Standards)

Strategy 46 (Landscape Conservation and Enhancement and AONBs)

Strategy 47 (Nature Conservation and Geology)

Strategy 50 (Infrastructure Delivery)

D1 (Design and Local Distinctiveness)

D2 (Landscape Requirements)

D3 (Trees and Development Sites)

EN5 (Wildlife Habitats and Features)

EN13 (Development on High Quality Agricultural Land)

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

EN21 (River and Coastal Flooding)

EN22 (Surface Run-Off Implications of New 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)

Government Planning Documents

National Planning Practice Guidance

Site Location and Description

The site relates to a broadly rectangular area of land in the south west corner of a field which lies to the immediate north of the edge of the village of Musbury. The site area extends to approximately 0.88 ha. The field slopes down towards the west and the site is bounded by hedgerows on its northwestern and southwestern sides. The land is currently in agricultural use and is accessed through a gateway at its southwestern

corner adjoining a junction of Higher Doatshayne Lane, Doatshayne Lane, Doatshayne Close and Yonder Mount. To the west of the site lies Doatshayne Lane with a recreation ground and allotment gardens beyond. To the south lies Yonder Mount, a residential close containing both single and two storey dwellings. To the east and north lie agricultural fields.

The site lies within the East Devon Area of Outstanding Natural Beauty and outside of but adjoining the defined Built-Up Area boundary of Musbury. A strip of land along the southwestern side of the site lies within Flood Zone 3, and an open ditch runs through this area.

Background

Planning permission was granted under application 17/0893/MOUT for up to 15 no. dwellings including 10 affordable units. That permission was in outline form with all matters reserved save for means of access. Permission was granted subject to conditions and to a legal agreement securing provision of 10 no. units of affordable housing, on site open space, landscaping and surface water drainage requirements. The permission was granted on 23rd July 2018 and required submission of reserved matters for approval within 3 years of that date. As no such reserved matters application has been received, that permission has therefore expired.

Proposed Development

The current application effectively seek a resubmission of the recently expired permission granted under 17/0893/MOUT. As before access is the only matter for which approval is sought at this stage and the application again seeks permission for up to 15 units of which 10 are proposed as affordable.

Whilst only details of access are to be determined at this stage the application is supported by an indicative layout plan which shows:

- New access further on to Yonder Mount but further to the southeast of the existing field access.
- Single access road running through the site with extended turning head at its northeastern end;
- Dwellings arranged primarily to run in a series of 3 rows parallel to the southwest boundary of the site, with a further row of 2 pairs of semi-detached properties to the northwest of the estate road.
- The schedule of accommodation indicates 4 x 1 bed semi-detached units; 4 x 2 bed semi-detached units; 2 x 3 bed detached units as affordable units and 2 x 4 bed detached houses, 2 x 3 bed detached houses and 1 x 4 bed detached bungalow for open market sale.
- An amenity area and attenuation pond is shown in the northwest corner of the site
- Areas of landscape planting
- Areas to be left undeveloped for drainage/flooding reasons

The layout indicates areas allocated for parking between rows and to the north side of the estate road. The indicative layout shows no dwellings within the flood zone, and a

culvert would be required under the new access to the site. It is proposed that the existing access gap would be closed.

The Design and Access Statement confirms that the same s106 requirements and obligations are proposed.

ANALYSIS

The principle issues with the current application remain as before and therefore commentary on these is repeated and updated as necessary to take into account any changes that have occurred since the previous grant of permission. Those issues are:

- The principle of development and compliance with policy (including provision of affordable housing)
- Landscape impact and Impact on the character and appearance of the area
- Flooding and Drainage
- Highway Issues
- Ecology Issues
- Loss of Agricultural Land
- Amenity Impact
- S.106 matters

The principle of development and compliance with policy (including provision of affordable housing)

The Adopted East Devon Local Plan 2013-2031 (LP) identifies sufficient sites for housing development in the District such that East Devon is considered to have an up to date 5 year housing site supply. Therefore, in accordance with paragraph 11 of the National Planning Policy Framework (NPPF), the district's policies relevant to the supply of housing are considered to be up to date and can be given full weight.

The site lies outside of the Built-Up Area Boundary for the village as designated through the East Devon Villages Plan (2018). The site therefore falls to be considered as development in the countryside and therefore against the criteria of LP Strategy 7 (Development in the Countryside),

Strategy 7 is quite specific by stating,

'Development in the countryside will only be permitted where it is in accordance with a specific Local or Neighbourhood Plan policy that explicitly permits such development'

And goes on to say,

'and where it would not harm the distinctive landscape, amenity and environmental qualities within which it is located'.

Strategy 35 (Exception Mixed Market and Affordable Housing At Villages, Small Towns and Outside Built-up Area Boundaries) of the Local Plan, as the title suggests,

relates to proposals for mixed market and affordable housing schemes in locations outside built-up area boundaries. It therefore permits, in certain circumstances and subject to a number of criteria being met, development outside built-up area boundaries for schemes including affordable housing proposals where normal market led housing schemes would not be permitted. The previous scheme for the development of this site was permitted on this basis with significant weight being given to the provision of affordable housing to meet an identified local need.

The current scheme essentially replicates the layout of the approved scheme under application (17/0893/MOUT) but it is necessary to reconsider the development again against the criteria of that policy and any other material changes that might affect the principle of development.

The proposal is for up to 15 no. units and such falls within the scale of development supported under Strategy 35. In addition the site is physically close to the built-up area boundary of the village and seeks to provide 10 of the units as affordable dwellings therefore according with the requirement for at least 66% of the units to be affordable. Strategy 35 also lists 3 no. further criteria, all of which will need to be evidenced they can be met for development to be permitted. Firstly, it needs to be evidenced that the affordable housing need in the locality would not otherwise be met. Secondly, that the village has a population of less than 3000 persons, is well designed using local materials and is close to a range of community service and facilities (including four or more of a school, pub, village hall, shop/post office, doctors surgery, place of worship and public transport service) and is sympathetic to character of the settlement and has a satisfactory highway access. The final requirement relates to the restriction of the affordable housing to persons in housing need and without access to market housing and has a local connection with the parish.

In relation to need the application is supported by a resubmission of the D&A Statement that accompanied the previous application with a brief update. At para. 2 this states that *'the housing is still needed in the village but negotiations with housing providers have not been concluded and it is not practical to apply for reserved matters until that has been done.'* The evidence of need is therefore reliant on the Devon Community Housing Needs Survey (HNS) carried out in February 2014 for the parish which concluded that there was at the time a need for 9 affordable homes in Musbury. This need was confirmed at the time of the previous application by the Housing Strategy Officer. Weight was also given to identified need in other adjoining parishes with which Musbury is grouped (under Strategy 35) for the purposes of affordable housing, those neighbouring parishes being Kilmington, Shute and Dalwood. In relation to parish grouping the pre-amble to Strategy 35 states that, *"For affordable housing in rural areas account will be taken of the specific need within the Parish in which the application land is sited and in addition regard will also be paid to need in surrounding parishes"*.

Whilst there was some need identified for adjoining parishes it was also noted that some schemes in adjoining parishes also sought partially to meet need in other parishes. However it was recognised that the most appropriate place to deliver the housing need of the parish is in the village. The 2014 HNS for the village is now 8 years old and as such is not considered to be up to date and there is no reason to suggest its findings would still reflect the housing needs of the parish. The applicant

has been advised of the need to update the survey to ensure that firstly, a need still exists, and secondly that where this is the case that the development proposed is designed to meet this need in terms of tenure mix and size of dwelling etc.

In response the applicant has pointed to Devon Homes Choice register, the parish councils' ongoing support and East Devon's own establishment of an affordable housing task force, as demonstration and recognition of need. This general level of affordable housing need across the district is not disputed, nor is the requirement for more affordable housing to be delivered more generally. However the Devon Homes Choice register is not accepted as demonstration of housing need for the purposes of the application of Strategy 35. This policy is a rural housing exceptions policy designed specifically to support affordable housing provision to meet demonstrated local need. In doing so it looks, subject to meeting the specified criteria, to support housing where this would not normally be permitted and where a need for this has been demonstrated, it does not look to support general affordable housing provision.

The Council has adopted an Affordable Housing Supplementary Planning Document (November 2020) which addresses Rural Exception sites such as that proposed in the application. At para. 6.3 it sets out what a 'robust housing needs survey' is considered to be and at para. 6.4 confirms that for a HNS to be considered 'up to date' for the purposes of the policy it needs to have, *"... been completed within the last five years; unless there has been significant development of affordable housing subject to a local connection within this period, in which case an update of the survey is likely to be necessary."* On this basis the application is not supported by an up-to date housing needs survey and therefore does not meet the requirement of Strategy 35 or demonstrate that there is a need for the number, size or tenure mix of affordable housing proposed.

In relation to the second criterion Musbury has a school, shop, village hall and place of worship and there is access to a regular bus service on the A358 that links Musbury with Seaton, Colyton and Axminster. Issues relating to the character of the settlement and highways matters are considered separately below.

Strategy 35 requires that restrictions be imposed to ensure that affordable housing is occupied, both initially and subsequently, by local people in genuine need, as a first priority. The application is accompanied by the same D&A statement that accompanied the earlier permission 17/0893/MOUT and for which an accompanying Section 106 legal agreement was secured providing for: 10 no. affordable units (1 no. shared ownership and 9 no. affordable rent) as well as provision and management of onsite open space; landscaping, and; surface water drainage features. As the D&A Statement is the same as previously submitted there remains some elements within the included heads of terms – related to obligations for affordable housing provision in the event that no suitable Registered Provider can be found – that are not considered appropriate (the parish council has raised specific issue with this). However no such clause was included in the final s.106 agreement and subject to favourable consideration of the application the tenancy, management and occupation of these units could again be appropriately be secured through a suitable legal agreement.

The Parish Council has offered broad support to the application and states that there is general recognition of the need for new homes in Musbury and in particular for

affordable housing. However, they also acknowledge that there is no up to date HNS to support this. Without an up-to date assessment of that need within the parish or demonstration of how the development might help meet any outstanding need in adjoining parishes it is not possible to determine that there is a need for the number and type of dwellings proposed, on this basis the proposal fails to meet all of the requirements of Strategy 35.

Landscape impact and Impact on the character and appearance of the area

The site lies within landscape characterised as type 3B Lower Rolling Farmed and Settled slopes, which is recorded as having a gently rolling landform, sloping up from a valley floor, with variable size fields with wide, low boundaries and irregular pattern. This landscape contains many hedgerow trees, copses, streams and ditches, streamside tree rows and has winding, often sunken lanes. The land use within this landscape is stated as being pastoral with tranquil and intimate character and incremental growth around the edges of villages is noted as a force of change. In terms of planning for development it seeks to ensure any development is sensitive to existing road patterns and settlement form and include measures to help soften the settlement edge and to integrate development into the landscape setting. In this regard the application site appears as a prominent agricultural field framed by hedge banks, abutting the northern edge of the existing residential development in Musbury.

LP Strategy 35 requires that a scheme should be physically very well related to the built form of the village, sympathetic to the character of the settlement and well designed using local materials. LP Strategy 46 requires that development be undertaken in a manner that is sympathetic to and helps conserve and enhance the local quality and distinctiveness of the natural landscape character.

The landscape impact information that accompanied the previous application has been resubmitted and relates to an earlier Landscape and Visual Impact Assessment (LVIA) and an update to this dating from 2016. The original assessment concluded that the impact on the character of the site would be “moderate-substantial adverse”, primarily due to the introduction of development into an area where there is currently none and the loss of the site to agricultural use, which contributes to the character of the area. Whilst the LVIA acknowledged that there would be localised landform change, it suggested that the overall character of the slope would remain and that the proposal would be in-keeping with the edge of settlement character formed by existing development in Yonder Mount. The LVIA update sets out to explain how the reduction in overall numbers and the design and layout of units could provide a more appropriate form of development in this edge of settlement location by providing additional landscape planting and lower eaves and ridge levels to provide a softer transition to the surrounding countryside. The previous approved scheme acknowledged that the current transition from village to countryside could be improved upon but that the development would move this transition further to the north-east and involve the loss of a not insignificant area of land to residential development.

The current application is unchanged in this regard from the previous permission and where at the time concerns were raised in relation to: the lack of appropriate assessment of the setting of Shute House; the continued concern of reducing the gap between Musbury and Maidenhayne; the urbanising effect of the proposed passing

place on Doatshayne Lane lack of details in relation to site sections; means of securing landscape and drainage delivery and maintenance and lack of overarching green infrastructure strategy.

It was found that the development of the site would not be in keeping with the character and appearance of the surrounding area and that it would have a detrimental impact on the AONB in conflict with Strategy 46, particularly with regard to the infilling effect of the development within the existing gap between Musbury and Maidenhayne and the consequent impact on the historic settlement pattern of this area. However, it was also recognised that there was potential to reduce this impact in the longer term. In the event the application was approved with weight given to the ability to reduce the overall impact of the development and softening of the transition of the northern edge of the village through landscaping proposals to be secured by condition and their long-term maintenance by means of a legal agreement.

Flooding and Drainage

The far southwestern part of the site, parallel to the open watercourse on this boundary, falls within Flood Zone 3 (high flood risk). This watercourse drains the field and land upstream from it. Although the site partially overlaps Flood Zone 3, the indicative layout plan illustrates that there is adequate space within the site for the amount of residential development proposed without the requirement for any dwelling to be constructed within that Flood Zone. The new vehicular access to the site would require a culvert to be constructed under it, similar to that under the existing field access. On the earlier approved scheme, The Environment Agency raised no objection to the proposal but did make reference to the sequential test for site selection however on this matter it was considered that given that the residential development could be carried out without constructing dwellings within Flood Zone 3 and that '*...the risk of flooding to the access and egress route is low in this case.*' And that the proposal was considered acceptable with regard to flood risk.

The current application was originally accompanied by the same Flood Risk Assessment (FRA) and Drainage Strategy as was submitted with the earlier application. This set out the flood risk categorisation of the site, the source of potential flooding and resulting flood risk relating to the development. In terms of surface water management it looked at the existing site drainage conditions and proposed a strategy for dealing with surface water relating to the new development and designed so as not to increase existing run-off rates. In terms of foul drainage this proposed to connect to the existing combined South West Water network in Yonder Mount. Whilst the concerns of local residents are noted in relation to capacity issues in the local network SWW, as the operator, have raised no objections.

The Environment Agency (EA) objected to the original submission considering the FRA to be inadequate, in particular by failing to derive a 'design flood level' taking into account the 1 in 100 year fluvial flood level and accounting for climate change, other concerns in relation to surface water attenuation features being shown within Flood Zone 3 and other areas where further detailed consideration was considered necessary.

In response the applicant has produced an amended FRA for consideration. The Environment Agency has reviewed the amended details but maintain their objection on the basis that the proposal does not provide sufficient information to determine whether the proposed finished floor levels of units would be high enough to ensure the development is safe over its lifetime; The proposal appears to include surface water drainage measures within areas at risk of flooding, and exceedance flows resulting from any blocking of the proposed culvert could increase off-site flood risk.

The EA has though provided useful guidance to the applicant as to how these issues might be addressed.

With regard to surface water drainage, the concerns raised in relation to the previous scheme have been repeated and are noted. Devon County Council (DCC) as the Lead Local Flood Authority (LLFA) has been consulted in this regard. As before, the current application proposes to provide surface water attenuation by means of soakaway where possible and where not by means of attenuating flows through the provision of above ground conveyance swales/detention basins on the site to reduce flows to greenfield run-off rates. However the EA has objected to the location of the proposed SuDS drainage measures where these lie partially within Flood Zone 3.

Devon County Council in their capacity as the lead local flood authority have in their response to the revised drainage strategy not indicated any in-principle objection. In their original comments though they mirrored the EA's concerns regarding the provision of drainage features within Flood Zone 3. Whilst the LLFA has not, reiterated these concerns in their most recent comments the drainage strategy layout continues to indicate SuDS features with Flood Zone 3.

The applicant has been given a lengthy period of time in which to provide an update to the original FRA to address the concerns raised but the amended FRA submitted has failed to satisfactorily do so, the application is therefore considered not to be in accordance with policy EN21 and EN22 of the Local Plan, and policy on flood risk set out in the National Planning Policy Framework and accompanying Planning Practice Guidance.

In terms of foul drainage it is noted that South West Water has raised no concerns in relation to the connection of this development to their existing sewerage infrastructure (see comments in ecology section).

Highway Issues

The application is in outline form but matters of access are to be considered at this stage. The proposal shows a single point of access on the southwestern side of the site onto Yonder Mount and the existing field access is shown to be closed up. The Design and Access Statement also refers to provision of a vehicle passing layby further to northeast of the site on Doatshayne Lane. This element was previously considered to increase the urbanising effect of the development spreading this further to the north and therefore whilst it was recognised that there may be some benefits from such a proposal it was not something that was previously requested by the Highways Authority and was not conditioned or otherwise secured through the previous permission.

The Highways Authority has not commented on the current application. In relation to the previous approval they confirmed that the speed limit on the local road adjacent to the site is restricted to 20mph and that there is no record of personal injury collisions in the area of Doatshayne Lane. As such they expressed the view that the local highway network is not unacceptably unsafe for all road users. Furthermore, in relation to the number of dwellings proposed and likely trip generation they did not consider this likely to have a severe impact on the surrounding highway network. The proposed access geometry and visibility splays were also considered to be suitable for the 20mph traffic speed restriction.

As before, whilst concerns raised over parking and highway safety are noted there is no reason to consider that adequate provision for parking could not be provided within the site and whilst the highways authority has not responded on the current application it remains the same as previously approved and where there is no evidence of significant changes in the volume or nature of traffic on the local highway network that would suggest an alternative view should be taken on the current scheme. Subject to conditions to control: visibility splay provision and maintenance; the closure of the existing access; site drainage; submission of further highways details and of a Construction Management Plan the proposal is still considered to be acceptable in highway terms.

Ecology Issues

There are both off-site and on-site issues to consider in relation to the application.

In relation to on-site potential impacts, the previous application for the development of the site was supported by an Extended Phase 1 ecological assessment. That document has been re-submitted and is accompanied by an updated ecological assessment carried out by the original ecologist. This confirms that a re-visit has been undertaken and that it remains the case that subject to the retention of the boundary hedges, which could be controlled by condition, that there is no ecological impact on flora or fauna on site that would represent a constraint on development.

In this instance, the boundary hedgerows are proposed to remain intact except for a small loss to form the new access point and in addition new native hedgerows to the current open boundaries of the site are indicated. Were the development otherwise found to be acceptable it would be possible to secure appropriate mitigation and enhancement by condition. Furthermore, conditions would also be required to secure a landscaping scheme to benefit biodiversity and to control external lighting so that it remains a dark area, in the interests of mitigating the impact of the development upon bats.

In relation to off-site impacts the foul drainage from the site is proposed to connect to the mains sewer. Natural England have recently issued guidance in relation to the current conservation status of the River Axe Special Area of Conservation (SAC) which is considered to be in an 'unfavourable condition'. The advice is that the condition status is affected by increased phosphate levels in the river. Excessive levels of such nutrients can lead to rapid growth of certain plants through the process of eutrophication, leading to a loss of biodiversity and the decline in the condition of

designated sites. In order to achieve improvements in water quality it is advised that substantial reductions in nutrients are needed and that mitigation solutions will be needed to enable new development to proceed without causing further harm.

The Council as the Competent Authority should only grant permission if they are certain at the time of Appropriate Assessment that a plan or project (in this case the proposed development) will not adversely affect the integrity of a habitats site i.e. where no reasonable scientific doubt remains as to the absence of effects. In this regard, new residential development, such as that proposed will, without appropriate mitigation, lead to increased phosphate loading (from greywater discharge) and as such should not be permitted.

It is further advised that large scale strategic mitigation measures are likely to be required to address this issue and that in order to satisfy the guidance and mitigate for the impacts of new dwellings such mitigation will need to be in place for at least 80 – 120 years. Whilst the applicant has suggested that such measures could be secured none have been proposed to date.

An Appropriate Assessment under the Habitats Regulations has been completed for this project (appended to this report). The conclusion of the assessment is that the proposal is likely to negatively impact on the integrity of the River Axe SAC and that permission should be refused. Natural England has been consulted on the Appropriate Assessment and concurs with this conclusion.

On this basis, the lack of information to demonstrate that the proposal would not result in an unacceptable increase in phosphate levels within the foul water discharge, thereby affecting the current unfavourable status of the River Axe SSSI and SAC, would represent a reason for refusal of the application.

Loss of Agricultural Land

Policy EN13 of the Local Plan seeks to protect high quality agricultural land from development and will only permit this in exceptional circumstances, where there is an overriding need for the development and either sufficient land of lower value is unavailable or where the benefits of the development justify the loss of high quality agricultural land. The best and Most Versatile (BMV) agricultural land is defined in the NPPF as being, Grades 1, 2, and 3a of the Agricultural Land Classification. An earlier application for the development of this site was refused on the grounds that the land could potentially qualify as BMV land (3a), showing as undifferentiated grade 3 land in the Council's records. However the approved scheme was accompanied by a letter from a land agent clarifying the status of the land as being grade 3b to 4. This letter was accepted and has been resubmitted with the current application.

Amenity Impact

The application, as with the previous approved scheme, is in outline form with matters of layout, scale, external appearance and landscaping reserved. The indicative site plan accompanying the application is also unchanged from that submitted with the previous application and where the impact on residential, as far as that could be

determined at outline stage, was found to be acceptable. The following comments from the previous report are repeated here for completeness:

“... the indicative site plan shows a separation distance of approximately 19.5 metres from the nearest proposed property to the nearest existing property No.1 Yonder Mount. Whilst this is not fixed and could change, the presence of the flood zone, related to the open ditch on the southwest site boundary, would prevent development from coming within approximately 17 metres of No. 1. Given the orientation of No.1 at right angles to the site and with limited openings in its gable end facing towards the site such a separation distance is considered to be acceptable in principle and subject to consideration of reserved matters details. Elsewhere any reserved matters layout would, due to the flood zone restriction, result in greater separation distances between proposed and existing properties such that no significant impact would be likely to occur.

In accordance with Policy D1 of the Local Plan consideration must also be given to the amenity of future occupiers. Whilst at outline stage it is not possible to determine any such impacts the site area and indicative layout show that acceptable separation distances between and around buildings could be achieved.

It is not considered that the development would generate noise or any other impacts, outside any construction phase, which would affect neighbouring residential amenity to any significant degree, therefore, at this outline application stage, the proposal is considered to accord with Policy D1.”

Other considerations

A number of objectors as well as the Parish Council have made reference to the 'Baxters Farm's site elsewhere in the village. It has been suggested that this alternative site would be more suitable to provide any affordable housing required for the village.

The Baxter's Farm site is located toward the southern end of the village, immediately adjacent to the public house and close to the garage/shop and adjoining the conservation area. The site extends to approximately 0.4 ha and consists of a number of disused farm buildings of varying age and design and surrounding yard areas. It lies within the built-up area boundary of the village. A draft development brief has been prepared for the site and this has been subject to recent public consultation. The brief considers a number of potential development options but finds residential development to be the most likely and sets out the manner in which the site could be developed for this purpose – this includes conversion of some older buildings to 2-3 dwellings and additional 8-9 dwellings on the remainder of the site where modern buildings could be removed, on this basis the site could accommodate between 10 - 12 units in total. As the site lies within the defined built up area boundary of the village the policy compliant affordable housing provision would be at 50 %, so 5 or 6 units if the site was developed out as suggested. Whilst this site does offer the potential to provide for some affordable housing for the village the development brief has not been finalised or adopted for use and there is no permission in place for residential development or which secures affordable housing. The Development Brief is in abeyance, with the site owner Devon County Council seeking to pursue a different mix

of uses for the site, and as such carrying limited weight and with the same unresolved nutrient issues as the application site. This being the case as it stands the site does not make alternative provision for affordable housing that can be counted against any need that may exist in the parish.

S.106 matters

The application proposes affordable housing at a level compliant with the requirements of Strategy 35 – Exception Mixed Market and Affordable Housing at Villages, Small Towns and Outside Built-up Area Boundaries and where such matters have previously been secured by means of a legal agreement.

Notwithstanding the issue relating to the lack of demonstration of affordable housing need were this to be demonstrated it would be possible to secure the type, tenure and number of affordable units through a new legal agreement. East Devon District Council or its approved Registered Provider could also be granted nomination rights and the affordable housing could be secured as such in perpetuity.

Development of this scale is required to provide on-site open space provision in line with the open space standards set out under Strategy 43 of the Local Plan. For developments between 10 – 49 dwellings this requires provision of on-site amenity open space of approximately 91 m². The indicative layout indicates that open space of this amount, or more, could be provided. The delivery and long term management of the proposed on-site amenity open space would also need to be secured by means of a legal agreement (which should also cover any SUDs and other drainage features), the s.106 agreement related to the previous application appropriately addressed these issues.

Since the previous permission was granted the Council has through discussions with the Royal Devon and Exeter NHS Foundation Trust (RD&E) and following the provision of Counsel Opinion and consideration of relevant case law agreed to seek to secure financial contributions from development to address the impacts of development on services provided by the trust. A robust methodology has been developed in partnership with the trust to enable funding to be collected from major residential developments this is considered to be compliant with Regulation 122(2) of The Community Infrastructure Levy Regulations 2010. In this case the contribution sought is for the amount of £10,622.00. This contribution would go towards the gap in the funding created by each potential patient from this development. A detailed methodology relating to how the amount has been arrived at has been provided and this includes an abatement to recognize that some of the occupants will be intra-migration, relocating from elsewhere within the district and therefore not representing an initial demand on the Trust's services. The contribution request therefore is reduced to 65% of the calculated service cost to reflect the 35% affordable housing requirement in the Exeter area. The applicant has pointed out that the requirement in this case is for 66% affordable housing provision and has requested that the contribution level is reduced to reflect this. This request has been relayed back to the Trust but they have not to date responded. Nevertheless, based on their own methodology the applicant's point is acknowledged and were the contribution request to be adjusted to reflect the percentage of affordable housing proposed on this site then the contribution amount would be reduced to £5,413 to the applicant. It is this lower amount that it is considered

could be reasonable substantiated. It is therefore agreed that a reduced contribution is reasonable in this case and the applicant has intimated their agreement to such – suggesting this could be paid on completion of the 5th open market dwelling. Whilst in the event of permission being granted such contributions could be secured through an appropriate s.106 agreement in the absence of such agreement or mechanism to secure such this would constitute a reason for refusal.

Conclusion/Planning Balance

The site is located outside of but adjoins the Built-Up Area Boundary of Musbury as designated through the East Devon Villages Plan. It is not a site allocated for housing and although outline permission has previously been granted for the residential development of the site for an affordable housing led scheme, under Strategy 35 of the Local Plan, this permission has lapsed. As such the site represents development in the countryside where such development is only permitted by Strategy 7 of the Local Plan where explicitly supported by another policy of the plan.

The scheme essentially remains the same as previously approved under the earlier application however the supporting information has not been updated and in some instances is now over 8 years old. Therefore in relation to affordable housing provision there is no up to date survey information to demonstrate what the current need for affordable housing in the parish (and where appropriate named adjoining parishes) might be. Although there appears to have been no affordable housing delivery in the village since the time of the previous application this is not sufficient to conclude that the previous need remains, or what the current need might be.

Clearly some social benefits would arise though provision of market and in particular affordable housing. In addition, future residents are likely to provide support to existing community facilities such as the school, village hall and church providing further social benefits. The proposal would give rise to not insignificant economic benefits through support of construction based jobs as well as support of local businesses through the patronage of future residents.

Nevertheless, Strategy 35 of the Local Plan and the Council's adopted Affordable Housing Supplementary Planning Document are both clear that affordable housing schemes such as this need to be supported by an up to date robust housing needs survey, none such has been provided. Granting of permission without demonstration of need would therefore be contrary to the most relevant development plan policies and would result in unjustified development in the open countryside.

In addition to the lack of demonstration of affordable housing need, the proposal would give rise to harm in relation to landscape impact and flood risk. The proposal would develop a greenfield site on the edge of the village in a fairly prominent location within the designated Area of Outstanding Natural Beauty and this weighs heavily against the proposal. Whilst it was previously accepted that appropriate landscaping works could reduce the overall impact of the development and soften the transition of the northern edge of the village with the surrounding countryside harm was still identified and in this instance would not be offset where there is no robust evidence to demonstrate it would be designed to meet a local affordable housing need.

In terms of drainage, both Devon County Council and the Environment Agency have considered the development in flood risk terms. The Environment Agency has raised objection to the scheme in that the flood risks arising from the scheme has not been adequately assessed and found to be acceptable. Whilst the applicant has been given opportunity to address the original and subsequent concerns of the Environment Agency the amended information submitted has failed to overcome their objections to the scheme and suggest that the sequential test for site selection should be carried out. It should be noted though that on the basis that the residential development could be carried out without constructing dwellings within Flood Zone 2/3 and that the risk of flooding to the access and egress route was previously considered low it was not considered necessary to apply the sequential test previously.

An Appropriate Assessment under the Habitats Regulations has been completed for this project which concludes that the proposal is likely to negatively impact on the integrity of the River Axe SAC and that permission should be refused. This is on the basis that foul water drainage related to the site would result in an increase in phosphate levels affecting the current unfavourable status of the River Axe SSSI and SAC, would represent a reason for refusal of the application.

Finally, the future residents of the scheme would place increased demands on the provision of local health services delivered through the Royal Devon & Exeter NHS Foundation Trust and which is currently operating at full capacity in the provision of acute and planned healthcare. The increased population would increase the gap in the funding created by each potential patient arising from the development and as such a contribution towards the provision of health care services has been sought. In the absence of any agreement to secure such funding or mechanism to do so the proposal would result in harm in this regard which would weigh further against the proposal.

Whilst the proposal is ostensibly the same as has previously been granted permission not all of the supporting information has not been updated in the intervening period since approval was granted and there is now both an absence of demonstration of need for the affordable housing proposed and a number other technical issues that remain unresolved. In the absence of demonstration of affordable housing need the strong weight given to the provision of affordable housing in the previous scheme falls away and the environmental harm arising from the scheme in terms of landscape impact, flood risk and impact on the conservation status of the River Axe Special Area of Conservation/Site of Special Scientific Interest weighs strongly against the proposal, on this basis the application is recommended for refusal.

RECOMMENDATION

1. Adopt the Appropriate Assessment attached to this report; and,
2. REFUSE for the following reasons:
 1. The application site falls outside of the defined Built up Area Boundary for Musbury as set out in the Adopted East Devon Villages Plan and as such is located in open countryside where development is only supported by the East Devon Local Plan where explicitly permitted by another policy of the plan. In

this instance, and in the absence of any robust demonstration of affordable housing need, compliance with such other development plan policy has not been demonstrated and therefore the development would represent unjustified development in the open countryside and where any benefits arising would not outweigh the harm to the designated AONB landscape. Consequently, the proposal is considered contrary to Strategies 7 (Development in the Countryside), 27 (Development at the Small Towns and Larger Villages), 35 (Exception Mixed Market and Affordable Housing At villages, Small Towns and Outside Built-up Area Boundaries), 46 (Landscape Conservation and Enhancement and AONBs) and policy D1 (Design and Local Distinctiveness) of the adopted East Devon Local Plan 2013-2031 and guidance in the National Planning Policy Framework 2021 and Planning Practice Guidance.

2. Insufficient information has been submitted to assess whether the proposal would result in an unacceptable increase in phosphate levels within the foul water discharge affecting the current unfavourable status of the River Axe SSSI and SAC catchment area and as such fails Regulation 63 of the Habitat Regulations 2017. Furthermore, the development therefore conflicts with Strategy 3 (Sustainable Development), Strategy 5 (Environment), Strategy 47 (Nature Conservation and Geology) and Policy EN5 (Wildlife Habitats and Features) of the adopted East Devon Local Plan 2013-2031 and the National Planning Policy Framework.
3. The proposed development represents 'more vulnerable' development in an area identified as falling partially within Flood Zone 3 and where the submitted Flood Risk Assessment has not provided sufficient information to demonstrate that the development has been designed so as to be safe, from a flood risk point of view, as such the development is found to be contrary to Policy EN21 of the East Devon Local Plan 2013 - 2031 and Guidance in the National Planning Policy Framework and associated Planning Practice Guidance.
4. The proposal does not provide a mechanism to secure the required financial contributions related to provision of health service provision within the area and to meet the identified gap in funding of non-infrastructure related service provision, it therefore fails to mitigate its impact and as such would not represent sustainable development in conflict with Strategy 3 (Sustainable Development) of the East Devon Local Plan 2013-2031 and guidance in the National Planning Policy Framework 2021 and Planning Practice Guidance.

Plans relating to this application:

| | | |
|------------------------------|--------------------|----------|
| 101 A : indicative site plan | Proposed Site Plan | 18.06.21 |
| J388/01A | Location Plan | 18.06.21 |

List of Background Papers

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

Appropriate Assessment and HRA Screening Report

The Conservation of Habitats and Species Regulations 2017, Section (63)

| | |
|-------------------------------|--|
| Application Reference | 21/1656/MOUT |
| Brief description of proposal | Outline application for up to 15 no. dwellings including 10 affordable (all matters reserved except for access) |
| Location | Land Off Doatshayne Lane Doatshayne Lane Musbury |
| Site is: | Within the nutrients Catchment Area for the River Axe SAC as defined by Natural England. See Appendix 1 for list of interest features of the SPA/SAC. |

Step 1 Screening for Likely Significant Effect on the River Axe SAC

Risk Assessment

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| Could the Qualifying Features of the European site be affected by the proposal? Consider both construction and operational stages. | Yes – As defined within Natural England guidance issued on 16 th March 2022. This proposal includes residential development within the catchment of the River Axe SAC, which would likely result in increased phosphate levels in the SAC during operation, through increasing grey/black water production. Increased phosphate levels are considered by Natural England to negatively impact the qualifying features of the River Axe SAC. |
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Conclusion of Screening

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| Is the proposal likely to have a significant effect, either ‘alone’ or ‘in combination’ on a European site? | In accordance with Natural England guidance, East Devon District Council concludes that the proposal would have a likely significant effect, when considered either alone or in combination, upon the qualifying features of the River Axe SAC due to the risk of increased phosphates generated by the development. An Appropriate Assessment of the plan or proposal is necessary. |
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|-------------------------|--------------------|-----------------------|
| Local Authority Officer | Charlie McCullough | Date: 28.04.22 |
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Step 2 Appropriate Assessment

NB: In undertaking the appropriate assessment, the LPA must ascertain whether the project would adversely affect the integrity of the European site. The Precautionary Principle applies, so to be certain the authority should be convinced that no reasonable scientific doubt remains as to the absence of such effects.

In-combination and Alone Effects

| | | |
|---|--|---------------|
| Impacts of current proposal alone, and in combination with other plans or projects. | Alone and in-Combination Effects: Natural England have advised that the proposals are ‘likely to have a significant effect’, when considered either alone or in combination, upon the qualifying features of the River Axe Special Area of Conservation (SAC), due to increased phosphate levels created by new residential development within the River Axe SAC catchment area. | |
| Mitigation of in-combination effects or alone effects. | There is no mitigation proposed. | |
| Assessment of Impacts with Mitigation Measures | | |
| Mitigation measures included in the proposal. | None | |
| Are the proposed mitigation measures sufficient to overcome the likely significant effects? | No - As advised by Natural England. | |
| Conclusion | | |
| List of mitigation measures and safeguards | None | |
| The Integrity Test | The proposal is considered likely to have adverse impacts on the qualifying features of the River Axe SAC (through increased phosphate levels), and is therefore likely to negatively impact the integrity of the River Axe SAC. | |
| Conclusion of Appropriate Assessment | The proposal is within the catchment of the River Axe SAC, and would result in increased phosphate levels in the River Axe, either alone or in combination with other proposals. No mitigation measures are proposed. East Devon District Council therefore concludes that the proposal is likely to negatively impact the integrity of the River Axe SAC. Permission is therefore refused. | |
| Local Authority Officer | Charlie McCullough | Date 28.04.22 |
| 21 day consultation to be sent to Natural England Hub on completion of this form. | | |

Appendix 1. List of interest features:

River Axe SAC – Component SSSI

H3260 Water courses of plain to montane levels with *R. fluitantis*
S1095 Sea lamprey, *Petromyzon marinus*
S1096 Brook lamprey, *Lampetra planeri*
S1163 Bullhead, *Cottus gobio*

Site Description

Site description: The mixed catchment geology of sandstones and limestones gives rise to calcareous waters where stream water-crowfoot *Ranunculus penicillatus* ssp. *pseudofluitans* dominates, giving way to river water-crowfoot *R. fluitans* further downstream. Short-leaved water-starwort *Callitriche truncata* is an unusual addition to the water-crowfoot community. The diverse flora results from a number of contributing factors. Firstly, the lower reaches of the Axe have high bed stability. Secondly, the river has few trees along its banks, allowing much light to reach the riverbed. Finally, the active geomorphology of the river has generated a range of natural features (including long riffles, deep pools, islands and meanders), which provide a variety of ecological niches. This variety of river channel habitats also supports an important fish community, including Atlantic salmon *Salmo salar*, sea lamprey *Petromyzon marinus*, brook lamprey *Lampetra planeri* and bullhead *Cottus gobio*.

Qualifying habitats

The site is designated under article 4(4) of the Directive (92/43/EEC) as it hosts the following habitats listed in Annex I:

· Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche* *Batrachion* vegetation. (Rivers with floating vegetation often dominated by water crowfoot)

SAC Conservation Objectives

With regard to the SAC and the natural habitats and/or species for which the site has been designated (the 'Qualifying Features' listed below), and subject to natural change; Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;

- The extent and distribution of qualifying natural habitats and habitats of qualifying species
- The structure and function (including typical species) of qualifying natural habitats
- The structure and function of the habitats of qualifying species
- The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely
- The populations of qualifying species, and,
- The distribution of qualifying species within the site.