

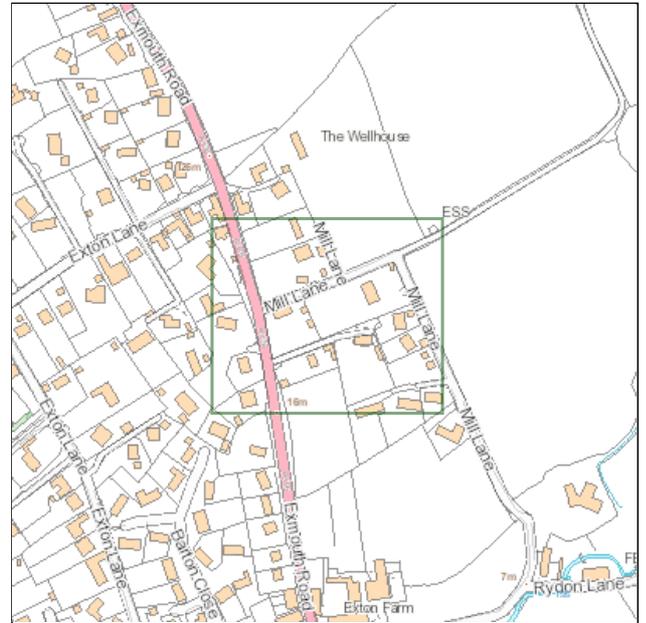
Ward Woodbury And Lymptone

Reference 23/0401/OUT

Applicant Cllr Philip Jordan

Location Exton Lodge Mill Lane Exton EX3 0PJ

Proposal Outline proposal for a single dwelling with all matters reserved other than access



RECOMMENDATION: Refusal



		Committee Date: 13.06.2023
Woodbury And Lympstone (Woodbury)	23/0401/OUT	Target Date: 20.04.2023
Applicant:	Philip Jordan	
Location:	Exton Lodge, Mill Lane, Exton, EX3 0PJ	
Proposal:	Outline proposal for a single dwelling with all matters reserved other than access	

RECOMMENDATION: Refusal

EXECUTIVE SUMMARY

This application is before Members because the views of the Ward Member are in conflict with the Officer recommendation.

The application seeks outline planning permission for the construction of a dwelling with all matters reserved other than access.

Paragraph 11 of the NPPF states that plans and decisions should apply a presumption in favour of sustainable development. For decision taking this means approving development proposals that accord with an up-to-date development plan, or where the policies in the development plan which are most important for determining the application are out-of-date, permission should be granted unless within a protected area or the adverse impacts of granting planning permission for residential development of the site would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

The site is located to the east of the A376 and the main built up part of the village of Exton. In planning terms it is within countryside where policies of restraint apply. Strategy 7 (Development in the Countryside) of the Local Plan states that 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 where it would not harm the distinctive landscape, amenity and environmental qualities within which it is located.

However the Council can no longer demonstrate a five year housing land supply, and Strategy 7 (Development in the Countryside) which seeks to focus development within Built-up Area Boundaries, is no longer considered to be up-to-date. As such a tilted balance assessment is required. It is important to note

that the fact that the site is located in the countryside and outside of a BUAB as defined by the East Devon Local Plan cannot reasonably be a reason to refuse planning permission and the main test in determining this application relates to whether the development would represent sustainable development.

Exton does have good transport links with the train station, bus services and access to the Exe Estuary cycle path and a public house, although under the adopted Local Plan it does not contain the facilities required for it to be considered a sustainable settlement.

However whilst the site is located in close proximity to the A376 Exmouth Road none of the transport links or other facilities can be reached without crossing this extremely busy main road. There is no pavement on the eastern side of the road to the south that would provide a safe access to the nearest pedestrian crossing point, over 350m to the south at Exton Cross. Whilst the main road offers a regularly bus service to Exeter/Exmouth, access to this would either involve crossing the road, or negotiating the unpaved section of highway, neither of which are conducive to pedestrian safety.

Whilst there may be benefits in providing an additional dwelling, in terms of a very modest contribution towards the provision of the 5 year housing land supply the proposal is considered to be in conflict with the provisions of Policy TC2 of the Local Plan which weighs against the proposal within the overall planning balance. The proposal also fails to accord with those parts of the National Planning Policy Framework which concern actively managing patterns of growth in support of, the promotion of opportunities for walking, cycling and public transport and conflict and the environmental dimension of sustainable development.

It is considered that the proposed access to the site is acceptable and that a dwelling could be accommodated without detriment to residential or other amenity.

However notwithstanding that the Council is unable to demonstrate having a 5 year housing land supply of housing at the present time, the location of the site conflicts with local plan policy in respect of accessibility of new development, and with those parts of the National Planning Policy Framework which concern actively managing patterns of growth in support of the promotion of opportunities for walking, cycling and public transport, the environmental dimension of sustainable development. As such the development is not sustainable and the adverse impacts of the development significantly and demonstrably outweigh the benefits and the application is therefore recommended for refusal.

CONSULTATIONS

Local Consultations

Woodbury and Lympstone - Cllr Geoff Jung
23/0401/OUT

I have viewed the documents for 23/0401/OUT for an outline proposal for a single dwelling with all matters reserved other than access at Exton Lodge Mill Lane Exton

A previous application of a similar nature at this location was submitted in 2018 (18.2733.OUT) which was refused but went to appeal and again refused.

The inspector stated 'Whilst Exton has a range of public transport options, it has a limited range of day-to-day services including a church, village hall, public house, and open/play space, together with a petrol filling station with a small convenience shop attached. As such it is not identified as a named villages in the Local Plan's settlement hierarchy. Therefore, for development plan purposes, the appeal site lies within the countryside. To this end, the Local Plan clarifies that, in the countryside, development may be promoted in locations other than that set out in Policy Strategy 27 only where justified in a Neighbourhood Plan or community-led development which promotes the objectives of sustainable development.

However, EDDC are in the process of adopting a new Local Plan and Exton is now considered to be a sustainable village and although the new local plan is not made the decision has been made that the village is now considered to be sustainable, therefore new development could take place within the village boundary. I therefore support the application however I reserve my final views on this application until I am in full possession of all the relevant arguments for and against.

Parish/Town Council

Woodbury Parish Council does not support this application.

The development is in open countryside which is against the policy of East Devon Local Plan and Village Plan Policy.

Technical Consultations

None received

Other Representations

None received

PLANNING HISTORY

Reference	Description	Decision	Date
18/2733/OUT	Construction of detached dwelling and garage (outline application seeking approval for access only)	Refused Appeal dismissed	26.02.2019 27.09.2019
18/0602/FUL	Construction of detached garage/studio	Approved	27.06.2018

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 3 (Sustainable Development)

Strategy 5 (Environment)

Strategy 7 (Development in the Countryside)
Strategy 27 (Development at the Small Towns and Larger Villages)

D1 (Design and Local Distinctiveness)
D2 (Landscape Requirements)
D3 (Trees and Development Sites)

EN5 (Wildlife Habitats and Features)
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)
National Planning Practice Guidance

Site Location and Description

The application site comprises part of the garden curtilage associated with a property known as Exton Lodge. The site extends to an area of around 1260m² and is generally laid to grass. It has a slight fall from north to south and has been fenced off from the main property. The site is located within a cluster of existing residential properties located on the eastern side of the main road from Exeter to Exmouth, A376 and lies approximately 75m to the east of the junction of Mill Lane with Exmouth Road (A376).

Proposed Development

Planning permission is sought for the construction of a new dwelling. The application is submitted in outline with all matters reserved other than access.

ANALYSIS

The main issues to be considered in the determination of this application relate to the policy context and principle of the development; whether the site is of sufficient size to accommodate a dwelling without detriment to the character and appearance of the area; residential amenity of the occupiers of neighbouring properties; trees; ecology; or highway safety.

Policy Context and Principle

Para. 12 of the National Planning Policy Framework (NPPF) confirms the Development Plan as the starting point for decision making and that development that conflicts with it should not usually be granted unless material circumstance indicate otherwise. Para. 218 of the NPPF confirms that the policies with the framework are themselves material considerations.

Strategy 5B (Sustainable Transport) of the Local Plan states that development proposals should be of a form, incorporate proposals for and be at locations where it

will encourage and allow for efficient, safe and accessible means of transport, with low impact on the environment. Policy TC2 (Accessibility of New Development) sets out that development should be accessible by pedestrians, cyclists and public transport and also well related to compatible land uses so as to minimise the need to travel by car.

The site is located to the east of the A376 and the main built up part of the village of Exton, within a cluster of detached properties. In planning terms it is within countryside where policies of restraint apply. Strategy 7 (Development in the Countryside) of the Local Plan states that 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 where it would not harm the distinctive landscape, amenity and environmental qualities within which it is located.

The Council's strategic approach to new residential development is to direct new housing to larger towns within the District and to smaller towns and villages which have a range of services and are therefore considered to be sustainable locations. The smaller towns and villages are listed under the provisions of Strategy 27 (Development at the Small Towns and Larger Villages) of the Local Plan. Exton is not identified as settlement suitable for new residential development under Strategy 27 therefore in planning terms, under the Local Plan, the site is located within the countryside.

Exton does have good transport links with the train station, bus services and access to the Exe Estuary cycle path and a public house, although under the adopted Local Plan it does not contain the facilities required for it to be considered a sustainable settlement.

Whilst the Local Plan is in the process of being reviewed, and the sustainability of settlements and villages is again being considered, this process has been temporarily put on hold and no further development boundaries have been defined.

Having said this, the assessment has found that there are a number of facilities which could be found within 1,600m of Exton village. These include Exton train station approximately 500m to the west and the convenience store at the petrol station 500m to the north. Employment opportunities at industrial estate 1400m to the north, and Darts Farm slightly further.

However whilst the site is located in close proximity to the A376 Exmouth Road none of these facilities can be reached without crossing this extremely busy main road. There is no pavement on the eastern side of the road to the south that would provide a safe access to the nearest pedestrian crossing point, over 350m to the south at Exton Cross. Whilst the main road offers a regularly bus service to Exeter/Exmouth, access to this would either involve crossing the road, or negotiating the unpaved section of highway, neither of which are conducive to pedestrian safety.

This particular issue was considered by an Inspector in dismissing an appeal in 2015 (Exton Mill, Mill Lane) where it was found that whilst the physical distances between the site and the limited facilities available within the village were not unduly long and the site was closer to the pedestrian crossing (less than 300m along Mill Lane) the narrow unlit lanes would not be conducive to walking, and that other services such as

the primary and secondary schools and shops were not grouped in a manner convenient for a combined journey. (Appeal Reference APP/U1105/W/15/3069998).

A more recent appeal decision (APP/U1105/W/19/3226312) at the current application site, Exton Lodge for the construction of detached dwelling and garage (outline application seeking approval for access only) was dismissed in September 2019. Whilst the Inspector gave significant weight to the fact that Exton is not identified as a named village in the Local Plan's settlement hierarchy he also considered the location of the site in terms of sustainability. In this respect he found that whilst the site is located fairly close to the bus routes, the lack of footways to the south would necessitate the crossing and re-crossing of the main road to reach a southern bound service. The Inspector found that it would be reasonable to expect most journeys to be made by private vehicle. As a consequence the proposal would fail to accord with Strategy TC2 (Accessibility of New Development) of the Local Plan which requires new development to be located so as to be accessible by pedestrians, cyclists and public transport **and also** (*my emphasis*) well related to compatible land uses to as to minimise the need to travel by car.

At the present time, given the location of the site and nature of the development proposed, there is not considered to be any policy support for the development as a sustainable location.

Tilted Balance

Despite the clear lack of policy support from the development plan, the council cannot demonstrate a five year land supply. This means that the policies for the delivery of residential dwellings across the district are out of date. Although this does not mean that the policies of the Local Plan are irrelevant, it means that the tilted balance needs to be applied as per paragraph 11 of the NPPF.

Paragraph 11 of the NPPF states that:

Plans and decisions should apply a presumption in favour of sustainable development.

*For **decision-taking** this means:*

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

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

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

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

The consequences of not having a 5 year housing land supply, means that the policies which are most important for determining the application are out of date and d) applies such that planning permission should be granted, unless the provisions of *i. or ii.* apply. With respect to *i.* the site is not located in a protected area which would provide a clear reason for refusing permission, therefore *ii.* is engaged and the harm of the proposal must demonstrably outweigh the benefits of the proposal.

It is important to note that the fact that the site is located in the countryside and outside of a BUAB as defined by the East Devon Local Plan cannot on its own be a reason to refuse planning permission and that policies within the Local Plan which relate to spatial strategy and the distribution of housing in the District and built-up area boundaries, in the absence of a 5 year housing land supply, carry limited weight. The main test in determining this application relates to whether this proposal is a sustainable form of development and whether the adverse impacts of granting planning permission for residential development of the site would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

Character and Appearance of the Area

Policy D1 (Design and Local Distinctiveness) of the Local Plan states that proposals will only be permitted where they:

1. Respect the key characteristics and special qualities of the area in which the development is proposed.
2. Ensure that the scale, massing, density, height, fenestration and materials of buildings relate well to their context.

The application site forms part of the extended garden area of the property, it is enclosed by fencing and hedging and trees and is roughly grassed. It is a large plot, surrounded by large detached properties occupying spacious gardens, and in this respect the size of the application site is commensurate with that of surrounding development. It is considered that there is sufficient space to accommodate a new dwelling such that it would not appear at odds or out of character with the surrounding development.

In this regard the proposed development is considered to accord with Policy D1 of the Local Plan

Residential Amenity

Policy D1 of the Local Plan states that proposals should not adversely affect the amenity of occupiers of adjoining residential properties. The construction and occupation of any new dwelling on the site will alter the current situation and introduce a built form and activity which does not currently exist. Matters of overlooking or loss of privacy would form part of the detailed design of the building and considered further at the reserved matters stage. It is considered that there is sufficient space within the site to be able to construct a dwelling that would not result in any material loss of privacy, outlook or residential amenity such that refusal of planning permission on these grounds could be reasonably sustained.

Similarly it is considered that a development providing adequate amenity for future occupiers could be delivered.

In this regard the proposed development is considered to accord with Policy D1 of the Local Plan

Trees

There are no trees within the site itself although there is a large tree adjacent to the southern boundary. It is considered, however, that the site is of sufficient size to be able to accommodate a dwelling without having a negative impact on this tree. Any reserved matters application will need to be accompanied by an appropriate arboricultural report to demonstrate that the development will not be detrimental to the health of this tree.

Subject to the above condition the proposed development would accord with Policy D2 of the Local Plan

Highway Safety

Policy TC7- Adequacy of Road Network and Site Access of the Local Plan states that planning permission for new development will not be granted if the proposed access, or the traffic generated by the development, would be detrimental to the safe and satisfactory operation of the local, or wider, highway network.

The proposed access onto Mill Lane is considered to provide appropriate visibility for vehicles entering and leaving the site, and the junction of Mill Lane with Exmouth Road is considered to be acceptable from a highway safety perspective, with visibility in both directions and wide enough to allow vehicles to pass at the junction. There is no objection with regard to vehicular access to the site.

Exton does have good transport links with the train station, bus services and access to the Exe Estuary cycle path and a public house, although under the adopted Local Plan it does not contain the facilities required for it to be considered a sustainable settlement.

However whilst the site is located in close proximity to the A376 Exmouth Road none of the transport links or other facilities can be reached without crossing this extremely busy main road. There is no pavement on the eastern side of the road to the south that would provide a safe access to the nearest pedestrian crossing point, over 350m to the south at Exton Cross. Whilst the main road offers a regularly bus service to Exeter/Exmouth, access to this would either involve crossing the road, or negotiating the unpaved section of highway, neither of which are conducive to pedestrian safety.

It is considered that the physical obstacles, in terms of the location of the site in a position where there is no safe pedestrian access to any services, facilities or transport links, are such that the site is not a sustainable location, even were the village of Exton considered to be suitable for new development.

Ecological Impact

Policy EN5- Wildlife Habitats and Features of the Local Plan states that wherever possible sites supporting important wildlife habitats or features not otherwise protected by policies will be protected from development proposals which would result in the loss of or damage to their nature conservation value, particularly where these form a link between or buffer to designated wildlife sites. Where potential arises positive opportunities for habitat creation will be encouraged through the development process.

The main body of the site is laid to grass with sporadic planting to the boundaries. The report submitted with the previous application found that the site did not have any particular ecological value, and subject to an updated report being found to be acceptable, it is not considered that this issue would be a reason to withhold planning permission.

In this instance the proposed development would result in a negligible loss of habitat and were it to be supported, matters of biodiversity enhancement could be addressed and secured by way of planning condition.

Habitats Mitigation

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

Despite the introduction of the Community Infrastructure Levy (CIL) where a proportion of CIL goes towards infrastructure to mitigate any impact upon habitats, contributions towards non-infrastructure mitigation are also required as developments that will impact on a protected habitat cannot proceed under an EU directive unless fully mitigated. Evidence shows that all new dwellings and tourist accommodation within 10 kilometres of the Exe Estuary and/or the Pebblebed Heaths Special Protection Areas (SPA's) will have a significant effect on protected habitats which is reflected in Strategy 47- Nature Conservation and Geology of the Local Plan. This proposal is within 10 km of the Exe Estuary and the Pebblebed Heaths and therefore attracts a habitat mitigation contribution towards non-infrastructure at a rate of £367.62 per dwelling which has been secured alongside this application.

CONCLUSION

Whilst the Council is unable to demonstrate having a 5 year housing land supply of housing at the present time, the proposal conflicts with local plan policy in respect of accessibility of new development, and with those parts of the National Planning Policy Framework which concern actively managing patterns of growth in support of the promotion of opportunities for walking, cycling and public transport, the environmental dimension of sustainable development. As such it is considered that the adverse impacts of the proposed development significantly and demonstrably outweigh the benefits of the proposed development and the application is recommended for refusal.

RECOMMENDATION

REFUSE for the following reason

1. The site falls outside of the built up area boundary of any defined settlement or a Strategic allocation within the Adopted Local Plan and is therefore within the open countryside where residential development is restricted. The proposed development by reason of its unsustainable location in the countryside, remote from essential services and facilities required for daily living would result in an unsustainable form of development with reliance upon the use of the motor vehicle to access the services and would result in a development that would not be physically well related to the built form of the settlement. Walking and cycling alternatives to the car are largely unattractive and undesirable for future users and are unlikely to be regularly utilized, particularly due to the busy nature of the A376 and lack of convenient public footpaths. As such the proposal would be contrary to the provisions of Strategy 7 (Development in the Countryside), Strategy 27 (Development at the Small Towns and Larger Villages) and Policy TC2 (Accessibility of New Development) of the East Devon Local Plan 2013-2031 and those parts of the National Planning Policy Framework which concern actively managing patterns of growth in support of, the promotion of opportunities for walking, cycling and public transport in conflict with the environmental dimension of sustainable development.

Statement on Human Rights and Equalities Issues

Human Rights Act:

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

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

Plans relating to this application:

proposed access Combined Plans 22.02.23

Location Plan 23.02.23

Block Plan 22.02.23

List of Background Papers

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