

Ward Dunkeswell And Otterhead

Reference 23/0400/FUL

Applicant Exdon Limited

Location Land South Of Pump Field Close Dunkeswell
EX14 4XX

Proposal Construction of 2no dwellings (affordable
housing)



RECOMMENDATION: Approval with conditions



		Committee Date: 18.07.2023
Dunkeswell And Otterhead (Dunkeswell)	23/0400/FUL	Target Date: 19.04.2023
Applicant:	Exdon Limited	
Location:	Land South Of Pump Field Close	
Proposal:	Construction of 2no dwellings	

RECOMMENDATION: Approval with conditions

EXECUTIVE SUMMARY

This application is brought before the Committee owing to a difference of opinion between officers and a now former ward member who did not stand for re-election in the District Council elections in May.

It is also a 'departure' application as the proposal does not accord with the provisions of the development plan.

The proposal relates to a scheme for the construction of a pair of two storey semi-detached dwellings, described as 'affordable', on a site within the eastern portion of a field on the eastern edge of the Highfield estate at Dunkeswell. The site is located immediately to the south of a recent housing development, now known as Pump Field Close, allowed on appeal in 2015, and to the east of a terrace of three affordable dwellings under construction within the western part of the same field.

The site is located outside of the Built-up Area Boundary (BuAB) of any defined settlement or any site-specific allocation as set out in either the adopted Local or made Neighbourhood Plans. Ordinarily therefore, the proposal would be regarded as being contrary to the strategic approach set out in the former that seeks to direct growth and development to such settlements.

However, in the light of the Council's five year housing land supply position, relevant development plan policies that are most important for determining the application must be regarded as out-of-date. It is therefore necessary to consider whether the presumption in favour of sustainable development, or the 'tilted balance', set out in paragraph 11d) of the National Planning Policy Framework (NPPF) requires engagement.

This is in turn caveated by the need to also consider it having regard to the

extent to which policies within the Framework that protect areas of particular importance, including AONBs, provide a clear reason for refusal or the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when considering Framework policies taken as a whole.

In this case, there are considered to be two principal factors that weigh in favour of application of the 'tilted balance' and therefore acceptance of the principle of the development, notwithstanding the location of the site outside of any defined settlement within the AONB.

First, both the Highfield estate and Dunkeswell more widely exhibit good sustainability credentials in terms of the range of services and facilities, employment opportunities, etc. that are within reasonable proximity of the site.

Secondly, the relatively contained position of the site, with existing housing and trees largely screening it from both close and more distant views, is such that the development would result in no significant adverse impact upon the rural landscape character or landscape or scenic beauty of the AONB.

Indeed, although the decision dates back to 2015, these were reflected in the key findings of the appeal Inspector in allowing the appeal relating to the development of 8no dwellings at what is now Pump Field Close (referred to above). This decision was taken during a previous period when the Council was similarly unable to demonstrate a five year supply of deliverable housing sites.

As such, it is considered that the 'tilted balance' is engaged in this case and that the principle of the development could not readily be opposed purely on the grounds that the site is outside of a BuAB.

Equally, whilst there is no explicit policy requirement for the provision of affordable housing in this case that might otherwise be regarded as meeting the provisions of the Local Plan that allow for 'exception site' development such as this (albeit, in any event, the evidence drawn upon to seek to demonstrate a local requirement for such housing is not considered to be adequate), it is not considered that this alters the acceptability of the principle of development of unrestricted open market housing given the overall housing land supply position and the balance of other material considerations.

The concerns raised by the parish council, ward members and interested third party regarding the loss of an area shown on the previously approved site layout details for the permitted (at appeal) Pump Field Close development to be incorporated as a play area are acknowledged. However, this facility was not secured at the time of the appeal through a legal agreement, as would ordinarily be the case. Whilst an open space contribution (as well as a further contribution towards school transport for education) was secured by way of a unilateral undertaking, no such mechanism was put into place to require the provision of the play area. Moreover, the Inspector was clear in declaring himself satisfied that the financial obligations that were secured met the statutory tests within the Community Infrastructure Regulations and the relevant policy content of the then first National Planning Policy Framework.

In such circumstances therefore, and in light of the lack of any Local or Neighbourhood Plan policies that protect the site for the provision of a play area, it is not thought that the failure to provide such a facility can carry any significant weight in opposing the proposed residential scheme, particularly in the absence of any other material considerations that would also weigh against the development.

As such, and given no technical or other contextual objections to the proposal, approval is recommended.

CONSULTATIONS

Local Consultations

Parish/Town Council

The Council do not support this application and as with the previous application (21/0162/FUL for one unit) continue to believe that this space should remain an open space as identified in the original application 14/2141/FUL and earmarked as a Play area for that development.

In addition to this, the housing need survey carried out in 2018 identified a need for 9 units of affordable housing and this was met by applications 19/2757/FUL (6 units) & 19/1337/FUL (3 units).

Dunkeswell and Otterhead – (Former) Cllr David Key

Unfortunately I cannot support this application as the site was officially given as a piece of open space and therefore should remain as such.

Dunkeswell and Otterhead – Cllr Levine 3/7/23

I have now slept several nights over this application and find that I cannot support it in any way as it goes against the interests and wishes of the community. Technical arguments notwithstanding. The big question in my mind is whether the community was given due diligence to substantiate its case.

Technical Consultations

South West Water

Please see information under documents tab:

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

Asset Protection

Please find attached a plan showing the approximate location of a public 125mm water main in the vicinity of the above proposed development. Please note that no

development will be permitted within 3 metres of the water main. The water main must also be located within a public open space and ground cover should not be substantially altered.

Should the development encroach on the 3 metre easement, the water main will need to be diverted at the expense of the applicant.

www.southwestwater.co.uk/developer-services/water-services-and-connections/building-near-water-mains/

Further information regarding the options to divert a public water main can be found on our website via the link below:

www.southwestwater.co.uk/developer-services/water-services-and-connections/diversion-of-water-mains/

Should you require any further information, please contact the Pre Development Team via email: DeveloperServicesPlanning@southwestwater.co.uk.

If further assistance is required to establish the exact location of the water main, the applicant/agent should call our Services helpline on 0344 346 2020.

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) is acceptable and meets with the Run-off Destination Hierarchy.

I trust this clarifies the water and drainage material planning considerations for your LPA, however, if you have any questions or queries, please contact the Planning Team on 01392 442836 or via email: DeveloperServicesPlanning@southwestwater.co.uk.

Other Representations

One representation of objection has been received.

Summary of Grounds of Objection

1. Design does not fit in with the existing houses.
2. A park for children was promised six years ago but has never been provided.
3. Potential disturbance to adjacent tree line which is currently a habitat for birds, bats and squirrels.
4. Risk of damage to property if water main and sewerage in close proximity are disturbed.
5. Does not protect the AONB.

PLANNING HISTORY

Reference	Description	Decision	Date
21/0162/FUL	Construction of 1no affordable dwelling and associated works	Refusal	18.06.2021
19/1337/FUL	Erection of 3 no. affordable dwellings and associated works	Approval with conditions	14.07.2020
14/2141/FUL	Construction of 8 no affordable dwellings and associated external works with public amenity space.	Non-determinati on appeal approved	26.10.2015

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 1 (Spatial Strategy for Development in East Devon)

Strategy 5B (Sustainable Transport)

Strategy 7 (Development in the Countryside)

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

Strategy 43 (Open Space Standards)

Strategy 46 (Landscape Conservation and Enhancement and AONBs)

Strategy 50 (Infrastructure Delivery)

D1 (Design and Local Distinctiveness)

D2 (Landscape Requirements)

EN5 (Wildlife Habitats and Features)

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

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

EN22 (Surface Run-Off Implications of New Development)

Strategy 34 (District Wide Affordable Housing Provision Targets)

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

TC2 (Accessibility of New Development)

TC7 (Adequacy of Road Network and Site Access)

TC9 (Parking Provision in New Development)

Made Dunkeswell Neighbourhood Plan 2014-2031 Policies

NE1 (Retaining, Conserving and Enhancing the Natural Beauty of our Parish)

BE1 (Maintaining the Built Character through High Quality Design)

HP1 (Responding to Demonstrable Local Housing Need)

CFS1 (Preventing the Loss of Local Community Facilities, Services and Open Spaces used for Recreation)

Government Planning Documents

NPPF (National Planning Policy Framework 2021)

ANALYSIS

Site Location and Description

The site comprises the eastern portion of a field, amounting to around 0.61 hectares in area, located to the south and west of existing residential development at Pump Field Close on the eastern edge of the Highfield estate at Dunkeswell.

Pump Field Close itself is a cul de sac of comparatively modern construction comprising ten dwellings, arranged in five pairs of semi-detached two storey units.

The area forms part of the designated Blackdown Hills Area of Outstanding Natural Beauty (AONB).

The site is located outside of the Built-up Area Boundary (BuAB) of any settlement as defined in the adopted Local Plan and Villages Plan and is not the subject of any specific allocation set out in either document.

Background

Eight of the present units in Pump Field Close were granted permission as a result of the non-determination appeal allowed in 2015 pursuant to application ref. 14/2141/FUL.

Although acknowledging the case to be very finely balanced, the Inspector's principal conclusions in favour of the scheme were: the lack of a 5 year supply of available housing land (at the time) and therefore inability to give substantive weight to housing supply policies in what in any event remained, at that stage, an emerging Local Plan (with the supplementary Villages Plan also at an emerging stage); lack of significant harm to the landscape and scenic beauty of the AONB; the comparatively sustainable location of the site in relation to a number of services and facilities within walking distance, and the social benefits resulting from the provision of general needs affordable housing (notwithstanding the absence of any submitted evidence that it was required in order to meet local needs).

A more recently approved development of a terrace of three two storey affordable dwellings, granted permission in July 2020 (under application ref. 19/1337/FUL), on the land immediately to the west of the application site and originally forming part of the same field, has commenced.

This scheme originally comprised five units, with the additional two dwellings shown to be located on the land that forms the present application site.

However, the development was reduced to three dwellings so as to meet a shortfall in the then identified need for affordable housing in Dunkeswell. (The remaining units, six in number, are currently under construction on a site off Louis Way, approximately 0.3 km. to the north of the application site.). Indeed, its compliance with (by then adopted) Local Plan Strategy 35 (Exception Mixed Market and Affordable Housing at Villages, Small Towns and Outside Built-up Area Boundaries) represented the principal material consideration weighing in favour of the development, even aside from the more favourable housing land supply position - compared to the situation in 2015 - and the full weight that was able to be given to the adopted Local Plan policies for the supply of housing, including defined settlement boundaries.

A more recent proposal for the construction of a single affordable dwelling within the application site (subject of application ref. 21/0162/FUL) was refused in June 2021 with a subsequent appeal dismissed in January 2022. Again, at the time, full weight was able to be given to relevant housing land supply policies within the adopted Local Plan. These, coupled with the lack of a robust evidence base (relying upon Devon Home Choice data) to demonstrate the local need for the development, formed the basis for the Council's decision, and were backed by the appeal Inspector.

Proposed Development

The current application proposal relates to the construction of a pair of 'affordable' semi-detached two bedroom two storey dwellings, together with the provision of four vehicle parking spaces (two per unit), on the site.

The submitted details show the units to be oriented north/south within the site and housed within a building form that would resemble a larger single dwelling. It would incorporate a shared fully hipped roof with the southern unit, set slightly forward of the northern unit, also featuring a subservient two storey projecting gable element. Externally, it would be finished in render to the ground floor with horizontal cladding at first floor level above under a concrete interlocking tile roof; no further details as to these finishes have been provided. Windows and doors would be confined to the front and rear elevations of both dwellings with no side-facing windows proposed.

The footprint areas of the two units would be very similar to those of the approved dwellings to the west as well as the existing properties in Pump Field Close.

Vehicular access off Pump Field Close would be shared with the partially constructed neighbouring 3-unit development to the west of the site.

The proposed units are intended to be provided as 'affordable rented' dwellings under the management of the housing association Live West Homes Ltd. To this end, an appendix attached to the agents' supporting statement that accompanies the application sets out an assessment of affordable/social housing needs in the Dunkeswell area with reference to Devon Home Choice data.

However, no draft heads of terms for legal obligations to secure them as affordable dwellings have been provided with the application.

Considerations/Assessment

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

Principle of Development

The broad strategic approach set out in the current adopted Local Plan is to direct the majority of new development to settlements within the District that are considered to be sustainable. To this end, Strategy 27 (Development at the Small Towns and Larger Villages) sets out a list of settlements that are considered to offer a range of services and facilities to meet many of the everyday needs of residents and which have reasonable public transport connections. These each have Built-up Area Boundaries as defined in the adopted Villages Plan.

Dunkeswell and, more particularly in the context of this application proposal, the Highfield estate, are not considered to benefit from a sufficient range of services and facilities, principally on account of the lack of any primary or secondary school and limited public transport links. Neither have therefore been included in the list of settlements to which the strategy applies.

As such, and as stated above, the site and wider Highfield estate occupy a location outside of any BuAB or any site-specific allocation defined in either the adopted Local or Villages Plan and, as such, forms part of the countryside within which the provisions of Local Plan Strategy 7 (Development in the Countryside) apply. These only permit development where it is in accordance with a specific Local or Neighbourhood Plan policy and where it would not harm the area's distinctive landscape, amenity and environmental qualities.

On the face of it therefore, and in the absence of any other policy provisions that permit new build dwellings in the countryside, the principle of residential development of the site would be in conflict with the strategy of the Local Plan.

However, the Council is in a position where it is unable to demonstrate a five year housing land supply. The Council's latest Housing Monitoring Report ending 31st March 2022 went before Strategic Planning Committee on 4th October last year where the following was stated:

"This report provides a summary of house building monitoring information to the year ending 31 March 2022. It had been noted in the previous Housing Monitoring Update that the housing land supply position was declining and that action was needed to address this position. In the meantime the annual requirement figure has gone up from 918 homes per year to 946 homes per year as a result of changes to the affordability ratio which is a key input into the government's standard method for calculating housing need. The increased need figure combined with a declining supply position means that a 5 year housing land supply can no longer be demonstrated. The report advises Members of the implications of this and what actions are and should be taken to address this position."

Under Government policy, if an authority cannot demonstrate a 5 year housing land supply then the presumption in favour of sustainable development (the 'tilted balance'), as set out in paragraph 11d) of the National Planning Policy Framework (NPPF), is to be applied. This states:

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

(i) the application of policies in (the) 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."

In the circumstances therefore, there is an acknowledgment that the above policies are to be regarded as out-of-date; thereby triggering the need to apply the presumption in favour of sustainable development/tilted balance.

However, there is also a need to consider this in the context of the extent to which policies that protect areas of particular importance, which footnote 7 to paragraph 11d) stipulates as including those relating to land within AONBs, provides a clear reason for overriding the presumption and/or whether any adverse impacts resulting from its application would significantly and demonstrably outweigh the benefits of the development when considering NPPF policies holistically.

The next sections of the report therefore consider the extent to which the proposal would constitute sustainable development, or otherwise, having regard to its location and impact upon the AONB and, in summary, whether the 'tilted balance' requires engaging in light of the balance of conclusions reached.

The provisions of Local Plan Strategy 5B (Sustainable Transport) require that development proposals should contribute to the objectives of promoting and securing sustainable modes of travel and transport and would need to be of a form, incorporate proposals for and be at locations where it would encourage and allow for efficient, safe and accessible means of transport with low environmental impact, including (among other things), walking and cycling.

These provisions are largely supplemented by those of Policy TC2 (Accessibility of New Development) which require new development to be located so as to be accessible by pedestrians and cyclists, as well as public transport, and also well related to compatible land uses so as to minimise the need for car travel.

In this regard, given the immediate proximity of the site to the eight dwellings in Pump Field Close allowed at appeal in 2015 and the very similar background to both that scheme and the current proposal in terms of the lack of a five year housing land supply, it is considered that a review of the Inspector's findings in relation to these issues is justified.

On the matter of the locational sustainability of the Highfield estate, he commented as follows (adapted where necessary, for clarity, to omit descriptive details that are not relevant to the current proposal and to refer to current adopted Local Plan policies and NPPF guidance):

'Dunkeswell accommodates a good range of local services and facilities. The appellant has set out that these include a doctor's surgery, crèche, play area, restaurant, hairdresser, bowling club, tennis courts, social club, community centre, recreational area for football, mountain bike facilities, ball game facilities and allotments. I also observed that there is a local shop and there are several churches further to the north. It was evident from my site visit that the majority of these facilities are within a safe walking distance. Bus stops are within walking distance of the appeal site, although it is understood that they offer a relatively limited service.'

In terms of employment, the Council has acknowledged that there are significant opportunities at Dunkeswell Business Park and the nearby airfield. However, I agree

with the Council that such opportunities are unlikely to be accessible on foot, given the nature of the connecting roads and their distance from the appeal site at some 1.5 kilometres. Future occupants would therefore be reliant on a private motor vehicle to access the employment areas, although any journeys would be short.

In conclusion, there is clearly a good level of local services and facilities within Dunkeswell. Nonetheless, access to employment opportunities would be difficult by sustainable modes of transport and bus services to the wider area is also limited. Consequently, future occupants are likely to some degree to be reliant on a private motor vehicle. Future children would still need to be transported some distance to the nearest appropriate school. For these reasons, I consider that the proposal runs contrary to and Strategy 5B (Sustainable Transport) and Policy TC2 (Accessibility of New Development) of the Local Plan. Strategy 5B and Policy TC2 of the Local Plan are generally consistent with the Framework and therefore carry weight.

Whilst there will be some reliance on a private motor vehicle, I am mindful that many facilities can be accessed on foot and there are some limited opportunities to utilise public transport. As a result, I consider that the identified harm and development plan conflict carries only a moderate level of weight against the proposal.'

In regard to the impact of development upon the character and appearance of the AONB, the Inspector found as follows:

'The Framework, at Paragraph 176, sets out that great weight should be given to conserving landscape and scenic beauty in AONBs. Given the above observations, I consider that the appeal site is well contained and would not represent an intrusion into the open countryside. The Council accept that any impact on the rural landscape character and the natural beauty of the AONB would be limited and localised. For the above reasons, I agree with this view.

I consider that the proposal as a result of its urbanising nature will cause some limited harm to the rural character and appearance of the area and to some limited degree to the wider natural beauty of the AONB. The proposal therefore runs contrary to Strategies 7 (Development in the Countryside) and 46 (Landscape Conservation and Enhancement and AONBs) of the Local Plan. These policies are broadly in line with objectives contained in the Framework and so attract considerable weight.'

In applying the overall planning balance, he concluded:

'As noted above, relevant policies for the supply of housing in the adopted development plan are out-of-date. Paragraph 11 of the Framework, which sets out the presumption in favour of sustainable development, states that (unless material considerations indicate otherwise) where the development plan is absent, silent or out-of-date, planning permission should be granted unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted.

The appeal scheme would provide social benefits from the delivery of affordable dwellings towards provision in the District. Given that the appellant has not to a suitable degree identified a local need for the affordable units, I have afforded a moderate level of weight in favour of the proposal in this regard. The scheme would also deliver associated economic benefits during the construction and through the spending of future occupants, although this would be modest.

On the other hand, there would be some limited harm to the rural character and appearance of the area and to some degree the wider natural beauty of the AONB. There would be some reliance on a private motor vehicle by future occupants of the proposal to access employment and wider services and facilities. Further to this, school children would also need to be transported out of the village. These environmental matters carry limited and moderate weight against the proposal respectively.

Drawing these matters together, I consider the decision to be finely balanced. However, the test set out in Paragraph 11 of the Framework is that any harm must significantly and demonstrably outweigh the benefits. Although the proposal would cause some adverse environmental effects, I am not of the view that these are of such a scale that is sufficient to significantly and demonstrably outweigh the scheme's identified benefits in the social and economic dimensions. I therefore conclude that the proposal would amount to sustainable development in the terms of the Framework and the appeal should therefore succeed.'

Although the appeal decision was taken approaching 8 years ago, the circumstances surrounding the lack of a five year housing land supply and both the national and local policy context underpinning it are considered to be essentially very similar now to then.

It is also worth highlighting that footnote 7 to paragraph 11 of the NPPF states that, when applying the 'tilted balance', it is the policies within the Framework that relate to AONBs, as opposed to those in development plans, that should be applied.

The relevant policies in this regard are therefore those mainly set out in paragraphs 176 and 177. The former does not expressly preclude development within such areas. However, it does require that the scale and extent of development within designated areas (including AONBs) should be limited, while development within its setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.

In this case it is considered that the proposed development would be limited in scale as well as appropriately located and designed so as to avoid any significant impacts upon this part of the surrounding AONB landscape. Indeed, it would not be readily visible in wider landscape views owing to the containing effect provided by the adjacent tree screening to the east of the site, trees and hedges to the south and existing development to the north and west; factors to which the appeal Inspector referenced in the decision to permit the adjacent development in Pump Field Close.

As such, the balance of the material considerations set out above and the current lack of an adequate supply of available housing land are thought to weigh in favour of the principle of the development.

In terms of the offer of the development as affordable housing, there is no express policy requirement for the provision of this type of housing in these circumstances.

Moreover, there is no known current requirement for such housing in Dunkeswell to meet any identified need; this having previously been established through a housing needs survey in 2018 and subsequently met through the developments on the adjacent site and that at Louis Way, both referenced above.

Equally, and having regard to the findings of the appeal Inspector in resisting the previous proposal for a single affordable dwelling on the application site in 2022, it is not considered that the submitted data from Devon Home Choice that has been provided can be accepted as amounting to the required robust evidence base to indicate that there is an identified need for additional affordable housing in the village.

As such, although Local Plan Strategy 35 would ordinarily facilitate the provision of affordable housing in circumstances such as this, the lack of any robustly-evidenced proven local need in this case indicates that there is no policy support for the 2 houses to be required to be delivered as affordable units as they do not meet the requirements of Strategy 35.

However, and again with reference to the Inspector's findings in regard to the issue in the 2015 appeal decision, and notwithstanding the provisions of Strategy 7 that would ordinarily justify opposing residential development in this location, the contribution that the development would provide towards the supply of housing more generally would, when considered in the balance with the lack of an adequate supply of available housing land along with the other material issues set out above, represent a benefit that again weighs in favour of the scheme.

Play Area Provision

The objections raised by the parish council and the commenting (now former) ward member reflect long-held concerns that development would occupy land that was shown annotated on the approved site layout plan attached to the 2015 appeal scheme as a play area. As such, it is contended that this facility should be provided and the current proposal for residential development resisted accordingly.

Essentially similar objections were held in response to applications 19/1337/FUL and 21/0162/FUL referred to in the Background section of the report above.

It is indeed clear from the approved site layout drawing that formed part of the allowed appeal that it annotates a 'new play area' within what is broadly the majority of the adjacent site occupied by the three dwellings under construction (pursuant to permission 19/1337/FUL) as well as a small portion of the current application site. To this extent, there is empathy with the objections raised.

However, and as previously advised, despite this plan, no legal or other mechanism was ever provided to formally secure this open space provision in conjunction with the approved housing development. Although a unilateral undertaking was provided by the appellants that made provision for financial contributions towards both open space and school transport for education, no section 106 agreement was entered into by either the Council or the appellants to secure provision on the site of the play area.

Furthermore, no such provision was required by planning policy at that time for that scale of development.

Indeed, in his findings the appeal Inspector concluded that he had carefully considered the unilateral undertaking and was of the view that it was sufficient to secure the obligations sought by the Council. He was also satisfied that the obligations in the undertaking met the statutory tests set out in both the Community Infrastructure Regulations and the relevant paragraph of the NPPF and, given this, that the Council had provided substantial evidence to support the requirement for the sought obligations. The proposal therefore made suitable provision for both open space and school transport for education through financial contributions.

In these circumstances, it remains the case that it is not considered that the Council is in a position to secure or enforce the provision of the play area shown on the approved site layout plan attached to the approved appeal development. As such, the position that the site should be safeguarded for this purpose cannot carry any material weight in the balance of considerations in the assessment of the current proposal.

This position is supported by the lack of Local or Neighbourhood Plan policy specifically identifying or protecting this land for future play space use. As there is no legal mechanism to secure the use of the area for children's play space, and no Local Plan or Neighbourhood Plan designation protecting or identifying the site as a play area, the loss of the site to housing development could not reasonably be resisted on the grounds sought by the parish council and ward member.

In terms of other contextual issues that are material to assessment of the proposal, it is not considered that these give rise to any significant concerns.

Design/Impact upon Character and Appearance of Area

Subject to the submission of further details of the proposed external wall and roof finishes to be used for the development (that can be secured by condition), there are no objections to the scale, design or appearance of the development. Almost all of the existing housing development constructed, and approved, within the past 10 or so years in the immediate area, within Pump Field Close and Powells Way, is of simple two storey form, mostly exhibiting painted render and dark coloured concrete tile roofs. In this context therefore, it is considered that the development would be largely in keeping and would not detract from the adjacent street scene.

However, the intended use of cladding at first floor level would not be especially reflective of the character or appearance of existing adjacent development. It is

therefore recommended that a condition be attached to any permission granted to secure the submission of details/samples of materials so that a more appropriate palette can be negotiated.

Impact upon Neighbour Amenity

Although the northern unit would be positioned in close proximity to the site boundary with the rear gardens of the neighbouring properties at nos. 7 and 8 Pump Field Close to the north, it is not thought that it would result in any materially significant adverse impact upon the living conditions enjoyed by the occupiers on account of it being physically overbearing, dominating or intrusive as to result in loss of outlook, aspect or light.

Similarly, the orientation of the units 'end on' to the northern and southern site boundaries and the omission of any windows from the northern side gable wall of the northern unit would mitigate any overlooking of these properties that might otherwise result in loss of privacy.

Highways

Although no consultation comments regarding the proposal have been received from the County Highway Authority, the site is accessed off of the existing cul de sac and the scheme would provide for two parking spaces per unit with manoeuvring room for vehicles adjacent to, and in front of, the three units under construction to the west. It is not anticipated therefore that the development would give rise to any highway safety issues.

Drainage

It is intended to discharge foul drainage from the development to the mains sewer and surface water drainage via soakaway, thereby maintaining separation of the two systems. This has been confirmed as being an acceptable arrangement by South West Water and there are therefore no objections to the scheme from a drainage perspective.

Impact upon Heritage Assets

There are no designated or non-designated heritage assets on or within the vicinity of the site that would be affected by the proposed development.

Impact upon Trees

The eastern boundary of the site is contiguous with a belt of trees. Whilst the development itself would not be positioned in particularly close proximity to it, it is thought appropriate to require that means of protection during the course of development be carried out. A condition is therefore recommended to secure the submission of details of such measures and implementation thereafter.

Ecology

Owing to the ongoing development of the western portion of the field containing the application site immediately adjoining it, it is not considered that the latter contains any ecological features of significance.

Conclusion

In concluding, it is considered that the need to engage the 'tilted balance' in favour of sustainable development set out in the NPPF owing to the Council's housing land supply position, taken together with the sustainability credentials of Dunkeswell - and the Highfield estate more specifically weighs in favour of the development. In particular there are no significant or demonstrable adverse impacts arising from this development that would outweigh the benefits of delivering 2 additional dwellings.

RECOMMENDATION

APPROVE subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission and shall be carried out as approved.
(Reason - To comply with section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice.
(Reason - For the avoidance of doubt.)
3. Notwithstanding the submitted details, no development above foundation level shall take place until a schedule of materials and finishes, and, where so required by the Local Planning Authority, samples of such materials and finishes, to be used for the external walls and roofs of the proposed development has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
(Reason - To ensure that the materials are sympathetic to the character and appearance of the area, which forms part of the designated Blackdown Hills Area of Outstanding Natural Beauty, in accordance with Strategy 46 (Landscape Conservation and Enhancement and AONBs) and Policy D1 (Design and Local Distinctiveness) of the adopted East Devon Local Plan 2013-2031 and Policy B1 (Maintaining the Built Character through High Quality Design) of the made Dunkeswell Neighbourhood Plan 2014-2031.)
4. The development hereby permitted shall not be occupied until a scheme of hard and soft landscaping of the site has been submitted to and approved in writing by the Local Planning Authority; such a scheme to include the planting of trees, hedges, shrubs, herbaceous plants and areas to be grassed and hard surfaced. The scheme shall also give details of any proposed walls, fences and other boundary treatment. The landscaping scheme shall be carried out in the first planting season after commencement of the development, unless any alternative phasing of the landscaping is agreed in writing by the Local Planning Authority, and the landscaping shall be maintained for a period of 5 years. Any trees or other plants which die during this period shall be replaced during the next planting season with specimens of the same size and species unless otherwise agreed in writing by the Local Planning Authority.
(Reason - In the interests of amenity and to preserve and enhance the character and appearance of the area, which forms part of the designated

Blackdown Hills Area of Outstanding Natural Beauty, in accordance with Strategy 46 (Landscape Conservation and Enhancement and AONBs) and Policies D1 (Design and Local Distinctiveness) and D2 (Landscape Requirements) of the adopted East Devon Local Plan 2013-2031.)

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

(Reason - A pre-commencement condition is required to ensure that adequate facilities are available for construction and other traffic attracted to the site in accordance with Policy TC7 (Adequacy of Road Network and Site Access) of the adopted East Devon Local Plan 2013-2031.)
6. The dwellings hereby permitted shall not be occupied until the vehicular access, turning area and parking spaces shown on the approved plans have been provided in accordance with the approved details. These shall thereafter be retained and kept available for those purposes at all times.

(Reason - To ensure that adequate and safe provision is made for the occupiers and in the interests of highway safety in accordance with the requirements of Policy TC7 (Adequacy of Road Network and Site Access) of the adopted East Devon Local Plan 2013-2031.)

7. The dwellings hereby permitted shall not be occupied until the refuse, recycling and bicycle storage facilities shown on the approved plans have been provided in full in accordance with further details as to their external appearance that shall previously have been submitted to and approved in writing by the Local Planning Authority. These facilities shall thereafter be retained for their respective purposes in perpetuity.
(Reason - In the interests of ensuring that adequate refuse, recycling and cycle storage facilities are provided in accordance with Policies D1 (Design and Local Distinctiveness) and TC4 (Footpaths, Bridleways and Cycleways) of the adopted East Devon Local Plan 2013-2031.)
8. Notwithstanding the submitted details, no development shall take place until a surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. Unless it is demonstrated that it is unfeasible to do so, the scheme shall use appropriate Sustainable Urban Drainage Systems. The drainage scheme shall be designed so that there is no increase in the rate of surface water runoff from the site resulting from the development and so that storm water flows are attenuated. The development shall be carried out in accordance with the approved scheme.
(Reason: The details are required prior to commencement to ensure that they fit efficiently within the site layout, protect water quality and minimise flood risk in accordance with Policy EN22 (Surface Run-Off Implications of New Development) of the adopted East Devon Local Plan 2013-2031 and guidance contained within the National Planning Policy Framework (2021).)
9. Prior to commencement of any works on site (including demolition), tree protection details, to include the protection of hedges and shrubs, shall be submitted to and approved in writing by the Planning Authority. These shall adhere to the principles embodied in BS 5837:2012 and shall indicate exactly how and when the trees will be protected during the site works. Provision shall also be made for supervision of tree protection by a suitably qualified and experienced arboricultural consultant and details shall be included within the tree protection statement. The development shall be carried out strictly in accordance with the agreed details.

In any event, the following restrictions shall be strictly observed:

- (a) No burning shall take place in a position where flames could extend to within 5m of any part of any tree to be retained.
- (b) No trenches for services or foul/surface water drainage shall be dug within the crown spreads of any retained trees (or within half the height of the trees, whichever is the greater) unless agreed in writing by the Local Planning Authority. All such installations shall be in accordance with the advice given in Volume 4: National Joint Utilities Group (NJUG) Guidelines for the Planning, Installation and Maintenance of Utility Apparatus in Proximity to Trees (Issue 2) 2007.
- (c) No changes in ground levels or excavations shall take place within the crown spreads of retained trees (or within half the height of the trees, whichever is the greater) unless agreed in writing by the Local Planning Authority.

(Reason - A pre-commencement condition is required to ensure retention and protection of trees on the site during and after construction. The condition is required in interests of amenity and to preserve and enhance the character and appearance of the area in accordance with Policies D1 (Design and Local Distinctiveness) and D3 (Trees and Development Sites) of the Adopted East Devon Local Plan 2013-2031.)

Statement on Human Rights and Equalities Issues

Human Rights Act:

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

Equalities Act:

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

NOTE FOR APPLICANT

Informative:

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

Informative:

There is a public 125mm water main in the vicinity of the proposed development. Please No development is permitted within 3 metres of the water main. The water main must also be located within a public open space and ground cover should not be substantially altered.

Should the development encroach on the 3 metre easement, the water main will need to be diverted at the expense of the applicant.

www.southwestwater.co.uk/developer-services/water-services-and-connections/building-near-water-mains/

Further information regarding the options to divert a public water main can be found on our website via the link below:

www.southwestwater.co.uk/developer-services/water-services-and-connections/diversion-of-water-mains/

Should any further information be required, please contact the Pre Development Team at S.W.W. via email: DeveloperServicesPlanning@southwestwater.co.uk.

If further assistance is required to establish the exact location of the water main, the applicant/agent should call the S.W.W. Services helpline on 0344 346 2020.

Plans relating to this application:

8480-200	Proposed Plans	Combined	22.02.23
8480-202	Proposed Site Plan		22.02.23
8480-LP	Location Plan		22.02.23

List of Background Papers

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