

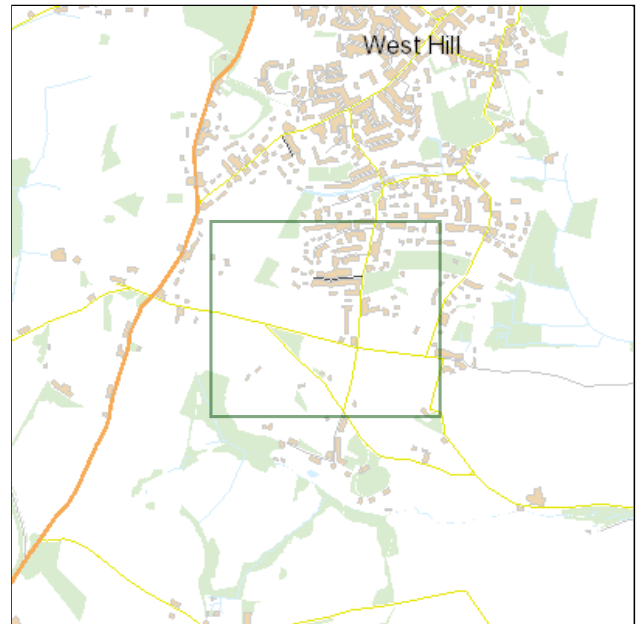
Ward West Hill And Aylesbeare

Reference 22/2533/MOUT

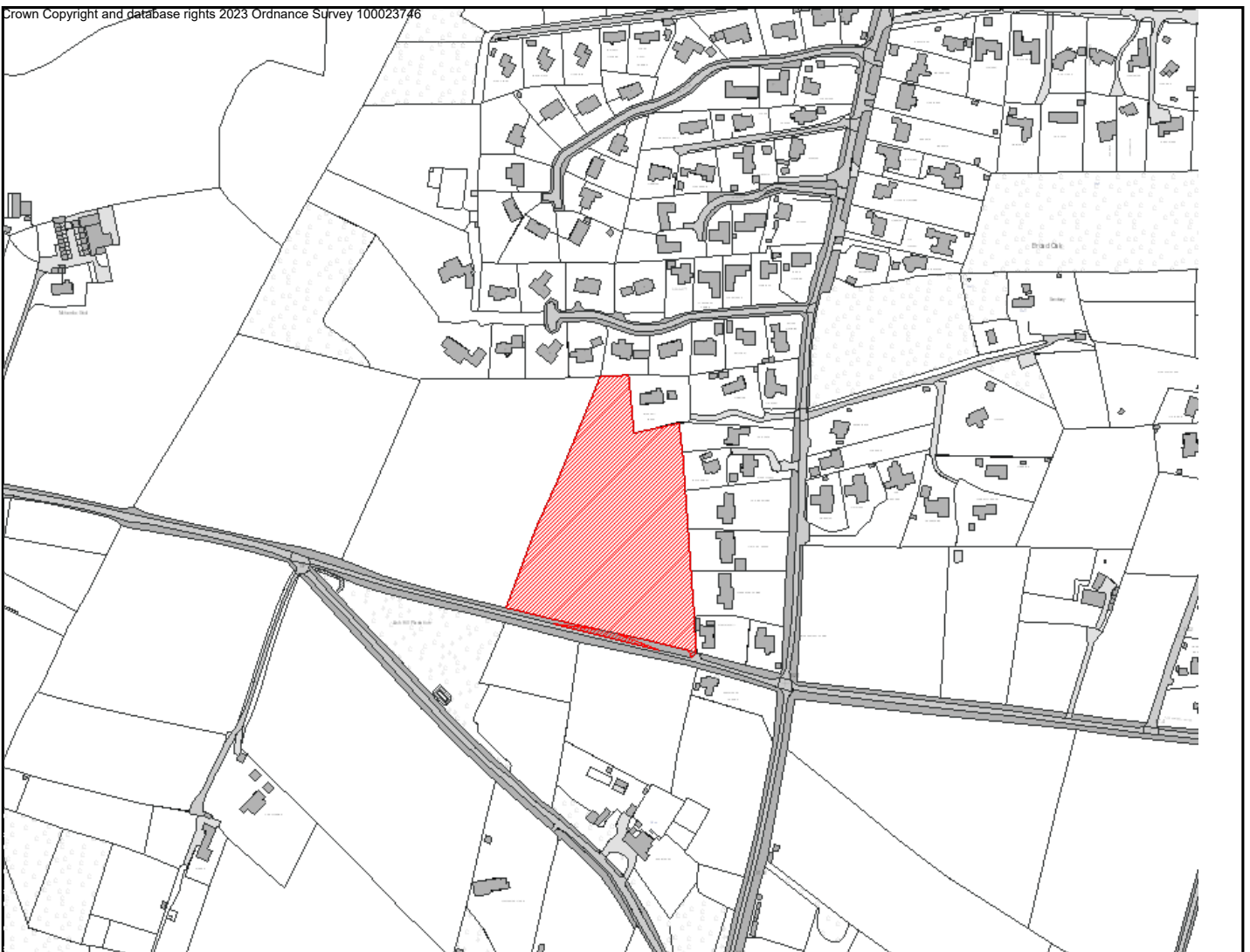
Applicant Morrish Homes & Messrs Compton,
Stephenson, Olliff & Sanders

Location Land North Of Oak Road West Hill EX11 1SJ

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



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



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

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

EXECUTIVE SUMMARY

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

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

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

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

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

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

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

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

CONSULTATIONS

Local Consultations

Parish/Town Council

05.01.23

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

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

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

Key issues:

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

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

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

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

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

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

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

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

Previous planning application outcomes:

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

1988 application refused.

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

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

1994 application refused.

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

2012 EDDC Strategic Housing Land Availability Assessment (SHLAA).

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

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

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

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

The application is contrary to the Neighbourhood Plan :

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amended Plans 05.04.23

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

West Hill And Aylesbeare - Cllr Jess Bailey

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

1. The site is in an unsustainable location

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

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

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

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

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

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

I am greatly concerned about the following road safety issues:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Biodiversity issues

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

6. Strength of community opposition to the proposal

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

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

Conclusion

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

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

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

Yours sincerely
Cllr Jess Bailey

Technical Consultations

Environmental Health

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

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

DCC Flood Risk Management Team

27.03.23

Recommendation:

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

Observations:

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

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

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

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

AMENDED PLANS 05.05.23

Recommendation:

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

Observations:

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

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

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

Remedial maintenance should also be included within the maintenance details.

County Highway Authority

Observations:

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

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

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

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

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

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

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

Recommendation:

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

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

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

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

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

EDDC Trees

10.01.23

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

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

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

AMENDED PLANS 03.05.2023

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

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

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

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

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

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

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

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

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

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

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

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

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

Economic Development Officer

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

1. The GDV comparisons suggested appear to be low. I have found the comparison data to show sales values of between £420- £475 psf with some outliers. The GroupWest figures for the detached units are broadly similar, but surprisingly the smaller semi-detached properties are all well below this level. Therefore the GDV should be increased.

2. The Number of Affordable units listed in the text of the report does not correlate to the plan, so does appear to be confused in the viability appraisals.

3. There are additional items in the cost plan that are high, such as professional fees and legal costs etc., for such a small site.

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

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

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

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

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

Natural England

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

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

Natural England's advice is that this proposed development, and the application of these measures to avoid or reduce the likely harmful effects from it, may need to be

formally checked and confirmed by your Authority, as the competent authority, via an appropriate assessment in view of the European Site's conservation objectives and in accordance with the Conservation of Habitats & Species Regulations 2017 (as amended).

This is because Natural England notes that the recent People Over Wind Ruling by the Court of Justice of the European Union concluded that, when interpreting article 6(3) of the Habitats Directive, it is not appropriate when determining whether or not a plan or project is likely to have a significant effect on a site and requires an appropriate assessment, to take account of measures intended to avoid or reduce the harmful effects of the plan or project on that site. The ruling also concluded that such measures can, however, be considered during an appropriate assessment to determine whether a plan or project will have an adverse effect on the integrity of the European site.

Your Authority should have regard to this and may wish to seek its own legal advice to fully understand the implications of this ruling in this context.

Natural England advises that it is a matter for your Authority to decide whether an appropriate assessment of this proposal is necessary in light of this ruling. In accordance with the

Conservation of Habitats & Species Regulations 2017 (as amended), Natural England must be consulted on any appropriate assessment your Authority may decide to make.

Sites of Special Scientific Interest Impact Risk Zones

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

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

Devon County Council, Minerals & Waste

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

Minerals

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

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

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

Waste

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

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

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

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

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

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

Environmental Health

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

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

Police Architectural Liaison Officer - Kris Calderhead

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

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

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

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

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

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

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

Other Representations

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

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

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

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

PLANNING HISTORY

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

POLICIES

Ottery St Mary and West Hill Neighbourhood (Made)

Policy NP1: Development in the Countryside

Policy NP2: Sensitive, High Quality Design

Policy NP6: Valued Views

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

Policy NP9: Accessible Developments

Policy NP12: Appropriate Housing Mix

Policy NP13: Accessible and Adaptable Homes

Policy NP14: Demonstrating Infrastructure Capacity

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 1 (Spatial Strategy for Development in East Devon)

Strategy 2 (Scale and Distribution of Residential Development)

Strategy 3 (Sustainable Development)

Strategy 4 (Balanced Communities)

Strategy 5 (Environment)

Strategy 5B (Sustainable Transport)

Strategy 7 (Development in the Countryside)

Strategy 24 (Development at Ottery St Mary)

Strategy 34 (District Wide Affordable Housing Provision Targets)

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

Strategy 37 (Community Safety)

Strategy 38 (Sustainable Design and Construction)

Strategy 43 (Open Space Standards)

Strategy 46 (Landscape Conservation and Enhancement and AONBs)

Strategy 48 (Local Distinctiveness in the Built Environment)

Strategy 50 (Infrastructure Delivery)

D1 (Design and Local Distinctiveness)

D2 (Landscape Requirements)

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

Government Planning Documents

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

Site Location and Description

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

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

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

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

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

Proposed Development

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

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

ANALYSIS

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

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

Principle

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

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

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

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

For decision-taking this means:

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

; and

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

granting permission unless:

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

; or

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

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

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

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

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

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

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

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

Emerging Local Plan

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

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

Should the site be allocated? No

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The IHT suggests;

400m desirable walking distance

800m acceptable

1,200 preferred maximum

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

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

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

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

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

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

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

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

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

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

Public Transport

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

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

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

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

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

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

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

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

Impact on the Character and Appearance of the Landscape

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

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

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

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

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

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

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

Accordingly, this issue does not weigh against the proposal.

Highways

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

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

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

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

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

Drainage Systems

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

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

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

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

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

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

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

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

Foul Drainage

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

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

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

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

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

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

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

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

Ecology

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

European Designated Ecology Sites

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

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

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

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

Site Specific Ecology

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Affordable Housing

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

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

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

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

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

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

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

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

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

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

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

Trees

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

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

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

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

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

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

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

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

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

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

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

Open Space

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

Other Matters;

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

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

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

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

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

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

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

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

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

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

Agricultural Land Classification

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

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

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

Amenity

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

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

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

Consideration of the potential benefits in favour of this proposal

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

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

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

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

The paragraph 11 d) balance

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

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

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

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

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

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

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

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

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

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

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

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

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

Appropriate Assessment

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

Statement on Human Rights and Equalities Issues

Human Rights Act:

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

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

RECOMMENDATION

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

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

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

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

Plans relating to this application:

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

List of Background Papers

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