

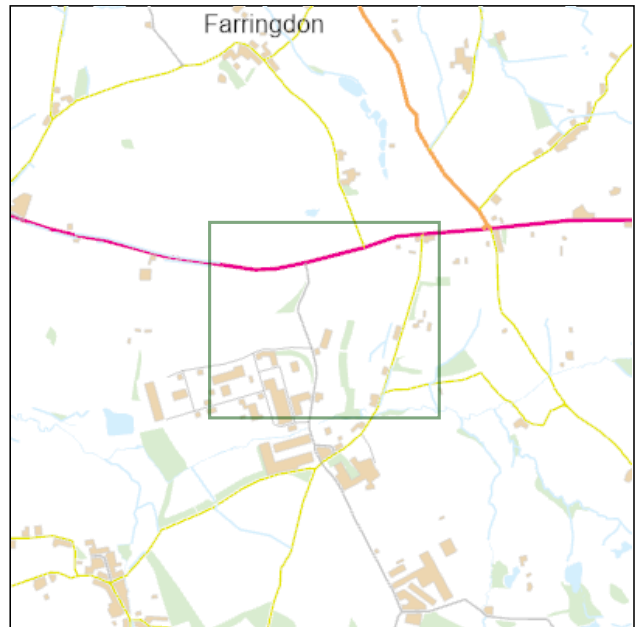
**Ward** Woodbury And Lymptone

**Reference** 22/1893/FUL

**Applicant** Mr Paul James (FWS Carter & Sons Ltd)

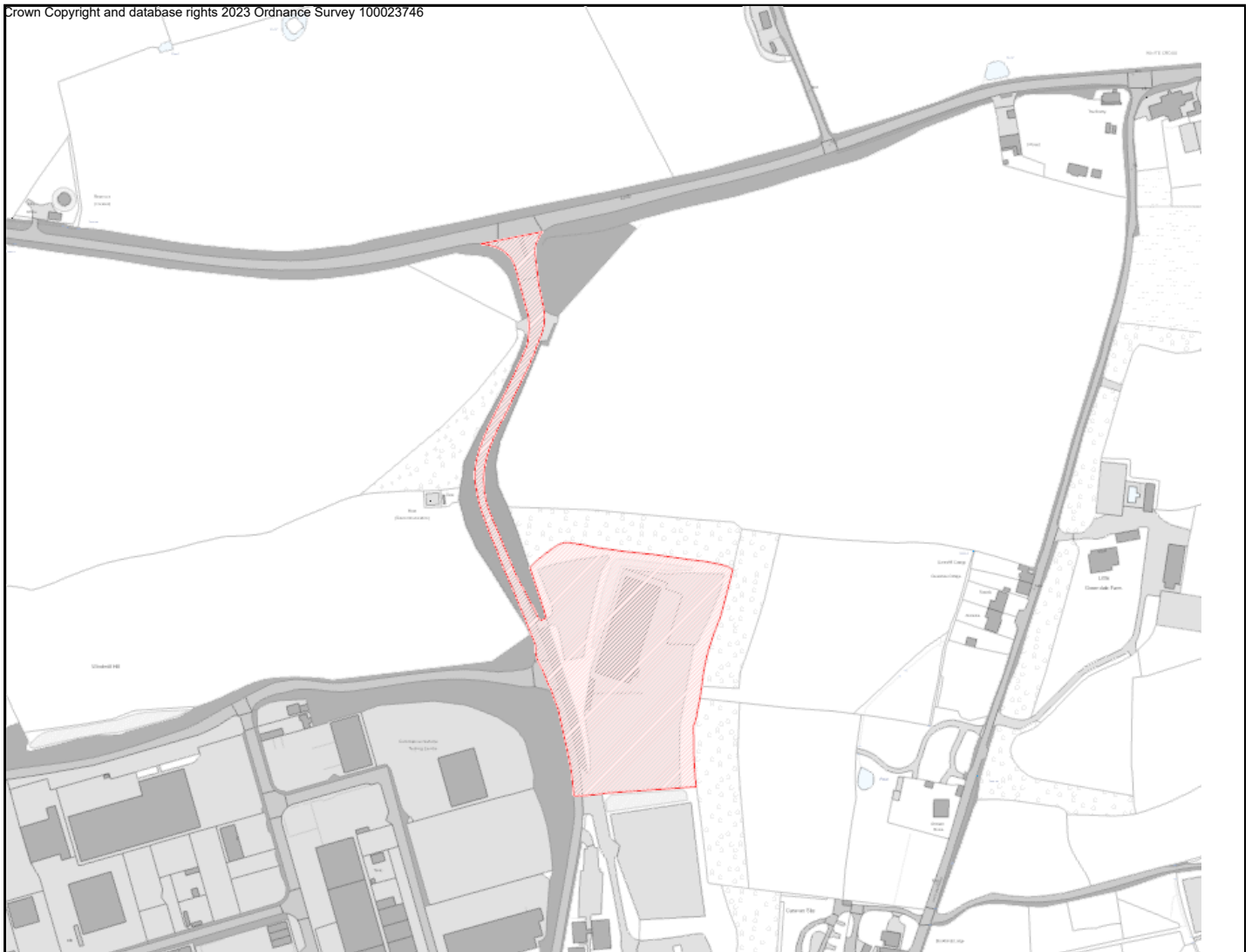
**Location** NHS Vaccination Centre Greendale Business Park Woodbury Salterton Exeter EX5 1EW

**Proposal** Temporary permission (use class E) to permanent permission NHS walk in centre (use class E) (Ci, ii,iii, D, E,F,G), B2, B8 commercial, business and services including ancillary parking.



**RECOMMENDATION: Refusal**

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		<b>Committee Date: 19.12.2023</b>
<b>Woodbury And Lympstone (Woodbury)</b>	<b>22/1893/FUL</b>	<b>Target Date: 21.10.2022</b>
<b>Applicant:</b>	<b>Mr Paul James (FWS Carter &amp; Sons Ltd)</b>	
<b>Location:</b>	<b>NHS Vaccination Centre Greendale Business Park</b>	
<b>Proposal:</b>	<b>Temporary permission (use class E) to permanent permission NHS walk in centre (use class E) (Ci, ii,iii, D, E,F,G), B2, B8 commercial, business and services including ancillary parking.</b>	

**RECOMMENDATION: REFUSAL**

#### **EXECUTIVE SUMMARY**

**This application is before members of the Planning Committee because the officer recommendation differs from that of a ward councillor.**

**The starting point for determining this application is that it is for the retention of a site and building in the countryside that was originally constructed under permitted development rights. The building has a temporary permission and has only been approved by the Council alongside the permitted development right on the basis of exceptional circumstances at the time to aid in dealing with the global pandemic to fight Covid 19 with the intention of its removal by the end of December 2023. Members should note that the building is not currently in use by the NHS but by an unauthorised commercial user.**

**The fact that the building and site are already in use for a temporary basis is not considered to be relevant to the determination of this application because when originally constructed under permitted development, the Council could give no consideration to the location of the building, its siting and how it would be considered against Local Plan policies, the principle of development, the accessibility and sustainability of the site, its landscape and visual impact, surface water run-off and management, highway safety and any other relevant material considerations.**

**Development of the application site has led to the outward expansion of the business park into the countryside and outside of the extent of authorised uses of Greendale Business Park which is not supported by either the Local Plan or the Adopted Villages Plan. The application is considered to be contrary to strategy 7 and policy E7 of the Local Plan which indicate that the principle of**

**development in this location would harm the clear strategic intentions of the Local Plan which is not to permit the outward expansion of Greendale Business Park.**

**In the absence of policy support for the principle of development, the application is considered to be a departure from the Local Plan. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.**

**Strategically, Greendale Business Park is identified within the Local Plan as a substantial stand-alone employment site which is different from the smaller and medium scale sites of East Devon and not deemed appropriate for expansion on account of its unsustainable location and to limit further landscape impact.**

**The location of the application site at Greendale Business Park away from settlements means that whether used by the NHS or commercial uses, people are likely to access the site via private car which promotes a pattern of transport that would not be considered to represent a form of sustainable development conflicting with Local Plan policies and the NPPF which seek to encourage promoting and securing sustainable modes of travel and transport. In land use terms the proposal is not considered to represent a sustainable form of development from an environmental perspective which weighs further against the proposal within the overall planning balance.**

**The landscape impact arising from the outward expansion of the business park into the countryside and the visual impact of the building is considered to be a further environmental concern which weighs against the proposal within the overall planning balance.**

**The support from the Council's Economic Development Officer is caveated by the fact that it is acknowledged that there is no specific policy within the Local Plan which outlines the conditions to which 'non-small scale' economic development in rural areas will be supported or refused. The economic benefits to be derived from retention of the building, its use by the NHS and other commercial uses are not considered to outweigh the proposal's policy conflict and the Council's strategic approach to development and the outward expansion at Greendale Business Park.**

**On balance, having regard for the above, whilst the proposal does not result in harm to residential amenity or highway safety, it isn't considered that there are sufficient material considerations that have been presented which justifies a departure from the Local Plan. This proposal represents an unjustified and unsustainable form of development which has led to the outward expansion of Greendale Business Park beyond its extent of authorised uses which is visually intrusive and encroaches into the open countryside to the detriment of the rural landscape character and appearance of the area. This harm coupled with the conflict with the Local Plan's strategic and plan-led approach towards the outward expansion of the business park contained within the East Devon Villages Plan and its wider sustainability objectives is considered to outweigh the social and economic benefits that would be derived from the fact that the**

**NHS may require the building in the future event of a COVID surge or through permanent use of the building by other commercial uses. The proposal is considered to be contrary to the provisions of Strategy 1, 5B, 7, 46 and policies D1, E7, EN22 and TC2 of the Local Plan. The application is therefore recommended for refusal.**

## **CONSULTATIONS**

### **Local Consultations**

Woodbury And Lympstone - Cllr Geoff Jung -  
26/06/2023

I have viewed the further documents for the planning application for 22/1893/FUL to change from temporary permission (use class E) to permanent permission for a NHS walk in centre (use class E) (Ci, ii, iii, D, E,F,G), B2, B8 commercial, business and services including ancillary parking at the NHS Vaccination Centre Greendale Business Park Woodbury Salterton

According to the latest correspondence from the NHS they have a lease on the Greendale farm shop drive through centre which did not successfully obtain retrospective planning permission plus they have a lease at the Covid walk in centre at Greendale Business Park, which they say they cannot use.

At the planning meeting to discuss the farm shop drive through centre application it was stated that although planning was not granted the use can continue for the time being in view of the temporary requirements of the NHS and enforcement will follow in due course, or the applicants can appeal the decision and therefore the use can continue until the appeal has concluded.

The correspondence from the NHS also says that the permission for the walk in Greendale Business Park vaccination centre ceased on 31/12/22. It also states that permission for the building to stay in situ finishes at the end of the year 2023 and has nil use to the NHS.

There are a number of points regarding the location of this facility.

The site was previously applied for and refused, and unsuccessfully appealed to the government planning inspectorate and resulted in a high court judgement with substantial costs to the applicant.

The site is outside the agreed Employment Area for Greendale and therefore the application is to be considered in the open countryside. It does not comply to the EDDC local Plan nor the EDDC villages plan.

According to the Government there are no further plans (at present) to continue Covid Vaccinations beyond the recent age related and most vulnerable, and communication with Woodbury surgery is suggesting that a booster jab may be an option at the time of the standard age-related flu jab in the autumn but awaiting a final decision from the Government.

Therefore, taking all the factors into consideration I cannot support the application. However, I reserve my final views on this application until I am in full possession of all the relevant arguments for and against.

Woodbury And Lympstone - Cllr Geoff Jung

15/09/2022

I have viewed the documents for planning application for 22/1893/FUL for the temporary permission (use class E) to change to permanent permission for the NHS walk in centre (use class E) (Ci, ii, iii, D, E,F,G), B2, B8 commercial, business and services including ancillary parking at NHS Vaccination Centre Greendale Business Park Woodbury Salterton.

This building was built under Government Emergency Powers, during the Covid Emergency, which did not require the local planning authority to approve. The location for this building is outside the employment area for Greendale Business Park and therefore the location is considered built in the 'open countryside'

Therefore, this application is against a number of East Devon local plan policies. Also, a previous retrospective planning application was refused at this location and was refused, was not supported by a Government planning inspector and the appeal to the High Court by the applicant was also refused, and the area was required to be returned to agricultural use.

I therefore cannot support the building to become permanent, and the structure, compounds and carpark need to be removed to be returned to agricultural use. However, I reserve my final views on this application until I am in full possession of all the relevant arguments for and against.

Woodbury And Lympstone - Cllr Ben Ingham

21.02.2023

I write to recommend this planning application for approval.

I note:

This site was filled in previously, then reversed, let's not do that again...

With the right screening, I think the existing would be acceptable

Access to this site has proved of high calibre

We need to support sustainable employment at every opportunity

Parish/Town Council

28/06/2023

Woodbury Parish Council supports this application for the permanent permission for a NHS walk in centre. If and when the NHS does not require this facility then it should be removed as it is outside the employment boundary for Greendale and in open Countryside. Ancillary parking should only be for the use of the NHS / walk in centre and not used for car storage. Remove ancillary parking and associated work upon this facility not being used by the NHS.

## **Technical Consultations**

EDDC Landscape Architect:

24/11/2023

### **Summary:**

Having reviewed the submitted LVIA it is considered that in a number of areas the level of landscape effects are understated and that even with proposed mitigation significant adverse effects remain in respect of changes to landform, landscape patterns/ site character and landscape policies/ strategies resulting in unacceptable landscape and visual harm.

### **DCC Flood Risk Management Team**

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.

The applicant has not provided any information in relation to the disposal of surface water from the site to enable me to make observations on the proposal. The applicant must therefore submit a surface water drainage management plan which demonstrates how surface water from the development will be disposed of in a manner that does not increase flood risk elsewhere, in accordance with the principles of Sustainable Drainage Systems.

Economic Development Officer

**ECONOMIC DEVELOPMENT TEAM RESPONSE**

Reference: 22/1893/FUL

Description: Temporary permission (use class E) to permanent permission NHS walk in centre (use class E) (Ci, ii,iii, D, E,F,G), B2, B8 commercial, business and services including ancillary parking.

Location: NHS Vaccination Centre Greendale Business Park Woodbury Salterton Exeter EX5 1EW

Date: 15 November 2022

Recommendation: Approve

### **Initial Comments**

We acknowledge the applicant's proposal for permanent permission to be granted for a 1.95ha site currently used as an NHS walk in centre. The applicant has confirmed that the permission sought would enable the continuation of the site to be used as a vaccination centre once the current temporary permission expires on 31st December 2022. The applicant is seeking permission for the site to be used for employment uses once the site is no longer required by the NHS.

## Local Plan Policy

There is no specific policy within the Local Plan which outlines the conditions to which extensions to Greendale Business Park for employment purposes will be supported or refused. Policy E7 outlines the conditions to which extensions to existing employment sites will be supported or refused, however E7 clearly states clearly that the policy does not apply to Greendale Business Park.

Policy E5 of the Local Plan outlines the conditions to which small scale economic development in rural areas will be supported or refused, however there is no definition of what is regarded as 'small scale', 'large scale' or otherwise.

Assuming the applicant site is regarded as small scale, policy E5 states that small scale economic development will be permitted where it involves the conversion of existing buildings. This permission is dependent upon a variety of other (non-economic) criteria being met, including transport, ecological and historical factors. We acknowledge the comment provided by the Highway Authority (3 October 2022) stating no objection to the proposed development. Assuming there is no detrimental impact arising from the other specified factors, and the applicant site is regarded as small scale, the proposed development appears to be compliant with policy E5.

If the applicant site is not regarded as small scale, there is no specific policy within the Local Plan which outlines the conditions to which 'non-small scale' economic development in rural areas will be supported or refused.

## Employment Need

The need for additional employment development is becoming increasingly clear. Since the beginning of the current Local Plan period in 2013, East Devon has commendably met 97% of its housing target of 950 homes per year. If the Local Plan Strategy 31 target (of 1 hectare of employment land for each 250 homes proposed) is applied to all homes built and all employment land delivered in East Devon, only 63% of this employment space target is currently being met. We have fallen significantly behind (37%) in the delivery of new employment space compared to new homes across our district.

The need to increase the supply of employment space is therefore essential, given the worsening imbalance between the delivery of employment space lagging so far behind that of residential development throughout the current Local Plan period. If unchecked, this trend will inevitably result in East Devon residents having to travel further and further for employment opportunities, increasing outward commuting and carbon emissions whilst impeding efforts to encourage settlement self-containment and to tackle our worsening old age dependency ratio.

## Economic Inactivity

Employment provision not keeping pace with new housing delivery in East Devon throughout the current Local Plan period has had a disproportionate effect on younger residents, many of whom leave the district to find adequate employment opportunities elsewhere. Evidence from the Onward think tank shows that where 2.6% of UK undergraduates study in Devon, only 1.6% of UK under-30s with a degree live in Devon, implying a significant brain drain .

Compounding this loss of younger workers from the district is the dramatic increase we have seen in older, typically retired residents who depend on the working age population - a working age population that is shrinking. ONS data shows that out of over 330 local authority areas, East Devon currently has the third highest proportion of retired people in the UK and the very highest proportion of residents of 90+ years of age . East Devon also has one of the highest levels of economic inactivity in the country . To be clear, this situation is worsening. In order to maintain a functioning local economy in decades to come, we are compelled to support the delivery of valuable employment opportunities when they arise.

#### Conclusion

Due to the particularly challenging economic prospects facing East Devon and the positive economic benefits this employment space would unlock, we strongly encourage any delivery of this application to include the development of the employment provision proposed. We would therefore actively recommend that this proposal is approved.

#### County Highway Authority

This establishment has been used since 2020 with no direct recorded collisions within the junction of Greendale from our recorded collision record (currently January 2017 - December 2021).

The vehicular trip generation has already been established along with the current uptake of the regular bus service. I do not envisage the trip generation being in excess of the current extent with either the NHS as is or of a similar use to that of the rest of Greendale Business Park.

#### Recommendation:

THE HEAD OF PLANNING, TRANSPORTATION AND ENVIRONMENT, ON BEHALF OF DEVON COUNTY COUNCIL, AS LOCAL HIGHWAY AUTHORITY, HAS NO OBJECTION TO THE PROPOSED DEVELOPMENT

#### Environmental Health

I have considered the application and do not anticipate any environmental health concerns.

#### Other Representations

One letter of objection has been received at the time of writing this report raising concerns which can be summarised as:

- The application does not comply with the Local Plan
- The Greenhouse Gas Assessment does not include the planting of trees
- No overriding material considerations have been presented.

#### **PLANNING HISTORY**

There is an extensive planning history for this site however, the most relevant applications to the proposal to which this application relates are:



**21/2123/COU- Continued use of Greendale Vaccination Centre by the NHS until 31st December 2022- Approved 04.02.2022 subject to the following condition:**

The building shall be used as a vaccination/NHS centre only in relation to the Covid19 pandemic and the use of the building hereby approved shall cease on 31st December 2022 unless amended by a further grant of planning permission. The temporary building and all the resulting materials shall be removed from the land and the land restored to its former condition by 31st December 2023 unless varied by a further grant of planning permission.

(Reason - The use of the building and its siting are acceptable in exceptional circumstances to aid in dealing with the global pandemic to fight Covid 19, the use of the site and building are contrary to Strategy 7 (Development in the Countryside) and D1 (Design and Local Distinctiveness) of the East Devon Local Plan being outside the defined developable area of Greendale Business Park as defined by the Villages Plan DPD and the building would have a detrimental impact on the character and appearance of the surroundings.)

**21/3049/FUL- External lighting scheme- Approved 04.02.2022 subject to the following condition:**

Use of the lighting hereby permitted shall cease on 31st December 2022 unless amended by a further grant of planning permission. The lights, and all associated materials/equipment, shall be removed from the land and the land restored to its former condition by 31st December 2023, unless varied by a further grant of planning permission.

(Reason - The lighting is acceptable in exceptional circumstances to enable the safe use of the vaccination centre to aid in dealing with the fight against the global Covid-19 pandemic. There is no justification for the retention of the lighting beyond the period for which the vaccination centre has planning permission, given the location of the site outside any built-up area defined in the East Devon Local Plan and outside the defined developable area of Greendale Business Park as defined by the Villages Plan DPD. Without the need to illuminate the vaccination centre, the lights may have a detrimental impact on the character and appearance of the surroundings which would be contrary to Strategy 7 (Development in the Countryside) and Policy D1 (Design and Local Distinctiveness) of the Local Plan).

**15/2592/MOUT - Hybrid application for detailed planning permission for extension to compound 33A and attenuation pond and warehouse, office building and hardstanding to compound 39 and outline planning permission for B1/B2/B8 units (access to be determined). Refused 07/07/2016 for the following reasons:**

1. The proposed development, by virtue of its scale and extension beyond the built form of Greendale Business Park and outside of any recognised development boundary is within the open countryside where new development is strictly controlled. As no other policy within the Local Plan facilitates such development, the proposal represents sprawling development in the countryside in conflict with the spatial approach to accommodate industrial development within defined settlements as identified within the Local

Plan. It is not considered that there are material circumstances to outweigh the adverse impacts of further industrial development in this location. As such the proposal is contrary to Strategy 7 - Development in the Countryside, Policy E4 (Rural Diversification), Policy E5 (Small Scale Economic Development in Rural Areas), Policy E7 (Extensions to Existing Employment Sites) of the Adopted East Devon Local Plan 2013-2031 as well as the guidance contained within the National Planning Policy Framework.

2. Insufficient information has been provided to justify that the proposal would not result in a loss of amenity to the occupiers of near-by dwellings by virtue of noise and, potentially, light pollution. Therefore, the proposal is considered to be contrary to Policy D1 (Design and Local Distinctiveness) and EN14 (Control of Pollution) of the Adopted East Devon Local Plan, as well as guidance contained within the National Planning Policy Framework.
3. Insufficient information has been provided to demonstrate that the development proposed would have an acceptable visual impact on the landscape. Therefore the proposal is contrary to Strategy 7 - Development in the Countryside and Policies D1 - Design and Local Distinctiveness, D2 - Landscape Requirements and D3 - Trees on Development Sites of the Adopted East Devon Local Plan and the guidance contained within the National Planning Policy Framework.

**16/2597/FUL - Land At Greendale Business Park Woodbury Salterton EX5 1EW -Change of use of the site to a storage yard, including the erection of warehouse, office building, fencing and associated works (retrospective application). Refused - 22/03/2017 for the following reasons:**

1. The proposed development, by virtue of its scale and extension beyond the built form of Greendale Business Park and outside of any recognised development boundary is within the open countryside where new development is strictly controlled. As no other policy within the Local Plan facilitates such development, the proposal represents sprawling development in the countryside in conflict with the spatial approach to accommodate industrial development within defined settlements as identified within the Local Plan. It is not considered that there are material circumstances to outweigh the adverse impacts of further industrial development in this location. As such the proposal is contrary to Strategy 7 (Development in the Countryside), Policy E4 (Rural Diversification), Policy E5 (Small Scale Economic Development in Rural Areas), Policy E7 (Extensions to Existing Employment Sites) of the Adopted East Devon Local Plan 2013-2031 as well as the guidance contained within the National Planning Policy Framework.
2. Insufficient information has been provided to demonstrate that the development proposed would have an acceptable visual impact on the landscape. Therefore the proposal is contrary to Strategy 7 (Development in the Countryside) and Policies D1 (Design and Local Distinctiveness), D2 (Landscape Requirements) and D3 (Trees on Development Sites) of the

Adopted East Devon Local Plan and the guidance contained within the National Planning Policy Framework.

3. Insufficient information has been submitted to demonstrate that adequate provision has been made to accommodate the surface water run off arising from the proposed development. As such the proposal is contrary to the provisions of Policy EN22 (Surface Run-Off Implications of New Development) of the Adopted East Devon Local Plan, as well as the guidance contained within the National Planning Policy Framework.

Following this refusal, the Council took enforcement action seeking the removal of the compounds, hard standing, and to cease the use of the land for the storage of park homes, caravans, and shipping containers.

An appeal against the enforcement notice was lodged and dismissed by the Planning Inspectorate. This appeal decision is appended to the committee report because the conclusions reached by the Inspector at the time in respect of the principle of development and its landscape impact are considered to be material to the determination of this application.

The soundness of Inspector's decision was subsequently challenged and upheld by the High Court.

## **POLICIES**

### Adopted East Devon Local Plan 2013-2031 Policies

Strategy 1 (Spatial Strategy for Development in East Devon)

Strategy 5B (Sustainable Transport)

Strategy 7 (Development in the Countryside)

Strategy 46 (Landscape Conservation and Enhancement and AONBs)

D1 (Design and Local Distinctiveness)

D2 (Landscape Requirements)

E7 (Extensions to Existing Employment Sites)

EN22 (Surface Run-Off Implications of New Development)

TC2 (Accessibility of New Development)

TC7 (Adequacy of Road Network and Site Access)

## East Devon Villages Plan

### Government Planning Documents

NPPF (National Planning Policy Framework 2021)

### Government Planning Documents

National Planning Practice Guidance

### **Site Location and Description:**

This application relates to the former NHS vaccination centre site and building located to the east of the main entrance off the A3052 into the Greendale Business Park. It is not currently in use as a vaccination centre and currently has an unauthorised commercial use operating from within the site and building. The site is located in the countryside, outside of the extent of authorised uses of the business park as defined within the Adopted East Devon Villages Plan. The land rises to the north of the building and drops to the south and east. There are trees and/or hedging to the north, east and west of the building which are the subject of a Tree Preservation Order.

The building on the site is orientated north-south and is a large structure with the appearance of an industrial unit. There is a surfaced area to the east, south and west of the building which is used for car parking.

In planning terms, the site is within the open countryside and is not the subject of any national or local landscape designations. Trees on the eastern and southern boundary are the subject of a TPO.

### **Background to the NHS Vaccination Centre:**

It is important to note that the building that is the subject of this planning application was constructed under permitted development rights established in light of the Covid-19 pandemic.

Part 12A of The Town and Country Planning (General Permitted Development) (Coronavirus) (England) (Amendment) Order 2020 was a time limited emergency permitted development right which came into force on the 9th April 2020 until 31st December 2021. The legislation was updated to extend the permitted development right until the 31st January 2022.

The permitted development right allowed for development by or on behalf of a local authority or health authority body for the purposes of preventing an emergency; reducing, controlling or mitigating the effects of an emergency; and taking other action in connection with an emergency.

The right enabled development including, but not limited to, change of use for existing buildings and new temporary modular buildings. The rights could be suitable to provide permission for a range of uses including use as hospitals, health facilities, testing centres, coroner facilities, mortuaries, additional residential accommodation and storage and distribution, including for community food hubs.

The vaccination centre building and car park which is the subject of this planning application was originally constructed under this legislation.

A temporary planning permission was granted by the Council in 2022 (ref 21/2123/COU) for the continued use of Greendale Vaccination Centre by the NHS until 31st December 2022. Planning permission was granted for the continued use of Greendale Vaccination Centre by the NHS on the basis that the proposal was Permitted Development from the 11th January 2022, and given the need for the facility to deal with the emergency global pandemic treatment required to the wider public, it was in the public interest for the use to continue on site until 31st December 2022 and planning permission was therefore granted even though it was not required because it was superseded by the extended timeframe within the legislation.

Members should note that a condition was imposed which required the temporary building and all the resulting materials to be removed from the land and the land restored to its former condition by 31st December 2023. The reason for the condition was because the use of the building and its siting were considered to be acceptable only in exceptional circumstances to aid in dealing with the global pandemic to fight Covid 19 and on the basis that the use of the site and building are contrary to Strategy 7 (Development in the Countryside) and D1 (Design and Local Distinctiveness) of the East Devon Local Plan being outside the defined developable area of Greendale Business Park as defined by the Villages Plan DPD and the because the building has a detrimental impact on the character and appearance of the surroundings.

Both the permitted development right and the condition of the temporary planning permission are clear in that the use of the land must cease on or before the 31st December 2022 and that on or before the expiry of a further 12 months from when use of the land ceases, any building, works, plant, machinery, structure and erection permitted by Class A has to be removed; and the land is restored to its condition before the development took place, or, if the developer is not also the local planning authority, to such other state as may be agreed in writing between the local planning authority and the developer.

It is understood that the use of the building by the NHS has ceased in favour of a newly constructed vaccination centre at Greendale Farm Shop (refused by Planning Committee and the subject of a current appeal) and therefore in accordance with the permitted development legislation and the temporary planning permission granted by the Council, the building should be removed from the site by the end of this year.

At the time of the pandemic, the priority was to provide a site for the NHS to administer COVID vaccinations, the location and siting of the vaccination centre did not fall within the control of the Local Planning Authority. The fact that the NHS vaccination centre was constructed under permitted development rights is relevant to the determination of this application because, as explained later within this report, it is not a site or a location that the strategic or development management policies within the Local Plan support in land use terms on account of the fact that the site is located within the open countryside, distanced from towns and village settlements and is in an unsustainable location.

The applicant constructed this building in the full knowledge that it was only permitted as a temporary building.

It is also important to note that the emergency legislation was time limited and expired in December 2022. The government have not decided to renew the permitted development right which in itself is suggestive of the fact that the provision of additional temporary health facilities in response to coronavirus is no longer required.

### **Proposed Development:**

Planning permission is sought to retain the building and car park for use by the NHS should it be required in the future and to allow the use of the building and site for uses with Classes E (Ci, ii, iii, D, E, F, G) and B2 (General Industry) and B8 (Storage and Distribution) of the Use Classes.

The building is steel framed with dark green clad walls under a dark grey coloured metal profiled roof. The building measures 10.5 metres in height to the ridgeline, 72 metres in length and 26.6 metres in width. It has an internal floor area of 1872 sqm. The building has a pitched roof design with a roller shutter door on the eastern elevation.

The site makes provision for vehicle parking with a mixture of tarmac and concrete surfacing and crushed rolled stone. There is an area for staff parking (approx. 94 spaces) to the west of the building with the remaining hard surfaced areas to the east and south. The site has two vehicular entrances from the internal business park road, one serving the staff parking area and the other to the south of the building.

## ANALYSIS

### **Issues and Assessment:**

Members should note that the starting point for determining this application is that it is for the retention of a site and building in the countryside that was originally constructed under permitted development rights. The building has a temporary permission and has only been approved by the Council on the basis of exceptional circumstances at the time to aid in dealing with the global pandemic to fight Covid 19.

As noted within the condition of the temporary planning permission which requires the use of the building to cease and its permanent removal from the site, this is because the use of the site and building are contrary to Strategy 7 (Development in the Countryside) and D1 (Design and Local Distinctiveness) of the East Devon Local Plan being outside the defined developable area of Greendale Business Park as defined by the Villages Plan DPD and because the building would have a detrimental impact on the character and appearance of the surroundings.

In considering this application, Members are therefore advised that the site should be considered as being a greenfield site, within the countryside and that the proposal for the permanent retention of the building and parking should be assessed as if it is

a new build development, effectively assessing the application as if the building and site were not in situ. The fact that the building and site are already in use for a temporary basis is not considered to be relevant to the determination of this application because when originally constructed under permitted development, the Council could give no consideration to the location of the building, its siting and how it would be considered against Local Plan policies, the principle of development, the accessibility and sustainability of the site, its landscape and visual impact, surface water run-off and management, highway safety and any other relevant material considerations.

On the basis that this application seeks the permanent retention of the building and parking, the main issues to consider in determining this application are in terms of an assessment of the following:

- The policy position and principle of development
- East Devon Local Plan
- The East Devon Villages Plan
- Sustainability and Accessibility of the site
- An assessment of the NHS justification and the need for the building
- The appropriateness of proposed commercial uses
- The landscape and visual impact
- The impact on highway safety
- The impacts on residential amenity
- Surface water drainage and management
- Carbon Impacts
- Planning balance and Conclusions

### **The Policy Position and Principle of Development:**

The National Planning Policy Framework (NPPF) states that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The Council formally adopted the East Devon Local Plan 2013-2031 on the 28th January 2016 and the policies contained within it are those against which applications are being determined and carry full weight.

Planning law requires that applications for planning permission must be determined in accordance with the development plan (foot note 2 states this includes local and neighbourhood plans that have been brought into force) unless material considerations indicate otherwise. Paragraph 12 of the NPPF states that the presumption in favour of development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted.

## **East Devon Local Plan 2013-2031:**

The strategic approach within the Local Plan is to direct new development into the most sustainable locations and accessible settlements which have been provided with defined built-up area boundaries which is reflected in Strategy 1- Spatial Strategy for Development in East Devon of the Local Plan.

Para 6.20 of the Local Plan states that BUABs are a fundamental policy tool for determining areas and locations that are appropriate, suitable, and acceptable for development. The Local Plan explains that the boundaries serve three primary functions:

- a) They set limits for outward expansion of settlements and in doing so control the overall scale and location of development that occurs in order to ensure implementation of the plan strategy:
- b) They prevent unregulated development across the countryside and open areas:
- c) They define (within the boundary) locations where many development types, in principle, will be acceptable because they will complement the objectives of promoting sustainable development.

At para 6.21, the Local Plan explains that beyond BUAB's some forms of development will be permitted. The development management policies of the Local Plan will provide more details of this and other development types relating to employment, recreation and other uses that can be acceptable under specified circumstances outside boundaries.

Paragraph 6.23 of the Local Plan states that development in open countryside outside defined boundaries will be resisted, unless on the merits of the particular case, there is a proven agricultural, forestry or horticultural need or it will meet a community need that is not, or otherwise not be met or there is another clear policy justification.

The application site is located in the open countryside where under the provisions of Strategy 7- Development in the Countryside of the East Devon Local Plan it is stated that development will only be permitted where it is in accordance with a specific Local or Neighbourhood Plan policy that explicitly permits such development and where it would not cause landscape, amenity or environmental harm.

Officers are of the view that there are no strategic or development management policies within the Local Plan which support this development which effectively leads to the outward expansion of Greendale Business Park into the countryside.

Policy E7- Extensions to Employment Sites of the Local Plan is a development management policy which establishes one of the exceptions to the policy of general constraint on development in the countryside established by Strategy 7. This policy provides for extensions to existing employment sites but specifically excludes Greendale Business Park.



Strategically, Greendale Business Park is identified within the Local Plan as a substantial stand-alone employment site which is different from the smaller and medium scale sites of East Devon and not deemed appropriate for expansion on account of its unsustainable location and to limit further landscape impact.

Policy E5- Small Scale Economic Development in Rural Areas of the Local Plan provides for the small-scale economic development in rural areas but is not applicable to large scale industrial areas such as Greendale Business Park. In addition, the proposed development is not considered to be small scale.

There are no specific policies that would support the outward expansion of Greendale Business Park contained within the Local Plan. Strategy 7 and policy E7 are perfectly clear in that the Plan seeks to apply a restrictive policy approach to accommodating further development through the outward expansion of Greendale Business Park.

This position has been supported by the Inspector in dismissing the appended enforcement appeal in which on the issue of principle, it was concluded that the development is contrary to Strategy 7 and policy E7 which indicate that the principle of development in this location would harm the strategic intentions of the Local Plan.

The Council's strategic approach to development at Greendale Business Park is further explained within the 'Setting the Context' section of the Local Plan (page 7 refers). It is stated that the Local Plan Document will set out strategic policy for development across East Devon and the full suite of policies for the seven main towns of the district and the West End and countryside areas, but not those villages with/proposed to have Built-up Area Boundaries nor Greendale and Hill Barton Business Parks. These villages and Business Parks are to have their own inset maps which will form part of the Village Development Plan Document.

### **East Devon Villages Plan:**

The East Devon Villages Plan was formally adopted by the Council in July 2018.

The Villages Plan together with the Local Plan and any 'made' neighbourhood plans form the 'Development Plan' for East Devon, which guides decisions on development and land use in East Devon. The Villages Plan includes a plan of the extent of authorised uses at Greendale Business Park.

Within the Villages Plan, the purple line on the inset map shows the full extent of the land authorised for business uses at Greendale Business Park. The Villages Plan makes it clear that policies of the adopted Local Plan will be used to determine planning applications at Greendale Business Park which is within the open countryside and the subject of countryside protection policies including Strategy 7 – Development in the Countryside.

Policy VP04 of the Villages Plan sets out the relationship between the policies of the development plan and Greendale Business Park. The policy states that inset maps are included in this plan that show the extent of authorised uses at the Greendale Business Park for information purposes only. Development of Greendale Business

Park as indicated on the inset map will be considered in accordance with the relevant policies of the development plan, in particular Strategy 7 of the East Devon Local Plan (Development in the Countryside).

Development of the application site has led to the outward expansion of the business park into the countryside and outside of the extent of authorised uses of Greendale Business Park which is not supported by either the Local Plan or the Adopted Villages Plan. The application is considered to be contrary to strategy 7 and policy E7 of the Local Plan where the principle of development in this location would harm the clear strategic intentions of the Local Plan which is not to permit the outward expansion of Greendale Business Park.

It should be noted that the Villages Plan is supported by an evidence-based document entitled 'Assessment of Potential Appropriateness and Suitability of Greendale and Hill Barton Business Parks for Further Expansion' that was prepared by the Council's Planning Policy Team. This document provides a robust assessment of the sustainability and accessibility of Greendale Business Park and concludes that it has poor accessibility for pedestrians and cyclists with busy roads to navigate, a lack of safe walking and cycling routes and few people living in cycling and walking catchments of the site. It is the evidence base behind the Council's policy approach to preventing the outward expansion and growth of the business park.

In the absence of policy support for the principle of development, the application is considered to be a departure from the Local Plan. Planning law requires that applications for planning permission must be determined in accordance with the development plan (foot note 2 states this includes local and neighbourhood plans that have been brought into force) unless material considerations indicate otherwise.

### **Sustainability and Accessibility:**

In setting out the strategic policy position set out within the Local Plan and the Villages Plan, it is clear that the policy approach is not to permit the outward expansion of Greendale Business Park beyond the extent of authorised uses because the Council does not consider this to be a suitable location for future employment growth. This spatial approach is relevant to the determination of this application both in terms of whether in land-use terms it is an appropriate and sustainable location to meet the future needs of the NHS who retain a long-term lease on the building and in respect of future employment uses for the building.

It is accepted that the Greendale Business Park has good vehicular access and connectivity with the A3052 however in location terms, it is not considered to be in a particularly accessible location by more sustainable transport modes, owing to its relatively isolated position away from a town or village settlement or other services and facilities. The site is not accessible on foot and owing to the busy nature of the A3052 is unlikely to be accessed via by bicycle.

Paragraph 105 of the NPPF states *“that the planning system should actively manage patterns of growth in support of these objectives. Significant development should be*

*focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions and improve air quality and public health. It does also recognise that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making’.*

These principles are reflected in policies in the Local Plan including Strategy 5B - Sustainable Transport which states *‘that development proposals should contribute to the objectives of promoting and securing sustainable modes of travel and transport. Development will need to be of a form, incorporate proposals for and be at locations where it will encourage and allow for efficient, safe, and accessible means of transport with overall low impact on the environment, including walking and cycling, low and ultra-low emission vehicles, car sharing and public transport’.*

Policy TC2 - Accessibility of New Development of the Local Plan also states *‘that new development should be located so as to be accessible by pedestrians, cyclists and public transport and also well related to compatible land uses so as to minimise the need to travel by car. Where proposals are likely to attract large numbers of visitors, they must be accessible by public transport available to all sectors of the community’.*

The application is not accompanied by a transport assessment and therefore the accessibility of the site either for NHS use or for commercial uses has not been demonstrated by the applicants. It is acknowledged that the application site can be accessed by public transport in that it can be reached by a number of buses with routes along the A3052 and with the 58 and 58A services running from Exeter to Exmouth (with stops in Woodbury, Woodbury Salterton, Clyst St Mary). However, the location of the site away from towns and villages means that the majority of people accessing the site are likely to do so via private car with little option to walk or cycle which promotes a pattern of transport that would not be considered to represent a form of sustainable development conflicting with the aforementioned Local Plan policies and the NPPF which seeks to encourage promoting and securing sustainable modes of travel and transport.

This reflects the spatial and strategic approach that has been taken within the East Devon Local Plan and the Villages Plan which does not offer policy support for the outward expansion or growth of Greendale Business Park on account of its unsustainable location. Employment growth whether for the NHS or for other commercial users would therefore represent an unsustainable form of development in this location. Concerns around sustainability and the accessibility of the site are explained in greater detail in respect of both the continued use of the site by the NHS and alternative proposed commercial uses proposed for the building.

### **NHS Justification and Evidence of Need:**

In respect of the proposed use for the building, this application seeks permission for possible future use of the building by the NHS as part of their surge protection programme and for various commercial uses when not required by the NHS. Whilst

the NHS are not the applicants for this application, they are understood to have a long-term lease on the building such that in the event that the vaccination centre was required for another medical emergency, existing commercial tenants would vacate at short notice and the NHS would relocate back to Greendale Business Park. Officers have not been provided with a copy of the lease, so the exact terms of the lease are unknown along with the timescales. The NHS would only use this building to retain surge capacity on the site.

Members should note that the building is not currently in use by the NHS and that it is in unauthorised use occupied by a commercial user. Members should also note that the NHS are currently administering COVID booster vaccinations from an unconsented vaccination centre at the nearby Greendale Farm Shop site, an application for the retention of which was refused by Planning Committee and is currently the subject of an appeal. The NHS have leases over the use of both buildings.

Within the supporting letter accompanying this planning application it is stated that the site has operated in its current form for the last 15 months as a Covid-19 vaccination centre and that the need for the centre by the NHS remains beyond the current time limited consent.

No substantive evidence has been provided by the applicants or the NHS to justify why there is a need for a permanent vaccination centre on this site, officers are however aware from considering the evidence to justify retention of the vaccination centre at the Greendale Farm Shop site that much of the justification is centred around the fact that the site has been used historically for such purposes and is well known and a tried and tested destination for responding to the COVID pandemic. However, officers are of the view that this does not justify the location of the new vaccination centre site or the building's permanent retention given that the Council had no control over the location of the original site during the pandemic.

The NHS describe Greendale as a well-known and accessible location but in planning terms, and as detailed later within this report, it is not located close to a settlement or other services and facilities and other than being on a bus route, is not very accessible by sustainable modes of transport and creates few opportunities for linked trips making it an unsustainable form of development in land-use terms which weighs against the proposal within the overall planning balance.

No reasonable planning justification or evidence of need for a continued use of this building by the NHS has been presented. There is no longer a state of emergency and there is no timescale or certainty that this building would be required to be used to vaccinate large numbers of people in the future. Officers do not consider this to be an appropriate justification or reason to grant a permanent building on this site.

Furthermore, in the interests of sustainable development, officers are of the opinion that the use proposed conflicts with the strategic approach within the Local Plan to direct new development into the most sustainable locations and accessible settlements which have been provided with defined built-up area boundaries which is reflected in Strategy 1- Spatial Strategy for Development of the Local Plan.

The pandemic required an emergency response finding any available sites/buildings that could accommodate, at short notice, temporary buildings, or re-purposing, these were often in unsustainable locations and the planning system set aside its usual land use policies to meet the very urgent need. However, now that the pandemic has been scaled down and the vaccination effort has been reduced to those of a certain age or with pre-existing medical conditions/vulnerable people, more permanent solutions need to be provided in locations that best suit the needs of the community they serve.

The Council has not been presented with sufficient information by the applicants or the NHS to demonstrate why a permanent vaccination centre is required in East Devon, in the countryside and on a greenfield site.

East Devon and Exeter have a wealth of brownfield land, car parks and community buildings within its urban and rural areas and so officers question why these alternative more sustainable locations have not been considered by the NHS in favour of a new build building and a non-conforming land use in the countryside.

The provision of a permanent vaccination centre in the countryside is contrary to the spatial strategy for development in East Devon and the wider sustainability objectives of the Local Plan which seek to direct new development into the district's most sustainable locations and accessible settlements which have been provided with defined built-up area boundaries. The Council's spatial approach to new development is to direct it to the district's largest towns and villages intended to form focal points for development to serve their own needs and the needs of surrounding rural areas. Within the districts towns and villages there are various 'service centres' where the public go to undertake shopping, other medical needs, and other activities such as church, school or for leisure activities, these service centres are often where the public go to receive vaccinations.

In land-use terms and having regards for the fact that the NHS have not been able to robustly demonstrate why a permanent vaccination centre is required in this location in favour of other more sustainably located sites better located in relation to existing villages and settlements and services and facilities providing better opportunities for linked trips, as advocated in the Local Plan's overall spatial approach to new development, it is not considered that a permanent use of the vaccination centre would represent a sustainable form of development from an environmental perspective which weighs against the proposal within the overall planning balance.

Members should also note that whilst we are told the NHS have an agreement with the applicants over a long-term lease in the event that the building is required to deal with another medical emergency, this falls outside of the control of the Local Planning Authority and as such we cannot require the applicant to make the building available to the NHS. This further diminishes the weight that should be attributed to the purported future use of the building by the NHS.

It is also relevant to note that the applicant is arguing need from the NHS to justify 2 otherwise unacceptable commercial buildings in the countryside with no explanation as to why the NHS have moved out of the building subject of this application into a

second, unauthorised building rather than to subdivide and use a smaller part of the first building.

The 'need' for the site by the NHS is the key issue that could be used to justify this development that is contrary to the Development Plan. It should be noted that if approved the building will be predominantly, if not solely used by commercial operators during its lifetime. The government has extended some of the PD rights introduced in response to the Covid pandemic, it has not extended the rights for temporary vaccination centres, indicating that they are no longer considered to be necessary.

### **Commercial Uses:**

Should the principle of the permanent retention of the building on this site be supported by Members, consideration should be given to the type and nature of commercial uses that are proposed and stated within the description of development.

The uses proposed by the applicant include those contained within Schedule 2, Part A, Class E of the Use Classes Order and include:

Ci, ii,iii- defined as for the provision of the following kinds of services principally to visiting members of the public—

- (i) financial services,
- (ii) professional services (other than health or medical services), or
- (iii) any other services which it is appropriate to provide in a commercial, business or service locality,

D- for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public

E- for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,

F- for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,

G- for—

- (i) an office to carry out any operational or administrative functions,
- (ii) the research and development of products or processes, or
- (iii) any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

B2- General Industrial

B8- Storage and Distribution

Use Classes G(i)(ii)(iii) light industrial uses, B2 (General Industrial) and B8 (Storage and Distribution) uses are uses that, if supported in principle, would generally be

found to be appropriate and compatible with the industrial and commercial nature of Greendale Business Park. Officers have concerns however over the nature and types of the remaining uses proposed for this site which are not considered to be sustainable locations for uses which are likely to attract large numbers of people who are likely to access the site via private car. The use classes order clarifies that the majority of the uses proposed are principally for visiting members of the public and the type of uses which are expected to be found within or close to communities in towns and settlements where they can be accessed via a variety of modes of transport with opportunities for linked trips etc.

This concern has been raised with the applicants and officers have requested a change to the description of development to ensure that future proposed uses for the building are appropriate for the site's countryside location however no agreement has been reached.

The proposed uses are considered to conflict with the Council's spatial approach to new development where the uses proposed would attract a large number of people for uses that would ordinarily be found within existing settlements such that it is not considered that this would represent a sustainable form of development from an environmental perspective, conflicting with the provisions of Strategy 1, 5B and policy TC2 of the Local Plan. This weighs against the proposal within the overall planning balance.

### **Landscape and Visual Impact:**

Paragraph 174 of the NPPF states that planning policies and decisions should contribute to and enhance the natural and local environment by:

- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);
- b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;

Strategy 7 - Development in the Countryside of the Local Plan requires that development does not harm the distinctive landscape, amenity and environmental qualities within which it is located, including:

1. Land form and patterns of settlement.
2. Important natural and manmade features which contribute to the local landscape character, including topography, traditional field boundaries, areas of importance for nature conservation and rural buildings.
3. The adverse disruption of a view from a public place which forms part of the distinctive character of the area or otherwise causes significant visual intrusions.

Strategy 46 - Landscape Conservation and Enhancement and AONBs of the Local Plan states that development will need to be undertaken in a manner that is sympathetic to, and helps conserve and enhance the quality and local distinctiveness of, the natural and historic landscape character of East Devon, in

particular in Areas of Outstanding Natural Beauty. Development will only be permitted where it:

1. conserves and enhances the landscape character of the area;
2. does not undermine landscape quality; and
3. is appropriate to the economic, social and well being of the area

Policy D1- Design and Local Distinctiveness states that proposals will only be permitted where they:

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

Whilst the site is not located within a designated landscape, it is in the countryside and has led to the outward expansion of the business park site to the north of the business park. The application site is located in what would previously would have been undulating rural landscape which is to some extent visually contained by higher ground. Under the permitted development right and the temporary planning permission that has been granted, there is a requirement to remove the building and materials from the site and restore it back to its original condition. Therefore, there is no fall-back for a permanent building on this site.

Members should note that the planning history for the site indicates that development on this site is likely to have a detrimental impact on the character and appearance of the area. In the appended appeal against an enforcement notice issued by the Council seeking the removal of a number of storage compounds, concrete yards with portacabins and the storage of park homes (reference APP/U1105/C/16/3165341) an inspector commented on the following in respect of development on this site, having already concluded that the principle of the development was contrary to policy.

*'The development has altered the landform and character of the countryside through the excavation and construction of the compounds, the creation of extensive areas of concrete hard standing, the introduction of steel fencing and security lighting, the erection of the warehouse on compound 39, the siting of portacabins offices, the open storage of mobile homes and other materials, etc. The effect of the development is significantly to change the character of the site from rolling open countryside to urbanised development having little relationship with its countryside setting. It is intrusive and, because of the change in levels, parts of the site are also prominent, particularly in respect of the warehouse on compound 39.'*

Furthermore, within the 'Assessment of Potential Appropriateness and Suitability of Greendale and Hill Barton Business Parks for Further Expansion' that was prepared by the Council's Planning Policy Team in support of the East Devon Villages Plan, this assessment included an assessment of specific land areas around the edges of Greendale Business Park to assess possible suitable locations for extra development. The assessment includes part of the site to which this application relates where it was concluded that the land is considered unsuitable for business park use on account of its elevated position expanding the visual impact of Greendale on the wider countryside including the setting of the AONB.



The landscape sensitivity around the outward expansion of Greendale Business Park was another reason why the strategic decision was made by the Council not to allow its outward expansion into the countryside.

In assessing the landscape and visual impact of this development, on the basis that the building and site benefit only from a temporary planning permission, Members are advised that the starting point should be that the site is a undeveloped greenfield site, in the countryside and outside of the extent of authorised uses contained within the East Devon Villages Plan.

The application is accompanied by a Landscape Visual Impact Assessment (LVIA) prepared by a suitable qualified landscape consultant which has been considered by the Council's Landscape Officer. Of note is that the LVIA is based on the current state of the site as an irregular shaped parcel of land comprising terraced open hardstanding areas with a large metal clad building and tow portacabins. This should not be the starting point for an assessment of the landscape and visual impact of the development. The baseline for the assessment should be the original greenfield state of the site prior to any development taking place.

The LVIA description of the development is not comprehensive and should have included:

- Removal of original land-cover including some removal of trees and scrub.
- Extensive regrading of the site to form a large level platform
- Hard surfacing across the site
- The introduction of associated infrastructure and new light sources

The LVIA sets out landscape guidelines for enhancement of the site including removal of the existing gravel track along the eastern and northern edge of the woodland and its reinstatement to agricultural use, provision of woodland planting in the northeast corner of the site and further offsite planting to the south of the site. These works lie outside of the redline application area and are not included on the submitted block plan (dwg. no 8274-06E). While they form the basis of the LVA of mitigation proposals and are shown on the accompanying landscape strategy plan they are not included in the block plan, dwg. no. 8274-06 rev. E and it is not clear whether they are intended to be provided as part of the application or are just recommendations of the landscape consultant.

The Council's Landscape Officer has advised that assuming these measures are to be included as part of the application then post mitigation effects would be:

- Landscape elements (trees, hedgerow) – **Moderate adverse** level of effect
- Landscape elements (landform) – **Substantial adverse** level of effect (**Significant**)
- Landscape patterns/ site character – **Moderate/ substantial adverse** level of effect (**Significant**) rather than LVA assessment as **Moderate/ slight adverse**
- Wider landscape character – **Moderate/ slight to slight adverse** level of effect as LVA

- Landscape policies and strategies – **Moderate/ substantial adverse** level of effect (**Significant**)

The conclusion of the Council's Landscape Officer having reviewed the submitted LVA it that is there are a number of areas the level of landscape effects are understated and that even with proposed mitigation significant adverse effects remain as indicated above in respect of changes to landform, landscape patterns/ site character and landscape policies/ strategies resulting in unacceptable landscape and visual harm.

Officers support the view of the landscape officer. In respect of landscape planning policies and strategies, Local Plan policy E7 and the East Devon Villages Development Plan seek to contain the boundaries of Greendale Business Park to existing limits to preserve surrounding rural character. The sensitivity of the site to commercial development has been identified in the Enforcement appeal decision and within the Council's own evidence base supporting the East Devon Villages Plan.

Furthermore, the LVIA's assertion that Local Plan strategy 7 '*does not set out what degree of 'harm' is unacceptable but it would need to be significant otherwise no new development would occur within the district*' is incorrect. The purpose of strategy 7 is precisely to prevent development in open countryside unless there is a specific policy or allocation in the local plan which permits it.

The policy position with regards to development on this site is clear in that there should be no outward expansion of the business park into the countryside and as such the change to the landform, the hard surfacing of the site and the construction of a sizeable industrial building on the site has altered the rural landscape character of the site which was previously part of the rolling open countryside. By virtue of the lack of policy support for the outward expansion of the business park, development on this site has therefore resulted in landscape harm and harm to the rural character and appearance of the area.

The building and the site do appear more prominent from a number of public vantage points outside the site to the south and east which is considered to be detrimental to the rural landscape character and appearance of the area. It is accepted that there is no visual harm in views from the north due landform and the topography of the business park which is effectively screened from the A3052 and that the visual impact of the building is reduced to a degree through the use of dark green clad walls and a dark grey roof covering although the building does contain a number of rooflights which is likely to result in some light pollution at night .The visual impact of the development is exacerbated by virtue of the size and scale of the building, its site coverage and its position on the highest point of business park (some 15 metres above that of the existing business park which does extend its visual influence both locally and within the wider landscape.

In the absence of policy support for the outward expansion of the business park, officers considered that the proposed development by reason of the size and scale of the building and the extensive areas of hard surfacing has altered the landform and character of the site from rolling open countryside to urbanised development.

The proposal as a result of its position at the highest part of the business park appears unduly prominent and visually intrusive and encroaches into the countryside to the detriment of the rural landscape character and appearance of the area. It is not considered that there are material circumstances to outweigh the adverse impacts of development in this location which justifies a departure from policy and that the visual harm is considered to outweigh the limited economic and social benefits that would be derived from the proposal. The proposal is considered to be contrary to the provisions of Strategy 46 (Landscape Conservation and Enhancement and AONBs), Strategy 7 (Development in the countryside) policies D1 (Design and Local Distinctiveness), D2 (Landscape Requirements) of the East Devon Local Plan 2013-2031 and the guidance contained within the National Planning Policy Framework.

### **Highway Safety:**

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

The views of the County Highway Authority have been sought who have raised no objections to the application on the basis that the site has been used since 2020 with no direct recorded collisions within the junction of Greendale from our recorded collision record (currently January 2017 - December 2021).

The vehicular trip generation has already been established along with the current uptake of the regular bus service. I do not envisage the trip generation being in excess of the current extent with either the NHS as is or of a similar use to that of the rest of Greendale Business Park.

Vehicular access into the business park from the A3052 is well established and does not raise any highway safety concerns in terms of increase traffic generation or visibility. Accesses into the site from the internal business park road are considered to be acceptable in terms of their visibility. In the absence of any objections from the CHA, the proposal is considered to be acceptable from a highway safety perspective in compliance with policy TC7 of the Local Plan.

### **Residential Amenity:**

Policy D1- Design and Local Distinctiveness of the Local Plan requires that proposals do not adversely affect the amenity of occupiers of adjoining residential properties.

Policy EN14 - Control of Pollution of the Local Plan states that permission will not be granted for development which would result in unacceptable levels, either to residents or the wider environment of:

1. Pollution of the atmosphere by gas or particulates, including. smell, fumes, dust, grit, smoke and soot.
2. Pollution of surface or underground waters including:

- a) Rivers, other watercourses, water bodies and wetlands.
  - b) Water gathering grounds including water catchment areas, aquifers and groundwater protection areas.
  - c) Harbours, estuaries or the sea.
3. Noise and/or vibration.
  4. Light intrusion, where light overspill from street lights or floodlights on to areas not intended to be lit, particularly in areas of open countryside and areas of nature conservation value

There are a number of residential properties located to the east of the site approximately 200 metres from the boundary. The Council's Environmental Health Officer has considered the application and has raised no concerns about the impact of the proposal on the amenities of local residents.

In the event that the principle of development on this site was supported, officers would seek to impose conditions relating to hours of use, delivery hours and for the submission of a lighting scheme to ensure the amenities of the nearest residential properties are duly protected from commercial uses on the site.

### **Surface Water Management:**

EN22 - Surface Run-Off Implications of New Development of the Local Plan states that planning permission for new development will require that:

1. The surface water run-off implications of the proposal have been fully considered and found to be acceptable, including implications for coastal erosion.
2. Appropriate remedial measures are included as an integral part of the development, and there are clear arrangements in place for ongoing maintenance over the lifetime of the development.
3. Where remedial measures are required away from the application site, the developer is in a position to secure the implementation of such measures.
4. A Drainage Impact Assessment will be required for all new development with potentially significant surface run off implications.
5. Surface water in all major commercial developments or schemes for 10 homes or more (or any revised threshold set by Government) should be managed by sustainable drainage systems, unless demonstrated to be inappropriate.

Whilst the site falls within an area with a low risk of flooding (flood zone 1) as a major development for a large building with substantial hard surfacing on a site in excess of 1 ha, the planning application should have been accompanied by a Flood Risk Assessment along with details of a surface water management and drainage strategy.

The omission of this information has been raised with the applicant who has failed to provide the requested information to allow a robust assessment of the impact the development has had in relation to surface water run-off, management and disposal from the site. As the building and parking on the site was originally permitted development, surface water drainage was not a matter that the Council had any control over. As the planning application is seeking the permanent retention of the building and hard surfacing, the surface water run off implications of the development must be considered.

The application has been considered by the County Council's Flood Risk Management Team who have raised an objection to the application on the basis that 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 the absence of a surface water drainage management plan which demonstrates how surface water from the development will be disposed of in a manner that does not increase flood risk elsewhere, the application is recommended for refusal in conflict with policy EN22 - Surface Run-Off Implications of New Development of the Local Plan.

### **Carbon Impact:**

The application is accompanied by a Greenhouse Gas Assessment which reports that removal of 2000 sqm of building and hard surfaced areas would result in significant carbon impact which does not accord with the Council's Climate Change Action Plan.

As part of the report the building's GHG emissions were analysed to understand the impact of three different scenarios to demonstrate the impact of the Vaccination Centre after 1.25 years

- Scenario 1 (baseline) which is the continuation of the existing building;
- Scenario 2 which is the demolition of the NHS Vaccination Centre after 2 years of operation; and
- Scenario 3 which is the early demolition of the NHS Vaccination Centre and the rebuild of a similar building on an alternative greenfield industrial site.

It is reported that to build the original NHS Vaccination Centre, 376 tCO<sub>2</sub>e was spent in embodied carbon, transport to site and construction emissions. To support the planning application to retain and repurpose the existing Centre, demolition emissions for the current asset were forecast (Scenario 2), and the future rebuild of a similar Centre in a different location (Scenario 3) estimated to demonstrate these latter two approaches would not only result in additional local carbon emissions but would waste all resources invested and emissions embodied within the Centre to date.

The report concludes that:

Scenario 1 (retention of the existing facility) is - in terms of carbon and the circular economy – the most efficient and sustainable of the three scenarios as it is the one that promotes preservation of the resources invested in the building and has the least carbon emissions.

Scenario 2 (the demolition of the Centre) will result in emissions associated with on-site activities and from the transport and disposal of end of life waste arisings. This scenario has a total carbon impact of 32.02 tCO<sub>2</sub>e which is equivalent to 231,000km travelled by an average private car.

Scenario 3 (the demolition of the Centre, as per Scenario 2, and rebuild of a similar building in a different location), represents the least sustainable option as all resources invested in the initial building are wasted, and additional embodied and transport GHG emissions associated with the construction of a new building would be required. This scenario's carbon impact is 407.86 tCO<sub>2</sub>e which is equivalent to 2.9 million km travelled by an average private car.

Whilst the Council has declared a climate change emergency and is committed to achieve Carbon neutrality by 2040 and the carbon impacts arising from removal of the building and hard surfacing are acknowledged, officers consider that very little weight should be attributed to this as a material planning consideration.

As previously stated, the building was originally constructed under emergency permitted development rights and through the legislation it was always the intention that any buildings or development would be time-limited and would be required to be removed within a given timescale. It is the case that there would be carbon impacts from the removal of any buildings that were constructed under the emergency legislation across the country but this does not justify their retention particularly when considering development in the countryside which contravenes Local Plan policies and the Council's strategic approach to development at Greendale Business Park.

In deciding how much weight should be attributed to the carbon impacts arising from removal of the building, Members should be mindful that if this position was taken with all temporary or unauthorised building constructed in the District, enforcement action against them would rarely be taken. In the case of this application, the building has only been constructed on this site under permitted development rights for a temporary period. As such officers consider that minimal weight should be given to the carbon impacts arising from removal of the building as a material planning consideration.

### **Planning Balance and Conclusions:**

The site is located within the open countryside where under the provisions of Strategy 7- Development in the Countryside of the East Devon Local Plan, development will only be permitted where it is in accordance with a specific Local or Neighbourhood Plan policy that explicitly permits such development and where it would not cause landscape, amenity or environmental harm.

The starting point for determining this application is that it is for the retention of a site and building in the countryside that was originally constructed under permitted development rights. The building has a temporary permission and has only been approved by the Council alongside the permitted development right on the basis of exceptional circumstances at the time to aid in dealing with the global pandemic to fight Covid 19 with the intention of its removal by the end of December 2023.

The fact that the building and site are already in use for a temporary basis is not considered to be relevant to the determination of this application because when originally constructed under permitted development, the Council could give no consideration to the location of the building, its siting and how it would be considered against Local Plan policies, the principle of development, the accessibility and

sustainability of the site, its landscape and visual impact, surface water run-off and management, highway safety and any other relevant material considerations.

Development of the application site has led to the outward expansion of the business park into the countryside and outside of the extent of authorised uses of Greendale Business Park which is not supported by either the Local Plan or the Adopted Villages Plan. The application is considered to be contrary to strategy 7 and policy E7 of the Local Plan which indicate that the principle of development in this location would harm the clear strategic intentions of the Local Plan which is not to permit the outward expansion of Greendale Business Park.

In the absence of policy support for the principle of development, the application is considered to be a departure from the Local Plan. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

A new building in the countryside requires robust justification which the applicants have failed to provide to justify retention of the building. Whilst the NHS are not the applicants for this application, we are told they have a long-term lease on the buildings such that in the event that the building was required for another medical emergency, existing commercial tenants would vacate at short notice and the NHS would relocate back into the building. When not required by the NHS the building would be let to commercial tenants; the building may never be required by the NHS.

Whilst little evidence has been provided by the applicants or the NHS to justify why there is a permanent need for a 'reserve' vaccination centre on this site, officers are aware from considering the evidence to justify retention of the vaccination centre at the Greendale Farm Shop site that much of the justification is centred around the fact that the site has been used historically for such purposes and is well known and a tried and tested destination for responding to the COVID pandemic. However officers are of the view that this does not justify the location of this proposed 'reserve' vaccination centre site; it has not been demonstrated that such a service cannot be provided in equally well known locations that are more sustainable.

The NHS describe Greendale Business Park as a well-known and accessible location but in planning terms, it is not located close to a settlement or other services and facilities and other than being on a bus route, is not very accessible by sustainable modes of transport and creates few opportunities for linked trips making it an unsustainable form of development in land-use terms which weighs against the proposal within the overall planning balance.

With the exception of the G(i)(ii)(iii) light industrial uses, B2 (General Industrial) and B8 (Storage and Distribution) uses which are considered to be uses compatible with the industrial and commercial nature of Greendale Business Park, officers have concerns over the nature and types of uses proposed for this site which are not considered to be sustainable locations for uses which are likely to attract large numbers of people who are likely to access the site via private car. The use classes order clarifies that the majority of the uses proposed are principally for visiting members of the public and the type of uses which are expected to be found within or

close to communities in towns and settlements where they can be accessed via a variety of modes of transport with opportunities for linked trips.

The location of the application site at Greendale Business Park away from settlements means that whether used by the NHS or commercial uses, people are likely to access the site via private car which promotes a pattern of transport that would not be considered to represent a form of sustainable development conflicting with the aforementioned Local Plan policies and the NPPF which seeks to encourage promoting and securing sustainable modes of travel and transport.

In land use terms the proposal is not considered to represent a sustainable form of development from an environmental perspective which weighs further against the proposal within the overall planning balance.

The adverse landscape impact arising from the outward expansion of the business park into the countryside and the visual impact of the building is considered to be a further environmental concern which weighs against the proposal within the overall planning balance.

Support for the proposal from the Council's Economic Development Officer is noted and use of the site and building by the NHS and for other commercial uses would generate jobs and employment although this has not been quantified within the planning application submission. The support from the EDO is however caveated by the fact that it is acknowledged that there is no specific policy within the Local Plan which outlines the conditions to which 'non-small scale' economic development in rural areas will be supported or refused. The economic benefits to be derived from retention of the building for commercial uses are positive but are not considered to outweigh the proposal's policy conflict and the Council's strategic approach to development and the outward expansion at Greendale Business Park.

On balance, having regard for the above, it is concluded that no overriding material considerations have been presented which justify a departure from the Development Plan. This proposal represents an unjustified and unsustainable form of development which has led to the outward expansion of Greendale Business Park beyond its extent of authorised uses which is visually intrusive and encroaches into the open countryside to the detriment of the rural landscape character and appearance of the area. This harm coupled with the conflict with the Local Plan's strategic and plan-led approach towards the outward expansion of the business park contained within the East Devon Villages Plan and its wider sustainability objectives is considered to significantly and demonstrably outweigh the social and economic benefits that would be derived from commercial use of the building and the stated intention to allow occupation by the NHS if required. The proposal is considered to be contrary to the provisions of Strategy 1, 5B, 7, 46 and policies D1, E7, EN22 and TC2 of the Local Plan. The application is therefore recommended for refusal.

## **RECOMMENDATION**

REFUSE for the following reasons:



1. The proposed development, by virtue of its location beyond the built form of Greendale Business Park and outside of any recognised development boundary is within the open countryside where new development is strictly controlled. As no other policy within the Local Plan facilitates such a scale and type of development and in the absence of any evidence of overriding need, the proposal represents unjustified development in the countryside in conflict with the spatial approach to accommodate industrial development within defined settlements as identified within the Local Plan. It is not considered that there are material circumstances to outweigh the adverse impacts as a departure from policy of further industrial development in this location. As such the proposal is contrary to Strategy 1 (Spatial Strategy for Development in East Devon), Strategy 7 (Development in the Countryside) and Policy E7 (Extensions to Existing Employment Sites) of the Adopted East Devon Local Plan 2013-2031, the East Devon Villages Plan as well as the guidance contained within the National Planning Policy Framework.
2. Having regard to the sites location in the countryside, remote from any notable settlements and with limited access by public transport, walking or cycling and having regard to the wide range of proposed commercial uses, including many uses more typically found in town centres, the development will result in employees and visitors to the building being reliant on use of the private car, in conflict with policies in the East Devon Local Plan and the NPPF which encourage promoting and securing sustainable modes of travel and transport. The proposal is considered to be contrary to the provisions of Strategy 1 (Spatial Strategy for Development in East Devon), Strategy 5B (Sustainable Transport) Strategy 7 (Development in the Countryside), policies E7 (Extensions to Existing Employment Sites) and TC2- (Accessibility of New Development) of the East Devon Local Plan 2013-2031, the East Devon Villages Plan and paragraph 105 of the National Planning Policy Framework.
3. The proposed development by reason of the size and scale of the building and the extensive areas of hard surfacing has altered the landform and character of the site from rolling open countryside to urbanised development. The proposal because of its position at the highest part of the business park appears unduly prominent and visually intrusive and encroaches into the countryside to the detriment of the rural landscape character and appearance of the area. It is not considered that there are material circumstances to outweigh the adverse impacts of development in this location which justifies a departure from policy and that the visual harm is considered to outweigh the limited economic and social benefits that would be derived from the proposal. The proposal is considered to be contrary to the provisions of Strategy 46 (Landscape Conservation and Enhancement and AONBs), Strategy 7 (Development in the countryside) policies D1 (Design and Local Distinctiveness), D2 (Landscape Requirements) of the East Devon Local Plan 2013-2031 and the guidance contained within the National Planning Policy Framework.
4. Insufficient information has been submitted to demonstrate that adequate provision has been or can be made to sustainably manage surface water run

off arising from the proposed development. As such the proposal is contrary to the provisions of Policy EN22 (Surface Run-Off Implications of New Development) of the Adopted East Devon Local Plan, as well as the guidance contained within the National Planning Policy Framework.

## NOTE FOR APPLICANT

### Informative:

In accordance with the aims of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 East Devon District Council seeks to work positively with applicants to try and ensure that all relevant listed building concerns have been appropriately resolved; however, in this case the development is considered to be fundamentally unacceptable such that the Council's concerns could not be overcome through negotiation.

### Plans relating to this application:

8274-04	Proposed Combined Plans	24.08.22
8274-06 E	Block Plan	24.08.22
8274-05	Proposed Elevation	24.08.22
8274-LPA	Location Plan	24.08.22
	Landscape Visual Impact Appraisal	01.06.23

### List of Background Papers

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

## **Statement on Human Rights and Equality Issues**

### Human Rights Act:

The development has been assessed against the provisions of the Human Rights Act 1998, 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.

#### Equality Act:

In arriving at this recommendation, due regard has been given to the provisions of the Equality 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.



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# Appeal Decision

Site visit made on 31 October 2017

by **P N Jarratt BA DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5 December 2017

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## Appeal Ref: **APP/U1105/C/16/3165341**

### **Greendale Business Park, Woodbury Salterton, EX5 1EW**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by FWS Carter and Sons against an enforcement notice issued by East Devon District Council.
  - The enforcement notice was issued on 11 November 2016.
  - The breach of planning control as alleged in the notice is the construction of 4 compounds, identified as Compound 39, 48A, 47 and 11 and edged with a broken black line on plan 2 attached to the notice, by the levelling of the land, the laying of hard surfaces using concrete and scalplings, enclosing with security fencing, gates, CCTV cameras and lighting. The construction of 2 buildings and the associated use of the land to store a portakabin type temporary building, cubicle, shipping containers, mobile park homes, caravans and other associated items.
  - The requirements of the notice are
    1. Permanently remove from the land the concrete hard standing, foundations and associated drainage works from compounds 39, 48A and 47;
    2. Permanently cease the use of the land as compounds and for use as storage of mobile park homes, caravans, shipping containers, portakabin type buildings and storage of associated items;
    3. Permanently remove from the land all fencing from the perimeters of and within compounds 39, 48A, 47 and 11;
    4. Permanently remove from the land all gates from the perimeters of and within compounds 39, 48A, 47 and 11;
    5. Permanently remove from the land all CCTV cameras and supporting ancillary equipment from within compounds 39, 48A, 47 and 11;
    6. Permanently remove from the land all light fittings and cabling from compounds 39, 48A, 47 and 11;
    7. Permanently remove from the land the two permanent buildings sited within compound 39 shown indicatively edged and hatched in black on plan 2;
    8. Permanently remove from the land the temporary buildings including the shipping containers;
    9. Permanently remove from the land the cubicle identified outlined in yellow and coloured red on plan 3;
    10. Permanently remove from the land the mobile park homes caravans and associated items;
    11. Replace the topsoil in compounds 39, 48A and 47 to a depth of 20cm and reseed with an agricultural grass mix which shall be retained and maintained in perpetuity;
    12. Permanently remove, to an authorised place of disposal, all materials associated with compliance with steps 1, 3,4,5,6,7,8,9 and 10.
  - The period for compliance with the requirements is 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
  - **Summary of decision:** Notice varied and upheld, appeal dismissed and planning permission refused.
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## The site

1. The appeal site is in open countryside in what previously would have been an undulating rural landscape although it is to some extent visually contained by higher ground. The site extends to about 2.14 ha and is located to the north-east of the Greendale Business Park which offers a range of employment units, storage compounds and on-site services. The business park is accessed by a private road from the A3052 to the north and White Cross Road to the south along which the closest residential properties are located. The west boundary of the appeal site is adjacent to the access road.
2. The allegation refers to compounds 11, 39, 47 and 48a which are all gated and have metal security fencing; and also to an electrical distribution housing.
3. Compound 39 is a large concrete yard which has been excavated into the slope of the ground to create a level site. In the corner of the site is a recently constructed prominent green clad mono-pitched warehouse building. Next to this are the concrete footings and the service ducts for a building that had been removed at the time of my visit. A number of commercial and private vehicles were parked on the site. The appellants state that the site is occupied by Actavo, a scaffolding company having 8 employees.
4. Compound 48A, adjacent to compound 39, has a portacabin office and is occupied by Data Solutions Ltd having 13 employees.
5. Compound 47 has a number of portacabins and is occupied by Flogas with 4 employees.
6. Compound 11 is lower down the slope and has been excavated in part to create a level compound. EBCS Leisure Ltd with 5 employees uses the compound for the storage of park homes of which about 30 were present at the time of my visit.

## Relevant planning history

7. There have been many applications on the main Greendale Business Park and a number on the appeal site, the most relevant being planning permission 09/0410/MFUL granted in May 2009 for 'Change of use of agricultural land for employment, erection of associated offices and training facility and construction of parking and storage area'. This appears to include land identified as compound 11 and a small part of compound 47. It includes land to the south and west of compound 11 although this land is excluded from the notice. It also appears from the officer's report<sup>1</sup> that at that time, there had been a number of breaches of planning control in respect of the site. However it was concluded that the visual harm arising from the proposal was limited and in view of the economic benefits arising and the lack of available employment land at the time, approval was given, despite the site being in open countryside.
8. A partially retrospective hybrid application for the development of the appeal site (15/2592/MFUL) was refused in July 2016 for an extension to compound 33A, attenuation pond and warehouse, office building and hardstanding to

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<sup>1</sup> Appellant's statement Appendix B

compound 39 and outline permission for B1/B2/B8 units (access to be determined). This was not appealed against in view of continuing liaison between the appellants and the Council.

9. Following the service of the enforcement notice two planning applications were submitted for retrospective permission for the works that had been undertaken on the site. The revised schemes removed the three buildings shown on the outline element of the hybrid scheme and replaced them with open storage yards. Application 16/2597/FUL was for 'Change of use of the site to a storage yard, including the erection of a warehouse, office building, fencing and associated works. Application 16/2598/FUL was for 'Change of use of the site to storage yard including the erection of temporary ancillary offices, fencing, SUDS and associated works. Both applications were refused. The appellants did not appeal the decisions as they were registered after the issue of the enforcement notice.
10. A Breach of Condition Notice was issued on 11 November 2016 but was withdrawn the following month.

### **The appeal on ground (a)**

11. An appeal on this ground is that planning permission should be granted for what is alleged in the notice. The main issues in respect of the development include the acceptability of the principle of development and the effect of the development on the character and appearance of the open countryside.

#### *Principle of development*

12. The East Devon Local Plan 2013-2013 was adopted in January 2016 and I am able to attach substantial weight to it as it is up to date and was adopted subsequent to the National Planning Policy Framework (the Framework). The countryside is defined in Strategy 7 as those parts of the plan area outside the built up area boundaries and outside specific allocations shown on the proposals map. As the appeal site is outside these areas it is regarded as being in open countryside and there are no specific Local Plan policies which permit the development subject to the appeal. Development in the open countryside is only permitted where it is in accordance with specific Local or Neighbourhood Plan policy the explicitly permits such development. There is no neighbourhood plan covering the area of the appeal site.
13. Local Plan Policy E7 provides for extensions to existing employment sites but the policy specifically excludes Hill Barton and Greendale Business Parks. These are identified by the Council as substantial stand-alone employment sites which are different from the smaller and medium scale sites of East Devon and not deemed appropriate for expansion.
14. Although Policies E4 and E5 are referred to by the Council in the reasons for issuing the notice, Policy E4 relates to rural diversification of traditional agricultural related economic activities and is not relevant to this appeal, and Policy E5 provides for small scale economic development in rural areas but is not applicable to large scale industrial areas as in the current appeal.
15. An East Devon Villages Plan is currently being prepared which will identify village boundaries and residential development sites. It will also provide an inset plan for Greendale and Hill Barton Business Parks but the appellant points out that the current draft Villages Plan does not allow for expansion. The plan

has been subject to consultation and has recently been subject to examination. I note that the appellants have made representations about the Plan and on the availability of employment space for the type of users at the Business Park, and that some support has been expressed for this view.

16. The Council resolved in February 2017 to use the boundaries identified in the Villages Plan as primary policy for development management purposes. The Greendale Inset Map indicates that compound 11 is within the inset but the remaining areas appear to be outside. Although the Villages Plan has not been adopted it is at a fairly advanced stage such that I attach it moderate weight.
17. The Framework at paragraph 12 requires that proposed development that conflicts with an up to date local plan should be refused unless other material considerations indicate otherwise. The appellant has cited case law<sup>2</sup> relating to how development should be judged 'in accordance with the development plan' and I have had regard to these in my decision.
18. I disagree with the appellant's contention that the Local Plan is silent on the matter of employment provision/future development at the major existing employment sites of both Greendale and Hill Barton Business Parks. Although there may be no specific policies for the business parks Strategy 7 and Policy E7 are perfectly clear in that the Plan seeks to apply a restrictive policy approach to accommodating further development.
19. Whilst the appellant seeks support for the development through the various policies of the Framework, including paragraph 14, these do not outweigh the policy presumption against the development.
20. The appellant refers to appeal decisions in support of the argument that there is a need for the type of employment use provided for at the appeal site. An appeal decision relating to the nearby Hogsbrook Farm<sup>3</sup>, also under the control of the appellant, allowed the retrospective change of use of existing agricultural buildings to employment use in which the inspector, at paragraph 7, stated that the current level of occupancy indicated a demand and that he had not had evidence to indicate that this would lessen demand for space elsewhere. An appeal at Clyst St Mary<sup>4</sup> allowed the erection of 3 small B1 business units on the footprint of a fire damaged building where the inspector considered that the proposals would not have any material effect on the take-up of permissions elsewhere. I consider these cases to be materially different to the current appeal as they concerned existing or fire damaged buildings not comparable to the site the subject of this appeal. Furthermore, the Clyst St Mary decision pre-dates the adoption of the Local Plan as does the Council's comments about the current need for employment land in the 2010 officer report relating to an application at Hill Barton.
21. The appellants consider that there is an over-riding need for the appeal site to be used for employment purposes due to the absence of other sites in the district and that the adopted Local Plan has failed to make adequate provision to meet appropriate levels of employment demand. The appellants and the Council have produced numerous technical reports on the issue either in response to the Local Plan or to the Villages Plan. In the case of the former,

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<sup>2</sup> City of Edinburgh v SoS Scotland[1997] 1WLR 1447 and Tesco Stores Ltd v Dundee CC [2012] PTSR 98

<sup>3</sup> APP/U1105/W/16/3151307 and 3151311

<sup>4</sup> APP/U1105/A/12/2171968

this has been fully scrutinised through the adoption process and in the case of the Villages Plan, this has recently been the subject of independent examination.

22. The Local Plan and the emerging Villages Plan indicate that the principle of development on the appeal site is unacceptable other than in respect of compound 11 that benefits from an extant permission and is shown to be within the Greendale Inset Map in the emerging Villages Local Plan.
23. I conclude on this issue that the development is contrary to Strategy 7 and Policy E7 which indicate that the principle of development in this location would harm the strategic intentions of the Local Plan.

#### *Effect on the countryside*

24. The development has altered the land form and character of the countryside through the excavation and construction of the compounds, the creation of extensive areas of concrete hard standing, the introduction of steel fencing and security lighting, the erection of the warehouse on compound 39, the siting of portacabins offices, the open storage of mobile homes and other materials, etc. The effect of the development is significantly to change the character of the site from rolling open countryside to urbanised development having little relationship with its countryside setting. It is intrusive and, because of the change in levels, parts of the site are also prominent, particularly in respect of the warehouse on compound 39.
25. The appellants' Landscape and Visual Impact Assessment submitted with the earlier applications concludes that the impact on landscape character after mitigation would be slight-moderate adverse and there would be neutral impact on visual amenity due to the limited opportunity to view the site from publicly accessible locations. However, this does not affect my own conclusion in respect of the impact of the development on countryside character and appearance which I consider to be significant and harmful.
26. I note that the Council considered the landscape harm to be at an acceptable level when the 2009 permission was granted but this related to the lower compound 11 site which is considerably smaller in area than the appeal site.
27. I conclude on this issue that the development is harmful to the character and appearance of the wider countryside.

#### *Other considerations*

28. The development has generated considerable opposition from local residents, the Parish Council and the Woodbury Salterton Residents Association. There is widespread support for the Council's enforcement action against FWS Carter and Sons who the local residents state have persistently failed to respect the planning process. Local residents' concerns include potential noise and other disturbance arising from traffic, 24 hour operation, and external lighting.
29. The appellants state that the nearest residential properties are about 180m away with intervening trees and vegetation and that the Council's Environmental Health Officer raised no objection to previous applications on the site. Whilst the appellants consider that no significant adverse impact on residential amenity would occur, the Council was not satisfied that details had been submitted with the previous applications to show that the additional



operations are satisfactory and operate without unacceptable harm to residential amenity. Having regard to the extent of the existing employment area, a degree of disturbance to local residents occurs already and had the extant permission for compound 11 been fully implemented, this could have added to it. I am satisfied that a suitably worded condition could be imposed that might limit the potential effects of the development subject to the notice.

30. An ecological appraisal was submitted with the previous applications but as the site had been cleared, its value is limited. Trees have been felled to facilitate the construction of the compounds but additional tree planting could be required by condition. Part of the site is potentially of archaeological interest and could be the subject of an appropriately worded condition.
31. No highways objections were raised to the previous applications.
32. The appellants accept that alternative surface water drainage is required for the development and a SUDS solution and Drainage Strategy was considered to be acceptable as part of the earlier hybrid application. However the County Council's Flood Risk Management Team considers the flood risk strategy submitted previously and absence of any appropriate flood mitigation strategy development to be unacceptable. Notwithstanding this, an appropriately worded condition would normally satisfactorily deal with the issue.

#### *Planning Balance*

33. Although the development has created some employment, no reasons have been given why the occupiers of the compounds should be located in their particular compounds or why they cannot be relocated elsewhere. The economic benefits of the development are outweighed by the harm that the development causes to the development strategy of the Local Plan and to the character and appearance of the countryside. The extent of harm could not be mitigated sufficiently through the imposition of conditions to weigh in favour of the development.
34. I conclude that the development is contrary to Strategy 7 and Policy E7 of the adopted Local Plan. It is also contrary to Policy D1 relating to design and distinctiveness, Policy D2 regarding landscaping and Policy D3 in respect of trees and development sites. Additionally, the development fails to accord with the Framework.
35. The appeal on ground (a) fails.

#### **The appeal on ground (f)**

36. An appeal on ground (f) is that the steps required to comply with the notice are excessive and lesser steps would overcome the objections.
37. The appellants have not indicated why the requirements of the notice are considered to be excessive other than originally stating erroneously that the only works which ought to be required are those set out at point (I) of the notice. However there is no point (I) in the notice and the appellants subsequently stated that what was only necessary to remedy the breach are those works set out in step 5.2. This states: "Permanently cease the use of the land as compounds and for use as storage of mobile park homes, caravans, shipping containers, portakabin type buildings and storage of associated

- items". However the appellants have failed to explain how this remedies the breach or why the other steps are not necessary.
38. Part of the appeal site within the area of compound 11 has an extant planning approval and therefore the requirements in respect of this land only relate to its use.
39. Step 5.11 requires the replacement of the topsoil in compounds 39, 48A and 47 to a depth of 20cm and reseeded with an agricultural grass mix which shall be retained and maintained in perpetuity. Although the appellant has not made representations on this step, a requirement of the notice cannot go beyond the restoration of the land as it existed prior to the unauthorised development taking place. I therefore intend to vary the notice by the replacement of step 5.11 with "Reinstate the surface of compounds 39, 48A and 47 to its condition before the breach took place".
40. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice, as I propose to vary them, in this case do not exceed what is necessary to remedy the breach.
41. I have had regard to *Ahmed v SSCLG [2014] EWCA Civ 566* but I find that there is no obvious alternative to the retention of the whole of the development on site that would overcome the planning issues that I have identified in the ground (a) appeal.
42. The appeal on this ground fails.

### **Conclusions**

43. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

### **Decision**

44. It is directed that the enforcement notice be varied by the deletion of step 5.11 of the requirements and its replacement with "Reinstate the surface of compounds 39, 48A and 47 to its condition before the breach took place". Subject to these variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Peter Jarratt*

**Inspector**