

Ward Yarty

Reference 23/1997/FUL

Applicant Sharon and Nigel Harding

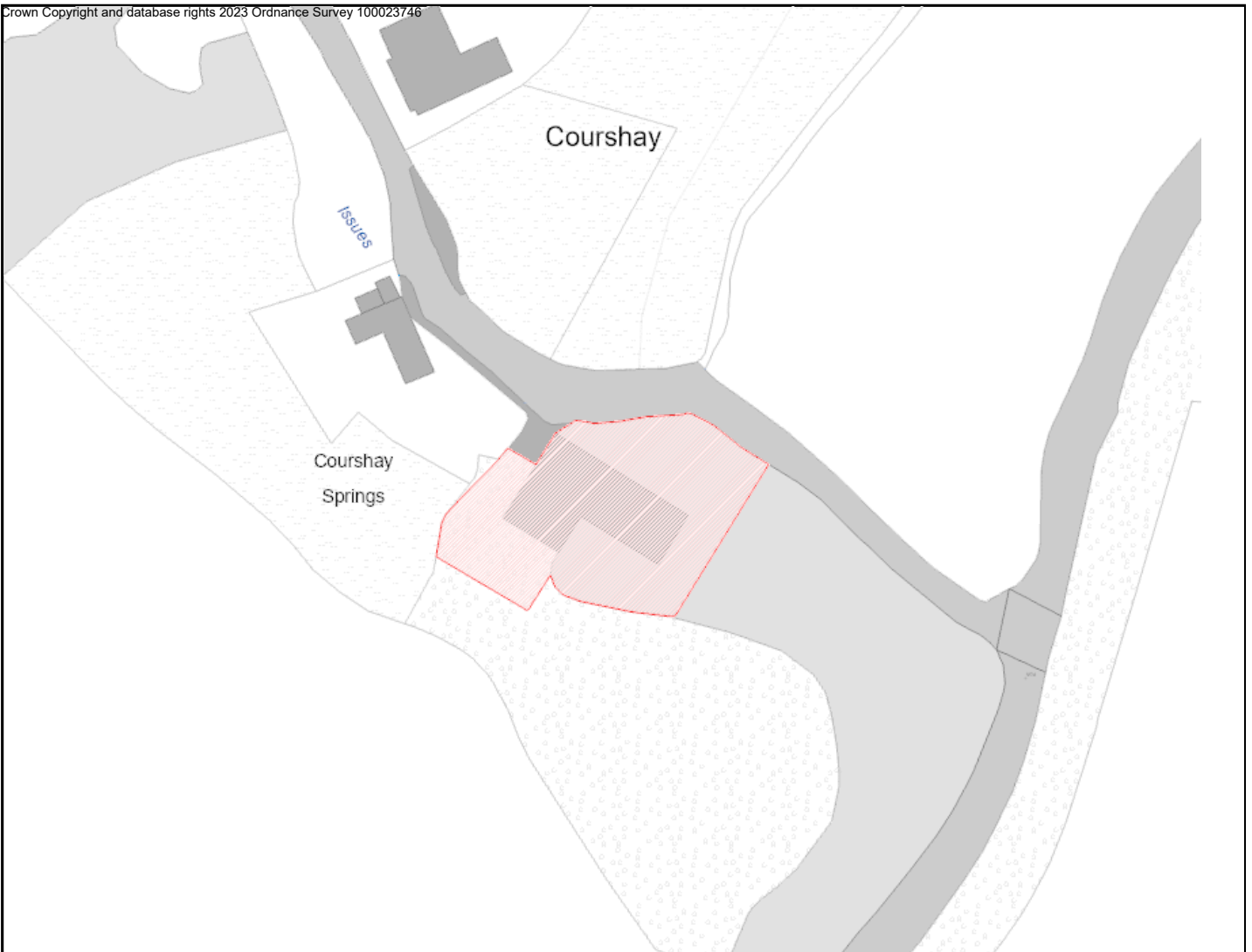
Location Land And Building South East Of Courshay Springs Hawkchurch

Proposal Demolition of existing buildings and construction of 1 no. dwellinghouse (alternative to conversion of a redundant building to form 1 no. residential dwelling and associated works approval reference 21/3211/FUL).



RECOMMENDATION: Adopt the Habitats Regulations Assessment and Approve with conditions

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		Committee Date: 19.12.2023
Yarty (Hawkchurch)	23/1997/FUL	Target Date: 15.11.2023
Applicant:	Sharon and Nigel Harding	
Location:	Land And Building South East Of Courshay Springs Hawkchurch	
Proposal:	Demolition of existing buildings and construction of 1 no. dwellinghouse (alternative to conversion of a redundant building to form 1 no. residential dwelling and associated works approval reference 21/3211/FUL).	

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EXECUTIVE SUMMARY

This application is before the Planning Committee because the applicants are related to an officer of the Council.

Planning permission is sought for the demolition of a former workshop building and the construction of a dwelling in its place. This is an alternative to the extant planning permission for the conversion of the workshop which was granted by the Planning Committee in February 2022 under reference 21/3211/FUL.

The proposal is a departure from the Local Plan because, whereas there is policy support for the conversion of rural buildings, there are no policies that support their replacement with dwellings.

Notwithstanding the lack of policy support for the principle, the fallback position whereby a dwelling would be delivered on the site is a material consideration which carries significant weight. The existence of the fallback position justifies supporting the principle of the development in this case, but the proposal also needs to deliver a betterment compared to the fallback position to justify support overall.

The proposed dwelling draws inspiration from stone barns in the locality and, although larger than the approved conversion, would be compatible with local architecture and demonstrate the key quality of local distinctiveness. Aesthetically it would be a significant improvement on the approved conversion.

In view of the fallback position and the design betterment than would be delivered, the proposal is supported.

CONSULTATIONS

Local Consultations

No responses have been received from the Parish Council or the Ward Member.

Other Representations

None received.

Technical Consultations

None required.

PLANNING HISTORY

Reference	Description	Decision	Date
EJ/4273	Implement store	Approval with conditions	07.07.1961
21/3211/FUL	Proposed conversion of a redundant building to form 1 no. residential dwelling and associated works.	Approval with conditions	18.02.2022

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 7 (Development in the Countryside)

Strategy 32 (Resisting Loss of Employment, Retail and Community Sites and Buildings)

Strategy 47 (Nature Conservation and Geology)

D1 (Design and Local Distinctiveness)

D2 (Landscape Requirements)

EN5 (Wildlife Habitats and Features)

EN16 (Contaminated Land)

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

TC2 (Accessibility of New Development)

TC7 (Adequacy of Road Network and Site Access)

TC9 (Parking Provision in New Development)

Government Planning Documents

NPPF (National Planning Policy Framework 2023)

National Planning Practice Guidance

Site Location and Description

The site is located just to the east of the main settlement of Hawkchurch amongst a small cluster of dwellings at Courshay. It forms part of a larger area of land which was formerly used for a mix of agricultural and industrial purposes but is in the process of being cleared of the detritus left over from that use. At the western end of the site is a former workshop building. There is a residential property neighbouring the site to the west and a lane on the north side. The main access is currently from a gate at the east end of the yard but there is also a pull-in at the western end of the site adjacent to the neighbouring dwelling. To the north, east and south there is agricultural land sloping down to the north east. The site is in an undesignated area of countryside between the East Devon, Blackdown Hills and Dorset National Landscapes (formerly known as AONBs).

ANALYSIS

Proposal

Planning permission is sought for the demolition of a former workshop building and the construction of a dwelling in its place. This is an alternative to the extant planning permission for the conversion of the workshop which was granted by the Planning Committee in February 2022 under reference 21/3211/FUL.

In the approved conversion scheme the form of the original building was largely unchanged other than the addition of a dormer extension to the south west elevation and the demolition of a roughly built single storey extension at the rear.

In comparison to the approved scheme, the new dwelling would provide an additional 40 square metres of floor space, comprised of around 45 square metres more first floor space and around 5 square metres less ground floor space. The overall length of the new building would be around 3m shorter than the approved conversion but the floor space lost at ground floor would be partly gained back by adding a single storey extension. At first floor level, additional floor space would be gained by reducing the amount of void space over the ground floor and lengthening the first floor by around 3.5m.

The other key difference is that the new building would be around 1.7m taller than the approved conversion, with a steeper roof pitch and a higher eaves.

As before, garden would extend around the property and access would be from a driveway on the north west side of the building to a parking area on the south west side.

Main issues

The main issues are:

- whether the proposed development would provide a suitable location for the construction of a dwelling having regard to the policies of the Local Plan and the existence of the fallback position; and

- whether the proposal would represent a betterment in terms of the effect on the character and appearance of the area compared to the fallback position.

Location

The site is in the countryside outside the main settlement of Hawkchurch but is not regarded as being isolated because it is part of a cluster of about 9 dwellings at Courshay. Although it is not isolated, it is in the countryside for planning policy purposes and in such locations new dwellings are only supported if there is support in a specific local or neighbourhood plan policy. There is no neighbourhood plan in this case and no support in the Local Plan for the construction of a dwelling in place of a workshop. Consequently, the proposal is not in accordance with the provisions of the Local Plan.

However, the fallback position would result in the delivery of a dwelling in this location and there is a real prospect of the development going ahead. Case law, including *Mansell v Tonbridge and Malling Borough Council* [2017], has established that such a fallback position is a material consideration. In this case, as there is no impediment to the permission being implemented, the fallback position attracts significant weight. Owing to the existence of the fallback position, the principle of constructing a dwelling in place of the workshop is acceptable in this instance.

Character and appearance

The proposed scheme would result in an enhancement to the site by virtue of the removal of extraneous structures, objects and scrap materials and the provision of landscaping. The same benefits would arise from the fallback scheme and therefore these benefits carry neutral weight in the assessment of the effect on the character and appearance of the area.

The key question is whether the scale and appearance of the new-build dwelling would result in a betterment compared to the approved conversion.

By virtue of being taller and longer (at first floor) than the approved conversion, the new dwelling would appear bulkier and more prominent. Additional bulk would also be added at the rear with the construction of a single storey wing. Although this wing would be similar in scale to the existing roughly built extension, this was to be removed as part of the approved scheme, partly because it was not suitable for conversion and partly to improve the setting of the retained building.

The new building would be almost 25% larger in volume than the fallback scheme (about 866m³ compared to 694m³). Furthermore, because permitted development rights were removed from the planning permission for the conversion, there is no scope for the converted barn to increase in floor area or overall bulk without the express consent of the local planning authority.

Whilst the increase in scale and bulk is substantial, there are no policies that apply to this site that place an upper limit on the size of dwellings. Consequently, there is no fundamental objection to the increase provided the resulting building is compatible with the character and appearance of the area.

The new dwelling has been designed with regard to the character of traditional farm buildings in the locality. In terms of the form of the building, the materials used, and the design of the window and door openings, the proposal is considered to be compatible with local architecture. For example, there are similarities with the stone-built granary at Wyld Court. Although the proposed dwelling is less restrained than the granary in terms of the number of windows, its design is still clearly derived from the local area and demonstrates the key quality of local distinctiveness.

In contrast, although the approved conversion retains the stone walls of the existing building, these are a relatively small component of the elevations. The majority of the walls and roof would be clad in timber and metal and whilst these finishes are typical of modern farm buildings, the resulting design holds limited visual appeal and little connection to the local area.

The proposed new dwelling would be an aesthetic enhancement and would respect the design and appearance of traditional buildings in the locality. The decision to base the design of the dwelling on a converted barn is also considered appropriate given the character of the existing building and its rural setting.

The new building would be visible from the adjacent lane but it would be in proportion with the neighbouring dwelling and its design would be compatible with its surroundings. From more distant vantage points there may be glimpsed views but the site is well screened by the land form and mature trees and hedgerows. Furthermore, in any such views the building would appear well-related to nearby buildings in terms of position, form, appearance and scale and would not detract from the character of the wider landscape.

Overall, therefore, the proposal would result in a betterment compared to the approved scheme.

Other matters

The site is in the catchment of the River Axe SAC where development is required to be 'nutrient neutral'. As already noted, there is an extant permission for a dwelling which was granted a month prior to the advice on nutrient neutrality being issued by Natural England. This permission is a realistic fallback and means that the current proposal would not result in a net increase in the number of existing or approved dwellings in the catchment. A significant effect on the River Axe SAC can therefore be ruled out and the proposal would be compliant with Strategy 47 and The Conservation of Habitats and Species Regulations 2017. A Habitat Regulations Assessment is appended to this report but Appropriate Assessment and consultation with Natural England is not required in this case because a significant effect has been ruled out.

The site is not in a flood zone and the only area of risk from surface water flooding lies to the south east of the building. Consequently, no specific measures are required in this application to address flood risk. However, to ensure compliance with Policy EN22, details of surface water drainage and hard surfacing are required and can be secured by conditions.

Foul sewage is proposed to be disposed of via a package treatment plant discharging to a soakaway. Whilst the suitability of the land for infiltration has not been assessed, the detailed design of the drainage system can be secured by condition to ensure compliance with Policy EN19.

The building has been surveyed for wildlife and it has been concluded that it does not support a bat roost. It is, however, recommended that bat and bird boxes are provided in the development, and these can be secured by condition in accordance with Policy EN5.

Given the former use of the land for industrial purposes, there is a risk of contaminated land being present. To ensure that any contamination is dealt with appropriately a condition is necessary in accordance with Policy EN16.

The north west elevation would face the neighbour's garden at a distance of about 8.2m. The first floor window in that elevation would serve a bathroom and therefore it would be reasonable to impose a condition requiring it to be obscure glazed in the interests of the neighbour's privacy. For the same reason it would also be reasonable to remove permitted development rights for new first floor windows in that elevation. Subject to those conditions the proposal would preserve the neighbour's living conditions, as required by Policy D1.

To preserve the character and appearance of the area and the integrity of the design, it is necessary to remove permitted development rights for extensions to the building, new doors and windows (other than those already shown on the plans) and cladding. This would ensure that the proposal is compatible with Policy D1.

It is proposed to use a former access at the western end of the site which has not been used for some time. Visibility would be adequate given that the lane is a no-through road and only serves a small number of dwellings. Within the site there would be adequate turning and parking space to serve the dwelling. The proposal would therefore comply with Policies TC7 and TC9.

In the absence of a lawful development certificate, it is not clear what the lawful use of the building and land is but based on the activities described in the planning statement it is probably a *sui generis* or mixed use incorporating elements of industrial activity. The proposal would result in the partial loss of a business premises, although the building is currently vacant. However, continued industrial use would significantly harm the environment of the locality and therefore the loss would be compatible with Strategy 32 which seeks to protect business premises only where they are appropriately located.

There is some uncertainty as to the applicant's future intentions for the land beyond the boundaries of the application site. Given that it would retain its current use there is potential for an unneighbourly business to be resurrected. However, whilst this cannot be controlled by way of a condition it is considered to be an unlikely eventuality with the probable outcome being a more benign use.

CONCLUSION

The replacement of a barn or workshop in the countryside with a dwelling is not in accordance with the Local Plan. However, the fallback position whereby the existing building would be converted to a dwelling is a significant material consideration, as established by case law (for example, Mansell v Tonbridge and Malling Borough Council [2017]). Although larger than the approved dwelling, the scale of the proposed dwelling would be in character with its surroundings and its appearance would be an enhancement compared to the approved scheme. Overall, the proposal would result in a betterment compared to the approved scheme and as such it is supported.

RECOMMENDATION

ADOPT the Habitats Regulations Assessment appended to this report

and

APPROVE subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission and shall be carried out as approved. (Reason - To comply with section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice. (Reason - For the avoidance of doubt.)
3. No development approved by this planning permission shall commence until a remediation strategy to deal with the risks associated with contamination of the site in respect of the development hereby permitted, has been submitted to, and approved in writing by, the local planning authority. This strategy shall include the following components:
 1. A preliminary risk assessment which has identified:
 - I. all previous uses
 - II. potential contaminants associated with those uses
 - III. a conceptual model of the site indicating sources, pathways and receptors
 - IV. potentially unacceptable risks arising from contamination at the site
 2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site.
 3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation

strategy giving full details of the remediation measures required and how they are to be undertaken.

4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete.

Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved.

5. In the event that unexpected contamination is found at any time during the approved development works that was not previously identified, the findings must be reported in writing immediately to the Local Planning Authority. A new investigation and risk assessment must be undertaken in accordance with the requirements of condition 1 & 2 and where remediation is necessary a new remediation scheme must be prepared in accordance with the requirements of condition 3. This must be subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification plan must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 4.

6. Where long term monitoring and maintenance has been identified as necessary, a monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period to be agreed with the LPA, and the provision of plans on the same shall be prepared, both of which shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out shall be produced, and submitted to the Local Planning Authority.

This must be conducted in accordance with DEFRA and the Environment Agency Land Contamination Risk Management (LCRM).

(Reason - To ensure that risks from land contamination to the future users of the land and neighbouring land, together with those to controlled waters, property and ecological systems, are minimised and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy EN16 - Contaminated Land of the East Devon Local Plan 2031-2031.)

4. No development shall take place (other than demolition) until details of the method of foul drainage to serve the dwelling, including its siting and the necessary percolation system, have been submitted to and approved in writing by the Local Planning Authority. The system shall be designed so as not to cause pollution of any watercourse or water sources. The development shall be carried out in accordance with the approved details.

(Reason - The details are required prior to commencement of construction to ensure that they fit efficiently within the site layout and to ensure that a suitable foul sewage treatment system of adequate capacity and design is available to serve the development in accordance with Policy EN19 - Adequacy of Foul Sewers and Adequacy of Sewage Treatment Systems of the East Devon Local Plan 2013-2031.)

5. No development shall take place (other than demolition) until a surface water drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. Unless it is demonstrated that it is unfeasible to do so, the scheme shall use appropriate Sustainable Urban Drainage Systems. The drainage scheme shall be designed so that there is no increase in the rate of surface water runoff from the site resulting from the development and so that storm water flows are attenuated. The development shall be carried out in accordance with the approved scheme.

(Reason - The details are required prior to commencement of construction to ensure that they fit efficiently within the site layout, protect water quality and minimise flood risk in accordance with Policy EN22 - Surface Run-Off Implications of New Development of the East Devon Local Plan 2013-2031 and the guidance contained with the National Planning Policy Framework.)

6. No development above foundation level (other than demolition) shall take place until details of the materials to be used in the construction of the external surfaces of the building (including details of quoins and lintels) have been submitted to and approved in writing by the Local Planning Authority. Such details shall include a sample panel of the stone wall of a minimum 1 square metre in area which shall be constructed on site for inspection by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

(Reason - To ensure that the materials are considered at an early stage and are sympathetic to the character and appearance of the area in accordance with Policy D1 - Design and Local Distinctiveness of the East Devon Local Plan 2013-2031.)

7. No development above foundation level (other than demolition) shall take place until a landscaping scheme has been submitted to and approved in writing by the Local Planning Authority; such a scheme to include the planting of trees, hedges, shrubs, herbaceous plants and areas to be grassed. The scheme shall also give details of any proposed walls, fences and other boundary treatment. The landscaping scheme shall be carried out in the first planting season after commencement of the development unless any alternative phasing of the landscaping is agreed in writing by the Local Planning Authority and the landscaping shall be maintained for a period of 5 years. Any trees or other plants which die during this period shall be replaced during the next planting season with specimens of the same size and species unless otherwise agreed in writing by the Local Planning Authority.

(Reason - To ensure that the details are planned and considered at an early stage in the interests of amenity and to preserve and enhance the character and appearance of the area in accordance with Policies D1 - Design and Local

Distinctiveness and D2 - Landscape Requirements of the East Devon Local Plan 2013-2031.)

8. The dwelling shall not be occupied until details of the surface finishes of all hard surfaces within the curtilage of the dwelling have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and the surface finishes shall be retained thereafter.
(Reason - In the interests of the character and appearance of the area and to prevent run-off from the site in accordance with Policies D1 - Design and Local Distinctiveness and EN22 - Surface Run-Off Implications of New Development of the East Devon Local Plan 2013-2031.)
9. Development shall be carried out in accordance with the recommendations of the Bat and Protected Species Survey prepared by Ecologic Consultant Ecologists (report reference 210837 dated September 2021).
(Reason - In the interests of wildlife protection and habitat creation in accordance with Policy EN5 - Wildlife Habitats and Features of the East Devon Local Plan 2013-2031.)
10. Before the dwelling hereby permitted is occupied the first floor bathroom window on the north west elevation shall have been glazed with obscure glass to Pilkington level 4 or equivalent and the obscure glazing of this window shall thereafter be retained at all times.
(Reason - To protect the privacy of adjoining occupiers in accordance with Policy D1 - Design and Local Distinctiveness of the East Devon Local Plan 2013-2031.)
11. Notwithstanding the provisions of Schedule 2 Part 1 Classes A, B, C and D of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification) the dwelling shall not be enlarged, no rooflights, windows, doors or other openings shall be installed in any wall or roof slope (other than those shown on the approved plans), and no part of the exterior of the dwellinghouse shall be clad with artificial stone, pebble dash, render, timber, plastic or tiles without the prior express consent of the Local Planning Authority.
(Reason - To protect the character of the building and the surrounding area and the privacy of adjoining occupiers in accordance with Policy D1 - Design and Local Distinctiveness of the East Devon Local Plan 2013-2031.)

NOTE FOR APPLICANT

Informative:

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

Plans relating to this application:

	Location Plan	19.09.23
HARDINGPRO	Proposed Combined Plans	19.09.23
HARDINGPRO2	Proposed Floor Plans	19.09.23
SP500	Block Plan	19.09.23

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.

Habitats Regulations Assessment		East Devon District Council
The Conservation of Habitats and Species Regulations 2017, Section (63)		
Application Reference	23/1997/FUL	
Brief description of proposal	Demolition of existing buildings and construction of 1 no. dwellinghouse (alternative to conversion of a redundant building to form 1 no. residential dwelling and associated works approval reference 21/3211/FUL)	
Location	Land And Building South East Of Courshay Springs Hawkchurch	
Site is:	<p>Within the nutrients Catchment Area for the River Axe SAC as defined by Natural England.</p> <p>See Appendix 1 for list of interest features of the SPA/SAC.</p>	
Step 1 Screening for Likely Significant Effect on the River Axe SAC		
Risk Assessment		
<p>Could the Qualifying Features of the European site be affected by the proposal?</p> <p>Consider both construction and operational stages.</p>	<p>No. There is an extant permission for a dwelling which was granted a month prior to the advice on nutrient neutrality being issued by Natural England. This permission is a realistic fallback and means that the current proposal would not result in a net increase in the number of existing or approved dwellings in the catchment. Consequently, compared to the baseline, there would be no increase in the amount of phosphorus reaching the River Axe as a result of permitting this development.</p>	
Conclusion of Screening		
Is the proposal likely to have a significant effect, either 'alone' or 'in combination' on a European site?	<p>In accordance with Natural England guidance, East Devon District Council concludes that the proposal would not have a likely significant effect, when considered either alone or in combination, upon the qualifying features of the River Axe SAC.</p> <p>An Appropriate Assessment of the plan or proposal is not necessary.</p>	
Local Authority Officer	Andrew Digby Senior Planning Officer	Date: 23/11/23

Appendix 1. List of interest features:

River Axe SAC – Component SSSI

H3260 Water courses of plain to montane levels with *R. fluitantis*

S1095 Sea lamprey, *Petromyzon marinus*

S1096 Brook lamprey, *Lampetra planeri*

S1163 Bullhead, *Cottus gobio*

Site Description

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

Qualifying habitats

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

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

SAC Conservation Objectives

With regard to the SAC and the natural habitats and/or species for which the site has been designated (the 'Qualifying Features' listed below), and subject to natural change;

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;

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