

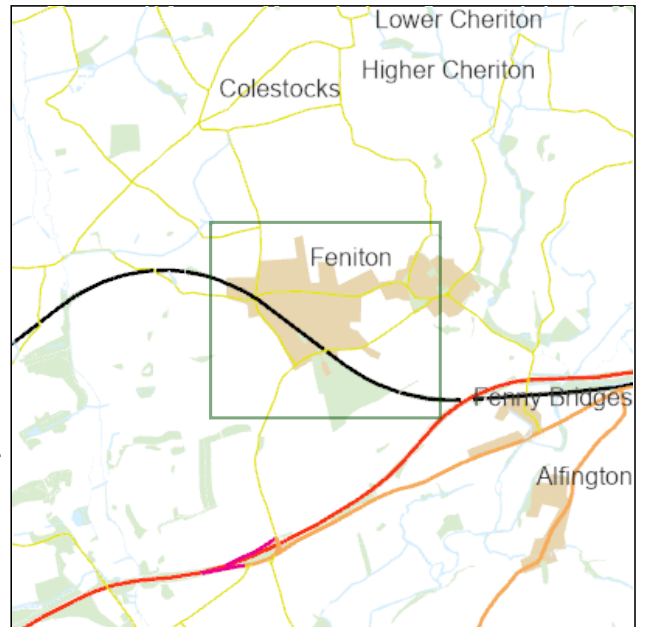
Ward Feniton

Reference 24/0331/MFUL

Applicant Mr Tom Buxton-Smith

Location Land North And South Of Station Road, Warwick Close, Wells Avenue, Land Opposite Greenacres Close And Land Adjacent To Ottery Road Near Sidmouth Junction Sewage Pumping Station. Feniton

Proposal Amendments to phase 4 of the Flood alleviation scheme (consented under ref; 14/2882/MFUL) - works comprising the construction of channels, culverts and swales and mitigation works including flood defences, inlet water storage areas, infrastructure and outfall structure.



RECOMMENDATION: Approval with conditions

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		Committee Date: 16.07.2024
Feniton (Feniton)	24/0331/MFUL	Target Date: 16.05.2024
Applicant:	Mr Tom Buxton-Smith	
Location:	Land North And South Of Station Road, Warwick Close, Wells Avenue, Land Opposite Greenacres Close And Land Adjacent To Ottery Road Near Sidmouth Junction Sewage Pumping Station, Feniton	
Proposal:	Amendments to phase 4 of the Flood alleviation scheme (consented under ref; 14/2882/MFUL) - works comprising the construction of channels, culverts and swales and mitigation works including flood defences, inlet water storage areas, infrastructure and outfall structure.	

RECOMMENDATION: Approval with conditions

EXECUTIVE SUMMARY

This application is brought before the Planning Committee as the scheme to which it relates has financial implications for the Council and as such cannot be determined under the scheme of delegation.

Permission is sought for revisions to the final phase (Phase 4) of the approved flood alleviation scheme for Feniton that was originally approved in 2015 (under application ref. 14/2882/MFUL).

Phases 1, 2 and 3 have since been completed.

Phase 4 involves the creation of an open channel on the north eastern edge of the village, to the east of Mount View, and construction of a below ground bypass culvert discharging to the south west into a ditch to the rear of Metcombe Cottage.

The proposed modifications involve, in summary, changes to the approved operations within the part of the site to the rear of Mount View at the north eastern end of the development and the realignment of the south western end of the culvert within a field opposite the junction of Green Lane and Ottery Road.

The latter involves additional land to the 2014 application site and therefore necessitates the submission of an entirely fresh detailed application for this phase of the scheme.

The principal benefits of the proposed revisions will be a reduction in the discharge rate from the culvert, an enhanced capacity in excess of the 1% annual exceedance probability event (1 in 100-year return period) with a 30% allowance for future climate change and easier inspection and maintenance of the diverted section of culvert at Ottery Road via the highway rather than private land.

As before, the main issues for consideration relate to the risks of flooding, landscape impact and any harm to trees and ecological interests.

Detailed assessments relating to the main constraints have again been included within the application. In assessing these, it is considered that, while some limited and localised harm would arise, much of this can be suitably addressed by appropriate mitigation that can be secured by way of appropriately worded conditions.

Also given the fallback scenario of the extent 2014 permission, it is again considered that there are significant benefits associated with the project and that, taken together with identified mitigation (for both flood risks and other site constraints) the scheme should be supported.

CONSULTATIONS

Local Consultations

Parish/Town Council

The Council support this application.

Technical Consultations

EDDC Trees

No objections subject to condition (Full consultation response at end of report)

Environmental Health

I have considered the application and note that this site is close to nearby residents who may be impacted during the construction process. Construction working hours shall be 8am to 6pm Monday to Friday and 8am to 1pm on Saturdays, with no working on Sundays or Bank Holidays.

Environment Agency

No objections subject to condition (Full consultation responses at end of report)

EDDC District Ecologist

No objections subject to conditions (Full consultation response at end of report)

DCC Historic Environment Officer

No objections subject to condition (Full consultation response at end of report)

Other Representations

Two representations of support and two 'neutral' representations have been received.

Summary of Grounds of Support

1. Feniton is long overdue this flood relief work.
2. Clarification about vehicular access to properties during works required.

Summary of 'Neutral' Representations

1. Concern that access to and from my property from my parking area in front of my bungalow with my car and accessibility to the road with my disability scooter kept in my garage will be impaired.
2. Would like the Council to provide warning/clarification as to when and if vehicular access is available, parking arrangements when vehicular access is not possible and hours of working.

PLANNING HISTORY

Reference	Description	Decision	Date
14/2882/MFUL	Flood alleviation works comprising the construction of channels, culverts and swales and mitigation works to individual properties including flood defences and by pass channel.	Approval with conditions	11.02.2015

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

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

Strategy 3 (Sustainable Development)

Strategy 5 (Environment)

Strategy 7 (Development in the Countryside)

Strategy 46 (Landscape Conservation and Enhancement and AONBs)

Strategy 47 (Nature Conservation and Geology)

Strategy 48 (Local Distinctiveness in the Built Environment)

D1 (Design and Local Distinctiveness)

D2 (Landscape Requirements)

D3 (Trees and Development Sites)

EN5 (Wildlife Habitats and Features)

EN13 (Development on High Quality Agricultural Land)

EN14 (Control of Pollution)

EN21 (River and Coastal Flooding)

EN22 (Surface Run-Off Implications of New Development)

Made Feniton Neighbourhood Plan 2016-2031 Policies

F1 (Environmental Protection)

Government Planning Documents

NPPF (National Planning Policy Framework 2023)

ANALYSIS

Site Location and Description

The application site comprises a long narrow tract of land stretching through part of Feniton and extending, just, into the adjoining parish of Ottery St Mary. From a field to the east of Mount View, on the northern edge of the village, it extends south of Station Road between Louvigny Close and Silverton Rise and through the recreational field. (At this point it also encompasses open land to its east and to the south of Vineton Place, together with a further spur of land beyond this extending as far south as Green Lane.) It then continues in a southerly direction along Warwick Close to Green Lane. After passing under the road, the site then turns to the west, alongside Green Lane itself, crosses under the railway line before continuing to the road junction of Green Lane and Ottery Road. It then turns to the north west to extend along part of an open field along the western side of the latter as far as an existing sewage pumping station building.

Background

Planning permission was granted to the Council in 2015 (application 14/2882/MFUL refers) for a flood alleviation scheme for Feniton comprising the following phases:

Phase 1 - Downstream mitigation works for Phase 4 (see below) including an improved ditch around Metcombe Cottage and Sweethams Cottage and a ditch bypassing the ponds at Gosford Farm

Phase 2 - Downstream property protection including new flood gates, walls and raised drives at The Oaks, Pine Cottage and Iron Gate Lodge

Phase 3 - Construction of a culvert underneath the Exeter to London Waterloo railway line and two manhole chambers at either end

Phase 4 - Construction of a new 1050mm diameter bypass culvert through Feniton, starting in the north east of the village, connecting to the culvert under the railway line (phase 3) and discharging south west of the village into the ditch behind Metcombe Cottage

Phases 1 and 2 of the scheme were constructed in 2016 while Phase 3 was constructed by Network Rail in 2022.

In summary, the key elements of the Phase 4 works, which are intended to carry flood water from the north east of the village to discharge to a ditch to the south west, consist of:

1. Inlet structure

- A new inlet swale in the field to the east of Mount View to capture overland surface water flows which cause localised flooding. It is intended that it will also act as a temporary attenuation pond
- A new inlet structure incorporating a silt trap and debris screen located immediately downstream of the swale, at the entrance to the proposed culvert (see point 2 below), to reduce blockages and prevent unauthorised entry into the culvert
- A new earth bund and land drain to re-direct overland surface water flows towards the inlet swale
- A gabion structure to retain an embankment adjacent to the new inlet head wall

2. Flood relief culvert

- An 850 metre underground culvert to convey flood water from the inlet swale to a drainage ditch to the south west, bypassing residential properties in Feniton

3. Outfall structure

- A new culvert outfall structure consisting of a curved, concrete open channel bed and gabion walls to retain the adjacent embankment. Energy dissipation features are added to the concrete channel bed to decrease flow velocity
- Improvements to the existing ditch behind Metcombe Cottage to tie in with improvements made further downstream in Phases 1 and 2

Proposed Development

The current application proposes modifications to the design of the approved Phase 4 works involving the following:

1. Redesign of the inlet swale on the land to the east of Mount View to incorporate the following:
 - a) The sitting of the structure within the ground rather than on raised embankments with deeper ground excavation
 - b) A larger debris screen structure to meet current regulations
 - c) Larger wing walls to the debris screen structure with gabion baskets in place of concrete
 - d) A single access maintenance ramp, at the north western corner of the field, in place of three access ramps previously approved

- e) The addition of timber access steps within the swale/channel
- f) Limited raising of land to the south east to prevent any flood waters from bypassing the channel

2. Omission of a network of smaller diameter (450mm and 300mm) pipes that are no longer required.

3. An extension of the approved culvert - as a concrete box culvert - into the field to the west of the Green Lane/Ottery Road junction with a discharge via a relocated outlet structure, consisting of a curved gabion basket headwall and outfall channel with concrete bed, into an existing drainage ditch that runs alongside the hedged western boundary of the field.

This has been changed from a large concrete structure with a sluice, silt trap and pedestrian bridge to a smaller redesigned structure to reduce the velocity of flow leaving the pipe culvert.

It has also been moved so that it can be inspected/maintained from the public highway rather than requiring regular access across private land.

These revisions aside, the approved Phase 4 scheme remains unchanged from the original 2014 application.

The proposed culvert extension and outlet structure involves additional operational development on land beyond the 2014 application site. As such, these operations cannot be considered either in the form of a non-material amendment under section 96A of the Town and Country Planning Act (TCPA) or a minor material amendment under section 73 of the TCPA to the original planning permission ref. 14/2882/MFUL.

Moreover, they are not considered to be permitted under any provisions set out within the Town and Country Planning (General Permitted Development) Order (GPDO), hence the requirement for a fresh full application relating to the entirety of this phase of the flood alleviation scheme.

Considerations/Assessment

Principle of Development

As stated previously at the time of the original 2014 application, the need for a flood alleviation scheme for Feniton is well documented. The village has flooded on a number of occasions in the comparatively recent past and this brings with it not only the financial costs to the Council, local businesses and residents but also personal misery.

Although three phases of the scheme have been completed, the remaining fourth phase to which the revised proposals relate is of obvious importance to the effectiveness of the development as a whole. Given this, together with the extant status of the 2014 permission, it is considered that the proposals are acceptable in principle.

However, as with the previous proposal there are a number of contextual issues that require consideration. These principally relate to flood risk and impact upon landscape character, trees and ecology, each of which is discussed in turn as follows.

Flood Risk

Although the primary purpose of the proposal is to reduce the risk of flooding it is important to consider the implications of any works involving the control of flood waters. This is to ensure that any benefits that are provided in one location do not cause additional harm in another. To this end, the submission is accompanied by a detailed flood risk assessment.

Its main conclusions are:

- The proposed works do not encroach into Environment Agency (EA) flood zones 2 and 3 although they do intentionally encroach into an overland flow path associated with surface water runoff
- The vulnerability classification of the proposed works is water-compatible development
- The vulnerability of the proposed works is compatible with the envisaged flood risk
- As the development is within flood zone 1, the proposal satisfies the sequential test for flood risk and is not therefore subject to the need to pass the exception test. However, since it has to interface with an area that is at higher risk of flooding, the impact of the proposed works on flood risk elsewhere should be considered
- The proposed works will reduce the final discharge from the culvert from the previously approved discharge rate of 2.3 cu.m./s to 2.0 cu.m./s.
- The proposed works would result in an enhanced capacity in excess of the 1% annual exceedance probability event (1 in 100-year return period) with a 30% allowance for future climate change

However, the assessment has had to be revised in the light of EA concerns as to the lack of sufficient information in relation to groundwater protection, most notably a demonstration that risks posed by the development to groundwater can be satisfactorily managed. A ground investigation was therefore required to characterise the site and evaluate the risk of impact to controlled waters for any contaminations or water pollution, more particularly owing to the site being located within a source protection zone and the encroachment of part of the scheme within the boundary of a historic landfill site just west of the railway line on the southern side of Green Lane.

In response, a Controlled Waters Risk Assessment report has been provided that satisfactorily demonstrates to the EA that it would be possible to manage the risks posed to controlled waters by the development. However, further detailed information - in the form of a remediation strategy - is required, principally on account of the historic landfill use which presents a high/medium risk of contamination that could be mobilised during construction and in turn pollute controlled waters.

A condition is therefore recommended to secure the submission for approval, and implementation thereafter, of a remediation strategy.

Impact upon Character and Appearance of Landscape

While the main flood relief culvert would clearly be installed underground and would not therefore impact the character and appearance of the area, the proposed swale, bund/land drain, silt trap, debris screen, access/maintenance ramp, gabion basket walls, headwall and outfall structure would all represent above ground elements of the proposals.

Although the swale, bund and ramp would change the topography and appearance of the field to the east of Mount View, the impact would be little more than localised in extent. Equally, whilst the other operations would read as engineered and rather harsh interventions in the landscape, they are essential parts of the scheme that, taken both in themselves and in the context of the development as a whole, are not considered likely to result in material harm to the character and appearance of the two main fields within which the modifications and additional operations would take place. This is also more especially given also the re and extent of the previously approved works that could alternatively be carried out in light of the extant status of the 2014 permission by way of a fallback scenario.

An existing orchard lies to the south of the existing railway line. It is understood that this has a dual purpose in both providing a commercial crop of apples as well as cover for free range poultry. While the proposed flood alleviation is culverted at this point, a working margin to construct the culvert is required. While such a margin would take place along the edge of the field it is likely to result in the loss of a small number of fruit trees. Noting that these can be replaced, it is not considered that any landscape harm would result.

Trees

The submission is accompanied by an arboricultural impact assessment report, incorporating a tree protection plan and arboricultural method statement prepared in accordance with B.S. 5837:2012.

These mainly propose construction exclusion zones and the installation of tree protection fencing (either braced Herras or high visibility barrier) adjacent to trees, tree groups and hedges as follows:

1. Around key trees on the northern and southern hedged boundaries of the field to the east of Mount View as well as along the entirety of the eastern side of the proposed swale.
2. A small group of trees on the southern side of Station Road between Louvigny Close and Silverton Rise.
3. Between a group of roadside trees along the southern side of Green Lane and larger tree groupings to the south to the west of the railway line.
4. Around two individual category B Oaks close to the Green Lane/Ottery Road junction and further south west alongside Ottery Road.
5. Alongside a category A Oak and the additional application site area adjacent to Ottery Road.

The Council's Tree Officers are satisfied, on the basis of the details submitted, that the proposals would result in no more than a limited impact upon the arboricultural features on and adjacent to the site and raise no objections subject to a condition being attached to any grant of permission requiring compliance with the tree protection measures supplied.

Ecology

A detailed report, following an Extended Phase 1 habitat survey of the site, and subsequent Phase 2 surveys in relation to hazel dormice and badgers, has also been provided with the application.

The proposals include the permanent loss of 5 metres of hedgerow and the temporary loss of 11 metres of hedgerow, which include the sections confirmed as dormouse habitat. However, a Dormouse Mitigation Licence from Natural England was obtained for the works in September 2023 and the hedgerow removal was completed under ecological supervision in October 2023. Although further temporary hedgerow removal is proposed, the affected sections are considered unsuitable habitat for dormice due to their isolated location and poor habitat connectivity and are not subject to the requirement to obtain a dormouse licence. Furthermore, the hedgerows are to be re-planted with a mix of native species.

Several habitats on site provide suitable foraging and commuting areas for bats. The report considers the trees proposed for removal do not contain suitable bat roosting features. Mitigation and compensation measures are considered acceptable and appropriate for the predicted impacts and the scale of the works.

Overall, the submitted ecological survey information, including various recommended ecological avoidance, mitigation and enhancement measures, is considered acceptable subject to the successful implementation of these measures and conditions to secure the submission, agreement and implementation thereafter of landscape and construction ecological management plans (LEMP and CEcoMP)

Archaeology

The original permission for the flood alleviation scheme, ref. 14/2882/MFUL, carried a condition requiring the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) approved by the Local Planning Authority.

The agents representing the Council have advised, in response to a query from the County Council's Historic Environment Team (HET), that there is an intention to implement the WSI that was approved in the discharging of this condition in relation to the archaeological works on Phases 2, 3 and 4 of the scheme, the Phase 1 works having already been implemented.

The HET therefore recommends a condition to ensure that the development proceeds in accordance with this undertaking.

Other Issues

The scheme would again result in the loss of a small amount of productive Best and Most Versatile (BMV) (Grade 1 and 2) agricultural land. However, although weighing against the proposal in the planning balance, it is not considered to outweigh the benefits assisted with the flood alleviation scheme. Again, in this regard the presence of a fallback scenario in the form of the extant 2014 permission is highlighted.

The remaining issue is the presence of a public footpath (no. 1 on the Definitive Map) that extends southwards off Green Lane and which the length of proposed culvert running parallel with Green Lane would cross under. However, whilst the footpath may require a temporary closure during construction of the scheme, it would not be affected long term given the underground nature of the proposed operations within this part of the site.

The issues raised by interested third parties regarding the management of access to properties in Warwick Close during the course of operations are acknowledged. However, they relate to the management of the project as opposed to its merits in Planning terms and, as such, are not directly material to assessment of the proposals.

Conclusion

In conclusion and having regard to the balance of the various material considerations set out above, it is considered that the submitted revised proposals for the Phase 4 operations relating to the Feniton Flood Alleviation Scheme are acceptable.

Approval is therefore recommended subject to conditions relating to the submission of a remediation strategy for mitigating the risk to groundwater from the development along with a LEMP and CECoMP in line with the recommendations made by the EA and the Council's Ecologist, respectively. A further condition is also recommended to secure the implementation of the remaining archaeological work secured through the submission and agreement of the WSI in connection with the discharging of the relevant condition attached to the previous planning permission granted under ref. 14/2882/MFUL.

RECOMMENDATION

APPROVE subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission and shall be carried out as approved.
(Reason - To comply with section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice.
(Reason - For the avoidance of doubt.)
3. Prior to commencement of any works on site (including demolition), measures for the protection of trees and hedges during the course of development shall be carried out as detailed within the Arboricultural Report, Tree Protection Plan and Arboricultural Method Statement dated 20th December 2023 prepared by Advanced Arboriculture. All works shall adhere to the principles embodied in B.S. 5837:2012 and shall remain in place until all works are completed, and no changes shall be made without first gaining approval in writing from the Local Planning Authority.

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

a) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and/or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.

b) No burning shall take place in a position where flames could extend to within 5m of any part of any tree to be retained.

c) No trenches for services or foul/surface water drainage shall be dug within the crown spreads of any retained trees (or within half the height of the trees, whichever is the greater) unless agreed in writing by the Local Planning Authority. All such installations shall be in accordance with the advice given in Volume 4: National Joint Utilities Group (NJUG) Guidelines For The Planning, Installation And Maintenance Of Utility Apparatus In Proximity To Trees (Issue 2) 2007.

d) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.

e) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.

f) No trees, shrubs or hedges within the site which are shown as being planted or retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed without the prior written consent of the Local Planning Authority. Any trees, shrubs or hedges removed without such consent, or which die or become severely damaged or seriously diseased within five years from the occupation of any building, or the development hereby permitted being brought into use shall be replaced with trees, shrubs or hedge plants of similar size and species unless the Local Planning Authority gives written consent to any variation.

(Reason – A pre-commencement condition is required to ensure retention and protection of trees and hedges on the site prior to and during construction 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 D3 (Trees and Development Sites) of the adopted East Devon Local Plan 2013-2031).

4. The development hereby permitted shall be carried out strictly in accordance with the Ecological Impact Assessment (Hamilton Ecology, January 2024), in particular the ecological mitigation and enhancement measures detailed in Table 2 and Figure 3 (Ecological Constraints and Opportunities Plan). A written record shall be submitted to the Local Planning Authority at the respective stages of the development to include records of compliance monitoring, supervised habitat removal, and photographs of the installed ecological mitigation, compensation and enhancement measures listed in Table 2 and Figure 3.

(Reason - To ensure that the development has no adverse effect on protected and notable species and provides ecological mitigation and enhancement measures in accordance with Strategy 47 (Nature Conservation and Geology) and Policy EN5 (Wildlife Habitats and Features) of the adopted East Devon Local Plan 2013-2031.)

5. Prior to the commencement of development, a landscape and ecological management plan (LEMP) shall be submitted to, and be approved in writing by, the Local Planning Authority. The LEMP shall be based on the submitted Ecological Impact Assessment. It shall include the location and design of biodiversity features, including the newly planted and enhanced hedgerow planting, the creation of the wildflower meadow and wetland and other features to be shown clearly on the submitted plans.

The content of the LEMP shall also include the following.

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a minimum 30-year period).
- g) Details of the body or organization responsible for implementation of the plan.
- h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

(Reason – A pre-commencement condition is required to ensure that the development provides ecological mitigation and enhancement measures in accordance with a prior evaluation of features to be managed in accordance with Strategy 47 (Nature Conservation and Geology) and Policy EN5 (Wildlife Habitats and Features) of the adopted East Devon Local Plan 2013-2031.)

6. No development shall take place (including ground works) until a Construction and Ecological Management Plan (CECoMP) has been submitted to and approved in writing by the Local Planning Authority. The CECoMP shall include the following:
 - a) Risk assessment of potentially damaging construction activities, to include an invasive species management plan to prevent the spread of non-native plant

species during the works. This is to include a pre-construction check a minimum of 6 weeks prior to commencement of works.

b) Identification of "biodiversity protection zones".

c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).

d) The location and timing of sensitive works to avoid harm to biodiversity features.

e) The times during construction when specialist ecologists need to be present on site to oversee works.

f) Responsible persons and lines of communication, including reporting compliance of actions to the LPA.

g) The role and responsibilities on site of an ecological clerk of works (ECoW), including any licence requirements.

h) Use of protective fences, exclusion barriers and warning signs.

The approved CEcoMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

(Reason – A pre-commencement condition is required to ensure that the development has no adverse effect on protected and notable species and provides ecological mitigation and enhancement measures further to a pre-construction risk evaluation of potentially damaging construction activities and the agreement of appropriate management measures, where necessary, in accordance with Strategy 47 (Nature Conservation and Geology) and Policy EN5 (Wildlife Habitats and Features) of the adopted East Devon Local Plan 2013-2031.)

7. No development relating to the landfill and groundwater protection area (as defined in yellow shading on the attached plan) 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. The strategy shall include the following components:
 1. A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - 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 and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components shall require the written approval of the Local Planning Authority. The scheme shall be implemented as approved.

(Reason – A pre-commencement condition is necessary to ensure that contamination of the site is corrected at the appropriate stage of development and that the development does not contribute to and is not put at unacceptable risk from or adversely affected by unacceptable levels of water pollution in line with Policy EN14 (Control of Pollution) of the adopted East Devon Local Plan 2013-2031 and paragraph 180 of the National Planning Policy Framework (2023).)

8. The development hereby permitted shall proceed in accordance with the Written Scheme of Investigation prepared by AC Archaeology (document ref: ACD1137/1/1 dated 12th May 2015). The development shall be carried out at all times in accordance with the approved scheme.

(Reason - To ensure, in accordance with Policy EN6 (Nationally and Locally Important Archaeological Sites) of the adopted East Devon Local Plan 2013-2031 and paragraph 211 of the National Planning Policy Framework (2023), that an appropriate record is made of archaeological evidence that may be affected by the development.)

NOTE FOR APPLICANT

Informative: Confirmation - No CIL Liability. This Informative confirms that this development is not liable to a CIL charge.

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:

001001 REV C01	Location Plan	15.02.24
001002 REV C01	Other Plans key plan	15.02.24
003001 REV C01	Other Plans	15.02.24
003005 REV C01	Other Plans	15.02.24
003002 REV C01	Other Plans	15.02.24
003003 REV C01	Other Plans	15.02.24
003004 REV C01	Other Plans	15.02.24
003006 REV C01	Other Plans	15.02.24

003007 REV C01	Other Plans	15.02.24
004000 REV C01	Sections	15.02.24
004001 REV C01	Other Plans	15.02.24
004002 REV C01	Other Plans	15.02.24
004003 REV C01	Sections	15.02.24
004004 REV C01	Other Plans	15.02.24
004005 REV C01	Other Plans	15.02.24

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.

APPENDIX – Technical Consultations - Full consultation comments

EDDC Trees

The proposal is supported by an arboricultural impact assessment, tree constraints plan, tree protection plan and arboricultural method statement. Together these show that the proposal will only have a limited impact on the arboricultural features on site and therefore no objections are raised. I recommend the following condition:

a) Prior to commencement of any works on site (including demolition), the Tree Protection measures shall be carried out as detailed within the Arboricultural Report

and Arboricultural Method Statement submitted by Advanced Arboriculture on the 20/12/2023. All works shall adhere to the principles embodied in BS 5837:2012 and shall remain in place until all works are completed, no changes to be made without first gaining consent in writing from the Local Authority.

b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.

c) No burning shall take place in a position where flames could extend to within 5m of any part of any tree to be retained.

d) No trenches for services or foul/surface water drainage shall be dug within the crown spreads of any retained trees (or within half the height of the trees, whichever is the greater) unless agreed in writing by the Local Planning Authority. All such installations shall be in accordance with the advice given in Volume 4: National Joint Utilities Group (NJUG) Guidelines For The Planning, Installation And Maintenance Of Utility Apparatus In Proximity To Trees (Issue 2) 2007.

e) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.

f) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.

g) No trees, shrubs or hedges within the site which are shown as being planted or retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed without the prior written consent of the Local Planning Authority. Any trees, shrubs or hedges removed without such consent, or which die or become severely damaged or seriously diseased within five years from the occupation of any building, or the development hereby permitted being brought into use shall be replaced with trees, shrubs or hedge plants of similar size and species unless the Local Planning Authority gives written consent to any variation.

(Reason - To ensure retention and protection of trees on the site prior to and during construction 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 D3 - Trees and Development Sites of the Adopted New East Devon Local Plan 2013-2031).

Environment Agency (Original consultation comments)

Thank you for consulting us on this application.

Environment Agency position

Whilst we support the principle of the scheme from the perspective of flood risk management, we do raise an objection because insufficient information has been submitted in relation to groundwater protection.

Reason

Our approach to groundwater protection is set out in 'The Environment Agency's approach to groundwater protection'. In implementing the position statements in this

guidance we will oppose development proposals that may pollute groundwater especially where the risks of pollution are high and the groundwater asset is of high value. Groundwater is particularly sensitive in this location because the proposed development site is located within source protection zone 3 and, part of the proposed scheme encroaches within the boundary of a historic landfill site ('Sidmouth Junction').

To ensure development is sustainable, applicants must provide adequate information to demonstrate that the risks posed by development to groundwater can be satisfactorily managed. Therefore, a ground investigation is required to characterise the site and evaluate risk of impact to controlled waters for any contaminations or water pollution.

Overcoming our objection

The applicant should submit additional information relating to groundwater protection as outlined in this letter. Please re-consult us on any relevant information submitted.

Please contact us again if you require any further advice.

Environment Agency (Further consultation comments)

Thank you for re-consulting us on this application.

Environment Agency position

Following review of the submitted Controlled Waters Risk Assessment ref. 5222087/GQRA/001/V1 by AtkinsRéalis dated 11th June 2024, we have no objection to the proposed development subject to the inclusion of a condition relating to the management of contaminated land on any permission granted. Suggested wording for this condition and the reason for this position is provided below.

Condition

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 will include the following components:

1. A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - 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 and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

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

We can confirm that the applicant has already presented a satisfactory preliminary risk assessment and is proposing to undertake additional site investigation to supplement data from 2014. This additional data will help to characterise the site further and will enhance the risk assessment. We look forward to receiving the additional information so that elements (2), (3) and (4) of the above Condition can be satisfied.

Reason - To ensure that the development does not contribute to and is not put at unacceptable risk from or adversely affected by, unacceptable levels of water pollution in line with paragraph 180 of the National Planning Policy Framework.

Reason for position - The previous use of part of the application site as a landfill presents a high/medium risk of contamination that could be mobilised during construction and in turn, pollute controlled waters. Controlled waters are particularly sensitive in this location because the proposed development site is within source protection zone 3 of South West Water's public water supply boreholes in the Otter Valley. The site is also located on the Otter Sandstone, which is a principal aquifer, which are capable of yielding significant quantities of water for potable supply and are important for providing base flow to rivers during dry periods.

The applicant's submitted Controlled Waters Risk Assessment demonstrates that it will be possible to manage the risks posed to controlled waters by this development. Further detailed information will however be required before built development is undertaken. We believe that it would place an unreasonable burden on the developer to ask for more detailed information prior to the granting of planning permission but respect that this is a decision for the local planning authority.

In light of the above, the proposed development will be acceptable if a planning condition is included requiring the submission of a remediation strategy. This should be carried out by a competent person in line with paragraph 189 of the National Planning Policy Framework. Without this condition, which is outlined above, we would object to the proposal in line with paragraph 180 of the National Planning Policy Framework because it cannot be guaranteed that the development will not be put at unacceptable risk from, or be adversely affected by, unacceptable levels of water pollution.

Please contact us again if you require any further advice.

EDDC District Ecologist

1 Introduction

This report forms the EDDC's Ecology response to the full application for the above site.

The report provides a review of ecology related information submitted with the application in relation to adopted policy, relevant guidance, current best practice and existing site context and should be read in conjunction with the submitted information.

2 Review of submitted details

Ecological Impact Assessment (EclA)

The application is supported by an Ecological Impact Assessment (EclA), including a biological records centre data search and surveys for dormice and badgers. The application is also informed by a Preliminary Ecological Report (Blackdown Environmental, 2014), Phase 2 Ecological Survey Report (Blackdown Environmental 2014) and an Ecological Statement of Compliance (Blackdown Environmental 2015) associated with a previously consented development (ref. 14/2882/MFUL) involving the first three phases of this scheme.

The ecological surveys to support the application are within 12 months of the application and follow best practice guidelines and are therefore considered suitable to support the application. The botanical survey was undertaken outside the optimal survey period; however acceptable justification is provided.

Ecological receptors

Ecological surveys determined the site supports dormice, harvest mice and foraging and commuting badgers. An outlier badger sett was identified adjacent to the site, along the railway line. The EclA considers the site also provides potential habitat for commuting and foraging bats, nesting birds, hedgehogs, brown hares, reptiles and common amphibians.

The site is within a great crested newt (GCN) consultation zone, however, there are no suitable breeding ponds within 250m of the site and therefore are considered absent. In addition, the EclA considers beavers, otters, and water voles are also absent from the site.

The EclA notes the presence of variegated yellow archangel, an invasive non-native species (listed on Schedule 9 of the Wildlife and Countryside Act (1981, as amended)), in the southwest section of the site and considers the works have the potential to spread the species. Suitable mitigation measures have been provided which is welcome.

Further details on the management of the species during construction could be provided within a Construction and Ecological Management Plan (CECoMP).

Ecological Impacts

There are no predicted impacts on any designated sites for wildlife interest.

The development would result in permanent loss of 5 m of hedgerow, 0.18 ha of modified grassland, several young broad-leaved trees, and areas of tall ruderal vegetation and scrub. In addition, the proposals include the temporary loss of 11 m of hedgerow, proposed to be reinstated during the first available planting season with a mix of native species.

In the absence of mitigation measures, the EclA report considers the impacts of site clearance and construction could result in killing or injury to several protected

species, including nesting birds, badger, dormice, common reptiles and amphibians, harvest mouse and hedgehog.

Bats

Several habitats on site provide suitable foraging and commuting habits for bats. The report considers the trees proposed for removal do not contain suitable bat roosting features. Mitigation and compensation measures are considered acceptable and appropriate for the predicted impacts and the scale of the works.

Dormice

The proposals include the permanent loss of 5 m of hedgerow and the temporary loss of 11 m of hedgerow, which include the sections confirmed as dormouse habitat and identified as TN1, TN3 and TN12. A Dormouse Mitigation Licence from Natural England was obtained for the works in September 2023 and the hedgerow removal was completed under ecological supervision in October 2023. Further hedgerow removal is proposed (TN7, TN8, and TN18 within Figure 2: Phase 1 Habitat Plan, target notes and photographs); these sections are considered unsuitable habitat for dormice due to their isolated location and poor habitat connectivity and are not subject to dormouse licence. Their removal is temporary and will be re-planted upon completion of the works.

Ecological mitigation, compensation, and enhancement measures

The submitted ecological survey information including ecological avoidance, mitigation, and enhancement measures are considered acceptable assuming the following conditions are imposed and the successful implementation of the mitigation and enhancement measures.

3 Conclusions and recommendations

If minded for approval, the following conditions are recommended:

- o Works shall proceed strictly in accordance with the Ecological Impact Assessment (Hamilton Ecology, January 2024), in particular the ecological mitigation and enhancement measures detailed in Table 2 and Figure 3 (Ecological Constraints and Opportunities Plan). A written record shall be submitted to the local planning authority to include records of compliance monitoring, supervised habitat removal, and photographs of the installed ecological mitigation, compensation and enhancement measures listed in Table 2 and Figure 3.

- o A landscape and ecological management plan (LEMP) shall be submitted to, and be approved in writing by, the local planning authority prior to the commencement of the development based on the submitted Ecological Impact Assessment. It should include the location and design of biodiversity features including the newly planted and enhanced hedgerow planting, the creation of the wildflower meadow and wetland, and other features to be shown clearly on submitted plans.

The content of the LEMP shall also include the following.

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a minimum 30-year period).
- g) Details of the body or organization responsible for implementation of the plan.
- h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

o No development shall take place (including ground works) until a Construction and Ecological Management Plan (CECoMP) has been submitted to and approved in writing by the local planning authority. The CECoMP shall include the following:

- a) Risk assessment of potentially damaging construction activities, to include an invasive species management plan to prevent the spread of non-native plant species during the works. This is to include a pre-construction check a minimum of 6 weeks prior to commencement of works.
- b) Identification of "biodiversity protection zones".
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons and lines of communication, including reporting compliance of actions to the LPA.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW), including any licence requirements.
- h) Use of protective fences, exclusion barriers and warning signs.

The approved CECoMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

Reason

To ensure that the development has no adverse effect on protected and notable species and provides ecological mitigation and enhancement measures in accordance with Strategy 47 (Nature Conservation and Geology) and Policy EN5

(Wildlife Habitats and Features) and EN14 (Control of Pollution) of the Adopted East Devon Local Plan 2013-2031

DCC Historic Environment Officer

Application No. 24/0331/MFUL

Land North and South of Station Road, Warwick Close, Wells Avenue, Land Opposite Greenacres Close And Land Adjacent To Ottery Road Near Sidmouth Junction Sewage Pumping Station. Feniton - Amendments to phase 4 of the Flood alleviation scheme (consented under ref; 14/2882/MFUL) - works comprising the construction of channels, culverts and swales and mitigation works including flood defences, inlet water storage areas, infrastructure and outfall structure: Historic Environment

My ref: ARCH/DM/ED/22765c Comments received 08/05/24

Thank you for the clarification regarding Phases 2 and 3 of the scheme subject to planning application 14/2882/MFUL. Since there is an undertaking from AtkinsRéalis referred to in our email exchange that they will be implementing the previously approved written scheme of investigation I would advise - in accordance with current practice - that any consent that may be granted for the above planning application should be conditional upon the following worded condition:

'The development shall proceed in accordance with the Written Scheme of Investigation prepared by AC Archaeology (document ref: ACD1137/1/1, dated 12th May 2015) and submitted in support of this planning application. The development shall be carried out at all times in accordance with the approved scheme.'

Reason

'To ensure, in accordance with Policy EN6 (Nationally and Locally Important Archaeological Sites) of the East Devon Local Plan and paragraph 211 of the National Planning Policy Framework (2023), that an appropriate record is made of archaeological evidence that may be affected by the development.'

I will be happy to discuss this further with you, the applicant or their agent.

I refer to the above planning application. The consent granted for application 14/2882/MFUL is conditional upon a programme of archaeological work being undertaken - Condition 4.

While the archaeological works were implemented on Phase 1 of this scheme, this current application refers to Phase 4 but I am unaware that any archaeological works have been undertaken on Phases 2 and 3 of this scheme, if they have previously proceeded, as per the agreed programme of archaeological work - copy attached.

As such, I would advise that the applicant is made aware of the need to undertake archaeological works during the course of the groundworks associated with the construction of the flood alleviation scheme as per the agreed programme of archaeological work.

I will be happy to discuss this further with you, the applicant or their agent.