

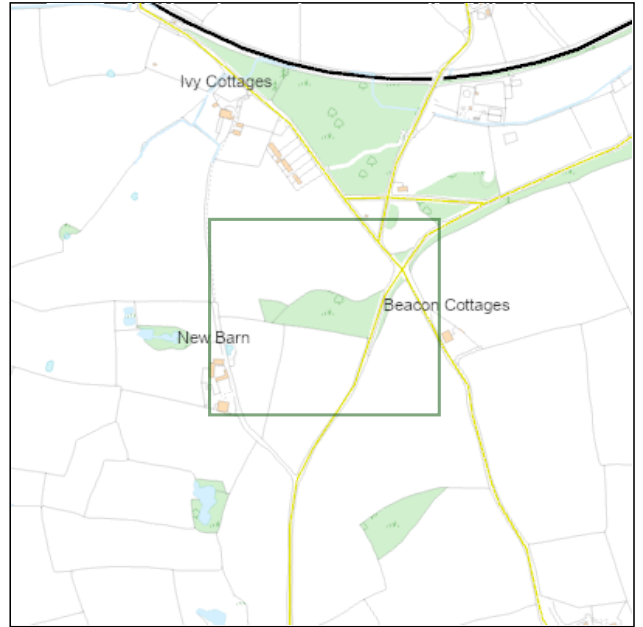
Ward Tale Vale

Reference 24/0603/FUL

Applicant Mr Craig Davies

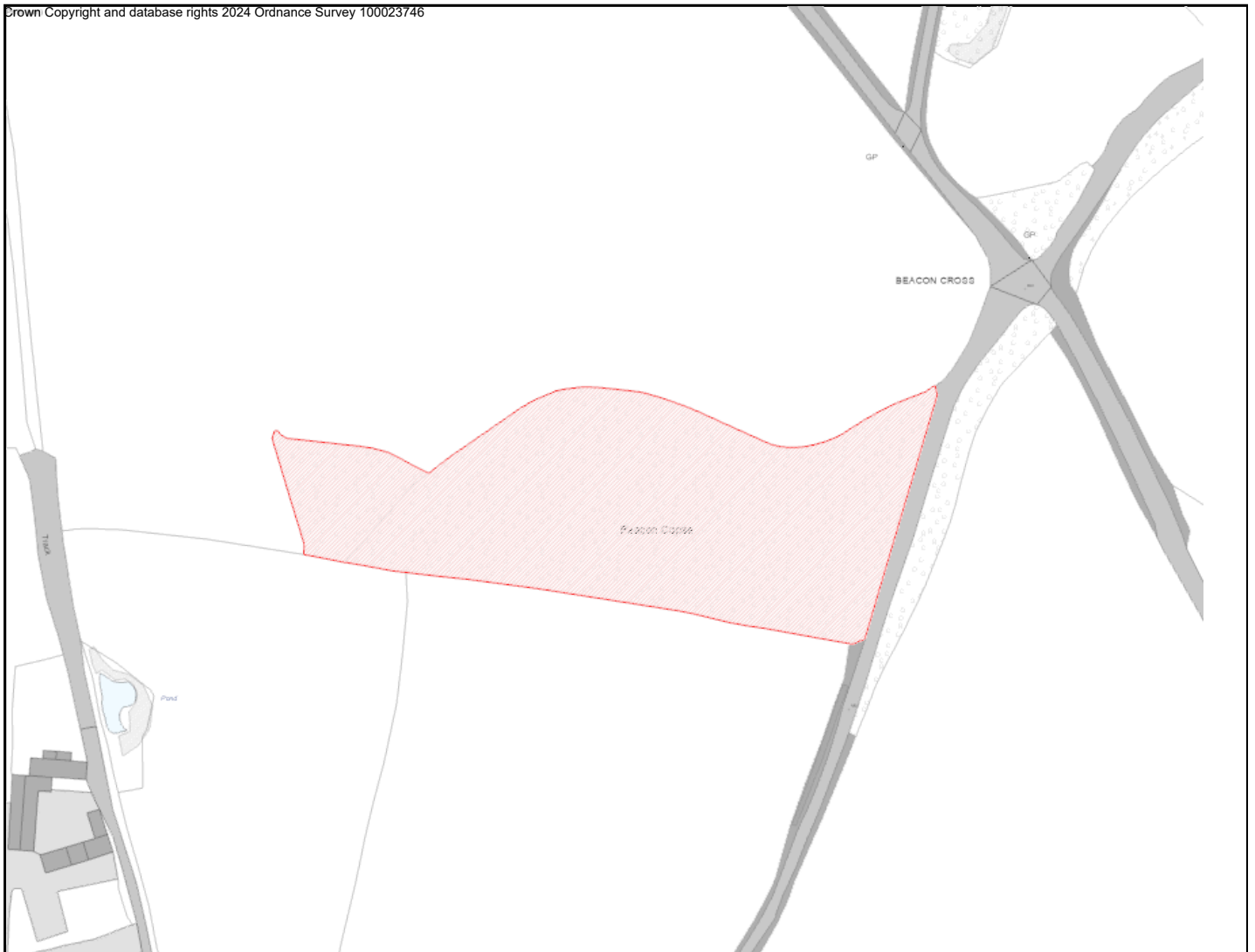
Location Beacon Copse Talaton

Proposal The erection of 4 x military tents; installation of 20ft container for storage of equipment; installation of 2 person compost toilet



RECOMMENDATION: Approval with conditions

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		Committee Date: 20.08.2024
Tale Vale (Talatan)	24/0603/FUL	Target Date: 13.06.2024
Applicant:	Mr Craig Davies	
Location:	Beacon Copse, Talaton	
Proposal:	Retrospective permission for the change of use of land from agricultural to an educational facility (F.1) and the erection of 4 x military tents, siting of two storage containers and installation of a compost toilet.	

RECOMMENDATION: Approval with conditions

EXECUTIVE SUMMARY

The application is before members as the development would be a material departure from the Development Plan.

The application seeks planning permission for the change of use of Beacon Copse to an educational facility for children and young adults between the ages 11 – 16. The applicant, South West Alternative Provision (SWAP), operate a military inspired educational base for those with Special Educational Needs and Disabilities (SEND).

Strategy 7 (Development in the Countryside) of the East Devon Local Plan 2013 - 2031 (EDLP) states that development shall only be permitted where it is in accordance with a specific Local or Neighbourhood Plan policy. However, there are no policies within the East Devon Local Plan or an adopted Neighbourhood Plan that would support the principle of this type of development.

Notwithstanding this, the provisions of paragraph 99 of the National Planning Policy Framework offers support for the provision of educational facilities and states that ‘great weight’ should be given to create, expand and alter schools.

The primary issues for consideration are the environmental impact of the proposals, owing the applications site’s countryside location, and weighing this against the social and economic benefits that the proposals would provide.

Having reviewed the visual impact of the proposals, officers are satisfied that the scale and orientation of the tents, storage containers and compost toilet would not harm the character and appearance of the area.

However, it is considered that development would conflict with the provisions of

Strategy 5b and Policy TC2 of the Local Plan due to the site's remoteness from nearby public transport links and the subsequent need for staff and pupils to be dependent on private modes of transport to attend school. The development would therefore result in a degree of environmental harm.

Notwithstanding this, evidence available to the LPA indicate that there is a local and national shortage of educational facilities for SEND pupils. It is therefore the position of officers that the social benefits of the scheme weigh significantly in favour of development despite the identified environmental harm. The application is therefore recommended for approval subject to conditions listed at the end of this report.

CONSULTATIONS

Local Consultations

Parish/Town Council

The Council RESOLVES to support the application for the following reasons:-

- ' Excellent traffic management plan in place, allaying any highway or safety issues
- ' No impact on residents or the environment ' nothing is visible outside of the site and all infrastructure is temporary and will leave no trace if the venture closes
- ' The applicants are working closely with the landowner's forestry and land experts to ensure that Beacon Copse is preserved in its natural state with no tree/stump/hedge removal
- ' the need for Alternative Provision for young adults who struggle to cope with traditional education is vitally important, and this seems an ideal location to provide a much needed resource

Technical Consultations

County Highway Authority

Observations:

I have visited the site and reviewed the planning documents.

The access is established with suitable visibility that can be taken into the middle of the carriageway due to the lane from Beacon Cross being a single vehicle width.

The Design and Access statement incorporates measures to restrict the trip generation including only having student numbers of 12 and 4 members of staff, restricted arrival and departure times, combined transported students, restricted travel routes and 4 vehicle spaces on-site with additional visitors parking at Escot Park Cafe and being collected, whilst it may be difficult to enforce some of these policies, these policies combined I believe will ensure that the sites trip generation will not become excessive for the vicinity.

However, I do recommend whilst respecting the natural environment that the first 5m of the access is laid with a sealed surface in order to reduce drainage and debris being brought onto the highway network.

Recommendation:

THE DIRECTOR OF CLIMATE CHANGE, ENVIRONMENT AND TRANSPORT, ON BEHALF OF DEVON COUNTY COUNCIL, MAY WISH TO RECOMMEND CONDITIONS ON ANY GRANT OF PLANNING PERMISSION

EDDC Trees

No objection. It is noted that within the tents ground protection will be provided via wooden pallets which is considered suitable. It is considered that it may also be necessary to mulch areas of heavy footfall - entrances to tents, footpaths, around outdoor seating etc to help reduce ground compaction.

Environmental Health

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

Ecological Officer

No objection, application is retrospective and therefore outside scope of BNG.

Other Representations

None

Planning History

19/1909/FUL - Change of use of woodland and agricultural land to educational base for children aged 3-6, including creation of a car parking area and the creation of a classroom and toilet. REFUSED

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 5B (Sustainable Transport)
Strategy 7 (Development in the Countryside)
Strategy 47 (Nature Conservation and Geology)
D1 (Design and Local Distinctiveness)
D3 (Trees and Development Sites)
EN5 (Wildlife Habitats and Features)
TC2 (Accessibility of New Development)

TC7 (Adequacy of Road Network and Site Access)
TC9 (Parking Provision in New Development)
EN9 (Development Affecting a Designated Heritage Asset)
EN14 (Control of Pollution)
EN13 (Development on High Quality Agricultural Land)

Government Planning Documents

NPPF (National Planning Policy Framework 2023)

OFFICER REPORT

Site Location and Description

The application site relates to a small woodland known as Beacon Copse, approximately a hectare in size just south west of Beacon Cross between Whimple and Feniton. The immediate area is inherently rural character with sunken rural lanes that subdivide parcels of agricultural land. The application site sits above the level of the adjacent highway to Larkbeare and is accessed via a break in the verge in the north eastern corner of the application site.

Proposed Development

The application seeks retrospective planning permission for the change of use of Beacon Copse to an educational facility for children and young adults between the ages 11 – 16. The applicant, South West Alternative Provision (SWAP), operate a military inspired educational base for those with Special Educational Needs and Disabilities (SEND). The submitted Design and Access Statement emphasises that the proposal is not for a forest school and the purpose of SWAP is to engage young people in hands-on practical learning to reintegrate them back into mainstream school.

To facilitate the change of use of the land, four military tents have been erected at the site alongside two storage containers and a compost toilet. Access and egress is provided in north eastern corner onto the road between Beacon Copse and Larkbeare. A small parking area has been roped off to the east of the two storage containers.

The school shall operate four days a week during term time and be limited to 12 young people, three instructors and a site caretaker on any given day.

Principle of Development

Beacon Copse is located in the open countryside as defined within the East Devon Local Plan where development is strictly controlled so that it does not impact unreasonably on its surroundings. In this instance, the provision of an education facility at this countryside location does not accord with any policies within the East Devon Local Plan. As such, the principle of the development is contrary to the development plan; it is therefore necessary to consider if there are any material planning considerations that would justify allowing this proposal as a departure from the plan.

Strategy 7 (Development in the Countryside) of the East Devon Local Plan 2013 - 2031 (EDLP) states that development shall only be permitted where it is in accordance with a specific Local or Neighbourhood Plan policy. In addition to this, development shall need to ensure that it is not harmful to the countryside; this may be by virtue of visual harm, increase in traffic, pollution or other factors.

The NPPF is a material consideration and officers are mindful of an appeal against the Local Authority's decision to refuse planning permission 20/0848/FUL for the conversion of a residential dwelling into an independent school for students with Autistic Spectrum Disorder or with Social Emotional Mental Health Needs at Windrush in Poltimore. The appeal was allowed where the inspector considered that the provisions of Paragraph 94 of the NPPF weighed in favour of the proposals. At paragraphs 9 & 10 of the decision the inspector identifies that the proposals would be contrary to Strategies 5B (Sustainable Transport), Strategy 7 and Policy TC2 (Accessibility of New Development) of the Local Plan. Notwithstanding this he went on to conclude:

'9. That said, Paragraph 94 of the Framework identifies the importance that a sufficient choice of school places is available to meet the needs of communities. It goes on to say that the decision maker should give great weight to the need to create, expand or alter schools. It is evident that Devon has a significant need for this type of school, much of which is concentrated around the wider Exeter area. Student numbers are also expected to rise considerably, particularly in East Devon, Exeter and the South Hams. The proximity of Windrush to Exeter and to the M5 motorway make it well placed in this regard.

10. It is also logical that the predication of the facility on outdoor learning requires it to be within a rural location, where it will invariably be beyond the reach of public transport. I also accept that the relatively wide geographical spread of pupils in comparison to mainstream schools and the specific needs of pupils would lead to specialist or private vehicles being the predominant method of school transportation regardless of the school's location. These factors weigh significantly in the scheme's favour. I return to them in the planning balance.'

The NPPF has since been amended and the provisions of the former paragraph 94 are now contained at paragraph 99, the wording of which is provided below:

'99. It is important that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should:

- a) give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications; and*
- b) work with school promoters, delivery partners and statutory bodies to identify and resolve key planning issues before applications are submitted.*

As such, the provisions of paragraph 99 of the NPPF not only supports the principle of the current proposals but also attributes great weight to the provision of

educational facilities. However, notwithstanding this, the inspector in the Windrush case also attributed weight to the appeal site's accessibility due to the site's 'well placed' proximity to the M5 and Exeter. The application site shares a different relationship to nearby settlements and arterial routes and therefore the accessibility of the site shall need to be reviewed. Secondly, as the appeal decision was issued over three years ago, a review into the current need of such a facility shall be undertaken'.

Justification for Development

In terms of demonstrating whether there is a need for the proposed educational facility, SWAP are currently operating from the site and have limited capacity to 12 students on any given day. As they are already operating at capacity, there is clearly currently a demand for the facility. The applicant has also detailed within the submitted Design and Access Statement and letter received 20th June that the responsibility for providing alternate types of schooling for young people is contained within the Children and Families Act 2014 at Section 21.

Furthermore, the Strategic Review of Special Educational Needs Provision 2017-2018 report by Devon County Council shows that the number of pupils in Devon with special educational needs has increased and is expected to exceed 4000 by March 2018. There is no evidence before the LPA to demonstrate that this need has been met and, having given the recent reporting that mainstream school provision for SEND has been significantly underfunded within the district, it is the position of officers that there is likely still an outstanding need for such provision to come forward through the private sector.

The Devon Education Infrastructure Plan 2016-2033 advises that the County's maintained special school provision stands at 1 school for the whole of East Devon, and that there are no specialist school centres attached to any of the schools in the district and no recorded independent special schools.

Furthermore, in March 2024, The Department for Education stated that at least two in three of schools that provide places for SEND students were either at or over capacity.

Having considered the provisions of paragraph 99 of the NPPF, information submitted from the applicant, information available on Devon County Council's website and information published by Central Government, it is considered that there is a need to provide facilities for those learners with special educational needs nationally and across Devon. This justifies the need for the proposals and highlights social benefits that development of such facilities can provide. This weighs heavily in favour of the application.

Location of the Application Site

Beacon Copse is located approximately 1.5km to the north of the A30, 6Km away from the A373 and 8km away from the M5. The nearest bus stops are in Newtown and Talaton which are not walkable for all to or from the application site. To access

the site, individuals would have to utilise private modes of transport to navigate the network of rural lanes.

Due to the lack of nearby public transport opportunities, the LPA has sought further details from the applicant regarding why the application site's rural location was chosen and necessary to operate from. In response to this, the following points were raised:

- The need for the site to be away from the general public.
- Located where there are several permissible paths, woodland and water features in order to undertake aspects of SWAP's educational programme and omitting the need to travel elsewhere.
- The site itself needs to be free from permissive paths to safeguard the security of the site and equipment.
- Some of the needs of the students requires avoiding any potential engagement with the general public.
- An area that can be controlled, where instructors can closely monitor students within the site's boundaries.
- Physically separate from nearby residential properties to avoid noise disturbance.

Despite the above bullet points, by virtue of the site's location and remoteness from settlements, services or public transport, and accessed by narrow unlit roads, the development would lead to an increase in vehicle movements to and from the site due to the fact that it is unlikely to be desirable to walk or cycle to the site on a regular basis. Application 19/1909/FUL was partly refused on these grounds. However, this decision predated the Windrush appeal, where the inspector attributed significant weight to the provisions of paragraph 99 despite the site being remote from nearby settlements. Whilst Beacon Copse is not as well related to the M5 or Exeter as the appeal case, the scale of the operation and number of students on hand is much smaller. Additionally, the applicant has provided a detailed Transport Plan to demonstrate how students and staff shall access the site.

The applicant has confirmed that young people placed with SWAP come from surrounding schools or through a referral from the local authority. Once a referral has been made, they consider the home address of that young person and will decide whether it is feasible, distance and time wise, for them to attend.

The Transport Plan details that SWAP staff shall collect and transport students to and from the site therefore limiting the footfall of traffic to three vehicles for drop offs and collections. Furthermore, the time frame within which drop offs and collections shall be restricted between 09:15 – 09:45 in the morning and 14:15 -14:45 in the afternoon. Appendix 3 of the Design and Access Statement also communicates that staff shall not approach or leave the site for drop offs via Larkbeare road to the south which is particularly narrow and lacks passing points.

The applicant has provided further details regarding the catchment area that students shall come be accepted from. It is understood that all young people shall

usually be within a 20 mile radius, currently the school has students from Exeter, Tiverton, Exmouth, Sidmouth, Axminster and Honiton. Overall, if the Transport Plan is to be adhered to, it is acknowledged that this would go some distance in reducing the environmental impact of the scheme by lessening the number of private vehicles depended on to transport young people to and from the site.

However, due to the sites remote location, effective implementation of the Transport Plan still results in their being need to depend upon at least four vehicles to access and egress the site. Consequently, the site cannot be said to meet the provisions of Strategy 7 (Development in the Countryside), and Policies D1 (Design and Local Distinctiveness), RC6 (Local Community Facilities) and TC2 (Accessibility of New Development) of the East Devon Local Plan. This harm shall be factored into the overall planning balance at the end of the report.

Access and Impact on Local Highway Network

The County Highway Authority has reviewed the proposals and considered the submitted transport measures referred to within the former section of the report. Firstly, the access and visibility for those accessing and exiting the site onto the road south of Beacon Cross is considered acceptable.

Whilst it is indicated that the level of anticipated traffic would be acceptable from a highway safety perspective, it is alluded to that ensuring that the site is operated within the parameters of the Transport Plan could be difficult to enforce. Notwithstanding this, the County Highway Authority have not raised any objection to the proposals subject to a condition requiring further details concerning the surface of the access road to avoid water run off or debris being carried onto the public highway.

The proposals would provide parking spaces for four vehicles which is considered to be the maximum number of cars needed to be onsite at any given time. This is an element of the scheme that can be controlled via planning condition to ensure that development would have an acceptable impact on the safety of the local highway network and to ensure that footfall of traffic to and from the site is in line with the level envisaged within the Transport Plan. It is therefore recommended that if permission is forthcoming that no more than four cars shall be parked onsite at any given time and that no more than twelve students and four members of staff are present at the site.

Given the above, the proposals are considered to meet the provisions of Policy TC2 and Policy TC7 (Accessibility of New Development) of the Local Plan.

Impact on Character and Appearance of the Area

The From Beacon Cross there are long reaching southerly views towards East Hill, however the application site is much more enclosed and private despite being elevated above the adjacent highway. This is due to the dense vegetation and trees that border the boundaries and characterise the copse which prevent public views into the site. The copse is also a distinct landmark in the landscape and is visible

from multiple long distant views from public vantage points. It is therefore considered pertinent to the acceptability of the proposals that the contribution the woodland makes to landscape character is not compromised.

The submitted drawings communicate the siting of four tents, two storage containers and a compost toilet. All of which shall be sited within the woodland and screened from public view. The tents are constructed of dark green cotton/polyester as indicated at appendix 1 of the submitted Design and Access Statement. Tents 1 & 2 shall be used as classrooms for instructors to deliver activities, Tent 3 used as for shelter around the fire pit and Tent 4 as a hub for those students who may struggle with a particular course and need to be provided their own space. The pair of storage containers along the northern boundary shall be used to store activity equipment and clothing.

The proposed siting, scale and mass of tents, containers and the toilet avoid pressure to prune or remove any of the trees within the copse ensuring that they continue to contribute to landscape character whilst also screening the development. The parking area is situated within a clearing and screened by existing tree cover. The Local Planning Authority's Tree Officer has reviewed the proposals who notes that the tents ground protection will be provided via wooden pallets avoiding any intrusive development within the tree's Root Protection Areas, which is considered appropriate. As a result, officers are satisfied that use of the site for educational purposes shall not jeopardize the health of existing trees and ensure the copse continues to make a positive contribution to the character and appearance of the area.

As such, despite short distance views being available of the copse from the highway just west of Talaton Farm and from the PROW that runs from Ivy Cottages south towards New Barn Farmhouse, the development itself would not cause any harm to the character and appearance of the area. The development is therefore considered to meet the objectives of Policy D1 (Design and Local Distinctiveness) and D3 (Trees and Development Sites) of the Local Plan.

Economic Impact

The submitted application form indicates that three full-time employees and two part time jobs shall be created by the proposals, assumedly in the form of three full time instructors and two part time site managers. Longer term economic benefits are anticipated by way of equipping the students with skills that they would otherwise potentially struggle to obtain through mainstream schools, assisting them in increasing their chances of successful employment in the future.

The short term and long-term economic benefits are attributed modest weight in the planning balance.

Ecological Impact

As already detailed within the report, the proposals seek to retain all the existing trees and therefore no existing habitat for protected species is anticipated to be lost. However, any external lighting has the potential to disrupt flight paths for any bats

that may utilise the site for foraging. Whilst it is unlikely that external lighting shall be required due to operating hours stated within the application form, if any is required, details of this shall need to be submitted to and approved in writing by the Local Planning Authority.

The Local Planning Authority's Ecologist has also reviewed the proposals and raised no objections and it has been established that the proposals shall not be required to provide a Biodiversity Net Gain metric as the works are retrospective. As a result, the proposals are considered to meet the provisions of Policy EN5 (Wildlife Habitats and Features).

Impact on Neighbouring Amenity

The nearest residential properties to the application site are located at Beacon Cottages to the east, Hillside to the north and New Barn Farmhouse to the south west, all are located within 200 metres of the application site. The proposed use, by virtue of the increase in footfall of traffic to and from the site and noise caused during school hours has the potential to impact the amenity of adjacent properties.

However, the LPA's Environmental Health officer has been consulted, no concerns have been raised.

Impact on Designated Heritage Assets

Ivy Cottages consist of three Grade II properties orientated in a terrace with thatched roofs located 340 metres to the northwest of the application site. Owing to the separation distances between the properties and the application site, the development would not impact the setting or significance of these heritage assets. The development is therefore considered to meet the provisions of Policy EN9 (Development Affecting a Designated Heritage Asset).

Other Matters

Surface Water Attenuation - All surface water generated shall be attenuated within a nearby water course.

Foul Sewage – Foul sewage generated shall be dealt with via a compost toilet.

Conclusion

It is established in planning law and the National Planning Policy Framework that proposals are to be determined against the development plan unless material considerations indicate otherwise. As highlighted within the report, it is the position of officers that the development would conflict with the provisions of Strategy 7, Strategy 5b and Policy TC2 of the Local Plan due to the site's location within the countryside, it's remoteness from nearby public transport links and the need for staff and pupils to be dependent on private modes of transport to attend school. The development would therefore result in a degree of environmental harm.

However, it is also acknowledged that the submitted Transport Plan has implemented measures to ensure that students are transported with SWAP's own fleet of vehicles to reduce the number of overall vehicular movements to and from

the site. Including a site caretaker's vehicle, operation of the school on a day-to-day basis would only require four vehicles to be on site. The subsequent movements of vehicles to collect and drop off students would be limited. As such, whilst implementation of the Transport Plan does not eliminate the identified conflict with Strategy 5b and Policy TC2 all together, it does reduce the level of environmental harm that would be caused by the development in the absence of the Transport Plan.

Additionally, the LPA is mindful of the provisions of paragraph 99 and the 'great weight' planning decisions should attribute to proposals that meet needs to create, expand or alter schools whilst providing 'a sufficient choice of school places to meet the needs of existing and new communities'. Evidence put forward by the applicant suggests that the number of young people diagnosed with ADHD, ASD, SEMH is increasing. Furthermore, in March 2024, The Department for Education stated that at least two in three of schools that provide places for SEND students were either at or over capacity. In response to the Government's publication on school capacity which also looked at SEND provision, the National Association of Head Teachers (NAHT) have stated that 'these figures reflect the complete mismatch between the needs of the growing numbers of pupils with SEND and the funding available to schools and local authorities to support them'.

As such, whilst the findings of the strategic review conducted by Devon County referred to within the report could be seen as outdated, there is still considered an outstanding national shortage of educational facilities for SEND students. It is therefore the position of officers that the social benefits of the scheme weigh significantly in favour of development despite the identified environmental harm and the conflict with the spatial strategy for development set out in the Local Plan. The application is therefore recommended for approval subject to conditions listed below.

RECOMMENDATION

APPROVE subject to the following conditions:

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. The site shall be used as an educational facility for students with Special Educational Needs and Disabilities and for no other purpose (including any other purpose in Schedule 2, Part, Class F.1 of the Schedule to the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

(Reason: The development seeks to meet an identified need for the provision of a specialist educational facility in a location where development is usually

restricted in accordance with Strategy 7 - Development in the Countryside of the East Devon Local Plan.)

4. No more than 12 students and 4 members of staff shall be on the site at any one time. Furthermore, no more than 4 vehicles shall be parked on the site at any given time.

(Reason: The application site is located in the countryside where an unrestricted educational use would not usually be supported, in accordance with Strategy 7 - Development in the Countryside of the East Devon Local Plan 2013 - 2031).

5. Within four months of the date of planning permission having been granted for the development hereby approved, details of how the site access road shall be hardened, surfaced, drained and maintained thereafter shall have been submitted to and approved in writing by the Local Planning Authority. The hardened surface shall extend for a distance of no less than 5 metres back from its junction with the public highway. The development of the access shall be carried out in accordance with the approved details and within three months of the details having been approved.

(Reason: To prevent mud and other debris being carried onto the public highway in accordance with Policy TC7 - Adequacy of Road Network and Site Access of the East Devon Local Plan).

6. The two storage containers annotated as 'Storage 1' and 'Storage 2' on the submitted Site Plan, shall be used for storage purposes associated with the school hereby approved only and not for any standalone commercial purposes.

(Reason: The application site is located in the countryside where unrestricted commercial use would not usually be supported, in accordance with Strategy 7 - Development in the Countryside of the East Devon Local Plan 2013 - 2031).

7. Prior to installation of any lighting a lighting scheme shall be provided for the site which complies with the requirements of the Institute of Light Engineers guidance on the avoidance of light pollution. The lamps used shall not be capable of reflecting light laterally, upwards or off the ground surface in such a way that light pollution is caused. All lighting at the site shall accord with the approved lighting scheme.

(Reason: to ensure the development is sympathetic to the character and appearance of the area and to avoid detrimental impacts to nearby ecological habitat in accordance with Policy D1 - Design and Local Distinctiveness and EN5 - Wildlife Habitats and Features of the East Devon Local Plan.)

NOTE FOR APPLICANT

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

Biodiversity Net Gain

Paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 means that this planning permission is deemed to have been granted subject to "the biodiversity gain condition" (BG condition).

The Local Planning Authority cannot add this condition directly to this notice as the condition has already been applied by law. This informative is to explain how the biodiversity condition applies to your development.

The BG conditions states that development may not begin unless:

- (a) a Biodiversity Gain Plan (BG plan) has been submitted to the planning authority, and
- (b) the planning authority has approved the BG plan.

In this case the planning authority you must submit the BG Plan to is East Devon District Council.

There are some exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These are listed below.

Based on the information available this permission is considered to be one which will not require the approval of a biodiversity gain plan before development is begun because one or more of the statutory exemptions or transitional arrangements in the list below is/are considered to apply.

In this case the development had already been undertaken on the date the application was made to the Local Planning Authority. It is not possible for the Local Planning Authority to impose the BG condition and therefore the development is exempt.

Statutory exemptions and transitional arrangements in respect of the biodiversity gain condition.

1. The application for planning permission was made before 12 February 2024.
2. The planning permission relates to development to which section 73A of the Town and Country Planning Act 1990 (planning permission for development already carried out) applies.
3. The planning permission was granted on an application made under section 73 of the Town and Country Planning Act 1990 and
 - (i) the original planning permission to which the section 73 planning permission relates was granted before 12 February 2024; or
 - (ii) the application for the original planning permission to which the section 73 planning permission relates was made before 12 February 2024.
4. The permission which has been granted is for development which is exempt being:
 - 4.1 Development which is not 'major development' (within the meaning of article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015) where:

- (i) the application for planning permission was made before 2 April 2024;
- (ii) planning permission is granted which has effect before 2 April 2024; or
- (iii) planning permission is granted on an application made under section 73 of the Town and Country Planning Act 1990 where the original permission to which the section 73 permission relates* was exempt by virtue of (i) or (ii).

4.2 Development below the de minimis threshold, meaning development which:

- (i) does not impact an onsite priority habitat (a habitat specified in a list published under section 41 of the Natural Environment and Rural Communities Act 2006); and
- (ii) impacts less than 25 square metres of onsite habitat that has biodiversity value greater than zero and less than 5 metres in length of onsite linear habitat (as defined in the statutory metric).

4.3 Development which is subject of a householder application within the meaning of article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. A "householder application" means an application for planning permission for development for an existing dwellinghouse, or development within the curtilage of such a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse which is not an application for change of use or an application to change the number of dwellings in a building.

4.4 Development of a biodiversity gain site, meaning development which is undertaken solely or mainly for the purpose of fulfilling, in whole or in part, the Biodiversity Gain Planning condition which applies in relation to another development, (no account is to be taken of any facility for the public to access or to use the site for educational or recreational purposes, if that access or use is permitted without the payment of a fee).

4.5 Self and Custom Build Development, meaning development which:

- (i) consists of no more than 9 dwellings;
- (ii) is carried out on a site which has an area no larger than 0.5 hectares; and
- (iii) consists exclusively of dwellings which are self-build or custom housebuilding (as defined in section 1(A1) of the Self-build and Custom Housebuilding Act 2015).

Irreplaceable habitat

If the onsite habitat includes irreplaceable habitat (within the meaning of the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024) there are additional requirements for the content and approval of Biodiversity Gain Plans. The Biodiversity Gain Plan must include, in addition to information about steps taken or to be taken to minimise any adverse effect of the development on the habitat, information on arrangements for compensation for any impact the development has on the biodiversity of the irreplaceable habitat.

The planning authority can only approve a Biodiversity Gain Plan if satisfied that the adverse effect of the development on the biodiversity of the irreplaceable habitat is minimised and appropriate arrangements have been made for the purpose of compensating for any impact which do not include the use of biodiversity credits.

Plans relating to this application:

Location Plan	18.03.24
Proposed Site Plan	18.03.24

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.