

Ward

Woodbury And Lymestone

Reference

24/0721/FUL

Applicant

Mr I White

Location

Land North East Of Grange Close Lymestone  
EX8 5LD

Proposal

The erection of two detached dwellings with  
integral double garages, to include associated  
hard and soft landscaping.



**RECOMMENDATION: Approval with conditions**



		<b>Committee Date: 19.11.2024</b>
<b>Woodbury And Lympstone (Lympstone)</b>	<b>24/0721/FUL</b>	<b>Target Date: 12.07.2024</b>
<b>Applicant:</b>	<b>Mr I White</b>	
<b>Location:</b>	<b>Land North East Of Grange Close</b>	
<b>Proposal:</b>	<b>The erection of two detached dwellings with integral double garages, to include associated hard and soft landscaping.</b>	

**RECOMMENDATION: Approval with conditions**

### **EXECUTIVE SUMMARY**

**This application is before members of the Planning Committee because it is a departure from the East Devon Local Plan and the made Lympstone Neighbourhood Plan.**

**The application seeks planning permission for the construction of two detached dwellings. Access shall be provided via the existing private driveway that stems from Grange Close to the west, a short internal road shall extend past the principal elevation of Plot 1 to Plot 2. The proposed dwellings shall have integral garaging and be finished in brick, cladding and artificial slate.**

**Whilst the proposal represents a departure from policy contained within the East Devon Local Plan and the Lympstone Neighbourhood Plan by proposing residential development, the majority of which is outside of a BUAB, the site is considered to be in a sustainable location on the northern edge of the village where there would be safe and easy access to the wide variety of services and facilities and public transport on offer within Lympstone.**

**There is a clear need for more housing, both market and affordable, within the district. The current and projected levels of housing delivery do not meet this need in the long term under the current policy climate. This unmet need is a significant factor for decision-makers in planning applications and appeals, particularly pertinent for otherwise sustainable sites outside current settlement boundaries.**

**In the absence of any adverse impacts to the character and appearance of the area, neighbouring amenity, protected species or on highway grounds the application is considered acceptable and recommended for approval.**

## **CONSULTATIONS**

### Parish/Town Council

Recommendation: Object

Lympstone Parish Council object to the planning application due to being outside the BUAB, outside the approved outline planning application and the lack of detail on environmental protection.

### County Highway Authority

I have looked at the CEMP and am satisfied that it would meet our requirements.

### Environmental Health

Thank you for submitting the additional drawings regarding the location of the ASHP.

I have reviewed the plans and technical data regarding the air source heat pumps and do not anticipate any Environmental Health concerns.

### South West Water

Surface Water Services

The applicant should demonstrate to your LPA that its prospective surface run-off will discharge as high up the hierarchy of drainage options as is reasonably practicable (with evidence that the Run-off Destination Hierarchy has been addressed, and reasoning as to why any preferred disposal route is not reasonably practicable):

1. Water re-use (smart water butts, rainwater harvesting, grey flushing toilets)
2. Discharge into the ground (infiltration); or where not reasonably practicable,
3. Discharge to a surface waterbody; or where not reasonably practicable,
4. Discharge to a surface water sewer, highway drain, or another drainage system; or where not reasonably practicable,
5. Discharge to a combined sewer. (Subject to Sewerage Undertaker carrying out capacity evaluation)

Having reviewed the applicant's current information as to proposed surface water disposal for its development, please note that method proposed to discharge into the ground (infiltration) is acceptable and meets with the Run-off Destination Hierarchy.

### Woodbury And Lympstone - Cllr Geoff Jung

06.11.2024

Having reviewed the report and the recommendation I withdraw my objection and support the officers support.

I have viewed the planning application for 24/0721/FUL for the erection of two detached dwellings with integral double garages, to include associated hard and soft landscaping at Land North East off Grange Close Lympstone.

Although this location has outline permission for one dwelling, I believe the application for 2 dwellings at the end of this cul-de-sac would be overdevelopment of at this location.

Therefore, I do not support this development, but I reserve my final views for this application until I am in full possession of all the relevant arguments for and against. I note that SWW have commented on the provision of surface water treatment proposals which I support but I note that they have not commented on the proposed connection of foul sewage to existing SWW infrastructure.

As there is an apparent problem resulting in various failures to SWW infrastructure between the connection point and Maer Lane sewage treatment works at Exmouth I would like to see a Grampian order attached as a condition if this application goes forward as a recommendation to approve. This would require that SWW to overcome these failures with improved infrastructure prior to any occupation of these properties.

### EDDC Trees

The proposal is supported by an Arboricultural Survey by Advanced Arb dated the 26/03/2024 including TCP, TPP, AIA and AMS.

The proposal involves removal of G2 (group of Hawthorn, Elm Ash), T7 (Rowan), T8 (Silver Birch), T9 (Rowan) all cat C to facilitate development.

It should be noted that pre-emptive tree felling of a Cat A Oak located centrally within the site has taken place. This tree would have been a significant constraint to both the outline and current proposal. The outline proposal showed one property located centrally with a greater amount of replacement / mitigation planting. The current proposal shows a more constrained site which increases the pressure on the retained tree due to ground level changes and gives less opportunities for replacement planting. From the Foul and Surface Water Drainage Plan it appears that level changes are proposed within the RPA of T10 and T5, both of which are Cat A trees. It also appears that tree protective fencing is located within the RPA of a number of trees though no ground protection is provided.

Mitigation planting has been provided though the amount of replacement planting is considered low for the number of trees already removed / proposed for removal and in comparison to the outline app (it is noted some tree removal will benefit the long term development of retained trees. It is also noted that the retention basin for Plot 2 happens to be located within what would have been the RPA of removed G2).

Overall I would suggest that if amendments to the drainage plan could be made so that no work takes place within the RPA then I would have no objection to the proposal.

We originally made a TPO following the Outline app. This has now lapsed and I would recommend that a new TPO is made.

EDDC District Ecologist

No objection subject to conditions.

Environment Agency

Overall, we have no objections in-principle to this proposal based on the information submitted with the planning application. Whilst the flood map indicates that an area of flood zone 3 encroaches within the red line boundary there does not appear to be any development taking place within that area. However, if there is to be any development or land raising within the area at risk of flooding please reconsult us for further comments.

Other Representations

At the time of publication of this report 14 third party comments. 6 objections, 7 in support and 1 representation.

Of those objecting, the main concerns:

- Concerns regarding surface water run-off into the nearby watercourse.
- Permission was granted for a single dwelling only.
- Sewage flowing into the River Exe.
- Construction noise and traffic.
- Increase in flood risk to Harefield Stream.
- Need for more detailed CEMP.
- Need for long term maintenance Surface Water Drainage Scheme.

Of those comments received in support, the following points were raised:

- Highly reputable company. Care and consideration has been taken with the plans for the site. The development sits comfortably within the site.
- Design of the properties fits in well with the site.
- Development would be in keeping with the local area.
- Care and detail put into the drainage scheme.
- Development shall add two houses to the village's housing stock.

**PLANNING HISTORY**

**98/P0223** – Erection of a single dwelling. Refusal. 23/04/1998

**23/1079/OUT** – Outline consent for the construction of a single dwelling.  
Approval.01/09/2023

## **POLICIES**

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

Strategy 7 (Development in the Countryside)  
D1 (Design and Local Distinctiveness)  
D2 (Landscape Requirements)  
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)  
EN19 (Adequacy of Foul Sewers and Adequacy of Sewage Treatment System)  
EN22 (Surface Run-Off Implications of New Development)  
Strategy 5B (Sustainable Transport)

### **Lympstone Neighbourhood Plan (Made)**

Policy 4 - Need  
Policy 5 – Density & Scale  
Policy 6 – Density & Scale  
Policy 7 – Design  
Policy 11 – Parking  
Policy 14 – Flood Risk

### **Government Planning Documents**

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

## **OFFICER REPORT**

### **Site Location and Description**

The site refers to land to the north east of Grange Close, an undeveloped paddock extending to approximately 0.3 ha in area which is accessed off a private drive off Grange Close. The site is bordered by residential properties on its south western boundary and agricultural land to the north, east and north west.

The majority of the site is located outside of the built-up area boundary (BUAB) of Lympstone as defined by the East Devon Local Plan and the 'made' Lympstone Neighbourhood Plan. A small portion of the south west of the site does however fall within the BUAB as defined by the Lympstone Neighbourhood Plan. The site is not the subject of any national or local landscape designations and falls within an area designated as flood zone 1 (at lowest risk of flooding).

### **Proposed Development**

The application seeks planning permission for the construction of two detached dwellings. Access is to be provided via the existing private driveway that stems from

Grange Close to the west, a short internal road would extend past the principal elevation of Plot 1 to Plot 2. The proposed dwellings are proposed with integral garaging finished in brick, cladding and artificial slate.

Due to the sloping nature of the ground level, which falls away to the south east, a degree of cut and fill would be required to facilitate the development. The application is supported by a fully detailed landscaping scheme and Surface Water Drainage Strategy that propose two detention basins towards the north eastern corner of the site.

### Principle of Development

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

The proposed development proposes new build residential development outside of the defined settlement boundary of Lympstone, thereby conflicting with Strategy 7 of the local plan. Consequently, the site would not offer an appropriate location for the development proposed having regard to the development plan's overall settlement strategy and expectation for such development to be contained within a designated built up area boundary.

In strategic policy terms therefore, the site is within the 'countryside' as defined in Local Plan Strategy 7 (Development in the Countryside), the provisions of which would not ordinarily facilitate new build housing in the absence of any other local or neighbourhood plan policy that would explicitly permit such development.

Residential development of this nature and in this location conflicts with the spatial approach to development as expressed within the development plan. This conflict is attributed significant weight given that this is one of the main objectives of the local plan.

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

The National Planning Policy Framework (December 2023) (NPPF) states, at paragraph 77, that "local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide either a minimum of five years' worth of housing, or a minimum of four years' worth of housing if the provisions in paragraph 226 apply."

Paragraph 226 states: "From the date of publication of this revision of the Framework, for decision-making purposes only, certain local planning authorities will only be required to identify and update annually a supply of specific deliverable sites sufficient

to provide a minimum of four years' worth of housing (with a buffer, if applicable, as set out in paragraph 77) against the housing requirement set out in adopted strategic policies, or against local housing need where the strategic policies are more than five years old, instead of a minimum of five years as set out in paragraph 77 of this Framework. This policy applies to those authorities which have an emerging local plan that has either been submitted for examination or has reached Regulation 18 or Regulation 19 (Town and Country Planning (Local Planning) (England) Regulations 2012) stage, including both a policies map and proposed allocations towards meeting housing need."

The draft local plan consultation undertaken by East Devon District Council in November 2022 to January 2023 was carried out under Regulation 18. The emerging new Local Plan is therefore sufficiently progressed to benefit from this provision.

On this basis, and as the Council can currently demonstrate a 4.5 year housing land supply, policies within the adopted Local Plan most important for determining the application remain up to date and the presumption in favour of sustainable development (the 'tilted balance') set out at paragraph 11d) of the NPPF need not be applied.

#### The need to maintain a healthy housing supply and trajectory going forward

The "tilted balance" in the NPPF is not the only basis for planning decisions, it is a material consideration but does not displace the development plan nor the requisite planning balance established under section 38(6) of the Planning and Compulsory Purchase Act 2004.

The need for housing over the next five years is a crucial consideration in planning decisions. According to paragraph 69 of the National Planning Policy Framework (NPPF), local planning authorities must identify specific sites for housing for the next five years and broader areas for growth for the subsequent 10-15 years. This means that a responsible and proactive council should be looking beyond the mere 4 and 5 year timescales and should instead recognise the implications of decision making on both medium and longer term housing delivery.

If the Council cannot demonstrate a five-year housing supply when adopting a new local plan, it would conflict with paragraph 69(a) of the NPPF. Without an adequate supply of housing an Inspector would likely find such an emerging plan unsound and inconsistent with the requirements of paragraph 35 of the NPPF. Therefore, on this basis alone the Council should not rely solely on a short-term, four-year housing supply, as providing robust reason enough for resisting further housing as a matter of principle.

Appeal decisions have shown that even if a site is not allocated in the current plan or is outside development boundaries, it can still nevertheless be considered to be 'sustainable development' if there are no site specific technical objections and it is located within reasonable reach of an appropriate level of services and facilities. This is especially relevant given the Council's current and future housing supply challenges, regardless of the 'tilted balance'.



National policy, prior to December 2023 required a continuous five-year housing supply. Some other authorities have struggled to maintain this, leading to weaker positions when trying to defend planning appeals. These decisions often relied on overly optimistic policy assessments, resulting in a compounded effect on future planning. The experience of these authorities shows that it takes time to recover (so to claw back an appropriate supply of housing) making it very hard to successfully defend against appeals for sites deemed by the Council to be wholly unacceptable.

The Council's Housing Monitoring Update shows that the forthcoming five-year housing trajectory will fall below the required numbers and it is notable that affordable housing delivery has also been below the required levels. Currently, about 6,000 households are on the Council's housing register. The district's identified affordable housing need is 272 dwellings per year, totalling 4,896 dwellings over the 18-year plan period. Delivery in recent years has fallen well short of this annual target.

This issue was considered by Strategic Planning Committee on 15/7/2024 following the receipt of advice from Kings Counsel. The committee resolved to advise Planning Committee that in considering planning applications for housing developments that would deliver homes within the next 5 years in a sustainable way, significant weight should be given to the need to bolster the council's housing land supply position. This is in order to ensure that the council has a robust housing land supply and as a result a sound local plan in respect of housing land supply for examination of the Local Plan.

### Summary

There is a clear need for more housing, both market and affordable, within the district. The current and projected levels of housing delivery do not meet this need in the long term under the current policy climate. This unmet need is a significant factor for decision-makers in planning applications and appeals, particularly pertinent for otherwise sustainable sites outside current settlement boundaries.

To be in a strong position now, and remain so in the future, the Council must boost its supply of market and affordable housing and develop a local plan that ensures the realistic delivery of sufficient homes over the plan period. A robust approach in this regard would mean the adoption of a local plan which both expresses and reflects the needs of the district, provides the ability to defend unsustainable sites for development at appeal, prevent speculative planning applications afflicting local communities and meet the social elements at a national scale by delivering the right type of housing at the right time. Accordingly, the need to boost the supply of housing is a material consideration that can be attributed significant weight given the strategic importance maintaining a healthy supply of housing means to the council and its ability to retain control over key planning decisions.

### Location and Accessibility

Strategy 5B (Sustainable Transport) of the Local Plan states that development proposals should contribute to the objectives of promoting and securing sustainable modes of travel and transport. Development will need to be of a form, incorporate proposals for and be at locations where it will encourage and allow for efficient, safe

and accessible means of transport with overall low impact on the environment, including walking and cycling, low and ultra-low emission vehicles, car sharing and public transport. These objectives are further echoed within policy TC2 (Accessibility of New Development) of the Local Plan which states that new development should be located so as to be accessible by pedestrians, cyclists and public transport and also well related to compatible land uses so as to minimise the need to travel by car.

The site is located on the northern edge of the settlement and is considered to be well related to existing dwellings, facilities and services within the village. These include the Pre-School, Parish Church, Redwing Inn and a number of other facilities located along The Strand. The village also has a train station and a number of bus stops in walking distance from the site. Whilst the majority of the site is located outside of the BUAB of Lympstone, it does immediately adjoin its northern boundary where it would be possible to safely access these services, facilities and public transport links on foot or by cycling and thus reducing any over reliance on the use of the private car.

It is therefore the position of officer's that the application site is well related to services and facilities within Lympstone and therefore accords with the provisions of Strategy 5B and policy TC2 of the Local Plan.

#### Impact on Character and Appearance

The application site is well related to the built form of Lympstone. The north eastern boundary is characterised by a number of mature trees which form a natural boundary to the village and open countryside. The land falls away relatively quickly from east to west towards a watercourse that borders the site to the south east. Despite the lawful use of the site being considered agricultural, it does not appear that the land has been used for agricultural purposes for at least 20 years. Whilst the Agricultural Land Classification indicates the site has 'good to moderate' value, the sloping character and limited size of the site does not make it an attractive parcel to actively farm.

The proposals seek to construct two large four-bedroom properties with integral garages. The dwellings are to be two storey with the garaging within a flat, sedum roof. External walls are to be finished in a mix of brick and oak cladding with aluminium framed openings. Artificial slate is proposed for the pitched roofs with black lindab guttering along the eaves line and downpipes.

The character of Grange Close consists of detached bungalows constructed of brick, render and tiles. The character of Grange Close is largely medium density albeit No. 10, 12 and 14 are larger bungalows with larger gardens. Concerns have been raised by the Local Ward Member and third parties with regards to overdevelopment of the site. However, it is the position of officers that the dwellings sit comfortably within their respective plots and provide an appropriate level of external amenity space whilst also orientated in a manner that provides sufficient relief between boundaries.

However, it is appreciated that the overall scale of the buildings and the use of cladding doesn't conform to the established pattern of development of Grange Close which is underpinned by pitched roof bungalows with gable ends that front the highway. Notwithstanding this, the site is self-contained and well screened by existing vegetation and trees which would minimise any longer distance views from outside of

the site, particularly from the north east along the A376. In the event that glimpsed views are available, the proposals would still be read against the back drop of the village edge. Furthermore, the variety of architectural forms and materials varies beyond Grange Close, this is evident along Birch Road, Strawberry Hill and Orchard Close.

Despite the scale of the proposal dwellings, the development would not harm the character and appearance of the area or result in landscape visual harm. The proposals are considered to meet the provisions of Policy D1 (Design and Local Distinctiveness) of the Local Plan and Policy 7 of the Neighbourhood Plan.

#### Impact on Neighbouring Amenity

The sloping topography of the site and wider area would result in the internal floor levels being above the level of The Acorns and Harefield of Harefield Drive. Comments received from the occupants of The Acorns have requested that appropriate landscaping details are secured along southeastern boundary to ensure any overlooking is adequately mitigated. DRWG 1016/02 REV E communicates the construction of a hedgebank along this boundary alongside additional hedgerow planting and retention of a mature oak (T6). Implementation and retention of the landscaping scheme will go some distance to screen outlook from the first floor wrap around window that serves bedroom 1 of Plot 1.

Notwithstanding this, despite the changes in levels, the most southern part of Plot 1 is approximately 28 metres from the boundary shared with The Acorns, it is then another 35 metres to the northernmost part of their property. These separation distances are significant and, even if line of sight is possible from first floor windows, the resulting impact would not result in a significant loss of privacy at The Acorns.

A number of first floor windows that serve Plot 1 on the south western elevation would also have outlook towards 10 Grange Close. The two closest windows serve two ensembles, would therefore be obscured, and appear on the submitted elevations (DRWG 326:4:01 REV D) as high-level windows. Two windows serving bedroom 1 and the landing area of Plot 1 have outlook towards No.10. The distance between these windows and the boundary shared with No.10 is approximately 18 metres, with line of sight being largely screened by the mixed species hedge.

There are a handful of properties that back onto the site located on Strawberry Hill to the northwest. However, these properties are elevated above the application site and benefit from large external amenity areas that provide spatial relief between these areas and the proposal buildings.

Some local comments have raised concern over the impact of the construction phase on the amenity of local residents. The proposals are supported by a Construction Environment Management Plan which has modelled the anticipated frequency and type of construction traffic that shall be accessing the site and operating hours of construction. The County Highway Authority and Environmental Health Team have raised no objections to this document.

The proposals include the provision of Air Source Heat Pumps, one for each property. Further information has been provided as requested by the Local Planning Authority's Environmental Health Officer by way of manufacturer details in order to assess the impact of ASHP on adjacent properties. These have been provided and considered acceptable.

Having considered the development's impact on adjacent neighbours and the amenity afforded to prospective occupants of the proposal dwellings, the development is considered to meet the objectives of Policy D1 (Design and Local Distinctiveness) of the East Devon Local Plan.

### Surface Water Attenuation and Flood Risk

The application site is located in Flood Zone 1 and is at a 'very low' risk of surface water flooding. The site is not at risk from reservoir flooding or groundwater flooding. However, land either side of an adjacent watercourse, known as Harefield Stream, is located within flood zones 2 and 3.

The application is supported by a Foul and Surface Water Drainage Strategy prepared by Aqua-Tech Consultancy that states results from percolation testing show that the provision of soakaways would not be viable. As such, the application details the construction of two detention basins to attenuate and disperse surface water generated by the development into the adjacent watercourse that borders the application site to the southeast. The technical report states that the greenfield run off rate is 0.1 l/s unless during a 1 in 100 year flooding event in which this figure would rise to 0.2l/s.

Surface water run-off from each plot drains to a dedicated detention basins which are landscaped depressions. The technical report states that a vortex control unit shall restrict the discharge rate to 1.5 l/s which is the anticipated run off rate for a 1 in 100 year event plus 40% for climate change. The report states that this is in accordance with the Environment Agency's Policy Document SC030219 and the Water UK Publication Sewer Adoption Guidance.

Several third party comments have raised concerns over the proposed detention basins and the potential for the development to cause flooding elsewhere within the village. The Local Lead Flood Authority were consulted but declined to comment. South West Water have commented on the application where, in the absence of soakaways being appropriate, the proposed detention basins and discharge into the nearby local watercourse is deemed acceptable.

Furthermore, the Environment Agency were approached to advise whether the development could, bearing in mind the proposals to discharge surface water into the ordinary watercourse, potentially cause flooding elsewhere in the village. The EA responded that they have no concern that the proposals would cause flooding elsewhere.

As such, despite concerns raised by local residents, it is the position of officers that the application cannot be refused on flood risk grounds. The proposals therefore meet

the provisions of EN21 (River and Coastal Flooding) and EN22 (Surface Run-off Implications of New Development of the Local Plan.

### Foul Sewage

Policy EN19 - Adequacy of Foul Sewers and Adequacy of Sewage Treatment Systems of the Local Plan states that new development will not be permitted unless a suitable foul sewage treatment system of adequate capacity and design is available or will be provided in time to serve the development.

Development where private sewage treatment systems are proposed will not be permitted unless ground conditions are satisfactory and the plot is of sufficient size to provide an adequate subsoil drainage system or an alternative treatment system. Foul drainage is proposed to be via the existing mains in the road via a sewage pump solution. It is understood that the foul drainage would connect with the main sewer at the east end of Birch Road or Grange Close. This would accord with the provisions of policy EN19 of the Local Plan.

Some concerns have been expressed by the Local Ward Member and third parties regarding the capacity of the Maer Lane Waste Water Treatment Works. South West Water are in the process of investing and upgrading several treatment plants within the district. However, South West Water have not objected to the proposals. Furthermore, whilst the LPA has sought to impose grampion conditions on other residential schemes in the district to restrict occupation of dwellings until upgrading works are completed, this would not apply to a scheme of this scale.

The proposals are therefore considered to be compliant with Policy EN19 of the Local Plan.

### Arboricultural Impact

Policy D3 (Trees and Development Sites) of the Local Plan states that permission will only be granted for development, where appropriate tree retention and/or planting is proposed in conjunction with the proposed nearby construction. The council will seek to ensure, subject to detailed design considerations, that there is no net loss in the quality of trees or hedgerows resulting from an approved development. The development should deliver a harmonious and sustainable relationship between structures and trees. The recommendations of British Standard 5837:2012 (or the current revision) will be taken fully into account in addressing development proposals.

The LPA's Tree Officer has observed some pre-emptive tree felling during the assessment of the former outline permission and there are a number of Category A individuals, primarily oak, that characterise the site's South and Eastern boundaries. Initial concerns raised by the LPA's Tree Officer with regards to the proximity of the detention basins to the RPA of T5 (Oak) and T6 (Oak) were relayed to the applicant. An amended Surface Water Drainage Plan was submitted and five oaks (including T5 and T6) have been served with a Tree Preservation Order.

The submitted Planting Plan details native hedging around the site's perimeter alongside shrub and replacement tree planting just inside north western boundary. Overall, the submitted arboricultural information and Planting Plan are considered acceptable.

Notwithstanding this, any permission granted shall include conditions to ensure development is carried out in accordance with the Tree Protection Plan, the Arboricultural Method Statement and that no ground level changes shall occur within the RPAs of trees to be retained. Overall, subject to compliance with these conditions, the development is considered to meet the objectives of Policy D3 of the Local Plan.

### Ecological Impact

The application is supported by an Ecological Impact Assessment (EIA) and Landscape Ecological Management Plan (LEMP) prepared by Richard Green Ecology. The EIA includes surveys for foraging and commuting bats, hazel dormice, breeding birds, badgers, great crested newts, reptiles and Cirl bunting.

It was observed that the scrub, hedge and line of trees provided foraging resource and commuting routes for bats and hazel dormice. The existing grassland also provides suitable habitat for slow worms and limited habitat for amphibians albeit unlikely for great crested newts. No evidence of badgers, Cirl Bunting or hedgehogs were observed.

The main ecological impact results from development and loss of neutral grassland, scrub and tree removal. The EIA recommends that a Construction Ecological Management Plan is provided and adhered to and that an external lighting plan is submitted. These have therefore been required via planning condition and should be submitted prior to commencement on site. Further mitigation measures include the planting detailed within the submitted Planting Plan.

It is not anticipated that a European Species License shall be needed and due to the proposals being for two self build properties, the proposals are exempt from requiring a BNG Metric. The EIA and LEMP has been reviewed by the LPA's Ecologist who has raised no concerns subject to conditions securing implementation of mitigation measures and submission of a Construction and Ecological Management Plan (CECoMP). The proposals are therefore considered to accord with Policy EN5 (Wildlife Habitats) of the East Devon Local Plan.

### Habitat Regulations Assessment

The site is located in close proximity to the Exe Estuary and the East Devon Pebble bed Heaths Special Protection Areas (SPA's) which provide an important recreational resource for the local community. However, these are sensitive environments which are important to nature conservation and are subject to European wildlife site designations.

Despite the introduction of the Community Infrastructure Levy (CIL) where a proportion of CIL goes towards infrastructure to mitigate any impact upon habitats, contributions towards non-infrastructure mitigation are also required as developments that will impact on a protected habitat cannot proceed under an EU directive unless fully mitigated. Evidence shows that all new dwellings and tourist accommodation within 10 kilometres of the Exe Estuary and/or the Pebblebed Heaths Special Protection Areas (SPA's) will have a significant effect on protected habitats which is reflected in Strategy 47 (Nature Conservation and Geology) of the Local Plan. This proposal is within 10 km of the Exe Estuary and the Pebblebed Heaths and therefore attracts a habitat mitigation contribution towards non-infrastructure at a rate of £367.67 per dwelling which has been secured as part of this application.

### Conclusion

The site was dismissed as an allocation at Strategic Planning Committee 03.09.24 as part of the HELAA to inform the emerging East Devon Local Plan. Reasons for not allocating the site for three houses were based on ecological impact and access.

However, the site already has outline consent for the construction of one dwelling and an EIA and LEMP have been submitted in order to demonstrate that development can take place without causing harm to protected species. Furthermore, no objection has been received by the County Highway Authority.

At Planning Committee 22.08.2023 members resolved to approve 23/1079/OUT agreeing with the officer's recommendation and took the view that the site was adequately served by nearby services and facilities. As detailed within the current report, this position remains and despite being able to now demonstrate a 4.5 years of housing land supply, the LPA has a requirement to continue to bolster its housing stock. It is also the position of officers that the design, scale and form of the two dwellings are acceptable and would not cause undue harm to the amenity enjoyed by adjacent neighbours.

The development would provide ample space for parking, external amenity areas and bin storage. The submitted EIA and Landscaping Scheme shall mitigate some tree removal already undertaken and provide replacement habitat.

In light of the above the proposals is considered acceptable and therefore recommended for approval.

### **RECOMMENDATION**

1. Adopt the Appropriate Assessment
2. APPROVE subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission and shall be carried out as approved.

(Reason - To comply with section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. The development hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice.  
(Reason - For the avoidance of doubt.)
3. No development above foundation level shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.  
(Reason - To ensure that the materials are considered at an early stage and are sympathetic to the character and appearance of the area in accordance with Policy D1 - Design and Local Distinctiveness of the Adopted East Devon Local Plan 2013-2031.)
4.
  - a) The development hereby permitted shall be carried out in accordance with the recommendations and mitigation measures detailed within Arboriculture Report prepared by Advanced Arboriculture dated 26th March.
  - 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. A detailed landscaping scheme shall be provided showing suitable replacement planting for the removal of the Oak to ensure long-term tree cover.

(Reason - A pre-commencement condition is required 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).

5. The works shall be carried out in strict accordance with section 4 and appendix C of the Ecological Impact Assessment (Richard Green Ecology, March 2024) and the Landscape and Ecological Management Plan (Richard Green Ecology, March 2024), including any maintenance, management, and adaptive requirements of these documents, and any reporting requirements to the LPA.

(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), Policy EN5 (Wildlife Habitats and Features), and Policy EN14 (Control of Pollution) of the Adopted East Devon Local Plan 2013-2031.)

6. Prior to first occupation of the buildings, a written record should be submitted to the local planning authority including a toolbox talk sheet detailing the result of the removal of trees and scrub, details of any protected species (if found) and measures taken to avoid any wildlife offences. The record shall include photographs of the installed ecological mitigation and enhancement measures detailed within the submitted Ecological Impact Assessment, including integrated bat tubes, bat box, nesting bird boxes, bee bricks, and reptile habitat pile and hibernaculum.

(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),

Policy EN5 (Wildlife Habitats and Features), and Policy EN14 (Control of Pollution) of the Adopted East Devon Local Plan 2013-2031.)

7. 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:
  - o Risk assessment of potentially damaging construction activities
  - o Identification of "biodiversity protection zones"
  - o 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)
  - o The location and timing of sensitive works to avoid harm to biodiversity features
  - o The times during construction when specialist ecologists need to be present on site to oversee works
  - o Responsible persons and lines of communication, including reporting compliance of actions to the LPA
  - o The role and responsibilities on site of an ecological clerk of works (ECoW), if applicable, including any licence requirements
  - o 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 retention and protection of trees and other biodiversity features on the site prior to and during construction in accordance with Strategy 47 (Nature Conservation and Geology), Policy EN5 (Wildlife Habitats and Features), and Policy EN14 (Control of Pollution) of the Adopted East Devon Local Plan 2013-2031.

8. The development hereby approved shall be carried out in accordance with the Foul and Surface Water Drainage Strategy Plan (DRWG 01 REV C) prepared by Aqua Tech dated 29th August 2024 and all drainage infrastructure shall be installed in accordance with the details prior to occupation of the dwelling to which they relate and shall be retained and maintained as such for the lifetime of the development.

(Reason: In the interests of adapting to climate change and managing flood risk, and in order to accord with the provisions of policy EN22- Surface Run-Off Implications of New Development of the East Devon Local Plan 2013-2031).

9. The development hereby permitted shall be carried out in accordance with the Construction Management Plan (CMP) and Construction Environment Management Plan (CEMP) prepared by RBL Homes dated 12th March 2024.  
(Reason: to ensure that adequate facilities are available for construction and other traffic attracted to the site and that a precautionary approach to site clearance and to ensure that the impacts on habitats and protected species can

be appropriately managed and mitigated and that appropriate ecological mitigation measures are in place in accordance with Policy TC7 - Adequacy of Road Network and Site Access and Policy EN5 - Wildlife and Habitats and Features of the Adopted East Devon Local Plan 2013-2031.)

10. The dwelling hereby permitted shall be constructed as a self-build dwelling within the definition of self-build and custom build housing in the Self-build and Custom Housebuilding Act 2015 Act:
- i.) The first occupation of each unit in the development hereby permitted shall be by a person or persons who had a primary input into the design and layout of the unit and who intends to live in the unit for at least 3 years;
  - ii.) The Council shall be notified of the persons who intend to take up first occupation of each unit in the development hereby permitted at least two months prior to first occupation.

(Reason: To ensure the development is for a self-build dwelling and therefore exempt from providing biodiversity net-gain in accordance with Schedule 7A of the Town and Country Planning Act 1990 and Strategy 47 (Nature Conservation and Geology) of the East Devon Local Plan, 2013 - 2031.)

11. Under no circumstances should any external lighting be installed without prior consent from the local planning authority. Any lighting design should be fully in accordance with BCT/ILP Guidance Note 08/2023. The development shall be carried out in accordance with the approved details.

(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), Policy EN5 (Wildlife Habitats and Features), and Policy EN14 (Control of Pollution) of the Adopted East Devon Local Plan 2013-2031.)

12. The development shall be carried out with the Hardworks Plan (1016/01 REV F) and Planting Plan (1016/02 REV E). The Planting Plan shall be carried out in the first planting season after completion of the groundworks and the building construction works or prior to first occupation whichever is the earlier unless otherwise agreed in writing by the Local Planning Authority and all soft landscaping shall be maintained for a period of 5 years. Any trees or other plants which die during this period shall be replaced during the next planting season with specimens of the same size and species unless otherwise agreed in writing by the Local Planning Authority.

(Reason - In the interests of amenity and to preserve and enhance the character and appearance of the area in accordance with Policy D1 (Design and Local Distinctiveness) and Policy D2 (Landscape Requirements) of the East Devon Local Plan 2013-2031.)

13. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no works shall be undertaken within the Schedule 2 Part 1 Classes A, B, C, E or F for the enlargement,

improvement or other alterations to the dwelling hereby permitted, other than works that do not materially affect the external appearance of the buildings, or for the provision within the curtilage of any building or enclosure, swimming or other pool or hard surfaces.

(Reason - Such additions would be detrimental to the character and appearance of the area in accordance with Policy D1 - Design and Local Distinctiveness of the Adopted East Devon Local Plan 2013-2031.)

14. Notwithstanding the approved drawings, the two first floor windows on the south west elevation that serve the two ensuites as annotated on Floor Plan 326:2:02 REV A and Proposed Elevation 326:4:01 REV D shall be obscured to Pilkington Level 4 or equivalent prior to occupation of the dwelling and remain so in perpetuity.

(To protect the amenity of adjacent neighbours in accordance with Policy D1 - Design and Local Distinctiveness of the East Devon Local Plan. 2013-2031).

## NOTE FOR APPLICANT

### Informative:

In accordance with the requirements of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 in determining this application, East Devon District Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved.

### 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 exemption 4.5 from the list below are considered to apply:

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:

& Site Plan	Location Plan	17.05.24
1016/01 Rev F: Hardworks	Landscaping	02.04.24
1016/02 Rev E: Planting Plan	Landscaping	02.04.24

326:2:01 REV A: Ground Plot 1	Proposed Floor Plans	02.04.24
326:2:02: Rev A: First Plot 1	Proposed Floor Plans	02.04.24
326:2:03 Rev A: Ground Plot 2	Proposed Floor Plans	02.04.24
326:2:04 Rev A: First Plot 2	Proposed Floor Plans	02.04.24
326:2:05: Plot 1	Proposed roof plans	02.04.24
326:2:06: Plot 2	Proposed roof plans	02.04.24
326:4:02 D : plot 2	Proposed Elevation	08.08.24
326:3:01 E : site levels	Sections	08.08.24
326:4:01 D : plot 1	Proposed Elevation	08.08.24

#### 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.