

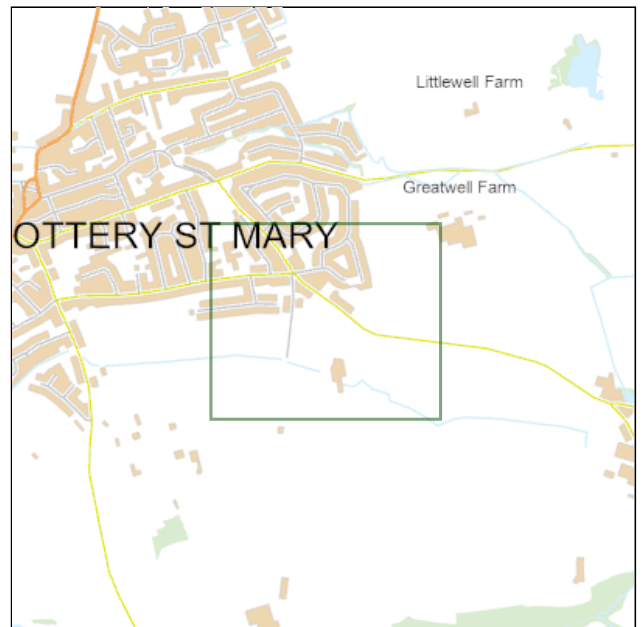
Ward Ottery St Mary

Reference 24/2515/PIP

Applicant Mr Simon Wagemakers (Ambergate Planning & Development)

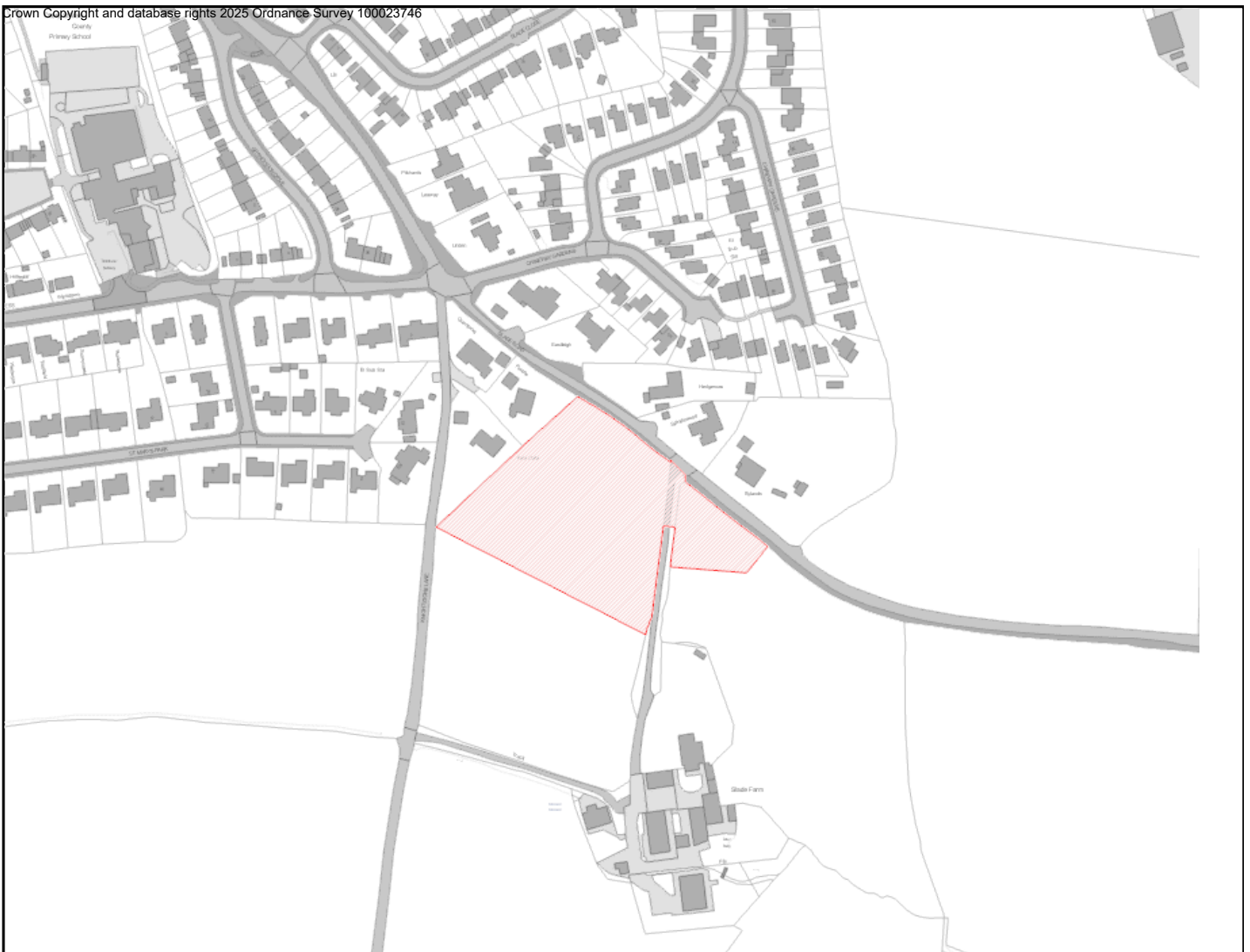
Location Land At Slade Farm Slade Road Ottery St Mary

Proposal Permission in principle for residential development of up to 9 dwellings



RECOMMENDATION: That Permission in Principle be granted

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		Committee Date: 22.04.2025
Ottery St Mary (Ottery St Mary)	24/2515/PIP	Target Date: 23.01.2025
Applicant:	Mr Simon Wagemakers (Ambergate Planning & Development)	
Location:	Land At Slade Farm Slade Road	
Proposal:	Permission in principle for residential development of up to 9 dwellings	

RECOMMENDATION: That Permission in Principle be granted

EXECUTIVE SUMMARY

This matter is brought before the Planning Committee owing to a difference of opinion between the commenting ward members and officers.

The application seeks Permission in Principle (PiP) for the development of up to 9 dwellings on two parcels of land, comprising the northern parts of two large fields extending to around 0.95 hectares in total, on the southern side of Slade Road on the south eastern edge of the built-up area of Ottery St. Mary. The site is located just outside of the Built-up Area Boundary (BuAB) as defined in the adopted Local Plan.

PiP applications are an alternative means of obtaining planning permission for housing-led development. They involve a two stage process, the first being the PiP stage and the second the technical details consent (TDC) stage. The PiP route can only be used for housing-led development and cannot be used for major development (i.e. proposals for 10 or more dwellings).

At the PiP stage the relevant considerations are limited to assessment of the location, land use and amount of development proposed, with other matters reserved for consideration at TDC stage.

Given that the proposal in this case relates to a scheme for less than 10 dwellings, the only matter for consideration relates to the location of the application site.

The submission in this case follows a 2015 outline application involving the development of up to 52 dwellings on the entirety of both fields. This was refused by the Council, principally on grounds relating to conflict with policy (outside of the BuAB of the town), detrimental impact upon landscape character

and appearance, loss of best and most versatile (BMV) agricultural land and the poor accessibility of the site in relation to services and facilities within the town.

Although a subsequent appeal against this decision was dismissed in 2016, this was mainly on the basis of the first two of these issues. The then recently adopted Local Plan and the five year housing land supply demonstrated by the Council, taken together with the 'prominent projection' into the open countryside that the development was perceived to represent, were considered to weigh against the scheme.

However, the Council's objections regarding the non-sustainable location of the site were not supported whilst the loss of BMV agricultural land was not of itself found to be significant. However, the conflict with Local Plan policy in this regard was upheld on account of the housing land supply position and therefore the lack of an overriding need for the development.

In the present context, the Council is not able to demonstrate the five year supply of available housing land required by the current National Planning Policy Framework (NPPF). Unlike the situation in 2015/16 therefore, the 'tilted balance' presumption in favour of sustainable development is engaged. As such, permission for development proposals should be granted unless the application of policies within the NPPF that protect areas or assets of particular importance provide a strong reason for refusing the development proposed.

In the absence of any such policies in this case and given the balance of the previous appeal Inspector's findings alongside the absence of any other material change in circumstances during the past nine years since the previous application and appeal, it is considered that the principal matter for consideration is the impact of the current proposal upon the character and appearance of the area.

In this regard, owing to the appreciable reduction in the site area, it is not considered that the degree of incursion into the landscape that would result from the construction of up to nine dwellings would be as significant as that of the previous appeal scheme. It is thought that the development would represent, both spatially and visually, more of a rounding off of the built form of this part of the edge of the town and less of a projection into the surrounding open countryside.

Both fields have, in their entirety, previously been discounted as a housing allocation during the search for sites as part of the local plan process such that they are not included in the current 'Regulation 19' draft of the emerging document. However, having regard to the very limited weight that can be given to the Plan at this stage, the much reduced site area now proposed and the issues set out above, not least the need to boost housing land supply, it is thought that a grant of permission in this case would be warranted.

Having regard to the overall balance of these factors therefore, it is recommended that PiP should be granted.

CONSULTATIONS

Local Consultations

Clerk To Ottery St Mary Town Council

The Town Council do not support this application based on the following;

The site is located in open countryside beyond the built-up area and would cause harm to the landscape and character of the area.

The land is grade 2 and 3 which is the most valued land. Policy EN13 of the Local Plan sets out that the best and most versatile land will be protected from development that is not associated with agricultural or forestry. The policy continues to identify that development affecting such land will only be granted exceptionally where there is an overriding need. No such need has been demonstrated.

EDDC Strategic Planning Officers report 23/09/24 states that this land is not recommended for allocation because the site is a greenfield site which would extend into the open countryside. Development would be visible from a considerable distance.

Referring to the Inspectors letter, as mentioned in the application, it states that it is evident that you are exiting the settlement and proceeding into open countryside.

Ottery St Mary - Cllr Vicky Johns

This application falls within my Ward and I strongly object to this application on the following grounds;

This application is a revision of a previous proposal, which was rejected by the Planning Committee in 2015, and subsequently dismissed on appeal. I note that the planning statement refers to the application site being 'accepted as being in a sustainable location'. I would however disagree with this statement due to the actual 'path' to the site being unusually during either wet weather or in the dark. The planning inspectorate, who viewed, the site stated lighting would be inappropriate due to the nature of being in the countryside. It also suggests that, as the number of proposed dwellings is for a smaller number of homes, there would be a lesser impact than the previous proposal, this does feel like a way of gaining planning using the PIP system of under 10 houses but on a site where a lot more houses could be placed in the future, my understanding is that is now what PIP applications should be used for.

A number of factors for refusal of this application have been identified by residents of Ottery St Mary, such as the potential for environmental harm or the precedent this a decision in principle would set. I share resident's concerns detailed on the planning portal.

The majority of the land is either Grade 2 or Grade 3 agricultural land, which should not be used for planning on unless there are exceptional circumstances which in this particular case there isn't. Using the emerging local plan and the possible lack of

housing is an untasteful way to push development and is also not correct. The local plan is, about to begin the Regulation 19 consultation stage and has identified suitable land to meet Ottery's housing needs and so this site is not necessary, in fact this particular site was put forward and has been rejected by the Strategic planning committee at East Devon.

The loss of green space and its potential effects on local biodiversity are also significant concerns. The site may provide a habitat for local wildlife, and if the application were to be approved, I would like to be reassured by the developer that any harms would be suitably mitigated against. Furthermore, as this application has no technical detail, any future application would need to include a clear proposal for how the development would manage surface water run off and issues with flooding and sewerage in the area.

The site also lies outside of the Built-Up Area Boundary for Ottery St Mary, which the application itself confirms. As an application for permission in principle for the development of land, I would be deeply concerned that a precedent would be set that this land is suitable for development and the proposed 9 dwellings may potentially increase when it comes to a Stage 2 planning application.

Other than the reduced number of proposed dwellings, I can see no significant material change to the previously rejected planning application from 2015. I appreciate any technical detail would have to be dealt with via an outline application, however, applications at this site have been rejected and dismissed already. I cannot see how the applicants could mitigate the concerns raised previously.

I strongly object to this planning in principal as there remain significant concerns around the suitability of this site for development including the lack of valuable agricultural land. It is my view, based on these concerns, that this application should be refused.

Ottery St Mary - Cllr Bethany Collins

This application falls within my ward, and it is my view, based on the current information available, that the application should be refused.

I understand that this application is a revision of a previous proposal, which was rejected by the Planning Committee in 2015, and subsequently dismissed on appeal. I note that the planning statement refers to the application site being 'accepted as being in a sustainable location'. It also suggests that, as the number of proposed dwellings is for a smaller number of homes, there would be a lesser impact than the previous proposal.

A number of factors for refusal of this application have been identified by residents of Ottery St Mary, such as the potential for environmental harm or the precedent this a decision in principle would set. I share resident's concerns detailed on the planning portal.

The majority of the land is either Grade 2 or Grade 3 agricultural land. The emerging local plan, about to begin Regulation 19 consultation stage, has identified suitable land to meet Ottery's housing needs and so this site is not necessary.

The loss of green space and its potential effects on local biodiversity are also significant concerns. The site may provide a habitat for local wildlife, and if the application were to be approved, I would like to be reassured by the developer that any harms would be suitably mitigated against. Furthermore, as this application has no technical detail, any future application would need to include a clear proposal for how the development would manage surface water run off and issues with flooding and sewerage in the area.

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Other than the reduced number of proposed dwellings, I can see no significant material change to the previously rejected planning application from 2015. I appreciate any technical detail would have to be dealt with via an outline application, however, applications at this site have been rejected and dismissed already. I cannot see how the applicants could mitigate the concerns raised previously.

In summary, there remain significant concerns around the suitability of this site for development. It is my view, based on these concerns, that this application should be refused.

Devon County Councillor (Otter Valley) - Cllr Jess Bailey

I wish to register my objection to this planning application as the Devon County Councillor for the Otter Valley. As the Devon County Councillor I will principally focus on matters which fall within the remit of DCC.

I note that this is a Permission in Principle application and relevant considerations are limited to an assessment of the location, land use and amount of development proposed with other matters reserved for consideration at Technical Detail Consent stage.

This site has been repeatedly put forward for development both through submission in response to various Calls for Sites (as part of the Local Plan process) and also by way of planning application.

In the 2019 HELAA assessment for the Greater Exeter Strategic Plan (GESP) the access to Ottery St Mary from the proposed site was described as follows:

"Current access is via Slade Road which is a narrow lane not suitable for accommodating additional development and associated movements. In addition to this, access into and through the town is constrained by narrow roads and a single route through the town centre. Further investigation may be required as to whether more significant highways improvements (bypass/distributor road) are necessary. Development of the site has the potential to impact on Junction 29 of the M5, which suffers from congestion at peak periods". It goes on to say: "Pedestrian/cycle movement into Ottery St

Mary from this location is poor and would need to be greatly improved. However, the width of roads on this side of town would make it very difficult to achieve safe pedestrian access".

I agree with these comments and therefore object on the grounds of road safety particularly for pedestrians. I am particularly concerned about pedestrian safety in this vicinity due to the proximity of the primary school.

The comments (set out above) during the GESP process were then re iterated by Eddc planning officers in their assessment of the site for the Eddc Strategic Planning Committee on 23rd September 2024.

The site was not recommended for allocation by Eddc officers because the "Site is a greenfield site which would extend into open countryside. Development would be visible from a considerable distance. Concerns regarding insufficient highway capacity."

It would be totally contradictory, given the highways and other concerns, for Eddc now to approve this Permission in Principal application.

DCC is the Leading Local Flood Authority and I must also flag concerns in this respect that were included in the GESP HELAA. The following comments were made:

"Flooding: In addition to the area within floodzone 3, a very small area of the south-western corner of the site (0.01ha) is within floodzone 2. Land within Flood Zone 2. Land in floodzone 2 has a medium probability of experiencing fluvial flooding and only has the potential to be developed for residential or economic use if the sequential and exceptions tests set out in the NPPG are adhered to. Any planning application must be accompanied by a Flood Risk Assessment. The site is close to areas of surface water flood risk which run along Slade Road. Any development must be accompanied by a suitable drainage strategy to deal with existing surface water flows through the site and any potential increase in surface runoff".

I therefore also object on the basis of flood risk concerns.

In addition to road safety and flood risk concerns, I am concerned about the lack of mitigation given the site is within 10km of the Pebblebed Heaths. Without a mechanism to secure mitigation to make the application acceptable, the proposal is in conflict with the Conservation of Habitats and Species Regulations 2017.

For all these reasons, I am strongly of the view this application should be REFUSED.

Technical Consultations

DCC Historic Environment Officer

I refer to the above application and your recent consultation. The Historic Environment Team has no in principle objection to the development of the area under consideration. However, while no heritage assets are recorded in the County

Historic Environment Record within the application site, the proposed development lies in a landscape known to contain prehistoric activity and there is the potential for the site to contain previously unrecorded archaeological deposits associated with the known prehistoric activity in the surrounding landscape. Archaeological works to the north in advance of a housing development revealed the presence of an important previously unknown Neolithic site dated to around 3,500BC, the presence of which could not have been determined in advance of intrusive archaeological investigations. As such, any development here has potential to expose and destroy archaeological and artefactual deposits associated with the known prehistoric activity in the local area.

I would therefore advise, should consent be granted for this permission in principle that, any subsequent application for grant of technical details consent should be supported by the submission of a Written Scheme of Investigation (WSI) setting out a programme of archaeological work to be undertaken in mitigation for the potential loss of heritage assets with archaeological interest. The WSI should be based on national standards and guidance and be approved by the Historic Environment Team.

If a Written Scheme of Investigation is not submitted with any subsequent application for grant of technical details consent the Historic Environment Team would advise, for the above reasons and in accordance with paragraph 218 of the National Planning Policy Framework (2024) and Policy EN6 (Nationally and Locally Important Archaeological Sites) of the East Devon Local Plan, that any consent your Authority may be minded to issue should carry the condition as worded below, based on model Condition 55 as set out in Appendix A of Circular 11/95, whereby:

'No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme as agreed in writing by the Local Planning Authority.'

Reason

'To ensure, in accordance with Policy EN6 (Nationally and Locally Important Archaeological Sites) of the East Devon Local Plan and paragraph 218 of the National Planning Policy Framework (2024), that an appropriate record is made of archaeological evidence that may be affected by the development.'

This pre-commencement condition is required to ensure that the archaeological works are agreed and implemented prior to any disturbance of archaeological deposits by the commencement of preparatory and/or construction works.

In addition, the Historic Environment Team would advise that the following condition is applied to ensure that the required post-excavation works are undertaken and completed to an agreed timeframe:

'The development shall not be occupied until the post investigation assessment has been completed in accordance with the approved Written Scheme of Investigation.'

The provision made for analysis, publication and dissemination of results, and archive deposition, shall be confirmed in writing to, and approved by, the Local Planning Authority.'

Reason

'To comply with Paragraph 218 of the National Planning Policy Framework (2024), which requires the developer to record and advance understanding of the significance of heritage assets, and to ensure that the information gathered becomes publicly accessible.'

I would envisage that the programme of work for this scheme taking the form of the archaeological control and supervision of topsoil stripping and ground reduction across the area(s) affected by the proposed development to the depth at which the supervising archaeologist establishes either (i) archaeological deposits and/or features are present (to allow for their identification, investigation and recording of these and any associated artefacts) or (ii) undisturbed natural ground is exposed. The results of the fieldwork and any post-excavation analysis undertaken would need to be presented in an appropriately detailed and illustrated report, and the finds and archive deposited in accordance with relevant national and local guidelines.

I will be happy to discuss this further with you, the applicant or their agent. The exact scope and nature of the archaeological work would depend upon the detail of the development proposed. The Historic Environment Team can provide the applicant with advice on the scope of the works required, as well as contact details for archaeological contractors who would be able to undertake this work. Provision of detailed advice to non-householder developers may incur a charge. For further information on the historic environment and planning, and our charging schedule please refer the applicant to: <https://new.devon.gov.uk/historicenvironment/development-management/>.

Other Representations

A total of 180 representations have been received, including a representation on behalf of the CPRE.

Summary of Grounds of Objection

1. No change in circumstances since previous application 15/1663/MOUT was refused and dismissed at appeal.
2. Precedent for further dwellings on the land which could be argued on the basis of a grant of permission.
3. Site rejected for development by Strategic Planning Committee in Sep. 2024.
4. Many other sites selected as being more appropriate for development.
5. Need for more housing development under the emerging Local Plan met by sites already allocated.
6. Development of high grade (2 and 3) agricultural farm land.
7. Slade Road is a narrow, unlit, single track road adjacent to the site that is already busy with horse riders, cyclists, tractors, dog walkers and hikers and is unsuitable and unsafe for more traffic.
8. Local infrastructure (roads, public transport, school, medical services) is oversubscribed and insufficient to cope with dwellings on the site when added to other sites allocated for development.

9. Formation of entrances into site off Slade Road would damage hedgerow that is a valuable habitat for wildlife.
10. More development on greenfield sites will add more surface water runoff during future extreme wet weather.
11. Lack of footpaths and street lighting, creating increased safety hazards for pedestrians and road users.
12. Site is in close proximity to the AONB and will be visible from East Hill to the visual detriment of the landscape.
13. Development outside of the town's Built-up Area Boundary and therefore contrary to Local Plan and Neighbourhood Plan.
14. The town has already contributed to the resolution of the housing crisis by building more than the target set for housing in the current Local Plan up to 2031.
15. Other local issues need resolving before new houses should be built; if not, problems with waiting for health appointments and education will only worsen; increase in population reliant on services with no increased service provision.
16. Increased noise and light pollution in the countryside.
17. Will exacerbate existing traffic problems and congestion along Longdogs Lane, Chineway Gardens and Slade Road.
18. Appears to be an attempt to circumvent a refusal to allow a previous application for a much larger number of houses.
19. Potential impact on Pebblebed Heaths Special Area of Conservation.
20. Sustainable disposal of surface water has not been demonstrated and is unlikely to be possible.
21. Projection into the countryside which that result in an unacceptable intrusion going against the landscape character assessment of the area as Lowland Plains.
22. Distance from local services and facilities means cars would be required for journeys causing more traffic on already congested roads.
23. Water and sewerage systems unable to cope with any population or demand increase.

PLANNING HISTORY

Reference	Description	Decision	Date
15/1663/MOUT	Outline planning application for the construction of up to 52no dwellings incorporating age restricted open market and affordable dwellings together with associated infrastructure (all matters reserved except for access)	Refusal	24.11.2015

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 1 (Spatial Strategy for Development in East Devon)

Strategy 3 (Sustainable Development)

Strategy 5B (Sustainable Transport)

Strategy 7 (Development in the Countryside)

Strategy 24 (Development at Ottery St Mary)

Strategy 46 (Landscape Conservation and Enhancement and AONBs)

D1 (Design and Local Distinctiveness)

D2 (Landscape Requirements)

D3 (Trees and Development Sites)

EN13 (Development on High Quality Agricultural Land)

TC2 (Accessibility of New Development)

TC7 (Adequacy of Road Network and Site Access)

Draft East Devon Local Plan 2020-2042 Policies

Strategic Policy SP01 (Spatial strategy)

Strategic Policy SP06 (Development beyond Settlement Boundaries)

Strategic Policy SD04 (Ottery St Mary and its development allocations)

Strategic Policy AR01 (Flooding)

Strategic Policy DS01 (Design and local distinctiveness)

Policy DS02 (Housing density and efficient use of land)

Strategic Policy TR01 (Prioritising walking, wheeling, cycling, and public transport)

Strategic Policy OL01 (Landscape features)

Policy OL10 (Development on high quality agricultural land)

Strategic Policy PB04 (Habitats Regulations Assessment)

Policy PB07 (Ecological enhancement and biodiversity in the built environment)

Policy PB08 (Tree, hedges and woodland on development sites)

Made Ottery St Mary and West Hill Neighbourhood Plan 2017-2031 Policies

NP1 (Development in the Countryside)

Government Planning Documents

National Planning Policy Framework 2024 (as amended)

ANALYSIS

Site Location and Description

The application site comprises two parcels of land at Slade Farm, Ottery St. Mary that together total around 0.95 hectares in area. Currently parts of separate fields laid to pasture, they are located to either side of a private driveway extending south off Slade Road that serves the farm and two other residential properties.

The larger land parcel, extending to around 0.8 hectares, occupies the more elevated northern part of a field to the west of the driveway that falls gently from north to south and from east to west. Its north western boundary is contiguous with that of the rear gardens of a pair of detached residential properties, Twin Oaks and Pendle, that are accessed off Knightstone Lane, an unmade track of single vehicle width that is also a public bridleway. Its northern boundary comprises a hedged frontage onto Slade Road whilst the boundary with the driveway itself is defined by a post and wire fence. The remaining, south western boundary does not follow any physical feature 'on the ground'.

The smaller parcel, to the east of the driveway, comprises a more level portion of land that also features a hedged frontage with Slade Road to the north. However, its boundary with the shared driveway serving Slade Farm is defined by an established hedge with trees. Its two remaining boundaries, with the remainder of the field, are open and undefined.

The site is located just outside of the Built-up Area (BuAB) of Ottery St. Mary as defined in the adopted Local Plan. Although neither the site nor the surrounding area are the subject of any landscape designations, they occupy land that is classified as Grade 2 and 3a agricultural land under the Agricultural Land Classification and therefore forms part of areas of best and most versatile (BMV) agricultural land.

Proposed Development

This application seeks permission in principle (PiP) for residential development of the site comprising up to 9 houses.

Given the nature of the application in this case (see Procedure section below), only the principle of the development in relation to the location of the application site is to be considered.

Background

The current submission represents a renewed attempt to seek permission for residential development following on from an outline application made in 2015 (15/1663/MOUT refers) for up to 52 dwellings on a larger site comprising the entirety of both field areas.

This application, which also sought approval of details of access but reserved the details relating to the layout and landscaping of the site and the appearance and scale of the development, was refused by the Council for the following reasons:

1. The site is located within the open countryside beyond the built form of Ottery St Mary where development must be strictly controlled to protect the countryside. Whilst recognising that such development would therefore be contrary to the development plan the proposal is in any event not considered to represent sustainable development due to the cumulative effects arising from the

- harm to the landscape and character of the area and in particular views from the surrounding road network and the setting, views and character of the Bridleway known as Knightstone Lane

- the loss of agricultural land classified as Grade 2 and 3 and therefore best and most versatile land; and

- the sites poor accessibility for pedestrians arising from both the walking distance to the town centre and the facilities it offers, and the quality and nature of the walk along Knightstone Lane as the only potentially suitable pedestrian route to the development which has the potential to be narrow dark and unattractive at certain times of the day/year and therefore contrary to the principles of Secured by Design .

Together it is considered that these issues outweigh the social and economic benefits that would arise from the development and as such it is considered that the proposal conflicts with the overarching objective to achieve sustainable patterns of land use contained within the National Planning Policy Framework. The proposal is therefore considered to be contrary to guidance contained within the National Planning Policy Framework and its accompanying guidance in the PPG, Policies S5 (Countryside Protection), D1 (Design and Local Distinctiveness), TA1 (Accessibility of New Development) and TA4 (Footpaths, Bridleways and Cycleways) of the adopted East Devon Local Plan and Strategies 7 (Development in the Countryside), 37 (Community Safety) and 46 (Landscape Conservation and Enhancement and AONBs) and Policies TC2 (Accessibility of New Development) TC4 (Footpaths, Bridleways and Cycleways) and D1 (Design and Local Distinctiveness) of the emerging New East Devon Local Plan

2. No mechanism has been submitted to secure a contribution towards measures to mitigate the effects of recreational use of the East Devon Pebblebed Heaths Special Area of Conservation and Special Protection Area by residents of the proposed development. Without such a mechanism and with no information submitted to facilitate the making of an Appropriate Assessment, the proposal is considered to conflict with the Conservation of Habitats and Species Regulations 2010. In addition the proposal is considered to be contrary to guidance in the National Planning Policy Framework and to Policies S7 (Infrastructure Related to New Development) and EN4

(Nationally Important Sites - including Sites of Special Scientific Interest) of the adopted East Devon Local Plan and Strategies 47 (Nature Conservation and Geology) and 50 (Infrastructure Delivery) of the emerging New East Devon Local Plan.

3. No mechanism has been submitted to secure necessary affordable homes and contributions towards education and public open space needs that would arise as a result of the proposed development. In the absence of such a mechanism, it is considered that the development would have an unreasonable and unaddressed impact on this infrastructure contrary to guidance in the National Planning Policy Framework and Policies S7 (Infrastructure Related to New Development), H4 (Affordable Housing) and RE3 (Open Space Provision in New Housing Developments) of the adopted East Devon Local Plan and Strategy 50 (Infrastructure Delivery) of the emerging New East Devon Local Plan.

A subsequent appeal against the Council's decision was dismissed in May 2016. The appeal Inspector's findings are discussed in the next sections of the report.

Procedure

The permission in principle (PiP) process was introduced through the Town and Country Planning (Permission in Principle) Order 2017. It provides an alternative means of obtaining planning permission for housing-led development. It is a two stage process, the first being the PiP stage and the second the technical details consent (TDC) stage. The PiP route can only be used for housing-led development and cannot be used for major development (i.e. proposals for 10 or more dwellings).

Local planning authorities can grant permission in principle to a site upon receipt of a valid application or by entering a site in Part 2 of its brownfield land register which will trigger a grant of permission in principle for that land providing the statutory requirements set out in the Town and Country Planning (Permission in Principle) Order 2017 (as amended) and the Town and Country Planning (Brownfield Land Register) Regulations are met.

In this case the application site is not considered to be 'brownfield land' and as such is not listed on the Local Planning Authority's register. The applicant must therefore undergo the two stage process set out above.

At the PiP stage the relevant considerations are limited to assessment of the location, land use and amount of development proposed, with other matters reserved for consideration at TDC stage.

The Government's national Planning Practice Guidance (PPG) advises that planning obligations cannot be secured at the PiP stage.

Considerations/Assessment

The proposed scheme would involve the development of less than 10 dwellings and, as such, satisfies the above eligibility requirements for a PiP application having regard to land use and development amount.

In this case, it is considered that the findings of the previous appeal Inspector, and the weight that should now be given to them in the present circumstances, are integral to the assessment of the proposal.

The Inspector identified the main issues as being:

- Whether the Council could demonstrate a five year housing land supply
- The effect of the proposal on the character and appearance of the area
- Whether the proposal would result in the loss of BMV agricultural land
- Whether the appeal site is sustainably located in relation to access to local services and facilities
- Whether the proposal is required to make provision for 25% or 50% affordable housing

It should be noted that the last of these is not relevant for the purposes of considering an application for PiP but is a matter for consideration at the later TDC stage.

Each of the remaining issues is considered in turn as follows.

Principle of Development/Five Year Housing Land Supply

Strategies 1 (Spatial Strategy for Development in East Devon) and 2 (Scale and Distribution of Residential Development) of the adopted East Devon 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. The latter include Ottery St. Mary, which has a BuAB defined in the Plan, as referenced above.

The proposal would comprise development in the countryside outside of the defined BuAB, thereby conflicting with Local Plan Strategy 7 (Development in the Countryside), the provisions of which only allow for development where it would be in accordance with specific local or neighbourhood plan policy(ies).

Consequently, the site would not provide an appropriate location for the proposed development proposed having regard to the development plan's overall settlement strategy and expectation for such development to be contained within a designated BuAB.

Given the above, residential development in this location conflicts with the spatial approach to development as expressed within the development plan. This conflict is attributed significant weight given that protection of the countryside, preventing sporadic development and ensuring suitable growth, are amongst the main objectives of the local plan.

However, the need for housing over the next five years is a crucial consideration in planning decisions. The National Planning Policy Framework (2024) (NPPF) requires that 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.

If the Council cannot demonstrate a five-year housing supply when adopting a new local plan, it would conflict with paragraph 78 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 the NPPF.

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 for 'sustainable development' if there is no identified contextual conflict, would not unbalance communities and is within reasonable reach of an appropriate level of services and facilities.

East Devon can currently only demonstrate a housing land supply of 2.97 years in line with the revised standard methodology for calculation introduced via the revised NPPF, thereby falling significantly short of the five-year requirement.

Anticipated housing completions over the next five years suggest continued underperformance against statutory requirements. Projections indicate an accumulating deficit unless swift action is taken to accelerate delivery. Adjustments to policies encouraging smaller and garden land windfall developments may provide incremental supply boosts.

The council must address the housing supply deficit to align with NPPF requirements and support the adoption of the emerging Local Plan by 2026.

The latest Annual Housing Monitoring Report underscored the urgent need for strategic action to enhance housing delivery and mitigate risks associated with supply shortfalls. Proactive planning and policy adjustments are critical to meeting future housing demands and regulatory requirements.

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.

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 great 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.

The 2024 NPPF as a material consideration

The NPPF is a material consideration in the determination of planning and related applications. Paragraph 11d) states that plans and decisions should apply a presumption in favour of sustainable development.

For decision-taking this means:

- approving development proposals that accord with an up-to-date development plan without delay; or
- where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date granting permission unless:
 - the application of policies in (the) Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

As above paragraph makes clear, where the policies of the Local Plan are out of date, which is the case here in the absence of a 5 year housing land supply, then a so called 'tilted balance' is applied, i.e. a presumption in favour of a grant of permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Paragraph 14 of the NPPF states that in situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided the following apply:

- a) the neighbourhood plan became part of the development plan five years or less before the date on which the decision is made; and
- b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement.

It should be noted that at the time of the determination of the previous appeal against the Council's refusal of the larger housing scheme for the land referred to above that, following on from the adoption of the current Local Plan in January 2016, the Inspector was able to conclude that the Council could demonstrate the requisite five year supply of available housing land. As such, the 'tilted' balance presumption in favour of sustainable development was not engaged with full weight attributed to the Local Plan policies relating to the supply of housing.

The circumstances and balance of that appeal decision are therefore materially different to that of the current application, where the Council is unable to demonstrate a five year housing land supply position.

Impact upon Character and Appearance of Area

On this issue, among the previous appeal Inspector's findings were the following:

"It was clear that when travelling south along the bridleway, once the existing dwellings are passed, there is a distinct sense of remoteness. Given the pattern of development to the west and the lack of development to the east, the appeal site has a strong connection with the open countryside and a noticeable rural context. This

can also be said when travelling along Slade Road, where once the existing dwellings to the north of the appeal site are passed, it is evident that you are exiting the settlement and proceeding into the open countryside."

"The scheme would result in the loss of two open fields and would extend built development significantly beyond that currently existing to the south and east. This would be particularly evident from several locations. Views over the appeal site and particularly its relationship with the open countryside beyond, are gained from the elevated ground to the north, particularly from St Mary's Park and glimpsed views from Longdogs Lane. The proposal would be seen as a projection into the countryside. In a similar manner, this would be very noticeable when travelling along the bridleway, despite the boundary hedges, and also from views further to the south of the appeal site, even when looking back towards the built development of the settlement."

"I am mindful that the appeal site is to some degree contained from long distance views to the west, south and east and that mitigation measures, along with the retention of existing vegetation, would help to soften the impact of the development. I accept both parties view that any impact on the Area of Outstanding Natural Beauty and its setting would be limited, given that it is located over a kilometre to the south. I also accept that there is existing housing, some of which are modern, in the vicinity and that the appeal site would not appear as an isolated development in the countryside. However, I consider that the proposal would result in an unacceptable intrusion into the countryside and would be viewed as a prominent projection, significantly past the built confines of the existing settlement. This would cause demonstrable harm to the character and appearance of the area."

It is thought, however, that there are some key differences between the likely impacts arising from the previous appeal scheme and those thought to result from the current proposals, not least owing to the considerable reduction in the application site area.

Essentially, whilst it is recognised that any prospective development would occupy the more elevated portion of the western field, it is not considered that it would result in the same degree of 'projection' or 'visual intrusion' into the countryside as the appeal scheme.

It would occupy only around slightly more than a third of this field, and barely around one fifth of the field to the east of the farm driveway, as opposed to the entire area of both fields as proposed under the appeal scheme.

Furthermore, it would extend the built form of this part of the town only a short distance to the south of a line taken from the point at which the north western boundary of the site with Twin Oaks meets Knightstone Lane and the continuation of the boundary of Bylands, on the opposite side of Slade Road from the site to the north east, to form the site boundary within the eastern field.

As a consequence, it is felt that development would read more as a form of 'rounding off' of the existing built form of this part of the town as opposed to a significant incursion into the expanse of open countryside beyond it.

Although it would be visible from a short length of Knightstone Lane to the south of Twin Oaks, and be positioned on gently rising ground, the extent of its incursion into the western field would appear considerably more limited with the level of impact upon the immediate wider landscape appearing far more localised and less intrusive to wider landscape character.

Development of the smaller land parcel to the east of the driveway to Slade Farm would be largely screened from shorter and medium distance views from Slade Road, both from the south east as it ascends towards East Hill and upon approach from the north west. The retention of the existing hedge and tree screening along the eastern side of the driveway would also mostly screen it from views from the driveway itself and any points of public vantage further to the west of the site.

It would also be possible at TDC stage to negotiate an appropriate treatment to the southern boundary of any development with the remainder of both fields so as to form a softened 'edge' to the built form of the town.

In addition, the considerably reduced site area, and therefore amount of development proposed, is such that the views over the site from St. Mary's Park and glimpsed views from Longdogs Lane that were identified by the Inspector would not readily reveal the presence of additional dwellings.

It is recognised that the full extent of the land to which the previous outline application and appeal related was considered by the Strategic Planning Committee in September 2024 and discounted as an allocated housing site in the emerging 'Regulation 19' Local Plan that has just recently been the subject of public consultation.

Among the reasons for not allocating the site were the extent to which development would extend into the open countryside, the likely visibility of development from considerable distance and concerns regarding insufficient highway capacity.

However, in the light of the significantly reduced site area and maximum number of dwellings proposed and its attendant lesser impact upon both localised and more distant views that are available of the site and its immediate context, taken together with the absence of any objections from the County Highway Authority to the 2015 proposals for in excess of five times the number of dwellings proposed, it is not thought that these would represent strong grounds upon which to oppose the more limited amount of development now proposed having regard to the broader housing land supply situation and the balance of the other material considerations set out in this report.

In the circumstances therefore, although it is accepted that the development of the site would result in some landscape impact (which would likely be unavoidable on any 'greenfield' site), it is considered that this would be restricted to a localised level of harm to the extent that it could be argued as carrying less weight in the overall planning balance than the previous appeal scheme; more especially when assessed within the context of the other material issues set out in this report in the wider planning balance.

In terms of the specific amount of development proposed, the creation of 9no residential plots would likely result in a density of housing that would be compatible with that of adjacent and nearby development in St. Mary's Park and Slade Road. As such, it is not anticipated that development of the site on the basis of a maximum of this number of dwellings would be out of character with this part of the edge of the built-up area of the town.

Loss of BMV Agricultural Land

The provisions of adopted Local Plan Policy EN13 (Development on High Quality Agricultural Land) protect BMV agricultural land from development that is not associated with agriculture or forestry and state that development affecting such land will only be granted exceptionally where there is an overriding need for it.

Given the Inspector's findings in regard to the housing land supply issue in connection with the previous appeal scheme, no overriding need for the development was identified at that time. The policy objection raised by the Council was therefore upheld.

However, whilst recognising the conflict with policy, the Inspector accepted the appellant's view that, given the scale of the appeal site, the loss of BMV land would not be significant.

In the circumstances therefore, given (on account of the much more limited scale of prospective development and the appreciably smaller site area) the much reduced level of loss of BMV agricultural land now proposed, taken together with the absence of the required five year supply of housing land, it is thought that this issue must now be regarded as carrying less weight in the wider planning balance in the assessment of the current PiP proposal.

Accessibility

Despite the Council's position in regard to the locational sustainability credentials of the site, namely its distance from local services and facilities and their accessibility via sustainable modes of transport, the Inspector significantly did not uphold this issue as carrying any weight against the development of the site.

He found as follows:

"During my site visit, I took considerable time walking the two routes to the local services and facilities discussed by the parties. The first route was via Longdogs Lane and Tip Hill. This route offered largely street lit footpaths along the majority of the route, except in relation to a pinch point where Longdogs Lane meets Tip Hill. At this pinch point it was very difficult to pass as a pedestrian, due to the number of cars using this very narrow section of the road and lack of footpaths. I consider that this would deter pedestrians and cyclists from using this route. However, I also observed that there is a footpath linking Homefield Close and St Budeaux Close to Yonder Street, which would offer an alternative route for this part of journey, which would result in pedestrians avoiding the pinch point and it is also slightly shorter in length. I consider that taking this route offers a safe and attractive journey to the majority of local services and facilities in the town centre on foot and by bicycle."

"The other route that I walked was via Slade Road and Yonder Street, which also offered a safe walking route, although, slightly longer in length. In both cases, I accept that the walking distance involved is not insignificant. However, I consider that given the routes are safe and offer an attractive environment for walking with footpaths and street lights, that they are not unreasonable. I accept some of the local services and facilities such as the medical centre, the hospital and the secondary school are beyond the distances advocated by the Manual for Street and the CHIT guidance. However, many of the local services and facilities are within the advocated distance range of 800 and 1200 metres, as set out in the appellant's evidence at Appendix 23. The area where the majority of the local services and facilities are located also accommodates bus stops, which I understand offer a good level of services to the wider area."

"Given all of the above, I consider that the appeal site is, on balance, suitably located to access a good level of local services and facilities, which can to a reasonable level, be accessed by sustainable modes of transport. I am also mindful that any journey to the local services and facilities by car would be very short. Consequently, I conclude that the proposal accords with Policy TC2 and TC4 of the LP. The policies seek to ensure that: new development is located so as to be accessible by pedestrians, cyclists and public transport to minimise the need to travel by car; and include measures to provide, improve and extend facilities for pedestrians and cyclists commensurate with the scale of the proposal."

In light of these findings, coupled with the reduced number of dwellings now proposed and the absence of any material change in circumstances during the past nine years since the appeal decision in 2016, it is not considered that objection to a grant of PIP on the grounds that the site occupies a non-sustainable location in relation to services and facilities within the town could reasonably be justified.

Planning Balance

Planning legislation is clear that planning applications should be determined in accordance with the development plan, unless other material considerations suggest otherwise.

There is identified conflict with the development plan in that the proposal seeks to build residential development in the countryside outside the defined BuAB for Ottery St. Mary. The proposal does therefore not comprise a plan-led development and there is identified conflict with the development plan in this regard.

The NPPF emphasises the need to significantly boost the supply of housing. East Devon has a significant shortfall in the supply of housing and can only demonstrate 2.97 years' worth of supply. The 'tilted balance' presumption in favour of sustainable development is therefore engaged and relevant policies that have demonstrably failed to provide a suitable supply of housing must be considered out of date.

This proposal would deliver a meaningful number of dwellings, thus addressing the significant need for housing in the District. It would also generate short-term economic benefits during the construction phase and longer-term social benefits by providing much-needed housing.

It is widely accepted that releasing additional greenfield sites will be necessary to meet the Council's ongoing housing trajectory. While the proposal conflicts with both the adopted Local Plan and the made Ottery St. Mary and West Hill Neighbourhood Plan by developing outside the BuAB, the Council cannot currently demonstrate a sufficient five-year housing land supply.

The situation is therefore materially different to that prevailing at the time of the determination of the appeal against the Council's refusal of the larger residential development scheme for the two fields (within which the current application site only occupies part) in 2016 and the basis upon which the Inspector principally upheld this decision.

In addition, in the light of the then appeal Inspector's findings against the Council in his assessment as to the locational sustainability credentials of the site, coupled with the considerably reduced number of dwellings currently proposed in comparison (up to 9 as opposed to up to 52), it is not considered that permission could be resisted on the basis of the lack of adequate access to service and facility provision within Ottery St. Mary. It is not thought that there has been any material change in circumstances to continue to justify the position taken by the Council at that time.

Similarly, in view of the overall limited weight that was given to the loss of high grade agricultural land by the Inspector, again taken in conjunction with the smaller site area and the current housing land supply position within the District, it is not thought that this could be robustly justified as a ground for objection to the proposed development.

Finally, turning to the remaining issue concerning the impact of development upon the character and appearance of the area, the current proposals involve only around one third of the site area to which the appeal scheme related. Development would not therefore represent a significant incursion into the open countryside in the same manner as found by the Inspector.

Although the larger site area, comprising the entirety of both fields, has previously been rejected as a potential site allocation for housing by the Strategic Planning Committee, with it not being included as such in the latest Regulation 19 version of the Draft Emerging Local Plan, it is reiterated that very limited weight can only be given to the Plan at this stage. As such, when taken alongside the pressing need for the Council to improve its housing land supply position, it is considered that the balance now weighs in favour of the release of this site.

Having regard to the overall balance of these material considerations, including the change in circumstances since the 2015 application and subsequent appeal, the respective weight previously given to the various material planning considerations by the Inspector, the current housing land supply position, the limited weight that can be given at this stage to the housing allocations set out in the emerging Local Plan and the limited impact of development upon the rural character and appearance of this part of the edge of the built-up area of the town, it is thought that support for the development of the much smaller site area now proposed would be justified.

Conclusion

In conclusion, having regard to the balance of the material considerations set out above, it is thought that a grant of PiP for up to nine dwellings on the site would be justified in this case.

National Planning Practice Guidance (PPG) states that it is not possible for conditions be attached to a grant of PiP and also that its terms may only include the site location and the type and amount of development. It also states that these must be specified, advising that the amount of residential development must be expressed as a range, indicating the minimum and maximum net number of dwellings which are, in principle, permitted.

The PPG also advises that the default duration of a PiP, where granted by application, is 3 years. Any subsequent application for TDC must be determined within this time period.

Appropriate Assessment

An Appropriate Assessment is required for development as it is within 10k of designated European sites and the proposed development and could give rise to recreation activity. The Appropriate Assessment must consider the conservation objectives for the affected European site(s) and the effect the proposed development would have on the delivery of those objectives. In the light of the conclusions about the effects on the delivery of the conservation objectives, the competent authority must decide if the integrity of the site would be affected. There is no definition of site integrity in the Habitats Regulations - the definition that is most commonly used is in Circular 06/2005 is '(...) the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified'.

The nature of this application and its location close to the Pebblebed Heaths and their European Habitat designations is such that the proposal requires a Habitat Regulations Assessment. An Appropriate Assessment (AA) is required as a result of the Habitat Regulations Assessment and Likely Significant Effects from the proposal. In partnership with Natural England, the council and its neighbouring authorities of Exeter City Council and Teignbridge District Council have determined that housing and tourist accommodation developments in their areas will in-combination have a detrimental impact on the Pebblebed Heaths through impacts from recreational use. The impacts are highest from developments within 10 kilometres of these designations. It is therefore essential that mitigation is secured to make such developments permissible. This mitigation would be secured via a combination of funding secured via the Community Infrastructure Levy and contributions collected from residential developments within 10km of the designations.

RECOMMENDATIONS

1. That the Habitat Regulations Appropriate Assessment be adopted.
2. That Permission in Principle be GRANTED.

NOTE FOR APPLICANT

Informative:

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

The applicant is advised that an application for approval of Technical Details Consent must be made and determined not later than the expiration of three years beginning with the date of this permission.

Community Infrastructure Levy (CIL) - Where CIL liable development is approved in permission in principle, the liability to pay CIL arises at the time of commencement of development following the grant of Technical Details Consent.

Plans relating to this application:

Location Plan	02.12.24
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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.