

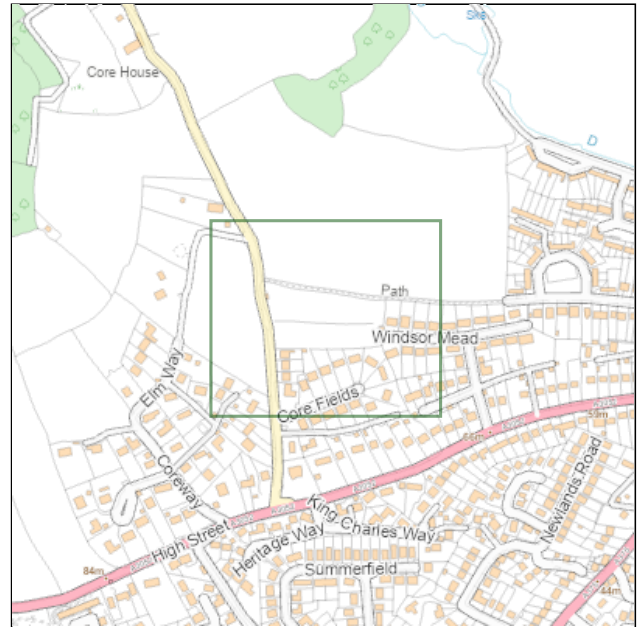
**Ward** Sidmouth Sidford

**Reference** 25/0356/MOUT

**Applicant** Mr P Aubery (Tavistock Green Ltd)

**Location** Land East Of Burscombe Lane Sidford  
Sidmouth EX10 9SG

**Proposal** Residential development for up to 15 dwellings  
(outline application seeking approval of details  
of access only)



**RECOMMENDATION: Approval with conditions subject to completion of s.106 obligations to secure affordable housing provision (including off site financial contribution), open space and SUDS provision and maintenance and habitat mitigation contribution) and adoption of an Appropriate Assessment**

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|------------------------------------|--|-----------------------------------|--------------|
|                                    |  | <b>Committee Date: 12.05.2026</b> |              |
| <b>Sidmouth Sidford (Sidmouth)</b> | <b>25/0356/MOUT</b>  | <b>Target</b>                     | <b>Date:</b> |
|                                    |  | <b>29.05.2025</b>                 |              |
| <b>Applicant:</b>                  | <b>Mr P Aubery (Tavistock Green Ltd)</b>   |                                   |              |
| <b>Location:</b>                   | <b>Land East Of Burscombe Lane Sidford</b>   |                                   |              |
| <b>Proposal:</b>                   | <b>Residential development for up to 15 dwellings (outline application seeking approval of details of access only)</b> |                                   |              |

**RECOMMENDATION:** Approval with conditions subject to completion of s.106 obligations to secure affordable housing provision (including off site financial contribution), open space and SUDS provision and maintenance and habitat mitigation contribution) and adoption of an Appropriate Assessment

#### **EXECUTIVE SUMMARY**

This application is brought before the Planning Committee as the proposal represents a departure from the adopted East Devon Local Plan. The officer recommendation is also contrary to the position of the town council and commenting ward members regarding the proposal.

The site comprises a field extending to approximately 1.08 hectares in area located on the northern edge of Sidmouth (Sidford) within the designated East Devon National Landscape (NL).

The site has a western road frontage boundary with Burscombe Lane. A public footpath connecting the latter to Higher Brook Meadow extends along its northern boundary. Existing residential development in Burscombe Lane and Core Fields to the south and in Windsor Mead to the east borders the site.

The application seeks outline planning permission for a residential development comprising up to 15 dwellings alongside provision of open space, drainage infrastructure and ancillary operations. All detailed matters, with the exception of those relating to access, are reserved for later consideration.

The submitted details show access to the development to be taken off Burscombe Lane with a new entrance formed in place of an existing field gateway, visibility splays created and a footway connection to the existing footway along the eastern side of Burscombe Lane provided.

The site lies outside of the Built-Up Area Boundary of the town as defined in the adopted Local Plan and made Sid Valley Neighbourhood Plan, resulting in a

clear conflict with the spatial strategy of both plans. However, the site is identified as an allocation within the latest Regulation 19 draft of the emerging Local Plan, albeit, while indicative of the Council's intended direction of growth of the town, this currently carries limited weight due to its still comparatively early stage in the process towards adoption.

However, the Council's current inability to demonstrate a five-year housing land supply is a significant material consideration and, under paragraph 11 of the National Planning Policy Framework (NPPF), notwithstanding the relevance of policies that seek to protect areas such as NLs that can mean that it need not be applied, there is a presumption in favour of sustainable development in such circumstances.

Whilst the development would extend the settlement into open countryside and result in some harm to the landscape character of the NL, these impacts are considered likely to be moderate and capable of mitigation through the safeguarding of existing boundary hedges and trees and appropriate site landscaping.

It is therefore considered that the principle of residential development of the site would be acceptable in this case. The proposal would deliver a meaningful contribution to housing supply, including affordable housing. It would also generate economic benefits during the construction phase and longer-term social benefits through the provision of the market and affordable housing. In addition, the scheme would incorporate sustainability measures such as biodiversity enhancements, aligning with national and local policy objectives.

In addition, there are no other significant contextual objections to the proposed development or technical issues that would outweigh the fundamental acceptance of the principle of development.

In combination, these factors are thought to carry considerable weight in favour of the proposal in the overall planning balance.

On balance and having regard to the significant housing land supply shortfall, the benefits of delivering housing, including affordable homes, are considered to outweigh the identified harms.

It is therefore recommended that the application be approved subject to conditions and completion of a Section 106 agreement to secure the necessary mitigation and infrastructure.

## **CONSULTATIONS**

### **Local Consultations**

Parish/Town Council

OBJECT:

Members objected to the proposed application, as it raised significant concerns regarding access, landscape impact, and ecological harm.

### 1. Access Issues

Burscombe Lane was a narrow and constrained rural lane, unsuitable for increased traffic from a development of this scale. The expected additional vehicle movements would exacerbate congestion and pose safety risks to pedestrians, cyclists, and existing road users. The proposed access did not comply with local transport policies and failed to provide adequate infrastructure for safe and sustainable access.

### 2. Landscape Impact

The site lies within a designated National Landscape, where development should be strictly controlled to protect its natural beauty. The proposal did not adhere to the Sid Valley Local Plan, the Neighbourhood Plan, or national planning policies (NPPF), which emphasised the protection of valued landscapes. The introduction of housing in this location would cause irreversible harm to the rural character and scenic quality of the area. The proposed development appeared to conflict with several policies outlined in the Sid Valley Neighbourhood Plan Specifically:

#### Policy 9: Residential Development within Built-Up Area Boundaries (BUAB)

This policy supports residential development within the BUAB. Development outside these boundaries was generally restricted to specific exceptions. If the proposed site lies outside the BUAB, it would not conform to this policy.

#### Policy 10: Exception Sites

This policy allows for small-scale residential developments of up to 15 homes on land immediately adjacent to the BUAB, provided certain criteria are met:

**Local Connection:** Homes should be occupied by individuals with a local connection.

**Affordable Housing:** At least 66% of the development should consist of affordable housing.

**Design and Character:** The development must be in keeping with the area's character.

If the proposed development did not meet these criteria, it would not align with Policy 10.

#### Policy 7: Local Distinctiveness

This policy emphasised that new developments should respect and enhance the local landscape character. Given that the site was within a designated National Landscape, any development that adversely affected the landscape's natural beauty would be inconsistent with this policy.

### 3. Ecological Concerns

The site supported a rich variety of hedgerow and wildlife, including protected species and important habitats. Increased development pressure would lead to habitat loss, disturbance, and fragmentation, contrary to biodiversity objectives set

out in both local and national policies. No sufficient mitigation measures had been demonstrated to offset these ecological impacts.

This application was inappropriate due to its failure to provide safe access, its detrimental impact on the protected landscape, and its disregard for ecological preservation.

#### Sidmouth Sidford - Cllr Stuart Hughes

Access to this site via Burscombe lane is extremely restricted as the lane is very narrow allowing only single car access with no continuous pavement for the numerous hikers who walk up to Core Hill woods. Currently the lane has very little traffic and there are substantial stone walls belonging to private dwellings which does not allow for any widening of the road. There would therefore be insufficient access for machine and personnel for this development. Alongside this the junction of Burscombe Lane and Sidford High Street on the busy County primary route A3052 which sees over 20,000 daily traffic movements and is also an abnormal loads route and diversion route when the A30 is closed is a dangerous junction due to poor visibility of approaching traffic when exiting, and several blind spots when turning into Burscombe Lane. The same would apply to Windsor Mead which is a very narrow Cul-de-sac. Because of this I recommend rejection of this application on the grounds of access plus I also believe this development would cause unacceptable disruption for the existing residents of Burscombe Lane Windsor Mead and Corefields.

#### Sidmouth Sidford - Mike Goodman

I have read the application for the above application 25/0356. For the following reasons I object to the development.

The access to the site is via Burscombe Lane which is very narrow and restrictive, having visited I can only see this as single car access.

This is often used for pedestrians and could be deemed unsafe.

Having reviewed the site it is unlikely that passing lanes can be installed or widening, stone walls will restrict changes.

The junction Burscombe Lane and Sidford High Street is a very busy County primary route of the A3052 which sees in excess of 20,000 traffic movements a day.

The junction does not give good availability to traffic movements.

I recommend that the current application is rejected.

### **Technical Consultations**

#### County Highway Authority

Observations:

I have visited the site and reviewed the application documents.

The application is outline only therefore I will not comment upon the internal site layout.

However, I am satisfied that the addition of 15 dwellings upon the edge of Sidford with a fairly quick dispersal onto the A3052, a regular bus service, local facilities and services and a link to the developing Sidford Valley cycle route will not create a trip generation intensification problem.

The proposed access will need to conform to our current best practice design guidance, Manual for Streets 1 and 2, with a visibility envelope of 2.4m as the 'X' distance by 'Y' direction of 43m in each direction, with a 'Z' height visibility of clearance above 0.6m.

The Public Right of Way (PROW), running along the northern boundary of the site should provide an alternative, non-vehicular route to the centre of Sidford, bus stop, local services and facilities.

I have checked our road collision data, a running 5 year period, currently at January 2019 - December 2023, and there are no recorded collisions within the vicinity of Burscombe Lane.

I would also recommend that should this application be approved any reserved matters application includes secure cycle storage per dwelling to encourage sustainable travel and help mitigate against the vehicle trip generation from this development.

Addendum 18/02/2026

The CHA has reviewed the amended access arrangement plans which have been slightly altered in response to the Transport Technical Objection Note.

The 'X' distance has been slightly altered to ensure sufficient visibility in both directions is provided. An extended section of widened carriageway north of the proposed access has now been provided, whilst also extending the footway. I am satisfied these alterations will help facilitate the successful operation of this development. Our consultee stance remains unchanged.

#### Environmental Health

I have considered the application and do not anticipate any environmental health concerns in relation to access

#### D.C.C. Historic Environment Team

My ref: ARCH/DM/ED/40852a

I refer to the above application. The proposed development site lies in a landscape where prehistoric activity is recorded in the county Historic Environment Record. Archaeological investigations undertaken on the southwest of Sidford has revealed evidence of prehistoric settlement and funerary activity. The road that runs through the village lies on the alignment of the Roman road leading westward from Charmouth to Exeter and there is the potential that that site may contain evidence of Romano-British settlement in this landscape too. As such, groundworks for the construction of the proposed development have the potential to expose and destroy archaeological and artefactual deposits associated with these heritage assets. The impact of development upon the archaeological resource should be mitigated by a programme of archaeological work that should investigate, record and analyse the archaeological evidence that will otherwise be destroyed by the proposed development.

The Historic Environment Team recommends that this application 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 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 prior to determination 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.

#### Natural England

This development site is within the zone of influence (Zol) for recreational pressure impacts to one or more European Sites (habitats sites).

Within this Zol, proposals for any net increase in residential units will have a likely significant effect on the qualifying features of the European Site(s) (habitats site(s)) through increased recreational pressure when considered either alone or in combination with other plans and projects.

Your authority has measures in place to manage these potential impacts through a strategic solution which Natural England considers will be effective in preventing adverse impacts on the integrity of the site(s).

Notwithstanding this, Natural England advises that these measures should be formally checked and confirmed by your authority, as the competent authority, via an appropriate assessment in view of the Natural England Access to Evidence - Conservation Objectives for European Sites and in accordance with the Conservation of Habitats & Species Regulations 2017 (as amended).

Providing the appropriate assessment concludes that the measures can be secured, it is likely that Natural England will be satisfied that there will be no adverse effect on the integrity of the European Site(s) (habitats site(s)) in relation to recreational disturbance.

#### Housing Strategy/Enabling Officer

Thank you for consulting the Housing Enabling Team on the above application. Percentage of Affordable Housing - under current policy Strategy 34 of the East Devon Local Plan, a requirement for 50% affordable housing will be required. Tenure - Strategy 34 sets a target of 70% for rented accommodation and 30% for affordable home ownership. The rented units should be provided as Social Rent as this is more affordable to local incomes in East Devon.

#### Sid Valley Neighbourhood Plan

Policy 11 of the adopted Neighbourhood Plan states that on schemes of 10 units or more, a minimum of 50% of homes must be affordable.

Policy 12 sets out the unit size mix of market, intermediate and rented housing as a percentage of each bedroom size.

Policy 13, Local connection criteria needs to be included in the S106 agreement.

Housing Mix - will be determined at Reserved Matters stage. However, I expect the applicant to engage with the housing team to ensure a mix that meets local housing needs as identified in the Sidmouth housing needs assessment and Devon Home Choice. I note all dwellings will be compliant with NDSS and they must also meet M4(2) standards.

Layout - the affordable housing should be dispersed across the scheme in clusters of no more than 10. The development should promote social cohesion and a mixed and balanced community.

Council Plan 2024 - 2028 - East Devon District Council wants to increase the availability of social and affordable housing in the district.

Police Architectural Liaison Officer - Kris Calderhead

Thank you on behalf of Devon and Cornwall Police for the opportunity to comment on this application.

I appreciate that the layout is only illustrative at this stage however, I would like to make the following comments and recommendations for consideration. They relate to the principles of Crime Prevention Through Environmental Design (CPTED) and should be embedded into the detailed design of the scheme to reduce the opportunity for crime and anti-social behaviour (ASB) and to conform with both local and national planning guidance.

o

I appreciate the reference to 'secured by design' within the Design and Access Statement (DAS) and support that such principles have been considered in the scheme.

o

Detailed design should include a layout that provides overlooking and active frontages to the new internal streets with accessible space to the rear of plots avoided as it increases the risk of crime and ASB.

o

Any existing or new hedgerow that is likely to comprise new rear garden boundaries must be fit for purpose. They should be of sufficient height and depth to provide both a consistent and effective defensive boundary as soon as residents move in. If additional planting will be required to achieve this then temporary fencing may be required until such planting has matured. Any hedge must be of a type which does not undergo radical seasonal change which would affect its security function.

o

Boundary treatments to the front of dwellings and around apartment blocks are important to create defensible space to prevent conflict between public and private areas and clearly define ownership of space. The use of low-level railings, walls, hedging for example would be appropriate. Defensible space enables occupants to control the space immediately around their plot.

o

Treatments for the side and rear boundaries of plots should be adequately secure (min 1.8m height) with access to the rear of properties restricted via lockable gates.

o

Pedestrian routes throughout the development must be clearly defined, wide, well overlooked and well-lit. Planting immediately abutting such paths should generally be avoided as shrubs and trees have a tendency to grow over the path creating pinch points, places of concealment and unnecessary maintenance.

o

Presumably the site will be adopted and lit as per normal guidelines (BS 5489). Appropriate lighting for pathways, gates and parking areas must be considered. This will promote the safe use of such areas, reduce the fear of crime and increase surveillance opportunities.

o

Vehicle parking will clearly be through a mixture of solutions although from a crime prevention point of view, parking in locked garages or on a hard standing within the dwelling boundary is preferable. Where communal parking areas are utilised, bays should be in small groups, close and adjacent to homes in view of active rooms.

I note the inclusion of a small rear parking court in the illustrative layout. Generally rear parking courts are discouraged as they provide legitimate access to the rear of plots and are often left unlit with little surveillance. However, I appreciate this only serves four plots.

Further guidance relating to designing out crime for residential developments can be found on the Secured by Design website, [www.securedbydesign.com](http://www.securedbydesign.com).

Should the application progress, please don't hesitate to contact me to review any updated plans and designs.

### EDDC Landscape Architect

Amended access works as shown on dwg. nos. JG05 rev. E and JG07 rev. A are generally acceptable subject to the following points being addressed:

o Drawing JG05 rev. E shows the proposed hedge bank north of the site access extending onto the RPA of tree T01 (large cat. A oak). The District Tree Officer should be consulted in respect of this.

o The proposed stone-faced Devon hedge bank is not inappropriate given the use of stone in the banks along Burscombe Lane in the vicinity of the site, but construction is a specialist skill and will require a suitably skilled and experienced specialist sub-contractor.

o The extent of new road/ footway and associated kerbing into the site to be approved as part of this outline application should be limited to 12m from the junction (measured from junction road markings), in order to allow for realignment of the site access road beyond this southwards, enabling the overall layout to shift southwards to provide an adequate buffer between the northern boundary and proposed rear gardens as noted in my original comments.

## 2.2 Layout

No changes to the illustrative site layout have been made in response to my previous comments. While the application is outline with all matters except access reserved, given the constraints and sensitivities of the site it is important to demonstrate that a

satisfactory layout can be achieved allowing for an adequate buffer to be provided to the northern boundary and to avoid a straight access road through the site which is out of character with the rural context.

### 3 CONCLUSION & RECOMMENDATIONS

Further clarifications and amendments are required in respect of the access proposals as noted in section 2.1 above.

The illustrative layout should be amended to demonstrate that the issues referred to in section 2.2 can be satisfactorily addressed.

Should the application be approved, a further condition would be required for details of the proposed hedge bank construction together with details of the proposed hedge bank contractor and stone supplier to be submitted to the LPA for written approval prior to commencement of hedge bank works.

#### EDDC Trees

Following receipt of further information I can confirm that I that I have no objection to the proposal from a tree perspective. The proposed visibility splay and hedge bank to the north of the access point will fall in the RPA of an A category Oak. However, the incursion is minor, and original access point to the field is located in this area which is likely to have been compacted to some degree from historical use and from the addition of compacted hardcore at the site entrance thus likely restricting root growth to some degree in this area. With appropriate ground protection in place within the RPA of the tree, it is considered that the removal of the existing hedge bank and reinstatement of the new hedge bank should not cause significant harm to the tree.

#### DCC Flood Risk Management Team

Recommendation:

Our objection is withdrawn and we have no in-principle objections to the above planning application at this stage, assuming that relevant pre-commencement planning conditions are imposed on any approved permission.

Observations:

The applicant have submitted Proposed Residential Development on Land at Pendle Hill, Sidford, Sidmouth, EX10 9SG (Report Ref. J-3186, Rev. 03, dated 04th July 2025) to support the 15 dwellings residential development.

It was mentioned that infiltration testing were carried out in 4 trial pits on 25th October 2023. The testing failed to record a significant drop in surface water level. The evidence provided by the applicant indicates that all 4 trial pits failed the infiltration testing.

Due to the failed infiltration testing, the applicant propose to manage the surface water runoff via an attenuation tank as shown in Surface Water Drainage Layout (Drawing No. 3001, Rev C, dated 16th June 2025). The applicant currently ruled out the use of above-ground feature due to the 3.5m easement required by South West

Water for their potable water mains. The applicant also confirmed that the site is allocated in the Draft East Devon Local Plan under Policy Sidm-31. Although it is intended to build 15 dwellings, the layout of the site development and the number of dwellings shall be considered to identify whether any above-ground pond or basin can be proposed for the proposed development site in detailed design.

The submitted greenfield runoff rate calculation indicates an area of 0.354ha (0.387ha with 10% urban creep) and the associated greenfield runoff rate,  $Q_{bar}$  is 2.77ls.

It is proposed to discharge the surface water runoff to a nearby surface water sewer via requisition. The applicant have provided evidence that there is agreement in principle from the owner or South West Water to discharge into their system.

There appears to be a surface water flow path to the north of the site, the applicant should ensure that the proposed site does not impact on the flow path.

### Other Representations

40 representations of objection have been received, including a representation from the Sid Vale Association.

### Summary of Grounds of Objection

1. Site lies outside of Built-up Area Boundary for Sidmouth and is therefore, in planning terms, open countryside.
2. Contrary to Local Plan Strategy 7 and a departure from the Plan's spatial strategy.
3. Contrary to Local Plan exceptions site Strategy 35 that requires min. 66% affordable housing.
4. Tenure mix falls short of 50% requirement in Local Plan Strategy 34.
5. Relies upon draft policy requirements in emerging Local Plan that is not in force; draft allocation of site carries limited weight at best.
6. Conflict with Sid Valley Neighbourhood Plan Policies 9 and 10.
7. Lack of 5 year housing land supply does not make every draft housing allocation acceptable.
8. Draft emerging Local Plan cannot formally supercede the neighbourhood plan until adoption.
9. Harmful incursion into National Landscape (Area of Outstanding Natural Beauty).
10. Proposal is 'major development' within meaning of NPPF paragraph 177 and therefore engages requirement to refuse permission.
11. No exceptional circumstances or matters of public interest exist to justify development.
12. Need for housing can be met outside of the National Landscape.
13. Burscombe Lane is inadequate to serve further development owing to lack of continuous footway and insufficient width in vicinity of site.
14. Off-site highway mitigation proposals are inadequate; no footway provision to make up a 20m gap or other solutions explored.
15. Additional traffic and pedestrian movements that will be generated would increase safety risks.
16. Proposed new entrance would concentrate traffic at the junction with Burscombe Lane; consideration needs to be given as to how two vehicles would pass without causing traffic to back up along the lane.

17. Visibility at the Burscombe Lane/Sidford High Street junction is inadequate to safely accommodate more traffic emerging from it.

18. Concern that attenuation tank will exacerbate flooding risks to Windsor Mead given failure of nearby drainage infrastructure.

19. Site introduced into emerging Local Plan at a late stage having been previously rejected.

### **PLANNING HISTORY**

| <b>Reference</b> | <b>Description</b>               | <b>Decision</b> | <b>Date</b> |
|------------------|----------------------------------|-----------------|-------------|
| 81/P0184         | Building Sites For 14 Dwellings. | Refusal         | 24.03.1981  |

### **POLICIES**

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

Strategy 1 (Spatial Strategy for Development in East Devon) Adopted

Strategy 2 (Scale and Distribution of Residential Development) Adopted

Strategy 3 (Sustainable Development) Adopted

Strategy 5B (Sustainable Transport) Adopted

Strategy 7 (Development in the Countryside) Adopted

Strategy 26 (Development at Sidmouth) Adopted

Strategy 34 (District Wide Affordable Housing Provision Targets) Adopted

Strategy 36 (Accessible and Adaptable Homes and Care/Extra Care Homes) Adopted

Strategy 38 (Sustainable Design and Construction) Adopted

Strategy 43 (Open Space Standards) Adopted

Strategy 46 (Landscape Conservation and Enhancement and AONBs) Adopted

Strategy 47 (Nature Conservation and Geology) Adopted

Strategy 48 (Local Distinctiveness in the Built Environment) Adopted

Strategy 50 (Infrastructure Delivery) Adopted

D1 (Design and Local Distinctiveness) Adopted

D2 (Landscape Requirements) Adopted

D3 (Trees and Development Sites) Adopted

EN5 (Wildlife Habitats and Features) Adopted

EN13 (Development on High Quality Agricultural Land) Adopted

EN14 (Control of Pollution) Adopted

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

EN22 (Surface Run-Off Implications of New Development) Adopted

H2 (Range and Mix of New Housing Development) Adopted

TC2 (Accessibility of New Development) Adopted

TC7 (Adequacy of Road Network and Site Access) Adopted

TC9 (Parking Provision in New Development) Adopted

#### Draft East Devon Local Plan 2020-2042 Policies

Strategic Policy SP05 (Development inside Settlement Boundaries) Draft

Strategic Policy SP01 (Spatial strategy) Draft

Strategic Policy SP02 (Levels of future housing development) Draft

Strategic Policy SP03 (Housing requirement by Designated Neighbourhood Area)  
Draft

Strategic Policy SP07 (Delivery of infrastructure) Draft

Strategic Policy SD06 (Sidmouth and its development allocations) Draft

Strategic Policy AR01 (Flooding) Draft

Strategic Policy HN01 (Housing to address needs) Draft

Strategic Policy HN02 (Affordable housing) Draft

Policy HN04 (Accessible and adaptable Housing) Draft

Strategic Policy DS01 (Design and local distinctiveness) Draft

Policy DS02 (Housing density and efficient use of land) Draft

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

Policy TR04 (Parking standards) Draft

Strategic Policy OL01 (Landscape features) Draft

Strategic Policy OL02 (National Landscapes (Areas of Outstanding Natural Beauty)) Draft

Policy OL09 (Control of pollution) Draft

Policy OL10 (Development on high quality agricultural land) Draft

Policy PB03 (Protection of irreplaceable habitats and important features) Draft

Strategic Policy PB04 (Habitats Regulations Assessment) Draft

Strategic Policy PB05 (Biodiversity Net Gain) Draft

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

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

Policy PB09 (Monitoring requirements for new planting scheme) Draft

Made Sid Valley Neighbourhood Plan 2018-2032 Policies (made 7/11/19)

Policy 1 (Sid Valley Development Principles)

Policy 6 (Infill Development, Extensions and Trees)

Policy 7 (Local Distinctiveness)

Policy 9 (Residential Development)

Government Planning Documents

National Planning Policy Framework 2024 (as amended)

## **ANALYSIS**

### Site Location and Description

The application site comprises a field of broadly oblong configuration, laid to pasture at the time of the officer site visit, that extends to approximately 1.08 hectares in area. It is located on the northern edge of Sidmouth (Sidford) just outside of the Built-up Area Boundary (BuAB) of the town as defined in the adopted East Devon Local Plan but within the designated East Devon National Landscape.

Its western boundary mostly comprises a Devon bank and forms a frontage onto Burscombe Lane, an unclassified highway that extends north off the A3052 (Sidford High Street). Burscombe Lane itself features residential properties; however, it also gives access to a shared private driveway to the rear of properties that front Sidford High Street. It also provides access to Corefields, a cul de sac that extends off it to the east.

The section of Burscombe Lane from its junction with Sidford High Street to a point just north of the junction with Corefields is essentially of two vehicle width with a footway along its eastern side. However, to the north of this point the road carriageway narrows to single vehicle width with no footways, aside from a short section along the front of three bungalows (Dovey House, Uphill and Pendle Hill) along its eastern side.

The southern site boundary also mainly borders the rear gardens of properties in Corefields as well as the side boundary of Dovey House. Also forming part of the National Landscape boundary, it largely consists of managed hedges

The eastern boundary, which also comprises managed hedges, also forms the side boundaries of nos. 13 and 14 Windsor Mead, positioned at the end of a residential cul de sac consisting mainly of bungalows and chalet style dwellings to the south and north, respectively, of a turning circle.

The northern boundary is with a public footpath (no. 50) that connects Burscombe Lane and Higher Brook Meadow. It exhibits a hedge and a line of trees of varying maturity. However, none are the subject of statutory protection in the form of a tree preservation order.

The site, which falls relatively gently from west to east, occupies a comparatively elevated position on the side of Core Hill. It forms part of a wider landscape that is of Landscape Character Type 3A - Upper Farmed and Wooded Valley Slopes, the key characteristics of which include:

- well-treed pastoral farmland with some arable cultivation on lower slopes
- wide, species-rich hedges with many hedgerow trees
- very winding narrow lanes, many sunken with high banks and flower-rich verges
- relatively remote and tranquil with little obvious modern development

### Proposed Development

The application seeks outline planning permission for a residential development of the site comprising up to 15 dwellings.

Although submitted in outline, the application seeks to discharge details of means of access to the site at this stage, reserving details as to the layout, scale and appearance of the development, together with landscaping of the site, for later approval.

As such, the application is accompanied by access details for formal consideration at this stage. These take the form of an illustrative site layout plan together with layout and section details. These show the proposed vehicular access to the prospective development positioned close to the south western corner of the site just to the north

of Dovey House and in close proximity to an existing field access off Burscombe Lane.

The indicative layout details also show an area of wildflower planting alongside part of the southern boundary of the site, retention of boundary vegetation and the setting aside of an area near to the south eastern corner for surface water attenuation infrastructure. It also shows two potential access links to the adjacent public footpath.

The submission also includes draft heads of terms for a prospective section 106 agreement. These relate to the provision of affordable housing (35% direct provision with 15% by way of a commuted payment to meet the 50% policy requirement), the provision of open space and the setting up of a management company.

#### Considerations/Assessment

The proposal falls to be considered having regard to the following material issues that are discussed in turn.

#### 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 Sidmouth, which has a BuAB defined in the Plan, as referenced above.

As stated above, the proposal would in this case comprise development outside of the BuAB of Sidmouth as defined in the Local Plan. In policy terms therefore, it would constitute development within the countryside where the provisions of Strategy 7 (Development in the Countryside) of the Plan apply.

These only allow for development where it would be in accordance with specific local or neighbourhood plan policy(ies).

However, the proposal in this case is not 'community led' nor facilitated by any policy contained within the made Sid Valley Neighbourhood Plan (NP).

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

On account of the above, residential development in this location conflicts with the spatial approach to development as expressed within the development plan. This conflict is attributed weight given that protection of the countryside (and more especially the National Landscapes), 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 over the course of recent months have shown that even if a site is not allocated in the current plan or is outside development boundaries, housing proposals can still nevertheless be considered as 'sustainable development' if there is no identified contextual conflict, they would not unbalance communities and are within reasonable reach of an appropriate level of services and facilities.

East Devon can currently only demonstrate a housing land supply of 3.5 years in line with the revised standard methodology for calculation introduced via the revised NPPF, thereby falling significantly short of the current 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.

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 that 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 the 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 five-year housing land supply, then the 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.

However, the Sid Valley NP, having been 'made'/adopted in November 2019, has formed part of the development plan for around six years. Furthermore, the document does not contain policies and allocations that meet the identified housing requirement. It is not therefore considered that it can be argued, on the basis of paragraph 14, that any adverse impacts of permitting the development in this case (in conflict with the NP) would significantly and demonstrably outweigh the benefits.

#### Impact upon National Landscape and Presumption in Favour of Sustainable Development

As set out above, the 'tilted balance' applied by NPPF paragraph 11d) is qualified by policies in the Framework that protect areas or assets of particular importance where these provide a strong reason for refusing development.

Among these policies are those that relate to National Landscapes.

Within such areas (as well as areas subject to other landscape designations), paragraph 189 of the NPPF requires that great weight should be given to conserving and enhancing their landscape and scenic beauty and confers upon them the highest status of protection in relation to these issues.

Paragraph 190 states that, when considering applications for development within these areas, permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest.

For these purposes, whether a proposal is 'major development' is a matter for decision makers, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated.

In this case, the application site is shown as a Housing Allocation in the 'Regulation 19' version of the Draft Emerging East Devon Local Plan 2020-2042 that was the subject of public consultation earlier this year.

The provisions of Strategic Policy SD06 (Sidmouth and its development allocations) reflect this and allocate the site for a 'small scale development' accommodating 'around 15 new homes'. Further provisions of the draft policy recognise the National Landscape location of the site and its relationship to adjacent predominantly single storey dwellings and state that 'only single storey dwellings will be appropriate'. It also 'expects that access for all road users would be off Windsor Mead.'

Its inclusion within the document follows the assessment of sites for allocation carried out by the Council's Strategic Planning Committee in 2024.

Among the assessment's conclusions was the following:

'This site could be brought forward if developed at a yield in keeping with adjoining densities. Although the site is within the National Landscape, there is existing housing directly to the east (Windsor Mead) and the south (Core Fields and along Burscombe Lane), which would help shield any development. Landscape impact would be high-medium, heritage impact low and a significant moderate adverse effect predicted on ecology.'

Sitting behind the Publication draft of the emerging Plan is a topic paper titled 'Major Development in National Landscapes'. It sets out how 'major development' in the context of a National Landscape has been identified and assessed in relation to site allocations.

As is evident from paragraph 190 of the NPPF, referred to above, the identification of 'major development' in a National Landscape in this context is open to interpretation by decision makers to take into account local factors.

The topic paper sets out how the NPPF has been interpreted for the Local Plan in light of the particular characteristics of the National Landscapes within East Devon.

The assessments consider whether development of the allocation sites have the potential to have a serious adverse impact on the natural beauty of a National Landscape by reason of its scale, character or nature. This has been necessary to avoid a situation where an allocation could be undeliverable because it was incapable of meeting the NPPF tests on 'major development'.

However, it does not mean that no further assessment is necessary as part of the development management process because the precise nature of the proposed development will have an impact on planning judgements about the actual impact on a National Landscape.

Where it is concluded that an allocation would constitute 'major development' in the context of a National Landscape, the NPPF (at paragraph 190, as referred to above) requires an assessment of whether there are 'exceptional circumstances' to justify the development 'in the public interest'.

The NPPF sets out three tests to assist such an assessment:

- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

The topic paper also therefore includes this assessment.

In relation to the application site, the principal conclusions are that:

- in terms of its setting the immediate context is the settlement edge to the south and east (mainly single storey detached dwellings) with open fields to the north and west
- the site is seen in the context of the wider urban area, which rises up the hill to the south and east
- the landscape makes some contribution to local landscape character, but the immediate context is the settlement edge
- there is no significant adverse impact on the purposes for which the area is designated as National Landscape
- the scale of impacts identified from allocation of the site is considered to be minor

As such, subject to development being limited to single storey housing as required by emerging Draft Local Plan Policy SD06, it is not considered to constitute 'major development' for the purposes of paragraph 190 of the NPPF.

In such circumstances it is not necessary for an 'exceptional circumstances' assessment to be undertaken to justify the need for the development having regard to the wider public interest.

#### Principle of Development - Conclusion

It is considered therefore, in light of the above, that the 'tilted balance' presumption in favour of sustainable development set out at paragraph 11d) of the NPPF is engaged in this case.

The site is an allocated site for housing within the emerging Local Plan. Whilst the Local Plan carries limited weight at this stage it nevertheless indicates that the Council have determined that this is a suitable site for housing development.

Moreover, for the purposes of NPPF paragraph 189, the proposal has been found not to comprise 'major' development within such an area. As such, there is no requirement to apply the 'exceptional circumstances' test set out in NPPF paragraph 190.

In the circumstances therefore and having regard to the fundamental requirement to increase housing land supply, it is considered that the principle of residential development of the site would be acceptable. Although there is an acceptance that the emerging Local Plan currently remains at a comparatively early stage in the process towards adoption, it is indicative of the broad direction of travel in policy terms and the allocation of the site follows a robust appraisal of many sites for potential inclusion in the Plan going forward.

#### Impact upon Character and Appearance of National Landscape

Paragraph 189 of the NPPF confers upon NLs, along with other designated landscape areas, the highest status of protection in relation to the conservation and enhancement of its landscape and scenic beauty and states that great weight should be given to these objectives in the control of development within them.

This is reinforced by the provisions of adopted Local Plan Strategy 46 (Landscape Conservation and Enhancement and AONBs) as well as, more generically, Policy D1 (Design and Local Distinctiveness) which, among other criteria, require that proposals respect the area's key characteristics and special qualities and do not adversely affect important landscape characteristics.

Furthermore all relevant authorities, including local planning authorities, have a statutory duty under section 245 of the Levelling-up and Regeneration Act to seek to further the conservation and enhancement of natural beauty of the area in carrying out their functions.

Many of the findings as to the likely impact of development of the site upon the designated NL have been incorporated within the topic paper 'Major Development in National Landscapes' referred to above.

Furthermore, notwithstanding this and the initial shortcomings of the applicant's landscape visual impact assessment identified by the Council's Landscape Architect (which have for the most part now been addressed), it is agreed that the principle of development could be acceptable subject to appropriate design and mitigation measures. In addition, with the quantum of development not being fixed at this stage, there may be some flexibility to negotiate a slight reduction in the number of units proposed at the reserved matters stage if considered necessary.

The outstanding issues raised by the Landscape Architect in relation to the site layout, in particular the achievement of a suitable landscape buffers between development and the northern site boundary with the public footpath and the spine road and the southern boundary, would also be capable of being considered further at the same reserved matters stage. Equally, the detailed alignment of the spine road itself, so as to avoid the straight access road shown indicatively on the layout drawing, and the extent of the footways entering the site from Burscombe Lane,

could be considered further later in the process in the event of this outline application being approved.

The submission of details of the proposed hedge bank construction required by the Landscape Architect could also be secured by condition.

On this basis it is considered that the proposal would meet with the Local Plan strategy/policy provisions referenced above.

#### Design/Layout/Scale/Appearance

As all details aside from those relating to means of access to the development are reserved for later approval, there is little by way of any other fixed detail to consider at this stage.

However, the submitted indicative details show a layout centred upon a spine road cul de sac extending eastwards off of Burscombe Lane running close to, and parallel with, the southern site boundary. A turning head is shown at the end of the road with a further short private driveway extending towards the northern boundary, at which point the potential pedestrian connection to the public footpath referred to above is indicated.

A similar, albeit longer, spur road is also shown extending north off of the spine road nearer to the entrance to the site with a second potential connection to the public right of way again indicated.

An area of wildflower planting is shown extending alongside the southern boundary as far as an area within the south eastern corner shown as being set aside for the proposed surface water attenuation infrastructure.

The layout also shows a mix of detached, semi-detached and terraced units arranged around the spine road and two spur roads with attendant off-road parking, part of this shown around a communal courtyard with much of the remainder defined in a series of tandem layouts.

Although the quantum of development is not intended to be fixed at this stage, it is accepted that a scheme of up to/around 15 dwellings would likely represent an acceptable density of development given the site area of just over 1 hectare, whilst also allowing for the land shown to be set aside for the wildflower planting and surface water drainage attenuation installation.

Strategic Policy SD06 of the emerging Local Plan states that development of "only single storey dwellings will be appropriate" on the site given that it is viewed "in the context of an area of predominantly single storey dwellings". It also states that "the site will require very careful planning and use of materials to take full account of both the immediate context and views from the wider landscape, particularly when viewed from higher land to the east, and only single storey dwellings will be appropriate."

This is particularly important in view of the comparatively elevated hillside position of the site, with some of the principal views towards it being from the A3052 on Trow Hill to the east of Sidmouth at similarly elevated levels, referred to above.

It is therefore accepted that the development could be laid out and designed so as to satisfy the requirements of Local Plan Strategy 46 and Policy D1 in regard to these matters.

#### Impact upon Neighbour Amenity

Open countryside to the north and west of the site beyond the public footpath and Burscombe Lane, respectively, is such that any development would not impact any neighbouring or nearby properties in these directions.

Similarly it is felt that, in combination, the existing hedge screening and the wildflower planting shown indicatively alongside the southern and eastern site boundaries would provide sufficient separation between the development and the adjacent residential properties in Burscombe Lane, Core Fields and Windsor Mead so as to mitigate any potential adverse overlooking/privacy or other amenity impacts upon the occupiers; particularly so if the development (or at least part of it) were of single storey form.

On this basis, it is accepted that the proposal would satisfy one of the key criteria of Local Plan Policy D1 (Design and Local Distinctiveness) that requires that development avoids any such impacts.

#### Highways/Access/Parking

The nature of Burscombe Lane, which is of single vehicle width with limited footway provision to the north of the junction with Corefields, is recognised, as is the considerable objection that has been received on the basis of its perceived capacity and suitability to accommodate the increase in the number of vehicle movements, as well as pedestrian activity, that would be generated by the proposed development.

However, no objections are raised to the proposal by the County Highway Authority (CHA) on the grounds of any anticipated adverse impact upon highway or pedestrian safety conditions or in relation to the development resulting in a trip generation intensification problem. This is owing to the proximity of the site to the A3052 as well as local services and facilities and public transport routes, including the developing Sid Valley cycle route at Sidford.

It is also recognised by the CHA that accessibility could be further enhanced if the detailed proposals that come forward at reserved matters stage incorporate connection(s) to the adjacent public footpath located to the north of the site, that could provide an alternative, non-vehicular route to the centre of Sidford, bus stop, local services and facilities.

In addition, the CHA's road collision data for its latest 5 year period shows no recorded collisions in the vicinity of Burscombe Lane.

The CHA is also satisfied with the submitted access details for the scheme.

Although not a matter for consideration at this outline stage, there is also no known reason why any detailed proposals for the site could not incorporate sufficient levels of parking provision for prospective occupiers and visitors.

Strategic Policy SD06 states that "it is expected that access for all road users (to the allocated site) would be off Windsor Mead".

However, access to the site off Windsor Mead would not currently be possible without the development of third party land that currently forms part of one, if not two, gardens attached to nos. 13 and 14 Windsor Mead beyond the turning head at the end of the western branch of that cul de sac over which the applicants have no control.

Burscombe Lane itself does provide a level of footway connectivity. However, this extends from Sidford High Street as far north as Corefields beyond which the road carriageway narrows to single vehicle width at which point there is a section, extending to around 30 metres in length, where there is no footway, there is then a further length of footway along the frontages of Dovey House, Uphill and Pendle Hill, as referenced above.

It is acknowledged, in the absence of any proposal to provide access to the development from Windsor Mead, that this represents a shortfall of the proposal as the lack of pavement for this 30m stretch means it would be a less attractive pedestrian route, especially when dark, leading to greater dependence on use of the private car.

In the circumstances therefore, and in line with the CHA's consultation comments, it is recommended that the details submitted at reserved matters stage should incorporate points of connection from the development to this footpath in line with the details shown on the submitted indicative site layout plan so as to provide some mitigation of the issues relating to the inadequacy of Burscombe Lane to properly accommodate the additional pedestrian movements that would likely be generated by the development. It should be noted however that this public footpath is unmade and unlit and would not be an attractive route when dark or wet/muddy.

The lack of a safe pedestrian route to local services at all time weighs negatively in the planning balance.

#### Foul and Surface Water Drainage

It is proposed to discharge foul drainage from the development via an existing mains sewer.

The proposed surface water drainage strategy, as stated above, involves below ground attenuation prior to discharge to a surface water sewer. This would comprise the installation of an attenuation tank within the south eastern corner of the site.

The scheme has been designed to accommodate the 1 in 100 year plus 50% climate change event plus 10% urban creep and calculations to demonstrate this have also been provided.

It has also been demonstrated to the satisfaction of Devon County Council's Flood Risk Management Group, as Local Lead Flood Authority (LLFA), that infiltration

testing has revealed that discharge to ground (principally via soakaways) would not be feasible owing to very low percolation rates.

Evidence has also been provided of South West Water's agreement that there exists capacity for an attenuated discharge to its surface water sewer.

It is therefore accepted that the proposed attenuated discharge represents the next sequentially preferred means of discharge having regard to the hierarchy of means of surface water runoff discharge solutions and, as such, is acceptable to the LLFA.

A condition is therefore recommended by the LLFA to secure the submission for approval of, among other things, a detailed drainage design based upon the submitted flood risk assessment. It is expected that these measures be incorporated within the required design.

However, the LLFA require that the site layout and number of dwellings proposed be considered at the detailed submission stage to identify whether any above-ground pond or basin can be incorporated within the proposed development of the site and any such changes to the overall strategy incorporated within the reserved matters application.

On this basis, it is accepted that the proposals would comply with the provisions of Local Plan Policy EN22 (Surface Run-Off Implications of New Development).

#### Ecology and Biodiversity Net Gain

The application is accompanied by an ecological impact assessment (EclA) report together with a biodiversity net gain (BNG) statement and statutory metric.

The EclA report sets out measures for both the mitigation of the impacts of the proposed development and ecological enhancement.

The former includes:

- Protection of retained hedges and trees, most notably the Oak tree within the Burscombe Lane frontage boundary hedge (close to the proposed access to the site, during construction)
- As shown on the illustrative layout plan, the creation of a c. 40 metre length native species-rich hedge within the centre of the site together with a c. 150 metre native species-rich hedge along the rear of gardens at the north of the site
- Buffers to retained hedges to enable appropriate management, with all areas outside of private residential ownership to be managed by a management company, and to retain 'dark corridors' for bats
- Hedge removal (with ecological supervision) to be appropriately timed to avoid the main bird nesting season with either a single or two stage approach to clearance to establish, under a Natural England mitigation licence, the extent of any impact upon local dormouse population

The latter comprises the installation of integrated bird nest and bat boxes and bee/insect bricks on each dwelling.

In relation to BNG the submitted calculations, based on the illustrative layout, indicate that the proposals would achieve a net gain of c. 27% or +0.58 area habitat units and c. 12% or +1.40 hedgerow units with all biodiversity gains created on site.

This would be via the proposed total 190 metre length hedge planting referred to above which, as a consequence, would result in the creation of significant on site gains thereby requiring the need to be secured legally for a 30 year minimum period from completion of the development by way of a habitat management and monitoring plan (HMMP).

A grant of planning permission would be subject to the statutory Biodiversity Gain Condition as well as the conditions recommended by the Ecologist relating to the carrying out of the mitigation and enhancement measures set out in the EclA and the provision of an HMMP. Further conditions are also recommended to secure the submission for approval of a Lighting Design report and a Construction and Ecological Management Plan (CEcoMP).

#### Derogation test

The supporting information with the application has identified that a Natural England licence will be required due to the presence of a bat roost within the outbuilding to be converted.

Natural England can only issue a licence if the following tests have been met:

1. the activity to be licensed must be for imperative reasons of overriding public interest including those of a social or economic nature and/or beneficial consequences of primary importance for the environment or for public health and safety;
2. there must be no satisfactory alternative that will cause less harm to the species;
3. the activity must not harm the long-term conservation status of the species.

Whilst decision makers should have regard to the 3 tests above it should be noted that the LPA is not expected to duplicate the licensing role of NE. An LPA should only refuse permission if the development is unlikely to be licensed pursuant to the derogation powers and Article 12 of the Habitats Directive was likely to be infringed.

From the evidence it is considered that the development would result in social benefits through the provision of additional housing, including affordable housing, to meet identified needs. It would also provide economic benefits throughout the construction phase. Taken in combination these indicate that the proposal is imperative for reasons of overriding public interest.

As the works could not be undertaken in a manner that would avoid such harm or be transferred to another site, there is no satisfactory alternative.

Additionally, given that planning conditions could maintain the favourable conservation status of the protected species, it is plausible that a licence could be granted subject to an application being made.

### Impact upon Trees/Hedges

As referenced above, boundary hedges and the Oak tree - categorised as an 'A' category specimen within the submitted arboricultural appraisal - within the western site boundary hedge alongside Burscombe Lane (the latter just north of the proposed site entrance) would be protected during the course of development by way of a scheme of tree protection fencing.

The operations to form the new site entrance, create the visibility splay to the north, translocate the hedge bank, infill the existing field gateway and widen the road carriageway of Burscombe Lane would in themselves involve works within c. 6.2% of the root protection area (RPA) of the Oak.

However, the extent of this incursion is considered to be minor. It is also recognised that the proximity of the existing field entrance to the tree is likely to have been subject to compacting from both its historical use and the addition of compacted hardcore that would have restricted root growth to some degree.

As such, subject to ground protection measures being implemented in accordance with a detailed arboricultural method statement to be submitted for approval, there are no objections to the proposal on arboricultural grounds.

The proposal would therefore satisfy the provisions of Local Plan Policy D3 (Trees and Development Sites).

### Affordable Housing

It is proposed that affordable housing be provided by way of 35% on site provision alongside an 'off-site' financial contribution so as to satisfy the Local Plan Strategy 34 requirement for 50% provision.

Details of the intended tenure type/split have not been provided at this stage. Whilst Strategy 34 sets a target of 70% social or affordable rent accommodation and 30% shared ownership or intermediate housing, this could be established at the section 106 agreement stage.

Both the on-site provision and financial contribution would be incorporated within obligations forming part of a section 106 agreement.

This split and the proportions between direct provision on site and the payment of a financial contribution have been accepted as an appropriate means of securing a policy-compliant level of 50% affordable housing provision within schemes elsewhere throughout the District. It is therefore considered to be acceptable in this case.

### Section 106 agreement obligations

The application submissions include draft heads of terms for a section 106 agreement to secure the following:

- o Affordable housing - 35% on site provision and 15% 'off site' financial contribution
- o On site open space implementation and management
- o Sustainable Urban Drainage system implementation and management

- o Habitat Regulations financial contribution towards mitigation of the effects of development upon European designated sites

### Planning Balance

The site lies outside of the Built-Up Area Boundary of the town as defined in the adopted Local Plan and made Sid Valley Neighbourhood Plan, resulting in a clear conflict with the spatial strategy of both plans. However, the site is identified as an allocation within the latest Regulation 19 draft of the emerging Local Plan, albeit, while indicative of the Council's intended direction of growth of the town, this currently carries limited weight due to its still comparatively early stage in the process towards adoption.

However, the current inability to demonstrate a five-year housing land supply is a significant material consideration and, under paragraph 11 of the National Planning Policy Framework (NPPF), there is a presumption in favour of sustainable development in such circumstances, subject to impact on the National Landscape.

Whilst the development would extend the settlement into open countryside and result in some harm to the landscape character of the NL, these impacts are considered likely to be moderate and capable of mitigation through the safeguarding of existing boundary hedges and trees and appropriate site landscaping.

In line with the assessment set out in the Major Development in National Landscapes topic paper it is not considered that the level of harm to, and therefore the scale of impact upon, the NL would be 'significant'. As such, it is thought that the 'tilted balance' presumption in favour of sustainable development set out at paragraph 11d) of the NPPF is engaged in this case as the application of policies in this Framework that protect areas or assets of particular importance (i.e. the NL in this case) is not considered to provide a strong reason for refusing the proposed development.

Pedestrian access to the site is limited; there are options that are likely to be used during daylight hours, but when dark, occupiers are more likely to be reliant on use of the private car. As such the site is not policy compliant in this regard. However, in recent appeal decisions Inspectors have judged locational based Local Plan policies to be out of date when the tilted balance is triggered, as in this case.

As such it is considered that any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, with significant weight given to the provision of housing including affordable homes.

It is therefore considered that the principle of residential development of the site would be acceptable in this case. The proposal would deliver a meaningful contribution to housing supply, including affordable housing through a combination of on-site provision and off-site financial contributions. It would also generate economic benefits during the construction phase and longer-term social benefits through the provision of the market and affordable housing. In addition, the scheme would

incorporate sustainability measures such as biodiversity enhancements, aligning with national and local policy objectives.

In addition, there are no technical objections raised that would outweigh the fundamental acceptance of the principle of development.

In combination, these factors are thought to carry considerable weight in favour of the proposal in the overall planning balance.

### Habitat Regulations Appropriate Assessment

An Appropriate Assessment is required for development as it is within 10k of designated European sites and the proposed development 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. This development will be CIL liable and the financial contribution will be secured by way of obligations contained within a section 106 agreement. On this basis, and as the joint authorities are working in partnership to deliver the required mitigation in accordance with the South-East Devon European Site Mitigation Strategy, this proposal will not give rise to Likely Significant Effects.

### **RECOMMENDATION**

1. That the Habitat Regulations Appropriate Assessment be adopted.
2. That the application be APPROVED subject to completion of a Section 106 Agreement and the following conditions:
  1. Approval of the details of the layout, scale and appearance of the development and landscaping of the site (hereinafter called "the reserved matters") shall be

obtained from the Local Planning Authority in writing before any development is commenced.

(Reason - The application is in outline with one or more matters reserved.)

2. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

(Reason - To comply with section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.)

3. 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.)

4. The approved landscaping scheme shall be carried out in the first planting season after commencement of the development unless any alternative phasing of the landscaping is agreed in writing by the Local Planning Authority and the landscaping shall be maintained for a period of 5 years. Any trees or other plants which die during this period shall be replaced during the next planting season with specimens of the same size and species unless otherwise agreed in writing by the Local Planning Authority.

(Reason - In the interests of amenity and to preserve and enhance the character and appearance of the area, which is designated a National Landscape, in accordance with Strategy 46 (Landscape Conservation and Enhancement and AONBs) and Policy D1 (Design and Local Distinctiveness) of the adopted East Devon Local Plan 2013-2031.)

5. Prior to commencement of any part of the site the Local Planning Authority shall have received and approved a Construction Management Plan (CMP) including:

(a) the timetable of the works;

(b) daily hours of construction;

(c) any road closure;

(d) hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8.00am and 6.00pm Mondays to Fridays inc.; 9.00am to 1.00pm Saturdays, and no such vehicular movements taking place on Sundays and Bank/Public Holidays unless agreed by the planning Authority in advance;

(e) the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;

(f) the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;

- (g) areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the County highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;
- (h) hours during which no construction traffic will be present at the site;
- (i) the means of enclosure of the site during construction works; and
- (j) details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site
- (k) details of wheel washing facilities and obligations
- (l) The proposed route of all construction traffic exceeding 7.5 tonnes.
- (m) Details of the amount and location of construction worker parking.
- (n) Photographic evidence of the condition of adjacent public highway prior to commencement of any work.

(Reason - A pre-commencement condition is required to ensure that adequate facilities are available for construction and other traffic attracted to the site in accordance with Policy TC7 (Adequacy of Road Network and Site Access) of the adopted East Devon Local Plan 2013-2031.)

6. Construction working hours shall be 8am to 6pm Monday to Friday and 8am to 1pm on Saturdays, with no working on Sundays or Bank Holidays. There shall be no burning on site and no high frequency audible reversing alarms used on the site.

(Reason - To ameliorate and mitigate against the impact of the development on the local community in accordance with Policy EN15 (Control of Pollution) of the adopted East Devon Local Plan 2013-2031.)

7. No development above foundation level shall take place until a schedule of materials and finishes, and, where so required by the Local Planning Authority, samples of such materials and finishes, to be used for the external walls and roofs of the proposed development shall be 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 sympathetic to the character and appearance of the development and the surrounding area, which is designated a National Landscape, in accordance with Strategy 46 (Landscape Conservation and Enhancement and AONBs) and Policy D1 (Design and Local Distinctiveness) of the adopted East Devon Local Plan 2013-2031.)

8. No development shall be commenced until details of final finished floor levels and finished ground levels in relation to a fixed datum 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 - A pre-commencement condition is required to ensure that adequate details of levels are available and considered at an early stage in the interests of the character and appearance of the development and surrounding area,

which is designated a National Landscape, in accordance with Strategy 46 (Landscape Conservation and Enhancement and AONBs) and Policy D1 (Design and Local Distinctiveness) of the adopted East Devon Local Plan 2013-2031.)

9. No development shall commence until the following has been submitted to and approved in writing by the Local Planning Authority:

(a) A detailed drainage design based upon the approved Proposed Residential Development on Land at Pendle Hill, Sidford, Sidmouth, EX10 9SG (Report Ref. J-3186, Rev. 03, dated 04th July 2025).

(b) Detailed proposals for the management of surface water and silt run-off from the site during construction of the development hereby permitted.

(c) Proposals for the adoption and maintenance of the permanent surface water drainage system.

(d) A plan indicating how exceedance flows will be safely managed at the site.

No building hereby permitted shall be occupied until the works that relate to that dwelling have been approved and implemented in accordance with the details under (a) - (d) above.

(Reason - To ensure the proposed surface water drainage system will operate effectively and will not cause an increase in flood risk either on the site, adjacent land or downstream in line with SuDS for Devon Guidance (2017) and national policies, including NPPF and PPG. The condition should be pre-commencement since it is essential that the proposed surface water drainage system is shown to be feasible before works begin to avoid redesign/unnecessary delays during construction when site layout is fixed in accordance with Policy EN22 (Surface Run-Off Implications of New Development) of the adopted East Devon Local Plan (2013-2031).

10. Visibility splays shall be provided, laid out and maintained for that purpose at the site access, where the visibility splays provide intervisibility between any points on the X and Y axes at a height of 0.6 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway (identified as X) shall be 2.4 metres and the visibility distances along the nearer edge of the carriageway of the public highway (identified as Y) shall be 43 metres in both directions.

(Reason - In the interests of ensuring the provision of adequate visibility from and of vehicles emerging from the site onto Burscombe Lane in accordance with Policy TC7 (Adequacy of Road Network and Site Access) of the adopted East Devon Local Plan 2013-2031.)

11. No individual dwelling shall be occupied until secure cycle/scooter storage facilities for that dwelling have been provided in accordance with details that shall previously have been submitted to and approved in writing by the Local

Planning Authority. The approved facilities shall thereafter be retained in perpetuity.

(Reason - In the interests of promoting sustainable travel in accordance with Policy TC4 (Footpaths, Bridleways and Cycleways) of the adopted East Devon Local Plan 2013-2031.)

12. No individual dwelling shall be occupied until bin and recycling storage facilities for that dwelling have been provided in accordance with details that shall previously have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall thereafter be retained in perpetuity.

(Reason - In the interests of ensuring that adequate provision is made for the storage of recycling and refuse within the development in accordance with Policy D1 (Design and Local Distinctiveness) of the adopted East Devon Local Plan 2013-2031.)

13. The development shall be carried out in accordance with the Ecological Impact Assessment (Woodfield Ecology, January 2025), in particular the ecological mitigation and enhancement measures detailed in Table 15 and section 4.3. A written record completed by a qualified Ecologist shall be submitted to the Local Planning Authority prior to occupation of any part of the development to include records of compliance monitoring, supervised habitat removal (including dormouse licence return) and photographs of the installed ecological mitigation, compensation and enhancement measures including:

- a) integrated bat boxes (1 per dwelling)
- b) bird boxes (1 per dwelling)
- c) insect bricks (1 per dwelling)
- d) hedgehog highways (13 cm<sup>2</sup> holes at ground level)
- e) 10 m dark corridors along north and west boundaries

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

14. No development shall commence on site until a Lighting Design, including lux contours, based on the detailed site design and most recent guidelines (currently GN08/23 and DCC 2022), has been submitted and approved in writing by the Local Planning Authority. The design shall clearly demonstrate that the northern and western hedge bank remain as dark corridors; i.e. at or below 0.5 lux (considering internal and external lighting). All external lighting shall be installed in accordance with the specifications and locations set out in the final design, and these shall be maintained thereafter in accordance with the design. Under no circumstances shall any other external lighting be installed without prior approval in writing from the Local Planning Authority.

(Reason - To ensure that the development has no adverse effect on protected and notable species in accordance with Strategy 47 (Nature Conservation and Geology) and Policy EN5 (Wildlife Habitats and Features) of the adopted East Devon Local Plan 2013-2031.) This needs to be a pre-commencement condition to ensure lighting impacts are mitigated from the outset of development.)

15. No development shall take place (including ground works) until a Construction and Ecological Management Plan (CECoMP) has been submitted to and approved in writing by the local planning authority. The CECoMP shall include the following:
  - a) Risk assessment of potentially damaging construction activities.
  - b) Identification of "biodiversity protection zones".
  - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
  - d) The location and timing of sensitive works to avoid harm to biodiversity features.
  - e) The times during construction when specialist ecologists need to be present on site to oversee works.
  - f) Responsible persons and lines of communication, including reporting compliance of actions to the LPA.
  - g) The role and responsibilities on site of an ecological clerk of works (ECoW), including any licence requirements.
  - h) Use of protective fences, exclusion barriers and warning signs.The approved CECoMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.

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

16. A Habitat Management and Monitoring Plan (HMMP) for a minimum 30-year period following completion of the development shall be submitted to, and approved in writing by, the Local Planning Authority prior to the commencement of the development.

The Plan shall be prepared in accordance with the submitted Ecological Impact Assessment (Woodfield Ecology, January 2025), the approved Biodiversity Gain Plan, and associated details and shall include the following:

- a) Details of the body or organization responsible for implementation of the plan accompanied by a site plan showing areas to be adopted; maintained by

management company or other defined body; and areas to be privately owned/maintained.

b) Details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body/ bodies responsible for its delivery.

c) A condition survey of existing trees, hedgerow and other habitat to be retained as a baseline for future monitoring and to identify any initial works required to address defects/ issues identified and bring them into good condition.

d) The planned habitat creation works to create and/or enhance habitat to achieve the biodiversity gain in accordance with the approved Biodiversity Gain Plan.

e) The management measures to maintain created, enhanced, and retained habitats in accordance with the approved Biodiversity Gain Plan for a period of 30 years from the completion of development.

f) Detailed maintenance works schedules covering regular cyclical work and less regular/ occasional works (including an annual work plan capable of being rolled forward over a minimum 30-year period). in relation to:

i. Existing trees and hedgerows/banks.

ii. Hedgerow management shall be carried out in accordance with the Hedge Management Cycle as set out in Hedgeline guidance.

g) The location and design of biodiversity features including integrated bird boxes, integrated bat boxes, insect bricks, and other features, e.g., permeable fencing, to be shown clearly on accompanying plans.

h) Boundary structures, drainage swales, water bodies and other infrastructure/ facilities within public/communal areas.

i) The monitoring methodology and frequency in respect of the created or enhanced habitat to be submitted to the Local Planning Authority.

j) Arrangements for periodic review and update of the plan that may be required to meet the objectives of the plan and reflect any relevant changes to site, legislation and best practice guidance.

k) The Plan shall also set out (where the results from monitoring show that its conservation aims and objectives are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The approved Plan shall be implemented in accordance with the approved details.

Notice in writing, in the form of a verification report completed by a competent ecologist or landscape architect, shall be given to the Council when the habitat creation and enhancement works as set out in the HMMP have been established to define the completion of development and the start of the 30-year maintenance and monitoring period.

Monitoring reports shall be submitted to Local Planning Authority in writing in accordance with the methodology and frequency specified in the approved HMMP.

(Reason - To ensure the development delivers a biodiversity net gain on site in accordance with Schedule 7A of the Town and Country Planning Act 1990 and 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.) This needs to be a pre-commencement condition to ensure the site is not disturbed in advance of the survey work)

17. Prior to the commencement of any works on site (including demolition and site clearance or tree works), an Arboricultural Method Statement (AMS) for the formation of the vehicular access and the protection of the adjacent Oak tree shown on the approved plans shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.  
The AMS shall adhere to the principles embodied in B.S. 5837:2012 and shall indicate exactly how and when the tree will be protected during the development process.

Provision shall be made for the supervision of the tree protection by a suitably qualified and experienced arboriculturalist and details shall be included within the AMS.

The AMS shall provide for the keeping of a monitoring log to record site visits and inspections along with: the reasons for such visits; the findings of the inspection and any necessary actions; all variations or departures from the approved details and any resultant remedial action or mitigation measures. On completion of the development, the completed site monitoring log shall be signed off by the supervising arboriculturalist and submitted to the Local Planning Authority for approval and final discharge of the condition.

(Reason - A pre-commencement condition is required to ensure retention and protection of the tree during and after construction. The condition is required in the interests of amenity and to preserve and enhance the character and appearance of the area, which is designated a National Landscape, in accordance with Strategy 46 (Landscape Conservation and Enhancement and AONBs) and Policies D1 (Design and Local Distinctiveness) D3 (Trees and Development Sites) of the adopted East Devon Local Plan 2013-2031.)

18. The development hereby permitted shall be carried out in accordance with the measures for the protection of trees and hedges during the course of development set out in the Arboricultural Impact Assessment report (ref.: 2338/AIA Rev. A) dated 10th March 2026, and as shown on the accompanying Tree Protection Plan (ref.: 2338/TPP) prepared by Doug Pratt Tree Consultancy. Provision shall be made for the implementation of the approved protection measures prior to the commencement of development and the approved protection measures shall remain in place for the full duration of the development.

The following restrictions shall also be strictly observed:

- (a) No burning shall take place in a position where flames could extend to within 5m of any part of any tree to be retained.
- (b) 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.
- (c) No changes in ground levels or excavations shall take place within the crown spreads of retained trees (or within half the height of the trees, whichever is the greater) unless agreed in writing by the Local Planning Authority.

(Reason - In the interests of ensuring retention and protection of trees and hedges on the site during and after construction in interests of amenity and to preserve and enhance the character and appearance of the area, which is designated a National Landscape, in accordance with Strategy 46 (Landscape Conservation and Enhancement and AONBs) and Policies D1 (Design and Local Distinctiveness) and D3 (Trees and Development Sites) of the adopted East Devon Local Plan 2013-2031.)

19. The landscaping details to be submitted at the reserved matters stage shall include details as to the construction of the stone-faced hedge bank at the rear of the visibility splays shown on the approved plans. Development shall be carried out in accordance with the approved details and shall be completed within the first planting season following commencement of development unless an alternative timetable is agreed in writing with the Local Planning Authority

(Reason - In the interests of amenity and to preserve and enhance the character and appearance of the development and the surrounding area, which is designated a National Landscape, in accordance with Strategy 46 (Landscape Conservation and Enhancement and AONBs) and Policy D1 (Design and Local Distinctiveness) of the adopted East Devon Local Plan 2013-2031.)

20. 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 that has previously 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.

(Reason - To ensure, in accordance with Policy EN7 (Proposals Affecting Sites which may potentially be of Archaeological Importance) of the adopted East Devon Local Plan 2013-2031 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. A 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.)

21. 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.)

22. The development hereby permitted shall take the form of single storey dwellings (and for the avoidance of doubt a chalet type bungalow is not regarded as a single storey dwelling).

(Reason - In the interests of the character and appearance of the locality in accordance with Policy D1 (Design and Local Distinctiveness) of the adopted 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 require the approval of a biodiversity gain plan before development is begun because none of the statutory exemptions or transitional arrangements listed 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 applies (planning permission for development already carried out).
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.

Where there are losses or deterioration to irreplaceable habitats a bespoke compensation package needs to be agreed with the planning authority, in addition to the Biodiversity Gain Plan.

For information on how to prepare and submit a Biodiversity Gain Plan please use the following link [Submit a biodiversity gain plan - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/submit-a-biodiversity-gain-plan)

[Plans relating to this application:](#)

|   |     |   |               |          |
|---|-----|---|---------------|----------|
| (2)   |     |   | Location Plan | 17.02.25 |
| JG07  | REV | A | Sections      | 05.01.26 |
| SECTION<br>DRAWINGS                         |     |   |               |          |
| JG05  | REV | E | Other Plans   | 05.01.26 |
| PROPOSED<br>ACCESS/FOOT<br>WAY<br>PROVISION |     |   |               |          |

### 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.