

**Ward** Ottery St Mary Rural

**Reference** 18/1064/FUL

**Applicant** Mr Simon Ashdown

**Location** Potters Country Market West Hill Road West Hill Ottery St Mary EX11 1TY

**Proposal** Demolition of the existing single storey buildings at the rear, erection of rear and roof level extensions to facilitate the introduction of 8 x 2 bedroom apartments, retention of ground floor shop, estate agents and cafe and dedicated vehicle parking and servicing



**RECOMMENDATION:**

1. That the Habitat Regulations Appropriate Assessment within the report be adopted;
2. That the application be APPROVED subject to a S106 agreement to secure an affordable housing contribution of £12,210 and overage capped at £178,768.



		<b>Committee Date: 8<sup>th</sup> January 2019</b>
<b>Ottery St Mary Rural (WEST HILL)</b>	<b>18/1064/FUL</b>	<b>Target Date: 09.07.2018</b>
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**EXECUTIVE SUMMARY**

**The application is before Members as the officer recommendation differs to the view of a Ward Member.**

**This is an application to redevelop the existing village shops at West Hill, retaining the shops and post office, but proposing 8 apartments on two floors above.**

**The proposal updates the current frontage and adds height, including a pitched roof. Some accommodation is to be removed and a marketing exercise has been carried out which demonstrates that not all of the current commercial space is viable.**

**The new building will be higher than at present, however it is considered that this will become a focal building for this part of West Hill and would not impact on neighbouring amenity due to the building's location on the road and distances from residential dwellings. Sufficient parking will be provided for the residents of the flats, and for visitors to the shops.**

**Due to the number of apartments proposed, affordable housing is required. It is accepted that this should take the form of a financial contribution, rather than provision on site. The applicant has provided viability analysis which states that the full amount cannot be provided if the development is to be successful and as**

**such a contribution of £12,210 has been offered. This offer is also subject to an overage clause requiring the developer to submit a development account on completion, with part of any uplift in profit going to the Council.**

**Subject to signing of a legal agreement for the above amount, and subject to conditions requiring the laying out of parking, provision of a new path and landscaping conditions the proposal is considered to be acceptable.**

## **CONSULTATIONS**

### **Local Consultations**

#### **Ottery St Mary Rural - Cllr P Carter**

In principle I would like to see this site developed, unfortunately I feel along with the Parish Council, West Hill Primary and preschools, West Hill Village Hall and a majority of the local community I have been discussing this application with have concerns over the lack of proposed car parking would lead to considerable Health and Safety implications for all users including deliveries to the site and pedestrians.

I would like to see further reviews on the considerable impact of the proposed parking and also the street scene design of the new proposed building, I feel this design leaves a lot to be desired for our lovely woodland village, something far more in keeping would be more favourable.

I look forward to further discussions and reviews of this application.

#### **Clerk To West Hill Parish Council**

08/06/18 - West Hill Parish Council strongly supports the principle of redevelopment of the site, but is unable to support the application in its present form

The site is located in a prominent position in the centre of West Hill, housing a shop, Post Office, estate agent, unused office facilities and a space with planning permission for a café. It is of vital importance to West Hill, which has few other amenities, and is registered as an Asset of Community Value (retail).

The parish council welcomes the redevelopment initiative and accepts that a partial change of use to residential is probably necessary and therefore acceptable, in order to fund the redevelopment of the other parts.

However in its present form, the council has concluded that it is unable to support the application.

West Hill is a tranquil, rural village of almost 900 homes. It is unusual in being heavily wooded and accommodation is mainly detached houses, the majority with large secluded gardens.

The site occupies a prominent position on a slope in the centre of the village. The proposed development involves draping an unattractive, flat roofed 1970 era building with a new shell and adding an additional storey to accommodate 8 apartments. The associated poor quality outbuilding (former cowshed) will be demolished.

The scale and appearance of the new shell is completely out of keeping with a rural, woodland village being more suited to an urban environment. The wall to the northeast towers above the car park as the site slopes in that direction, presenting a 26m x 14m urban backdrop to the centre of the village.

The majority of users of the current facilities travel by car. Whilst there are no parking standards for non-residential development, the proposed reduction of available parking spaces from 45 to 19 is of concern from a road safety viewpoint. The café (which the proposed operator indicated could have 40-50 covers) and the shop, which is apparently to be upgraded, are likely to increase demand for parking in the village centre which is already one of the largest safety concerns of residents. The council would expect the provision of disabled and perhaps parent and child spaces and this will only exacerbate the problem.

The council would expect a café of this size to require 12-15 spaces including staff, 1-2 for the estate agent, and a further 12-15 for shop staff and customers suggesting a realistic allocation of around 28-30 spaces.

Whilst the designation of vehicle and pedestrian routes within the car park is laudable, the potential for problems in a much restricted car park are serious. There is also potential for clashes between residents and the public if short cuts are taken through residents parking areas. On road parking is not an option as it is either prohibited (West Hill Road) or unsafe elsewhere, as highlighted in the council's Public Realm Survey.

The applicant did take note of a community suggestion for access between Beech Park (where there is an established exit to the car park) and West Hill Rd and has incorporated a permissive path along the southwest boundary. However, given that the principal users are likely to be people with small children going to and from the school with buggies, scooters etc, and the incorporation of steps in what appears to be an already narrow walkway is unacceptable.

The question of housing need is important. West Hill has expanded by 10% in recent years. There are sufficient extant planning consents to meet projected housing needs until 2031. No evidence is given for the need for 2 bedroom apartments. Anecdotal evidence from A P Marney, stated by the applicant to be associated with Hall & Scott, a local estate agent, has been treated with caution in view of a conflict of interest as they occupy a ground floor office in the development.

The applicant claims that there is demand from young people, young families and older people wishing to downsize although no evidence is given. The applicant has not included any affordable element from which it can be inferred that the likely prices will be unaffordable to first time buyers.

The council believes that young families are likely to be discouraged by the small size, lack of storage space, lack of a lift and nowhere to dry washing or for children to play. West Hill residents wishing to downsize have said they would be reluctant to buy an apartment above a shop with no lift and no outside space. Planning policy for West Hill is only required to support local needs.

The permanent loss of the additional retail/commercial space on the first floor is regrettable in view of the CAV status of the building. It is unsurprising that there was little interest from potential tenants given its neglected state.

Little attempt has been made to integrate the external parts of the scheme with the wishes of the community for a more coherent village hub. The West Hill Public Realm study was made available to the applicant, albeit at short notice, but much more could be done to improve the landscaping and to work with the parish council and the community to create that village centre the community needs.

It has already been noted that there is no provision of affordable housing. The applicant has stated that the required payment in lieu, of £178,000, would render the scheme uneconomic. The council has seen no evidence for this. However, in view of the importance of the site to the community, being an Asset of Community Value, and the lack of any real benefit to the community from the scheme which in fact impairs that value, the council does not feel that any reduction in this levy should be accepted and that the proposal should be amended in such a way that the required levy can be satisfied.

The council is concerned about disruption during the construction phase which could render the car park almost unusable and create traffic hazards in adjacent roads. A well considered construction management plan is essential.

In summary, the site is unique in West Hill and the proposals do little to enhance the site or reflect its critical influence on the character of the centre of the village. Although we accept that a retail building may be larger than a residential building, a three storey development will be too dominant especially as seen from the east or north.

The building will dominate and overlook the neighbour to the south and we feel that the obscure glazing to the bedroom, which emphasises this point, is undesirable and likely to be unacceptable to a prospective buyer.

There is also a concern over the balconies to the southeast elevation, which overlook the principal route through the village. The second storey balconies have now been reduced to Juliet style and the council would like the remainder to follow suit.

West Hill has expanded by 10% in the last few years fulfilling its Local Plan requirements and there is no substantive evidence given of the need for flats in the village.

The remaining non residential parking arrangements are inadequate and are likely to be detrimental to road safety.

We consider that the design places the café in the least desirable position and in consequence will be less likely to provide the central hub that so many residents would like to see.

The scheme is purely speculative development, radically changing the use of a registered Asset of Community Value. It provides little benefit to the environment or the community. The council would welcome the opportunity to engage properly with

the developers to produce a scheme which will create a real sense of place with an attractive atmosphere of which the developers and the village can be proud.

Such a solution would inevitably be more advantageous for the developer. It will need to address traffic issues, the scale of the building, a sense of place in the centre of the village. The present proposals have been confined by the existing layout of the shop and the requirement to keep it open throughout the build. Construction will virtually close the existing car park and although access might be retained the work will severely limit trade.

We emphasise that there is no evidence of need and conclude that the present proposals should not be approved because of their effects on the rural, village environment due to massing, inappropriate appearance, overlooking, inadequate parking arrangements and the loss of first floor retail/commercial properties.

Further comments - 09/08/18

This application was considered by West Hill Parish Council at the meeting on 7th August 2018. Councillors commented that the proposed amendments are very minor and do not substantially alter the overall development. However, they welcomed the addition of the ramp on the access path and agreed that it was an improvement over the previous design, which had steps, as it would facilitate use by parents with pushchairs.

Councillors voted to not support the application in its present form and referred back to their comments on the original plans. They welcome the addition of the ramp but have nothing to add to their previous comments.

Further comments - 12/11/18

I refer to the email sent to Andrew Digby from Murray Ross at Avalon Planning on 18th September.

Attached to the email was a briefing note prepared on behalf of the applicants to brief Councillors on the Development Control Committee. Paragraph 4 of the briefing note states "Since submission, the applicants have continued to work closely with the Council Planning Officers, together with the Parish Council. Accordingly a number of alterations have been made to the scheme to address those key concerns, including the addition of an accessible side access route for pedestrians, the inclusion of further landscaping and amendments to the design of the rear elevation." And further within the document: "The applicants feel that they have carried out sufficient engagement with the local community and Parish Council, indeed the public consultation event... demonstrated that there is a lot of support for the scheme from local residents."

West Hill Parish Councillors discussed this briefing note at their meeting on Tuesday 6th November and resolved to instruct me to write to you to set the record straight. Councillors are concerned that the briefing note has put an unnecessarily positive spin on the consultation outcome. Indeed, the Parish Council wrote to Murray Ross on 11th June 2018, informing him of the consultee comments about to be submitted. The letter clearly states that the Parish Council is not supporting the application "as it stands" and also offers an opportunity for a further meeting to discuss "suggestions for improvement in more detail." Sadly the Council's offer was not taken up. That is why

Councillors were surprised by the implication of continued close working and "sufficient engagement". Councillors have always maintained that the applicants could have done more to engage with the Parish Council's/residents' concerns. Apart from the addition of the side access route, Councillors are struggling to see what alterations were made to the scheme to address key concerns.

As the application is still awaiting a decision, I trust you will take these remarks into consideration and correct the impression given by the applicants that they have continued to work closely with the Parish Council and done as much as they could to address key concerns - they have not. And the Parish Council is still opposed to the proposal in its current form.

### **Technical Consultations**

Housing Strategy Officer Melissa Wall

Consultee response:

Government guidance states that provision and contributions in the form of a commuted sum for affordable housing should not be sought from developments of 10 units or less. In designated rural areas, of which West Hill applies (SI 1981/397), there is a threshold of 5 units or less where no affordable housing or tariff-style contributions should be sought. For developments of between 6 and 10 units in rural areas, and which have a maximum combined gross floor space of no more than 1,000 sq m, a tariff style contributions should be sought in the form of cash payments which are commuted until after the completion of the units.

The proposal for this scheme is for 8 units and therefore a contribution towards affordable housing will be required. We will be seeking a contribution of £178,768 towards affordable housing.

However we understand that the applicant is claiming that vacant building credit should be applied. Guidance states that where there is an overall increase in floor space in the proposed development, the local planning authority should calculate the amount of affordable housing contributions required from the development as set out in their Local Plan. A 'credit' should then be applied which is the equivalent of the gross floor space of any relevant vacant buildings being brought back into use or demolished as part of the scheme and deducted from the overall affordable housing contribution calculation. This will apply in calculating either the number of affordable housing units to be provided within the development or where an equivalent financial contribution is being provided.

Potters Country Market was marketed by Altitude Investments as a retail investment with development potential seeking offers in excess of £925,000. The Affordable Housing Financial Viability Analysis produced by S106 Management states that the property was subsequently bought by their client. Strategic Planning Committee (20 February 2017) resolved that Vacant Building Credit (VBC) will be considered on a case by case basis and that, other than in exceptional circumstances, the following criteria shall be applied:

- o VBC will only be granted where it would help to secure the redevelopment of vacant brown-field land or buildings

- o VBC will not be granted where land has been purchased for redevelopment and a 'vacant' period of time is a normal part of the development process
- o VBC will not be applied when the 'vacant' period is a policy requirement for demonstrating the land is no longer required for its current use

It could be suggested that the owners bought the property with the intention of redeveloping the upper floors. The planning officer will make a decision on whether VBC should be applied in this case. If it is agreed that it should be applied then this will reduce the contribution amount.

The applicants have submitted a viability report claiming that the commuted sum payment would render the scheme unviable. The viability evidence will be independently reviewed and a recommendation made.

An overage clause will be sought in respect of future profits and affordable housing provision, where levels of affordable housing fall below policy targets.

#### Environmental Health

I have considered this application and recommend that the following conditions are attached to any permission granted.

Before the development commences a scheme for the provision of internal sound insulation, to include party walls, floors and ceilings, shall be submitted to and approved in writing by the Local Planning Authority and the agreed scheme shall be completed prior to the commencement of the use hereby permitted.

Reason : To protect adjoining occupiers from excessive noise.

A Construction and Environment Management Plan must be submitted and approved by the Local Planning Authority prior to any works commencing on site, and shall be implemented and remain in place throughout the development. The CEMP shall include at least the following matters: Air Quality, Dust, Water Quality, Lighting, Noise and Vibration, Pollution Prevention and Control, and Monitoring Arrangements. 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. There shall be no high frequency audible reversing alarms used on the site, and no deliveries to and from the site outside the above hours of working.

Reason: To protect the amenities of existing and future residents in the vicinity of the site from noise, air, water and light pollution.

No deliveries to the shop or cafe shall be accepted or despatched to or from the site except between the hours of 07.30 and 18.00 Monday to Friday, or 07.30 and 18.00 on Saturdays, and not at all on Sundays or Bank Holidays.

Reason: To protect the amenities of local residents from noise.

Any plant (including ventilation, refrigeration and air conditioning units) or ducting system to be used in pursuance of this permission shall be so installed prior to the first use of the premises and be so retained and operated that the noise generated at the boundary of the nearest neighbouring property shall not exceed Noise Rating Curve 25, as defined in BS8233:2014 Sound Insulation and Noise Reduction for Buildings Code of Practice and the Chartered Institute of Building Service Engineers

Environmental Design Guide. Details of the scheme shall be submitted to and approved by the Local Planning Authority prior to the first use of the premises.  
Reason: To protect the amenity of local residents from noise.

### County Highway Authority

Observations:

The site is based on the C809, West Hill Road, at the centre of the village.

The proposed apartments will be serviced by a dedicated parking space each and the shared use of 10 other spaces which I believe will be satisfactory for the accommodation requirements as a whole.

Though I appreciate that this will take up space within the stores car park, which has been utilised for the school and other village use, no formal agreement as been put in place and this understanding has only been through the kindness of the store. Therefore the proposal may see an increase in on-street car parking, however, Beech Road has unrestricted parking, not including junctions and therefore is open to parking from any vehicle.

The access is to remain the same and the apartments have cycle parking to encourage sustainable travel.

Overall, the County Highway Authority (CHA) would not like to raise an objection to this planning application.

Recommendation:

THE HEAD OF PLANNING, TRANSPORTATION AND ENVIRONMENT, ON BEHALF OF DEVON COUNTY COUNCIL, AS LOCAL HIGHWAY AUTHORITY, HAS NO OBJECTION TO THE PROPOSED DEVELOPMENT

### Other Representations

7 objections and one representation have been received. They raise the following concerns:

- Overspill parking would be hazardous to highway safety
- It would cause increased noise and traffic in Beech Park
- It would be a danger to school children
- The car park would have insufficient space for delivery vehicles
- The building would be too tall and out of character
- It would be overbearing and overlook surrounding properties
- The scheme would not provide the required level of affordable housing contribution

### POLICIES

Ottery St Mary and West Hill Neighbourhood (Made)

Policy NP2 (Sensitive, High Quality Design)

Policy NP3 (Infill, Backland and Residential Garden Development)

Policy NP8: Protection of Local Wildlife Sites and Features of Ecological Value

Policy NP12: Appropriate Housing Mix

Policy NP14: Demonstrating Infrastructure Capacity  
Policy NP17: Community Facilities of Value  
Policy NP26: West Hill Design

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 5B (Sustainable Transport)

Strategy 6 (Development within Built-up Area Boundaries)

Strategy 27 (Development at the Small Towns and Larger Villages)

Strategy 32 (Resisting Loss of Employment, Retail and Community Sites and Buildings)

Strategy 34 (District Wide Affordable Housing Provision Targets)

Strategy 43 (Open Space Standards)

Strategy 47 (Nature Conservation and Geology)

Strategy 48 (Local Distinctiveness in the Built Environment)

Strategy 50 (Infrastructure Delivery)

D1 (Design and Local Distinctiveness)

D2 (Landscape Requirements)

D3 (Trees and Development Sites)

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

EN22 (Surface Run-Off Implications of New Development)

H3 (Conversion of Existing Dwellings and Other Buildings to Flats)

TC2 (Accessibility of New Development)

TC7 (Adequacy of Road Network and Site Access)

TC9 (Parking Provision in New Development)

Government Planning Documents

NPPF (National Planning Policy Framework 2018)

National Planning Practice Guidance

**Site Location and Description**

The site is in the centre of West Hill and is occupied by a two storey commercial building and car park. The lower floors are occupied by the village shop and an estate

agent, while one unit remains empty. The upper floor has been vacant for a considerable time.

On two side of the building there is a large car park and there is vegetation on the boundaries. The site is surrounded by residential properties although most are separated by roads or the car park.

## **Proposal**

Planning permission is sought for the creation of eight flats over two floors on top of the ground floor commercial premises. The middle level of the building would use and extend the existing first floor to provide four flats and an additional storey would be added to provide a further four.

Externally the elevations would be updated and a pitched roof would be added. At the rear of the building a single storey store room would be demolished and the main building would be extended to accommodate stairs to all levels as well as bin and bicycle stores on the ground floor. The commercial premises would remain.

A range of materials are proposed including fibre cement roof tiles and standing seam membrane for the roof, through colour rough render, timber-effect weatherboarding and grey weather goods.

## **ANALYSIS**

### **Principle of development**

The development plan for West Hill is the East Devon Local Plan 2013-2031 (EDLP) and the Neighbourhood Plan for the Parishes of Ottery St Mary and West Hill 2017-2031 (NP).

West Hill is identified in Strategy 27 of the EDLP as a village which offers a range of accessible services and facilities to meet many of the everyday needs of local residents, including access to public transport. The Villages Plan defines a Built-up Area Boundary for the village within which development is acceptable in principle in accordance with Strategy 6. The site lies within the boundary and therefore the provision of flats in this location is acceptable in principle and further supported by Neighbourhood Plan Policy NP12 (Appropriate Housing Mix) which encourages the provision of smaller 1 and 2 bed homes.

Notwithstanding the support for new homes in this location, the provision of flats through the conversion and extension of the upper floor of the building will result in the loss of a number of small business units. However, the premises have been marketed for commercial uses for a significant amount of time without success and therefore it is accepted that the requirements of Strategy 32 that allows such losses following an unsuccessful period of marketing, are met.

Although the building is an Asset of Community Value, this does not prevent the owner from seeing and securing planning permission for its re-development. It simply provides a period of time for the community to bid to purchase the building.

## Character and Appearance

The next main issue to consider is whether the development would be compatible with the character of the site and its surroundings. The improvements to the external appearance of the building are welcomed, particularly as the building is so prominent and now somewhat dated. It is noted, however, that increasing the height of the building by way of an additional storey and a pitched roof would result in a scale of development which would be at odds with the one and two-storey pattern of development which is typical in the village. Furthermore, design principle B1 in the Neighbourhood Plan states "The design of new or extended buildings must not be significantly different from those of nearby dwellings in respect of both eaves and ridge height."

The Parish Council has commented: "The scale and appearance of the new shell is completely out of keeping with a rural, woodland village being more suited to an urban environment. The wall to the northeast towers above the car park as the site slopes in that direction, presenting a 26m x 14m urban backdrop to the centre of the village."

While it is accepted that the building would be more dominant as a result of the additions and alterations, the northwest wall would only be about 75cm taller than the existing wall. The main additional bulk of the building would be in the pitched roof as well as the rear extensions. These elements would be recessed when viewed from West Hill Road and this is illustrated in the computer generated image on page 8 of the Design and Access Statement.

The design principles are clearly relevant to private residential development which makes up the bulk of development within the village. Application of these principles ensures that new development is in harmony with its surroundings. The same outcome should also be achieved on this site but the public nature of the building and its status as a focal point for the village means that the scheme should not be dismissed simply because it is taller than most other buildings in the village.

In this particular location the topography of the surrounding land, the position of the nearest dwellings and the status of the building as a focal point justify departing from the design principles. It is accepted that the building would appear imposing but this is considered a positive feature for a public building. Furthermore, although it would be taller than any dwellings in the immediate locality, it would not be so tall as to appear out of scale with its surroundings.

The weakest element of the design is considered to be the north-east elevation which faces onto the car park. The design has been amended during the life of this application but it is still a rather bland in comparison to the front and rear elevations, partly due to the lack of roof pitches. Furthermore, unlike many public buildings, this side would be public facing. In spite of those concerns, however, the use of materials and the design of the individual elements of this part of the building are sympathetic to the design of the building as a whole and it would be difficult to justify a reason for refusal on these grounds alone.

On balance, therefore, the scale and appearance is considered acceptable.

## Amenity

The impact of the development on the amenity of the occupiers of surrounding properties would be somewhat different to the impact of the existing building owing not just to its scale but also owing to the introduction of residential uses and the associated windows and balconies. The proposal would introduce new windows facing surrounding properties and all of the windows would have elevated views. Balconies are also proposed on the front and rear of the building.

At the front, there would be views towards the houses on the opposite side of the road but the window-to-window distance would be at least 26m which is sufficient for privacy. Views into the front gardens would be at closer range but both are exposed to public views to some degree and are relatively small areas compared to the private back gardens.

There would be a similar distance to the two properties beyond the car park at the rear so no adverse impacts would arise in that direction.

The nearest dwelling to the site is Higher Field which adjoins the south west boundary. This property has an address on West Hill Road but its vehicular access is from Beech Park. The proposed enlargement would add considerably to the bulk of the building adjacent to the boundary with this property. However, the additional height and bulk is mitigated by the difference in levels. The ridge height of Higher Field is 110.7 and this compares to a ridge level of 113.2 for the highest ridge of the enlarged building.

Although the 2.5m difference is not insignificant, the highest parts of the new development would be set in from the boundary. The combination of the design of the new development, the separation between the buildings and the layout of Higher Field are such that the development would not appear dominant or overbearing to the neighbour. With regard to windows in the side elevation, these have been designed to avoid views over the neighbour and it is reasonable to obscure the side windows while still allowing views to the front and rear. The only element that is unacceptable as drawn is the second floor balcony to flat 8 which would have unrestricted and elevated views over the driveway/garden of Higher Field. However, a screen on the edge of this balcony could be secured by condition.

## Trees

There are no trees on the site that are likely to be affected although it would be necessary to secure protection for retained hedgerows, trees and shrubs on the boundaries because these make a significant contribution to the character and appearance of the area. Where the building would extend towards Higher Field it is likely that the boundary trees within the garden of that property will need to be trimmed where they overhang the site. A method statement for this work could be secured by condition.

## Parking and pedestrian access

There are currently about 42 spaces in the car park serving the shop and 8 of these would be allocated to the flats. A further 9 spaces would be unallocated but reserved

for use by the occupants of the flats and these 17 spaces would be in a defined area of the car park behind the building. These are adequate to serve the 8 flats.

The remaining area of the car park would be reconfigured to provide 19 spaces although there might need to be a small reduction in that number to allow for larger disabled parking bays. While concern has been raised locally about the reduction in the amount of parking, there is considered to be ample provision for the users of the shop and the other businesses. Furthermore, although the car park is well used by parents taking their children to the nearby school, it is a privately owned facility and such use could be prevented at any time by the owner. Should there be no spaces available in the car park, there is space available on the road in Beech Park and the highway authority have not raised any concerns about the use of those roads.

### Other matters

At the rear of the shop there is a much older building which appears to date from the 19th century and may be the last remnant of the smithy which occupied the site. Buildings of this age are rare in West Hill but an examination of the structure has determined that little of the original fabric remains. Furthermore, there are no surviving fittings and therefore the building is not considered to be of any great significance such that it should be retained. In this instance the benefits of enhancing the appearance of the retained buildings and making efficient use of the site are considered to outweigh the loss of the building.

Secure bicycle parking facilities would be provided for the flats as well as dedicated bin storage facilities which are accessible to refuse collection vehicles.

Emergence surveys have been undertaken for bats but no evidence was found. The ecology report recommends the installation of two combined bat and swift boxes and this could be secured by condition, along with the landscaping scheme.

It is hoped that the ground floor units would remain open during the works although some disruption would be expected. Ultimately the Council cannot place any requirement on the businesses to stay open but the risk of closure is considered to be low. Furthermore, any change of use would need to comply with Strategy 32.

### Financial contributions

There are two non-negotiable payments required. First, the development would be liable for CIL, which is currently charged at approximately £145 per square metre. Second, a habitat mitigation contribution of £146.85 per flat, or £1,174.80 in total, is required and this payment has been secured with a Section 111 agreement.

### Affordable Housing

Strategy 34 of the Local Plan requires a contribution towards affordable housing from all residential development, subject to certain thresholds. For the purposes of calculating the contribution in this case a net figure of 8 dwellings has been used because two flats that could be provided under permitted development rights 'approved' under reference 13/1841/CPL have not been provided.

West Hill is in a designated rural area for the purposes described in paragraph 031 (Reference ID: 23b-031-20161116) of the Planning Practice Guidance and therefore developments of 6-9 units must make an affordable housing contribution in the form of a cash payment.

The level of contribution is set according to which market area the site falls within. West Hill is in the Rural market area where a 50% contribution is required. This equates to an affordable housing contribution of £22,346 per flat (at the time of submission) or £178,768 in total. Because the building is not vacant (the ground floor is occupied), vacant building credit does not apply in this case and therefore the full contribution is required, subject to viability considerations. Where it can be demonstrated that a scheme would not be viable if the full contribution were made, overage will be sought in accordance with Strategy 34. The use of overage clauses offers a way to seek some redress where overly pessimistic assumptions about values and/ or an overestimation of costs, have been used to justify a lower level of affordable housing contribution when the scheme could actually have provided more.

A viability appraisal was submitted with the application and this has been independently reviewed on behalf of the Council. The Planning Practice Guidance advises that review is an iterative and collaborative process and in this case there discussions over viability have taken place over a period of several months. The stages in the process are set out below.

***First offer: No contribution and no overage.***

The original viability appraisal prepared by S106 Management (S106M) on behalf of the applicant claimed that the development would only make a profit of 1.51%, which is well below the accepted figure of 20% as a suitable return to the developer.

Analysis of this appraisal found that S106M had undervalued the proposed flats, applied VAT where it would not apply and allowed for profit on the commercial elements which are not changing under this proposal. Furthermore it based the benchmark land value on the purchase price of the site and this is contrary to guidance in the PPG which states: "The price paid for land is not a relevant justification for failing to accord with relevant policies in the plan." (Paragraph: 002 Reference ID: 10-002-20180724).

Making adjustments for values, etc. the review concluded that the scheme would make a profit in excess of 20% of Gross Development Value (GDV) sufficient to make the full affordable housing contribution.

***Second offer: No contribution and no overage.***

In the second report by S106M it is claimed that the development would make a loss but no explanation is given as to why permission is being sought if that is the case. The report also included a valuation of the development by Bradleys Surveyors which concluded that the GDV would be £100,000 lower than in the first report. In addition, it stated that 'prospective customers looking in the West Hill area will not be looking for flats, certainly if they are above ground floor level and do not have a lift. This

considerably reduces the demand for these flats'. Again, it is not clear why a developer would risk building flats in this location if demand is uncertain.

In the review of the second report there remains disagreement over GDV and certain other matters but it is concluded that a contribution of £90,000 would not cause the scheme to be unviable.

**Third offer:** (i) £24,622 on commencement but no overage; or (ii) no contribution initially and overage only payable if development commences more than 2 years after permission is granted, with the proviso that the Benchmark Land Value used for calculating the overage is set at £411,000.

The report leading to the third offer introduced an Alternative Use Value, which is a legitimate way of establishing the BLV. However, the PPG explains that 'If applying alternative uses when establishing benchmark land value these should be limited to those uses which have an existing implementable permission for that use.' The scheme indicated was for the conversion of the existing first floor to two flats and the construction of two dwellings in the car park, the latter element not benefiting from planning permission.

In the absence of planning permission for the alternative use, the BLV of £411,000 is not credible. Furthermore, it does not allow for CIL and habitat mitigation contributions (no affordable housing contribution would be payable on the alternative scheme because it is below the threshold of six dwellings). Nor is any explanation provided for making no initial contribution. With regard to the timing condition, there is no reason to incentivise bringing the development forward quickly (within two years) and therefore this clause is not justified. For these reasons offer (ii) is unacceptable.

In respect of offer (i), the lack of overage makes this unacceptable in policy terms and, furthermore, the lack of transparency about how the level of contribution was reached means that it is not credible.

**Fourth offer:** (i) £24,622 on occupation but no overage; or (ii) no contribution initially and overage based on a BLV of £411,000.

Offer (i) remains unacceptable for the reasons given above and provides no clarity about when the contribution would be paid (on occupation of which dwelling?). Offer (ii) is as above except that the timing condition has been omitted. This remains an unacceptable offer for the reasons already given.

**Fifth offer:** c£24,000 on occupation of the 4th unit AND there is a financial review following occupation of the 6th unit and a further payment of 50% of anything over the GDV calculated at £3,150 per sq m of habitable GIA, is made to the Council as an overage agreement, less the £24k paid up front, and capped at the Policy sum (£178k).

As before, there is still no supporting evidence to justify the contribution offered and in this case there is no precision over the amount. The remainder of the offer is wholly unacceptable:

- Under no circumstances would a review prior to the completion of the development be appropriate without there also being a final review.
- The overage payment should be based on the difference between actual GDV and actual costs (plus 20% profit), not the difference between actual GDV and predicted GDV. (In the offer, 'GDV calculated at £3,150 per sq m of habitable GIA' is their predicted GDV; 'anything over the GDV' means the difference between the predicted GDV and the actual GDV.)
- The figure of £3,150 per sq m has not been justified, although it is accepted that it is closer to the figure of £3,300 used in the independent review than the base figure of £2,600 used in the Bradleys Surveyors valuation.
- The £24,000 should not be deducted from the overage amount. (Any contribution already made (£24k in this offer) should be deducted from the cap (£178,768), not from the overage. In this way the overage plus the original contribution would be capped at the policy amount.)
- The cap should be £178,768.

***Sixth offer: £12,210 on occupation and overage capped at £178,768, with a Benchmark Land Value of £90,000.***

The inputs leading to this offer are all agreed and, although the initial contribution falls a long way short of the full contribution, the conclusions of the viability appraisal are accepted. Two points are worth noting, however. First, the CIL contribution has been recalculated in consultation with the Council's Planning Obligations Officer and is now higher than originally assumed. Because the CIL contribution is higher, the affordable housing contribution has reduced. Second, the predicted Gross Development Value is based on a figure of £3,150 per square metre, which is lower than the figure of £3,300 calculated in the independent review but higher than the developers previous assessment (based on a 'red book' valuation) of £2,600. Predicting the value of these flats is difficult owing to the lack of comparable sales in the village and therefore the offer of £3,150 is considered a reasonable compromise.

If the actual sales values are more than predicted then the overage clause would ensure that 50% of the extra profit is paid as an affordable housing contribution, capped at the full contribution amount.

As mentioned before, the review of viability should be an iterative and collaborative process. Furthermore the PPG advises that 'the weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including... the transparency of assumptions behind evidence submitted as part of the viability assessment.'

After long negotiations the developer has now provided acceptable evidence that the development would not be viable if the full affordable housing contribution were made. However, in making the offer they are very keen to stress that they do not agree with certain of the assumptions. In particular:

- They reject the benchmark land value of £90,000 and argue that it should be higher based on the existing use value or an alternative use value.
- They insist that their assessment of sales values (based on a 'red book' valuation) is more reliable.

- They insist that vacant building credit should apply even though the building is occupied on the ground floor.

For these reasons, if this application were to proceed to appeal, the affordable housing offer would be withdrawn and they would seek to argue that no contribution should be made, using their assessment of benchmark land value, sales values, etc. as justification.

Notwithstanding those views, an offer has been made which is acceptable and satisfies the requirements of Strategy 34.

### Habitats Regulation Assessment and Appropriate Assessment

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. This section of the report forms the Appropriate Assessment 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 is 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 has been secured. 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.

### CONCLUSION

This is an application to redevelop the existing village shops at West Hill, proposing 8 flats above the retained ground floor shops.

Some commercial accommodation is to be removed but a marketing exercise has been carried out which demonstrates that not all of the current commercial space is viable or required.

The new floor and roof form will add height to the new building, however this is considered acceptable as it will become a focal building for this part of West Hill without impacting on neighbouring amenity. Sufficient parking will be provided for the residents of the flats, and for visitors to the shops.

Due to the number of apartments proposed, affordable housing is required by way of a financial contribution. The applicant has provided viability analysis which states that the full amount cannot be provided if the development is to be successful and as such a contribution of £12,210 has been offered. This offer is also subject to an

overage clause requiring the developer to submit a development account on completion, with part of any uplift in profit going to the Council.

Subject to signing of a legal agreement for the above amount, and subject to conditions requiring the laying out of parking, provision of a new path and landscaping conditions the proposal is considered to be acceptable.

## **RECOMMENDATION**

- 1. Adopt the Habitat Regulations Appropriate Assessment within the report**
- 2. APPROVE subject to a S106 agreement to secure an affordable housing contribution of £12,210 and overage capped at £178,768 and the following conditions:**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission and shall be carried out as approved.  
(Reason - To comply with section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice.  
(Reason - For the avoidance of doubt.)
3. Notwithstanding the approved drawings, prior to occupation of Flat 8 (identified on drawing number 16123 L02.03 Rev. C) a privacy screen at least 1.7 metres tall on the south west side of the balcony shall be provided in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority. The privacy screen shall thereafter be retained in perpetuity.  
(Reason - To ensure the privacy of the occupiers of the adjacent property in accordance with Policy D1 (Design and Local Distinctiveness) of the East Devon Local Plan 2013-2031.)
4. No flat shall be occupied until the windows serving that flat marked with an asterisk on approved drawing 16126 L04.01 Rev. B have been glazed with obscure glass. The obscure glazing of those windows shall thereafter be retained in perpetuity.  
(Reason - To protect the privacy of adjoining occupiers in accordance with Policy D1 (Design and Local Distinctiveness) of the East Devon Local Plan 2013-2031.)
5. Notwithstanding the approved drawings, no development shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.  
(Reason - To ensure that the materials are considered at an early stage and are sympathetic to the character and appearance of the area in accordance with Policy D1 (Design and Local Distinctiveness) of the East Devon Local Plan 2013-2031.)

6. Before the development commences a scheme for the provision of internal sound insulation, to include party walls, floors and ceilings, shall be submitted to and approved in writing by the Local Planning Authority and the agreed scheme shall be completed prior to the commencement of the use hereby permitted.  
(Reason: To protect adjoining occupiers from excessive noise in accordance with Policy EN14 (Control of Pollution) of the East Devon Local Plan 2013-2031).
7. A Construction and Environment Management Plan must be submitted and approved by the Local Planning Authority prior to any works commencing on site, and shall be implemented and remain in place throughout the development. The CEMP shall include at least the following matters: Air Quality, Dust, Water Quality, Lighting, Noise and Vibration, Pollution Prevention and Control, and Monitoring Arrangements. 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. There shall be no high frequency audible reversing alarms used on the site, and no deliveries to and from the site outside the above hours of working.  
(Reason: To protect the amenities of existing and future residents in the vicinity of the site from noise, air, water and light pollution in accordance with Policy EN14 (Control of Pollution) of the East Devon Local Plan 2013-2031)
8. No deliveries to the shop or cafe shall be accepted or despatched to or from the site except between the hours of 07.30 and 18.00 Monday to Friday, or 07.30 and 18.00 on Saturdays, and not at all on Sundays or Bank Holidays.  
(Reason: To protect the amenities of local residents from noise in accordance with Policy EN14 (Control of Pollution) of the East Devon Local Plan 2013-2031)
9. Any plant (including ventilation, refrigeration and air conditioning units) or ducting system to be used in pursuance of this permission shall be so installed prior to the first use of the premises and be so retained and operated that the noise generated at the boundary of the nearest neighbouring property shall not exceed Noise Rating Curve 25, as defined in BS8233:2014 Sound Insulation and Noise Reduction for Buildings Code of Practice and the Chartered Institute of Building Services Engineers Environmental Design Guide. Details of the scheme shall be submitted to and approved by the Local Planning Authority prior to the first use of the premises  
(Reason: To protect the amenity of local residents from noise in accordance with Policy EN14 (Control of Pollution) of the East Devon Local Plan 2013-2031)
10. No development above foundation level shall take place until a landscaping scheme has been submitted to and approved in writing by the Local Planning Authority; such a scheme to include the planting of trees, hedges, shrubs, herbaceous plants and areas to be grassed. The scheme shall also give details of any proposed walls, fences and other boundary treatment. The 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 - To ensure that the details are planned and considered at an early stage in the interests of amenity and to preserve and enhance the character and appearance of the area in accordance with Policies D1 - Design and Local Distinctiveness and D2 - Landscape Requirements of the Adopted East Devon Local Plan 2013-2031.)

11. No dwelling shall be occupied until 17 residential parking spaces and 19 customer/ staff parking spaces for vehicles have been provided in accordance with the approved plans submitted, unless approved in writing by the Local Planning Authority.

(Reason - To ensure that adequate and safe provision is made for the occupiers and in the interests of highway safety in accordance with the requirements of Policy TC7 – Adequacy of Road Network and Site Access and TC9 – Parking Provision in New Development of the Adopted East Devon Local Plan 2013-2031.)

12. The permissive path shown on the South West boundary shall be provided prior to final occupation of the dwellings, and thereafter maintained.

(Reason – To ensure access by pedestrians through the development in accordance with Policy TC2 – Accessibility of New Development of the Adopted East Devon Local Plan)

#### NOTE FOR APPLICANT

##### Informative:

In accordance with the requirement 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 proactively with the applicant to ensure that all relevant planning concerns have been appropriately resolved.

##### Plans relating to this application:

16126 L01.00A	Location Plan	08.05.18
16126 L02.00	Existing Floor Plans	08.05.18
16126 L04.00	Existing Elevation	08.05.18
16126 L01.01 Rev B	Layout	23.07.18
16126 L02.01 Rev B Ground	Proposed Floor Plans	23.07.18

16126 L02.02 Rev C First	Proposed Floor Plans	23.07.18
16126 L02.03 Rev C Second	Proposed Floor Plans	23.07.18
16126 L02.04 Rev B	Proposed roof plans	23.07.18
16126 L03.01 Rev B Indicative	Sections	23.07.18
16126 L04.01 Rev B	Proposed Elevation	23.07.18

List of Background Papers

Application file, consultations and policy documents referred to in the report.