

**REPORT OF THE HEAD OF PLANNING AND REGENERATION**

**14/00468/FULL**

Portway, Willand Old Village, Willand, Cullompton

**Description of Development:**

This application seeks a variation of condition 2 of planning permission reference 11/02002/FULL to allow the substitution of revised plans. Condition 2 relates to the carrying out of development in accordance with the approved plans.

The original planning permission (ref. 11/02002/FULL) granted permission for the erection of four detached dwellings and included the erection of a double garage to serve plots 2 and 3. This current application now seeks permission to provide a single garage for plots 1, 2 and 3, and a new driveway to provide two parking spaces to plot 4, which results in plot 4 having a larger rear garden than previously approved. The application also proposes to remove a protected Birch tree on plot 2 and replace it with a similar specimen further in the garden to allow the provision of parking spaces adjacent to plot 2.

The principle of the development, the number, layout and design of the dwellings have previously been approved. The determination of this application must therefore concentrate upon the acceptability of the changes to the scheme and whether there have been any changes to material planning considerations (including policy) since the approval of the previous scheme.

**REASON FOR REPORT:**

**To consider the reasons for refusal proposed by the Planning Committee at the meeting of 21<sup>st</sup> May 2014 in light of further advice from Officers.**

**OFFICER RECOMMENDATION(S)**

Subject to a Supplemental Section 106 Agreement to transfer the provisions of the earlier Section 106 Agreement for planning permission reference 11/02002/FULL, grant planning permission subject to conditions.

The provisions of the Section 106 Agreement for planning permission reference 11/02002/FULL secured the following payments:

1. £22,500 toward off-site affordable housing provision.
2. £15,654 air quality contribution toward the implementation of the Cullompton Air Quality Action Plan.
3. £4,326 toward the provision and funding of public open space in the parish of Willand.

**Relationship to Corporate Plan:**

**Better Homes  
Caring for our Environment**

### **Financial Implications:**

Any appeal may require the appointment of planning consultants to assist in the defence of the reasons for refusal. The applicant may make an application for costs on any appeal against the Council and such costs claims are made by demonstrating that there has been unreasonable behaviour. That being the case, Members must be able to clearly justify - each and every reason for refusal.

### **Legal Implications:**

Planning decisions must be made in accordance with the Development Plan unless material considerations indicate otherwise.

### **Risk Assessment:**

If Committee decide to refuse the application for reasons that cannot be sustained at appeal there is a risk of a successful appeal costs claim against the Council for reasons of unreasonable behaviour.

**At the Planning Committee held on 21<sup>st</sup> May 2014 Members of Planning Committee resolved that they were minded to refuse the above application contrary to officer recommendation and requested a further report to consider –**

- 1. The Committee's draft reasons for refusal, and**
- 2. The implications of refusing the application.**

1. The Committee was minded to refuse the application on the following grounds:

- (a) The loss of a birch tree on Plot 2 which would be detrimental to the amenity and appearance of the development and locality;
- (b) The position of the proposed parking on Plot 4 over the root protection area of the Tree Preservation Order protected oak tree would be likely to have long term detrimental effects on the health of the tree;
- (c) The application was contrary to policy DM14 (Local Plan part 3).

### **1. The Committee's draft reasons for refusal**

Set out below are the reasons for refusal which would appear on the planning decision notice:

1. In the opinion of the Local Planning Authority the loss of the protected Birch tree on plot 2 to facilitate the provision of a garage and two parking spaces would be detrimental to the amenity and appearance of the locality and this loss of amenity outweighs the benefits of the scheme in its provision of additional parking facilities, contrary to policies DM2 and DM14 of Local Plan Part 3 (Development Management Policies).

2. In the opinion of the Local Planning Authority the location of the proposed parking spaces to serve plot 4, which would encroach into the Root Protection Area of the protected Oak tree would be likely to be detrimental to the long term health and safety of the Oak tree, contrary to policy DM2 of Local Plan Part 3 (Development Management Policies).

## **2. The implications of refusing the application**

### **Reason for refusal 1 – Birch tree**

The Birch tree is located to the north of plot 2 and is no longer easily visible from the Old Village Road by virtue of the erection of plot 2. This has significantly reduced the level of public amenity which the tree provides. In assessing whether or not to impose a Tree Preservation Order a tree must be visible from public vantage points so as to contribute to the wider public amenity. The proposal is to plant a replacement Birch tree closer to the boundary of the site with Harpitt Close. The provision of this replacement tree will in the long term provide more public amenity than the existing Birch tree as it will be in a better position to be visible from Harpitt Close. Whilst it is regrettable to remove a tree which is presently healthy and not in conflict with the houses being erected, the removal of the tree results in an improvement to the number of parking spaces and provides them in a location which provides greater compliance with the Parking SPD.

Policy DM14 of Local Plan Part 3 (Development Management Policies) relates to the design of housing and requires that new housing development should be designed to deliver high quality local places taking into account physical context, local character, density and land use mix. Also of relevance is policy DM2 of the same document which also relates to seeking high quality design and seeks to ensure that development has a clear understanding of the characteristics of the site and its surrounding area, that it positively contributes to local character and forms visually attractive places.

It is your Officers view that the benefits of the provision of the parking spaces in a better location to support the dwelling, combined with the provision of a replacement Birch tree outweighs the harm caused as a result of the removal of the existing Birch tree.

### **Reason for refusal 2 – Oak tree**

In accordance with BS5837:2012 Trees in relation to design, demolition and construction – recommendations, section 7.4.2 'Design recommendations' discusses design options for hard surfacing within the Root Protection Area (RPA). Section 7.4.2.3 advises that 'new permanent hard surfacing should not exceed 20% of any existing unsurfaced ground within the RPA'. While it is preferable to see no encroachment into the RPA of the Oak tree due to its size and age, the suggested parking spaces encroach only slightly and significantly less than 20% of the area within the RPA, particularly as much of the area proposed for the parking spaces was previously surfaced.

The area of the RPA where the parking spaces are proposed falls only slightly within the actual RPA. The RPA was altered from the original plans which showed the RPA as calculated from the stem diameter of the tree, to follow the line of the original dwelling. To the front of the original property was a raised patio area which is unlikely to have had any significant root activity beneath it. This was why it was agreed to allow the protective fencing to be altered from the original plans.

The two parking spaces to serve plot 4 are proposed to be constructed using a 'no-dig' method. In respect of this application this method of construction involves the provision of a geotextile cellular sub-base which is filled with angular stone. A bed of sand is placed above this and with a top layer of block paving to provide the final top surface.

The stone which fills the cellular sub-base is not compacted as scientific trials have found that compaction only takes place in the top few hundred millimetres of ground at most, with most development sites only experiencing compaction to a depth of between 150mm and 200mm. The use of the cellular sub-base has also been shown to spread the wheel loads from traffic which reduces the amount of compaction. It is therefore possible for the surface to be constructed and result in minimal compaction reaching the bottom of the construction and natural soil.

The majority of the area over which the parking spaces are proposed were previously covered with hardsurfacing surrounding the bungalow which stood on the site. This will have resulted in some soil compaction already and so the provision of the parking spaces will have only a limited additional impact upon the compaction of the soil in this location and therefore any impact upon the Oak tree is also considered to be limited. The no dig construction, carried out under supervision from the arboricultural consultant, should reduce the impact on the ground area which falls within the RPA whilst providing the desired parking spaces.

Your Tree Officer has raised no objections to the scheme and would not be in a position to assist in defending a reason for refusal on these grounds.

**Conclusion:**

Following the erection of a dwelling on plot 2, the level of public amenity which the Birch tree provides is significantly diminished and taking into account the provision of a replacement tree in a more visible location, the benefits of the scheme in this area outweigh the harm caused.

Having regard to the method of construction proposed and that part of this area has been previously compacted through the provision of previous hard surfaces there is no evidence to support the view that the construction of the two parking spaces to serve plot 4 would be detrimental to the health and safety of the protected Oak tree and the works proposed comply with the British Standard BS5837:2012 Trees in relation to design, demolition and construction – recommendations. Your Officers are of the opinion that a reason for refusal based upon the impact on the Oak tree cannot be substantiated.

<b>Contact for any more information</b>	Miss Thea Billeter, Area Planning Officer 01884 234348
<b>Background Papers</b>	11/02002/FULL
<b>File Reference</b>	14/00468/FULL
<b>Circulation of the Report</b>	Cllrs Richard Chesterton Members of Planning Committee

**Application No. 14/00468/FULL**

**Agenda Item**

**Grid Ref:** 110243 : 303420

**Applicant:** Country & Coast  
Homes Ltd

**Location:** Portway Willand Old  
Village Willand  
Cullompton

**Proposal:** Variation of condition  
(2) of planning  
permission  
11/02002/FULL to  
allow the substitution  
of previously  
approved plans

**Date Valid:** 26th March 2014



**AGENDA ITEM**

**PLANNING COMMITTEE  
21<sup>st</sup> May 2014**

**REPORT OF THE HEAD OF PLANNING AND REGENERATION**

**14/00468/FULL - VARIATION OF CONDITION (2) OF PLANNING PERMISSION 11/02002/FULL TO ALLOW THE SUBSTITUTION OF PREVIOUSLY APPROVED PLANS - PORTWAY WILLAND OLD VILLAGE WILLAND CULLOMPTON**

**Reason for Report:**

To consider the planning application.

**RECOMMENDATION(S)**

Subject to a Supplemental Section 106 Agreement to transfer the provisions of the earlier Section 106 Agreement for planning permission reference 11/02002/FULL, grant planning permission subject to conditions.

The provisions of the Section 106 Agreement for planning permission reference 11/02002/FULL secured the following payments:

1. £22,500 toward off-site affordable housing provision.
2. £15,654 air quality contribution toward the implementation of the Cullompton Air Quality Action Plan.
3. £4,326 toward the provision and funding of public open space in the parish of Willand.

**Relationship to Corporate Plan:**

Managing the Environment, Decent and Affordable Homes, Community Well-being.

**Financial Implications:**

Section 106 Agreement secures financial contributions.

**Legal Implications:**

None.

**Risk Assessment:**

None.

**Consultation carried out with:**

1. Environmental Health
2. Highway Authority
3. Willand Parish Council

## 1.0 PROPOSED DEVELOPMENT

This application seeks a variation of condition 2 of planning permission reference 11/02002/FULL to allow the substitution of revised plans. Condition 2 relates to the carrying out of development in accordance with the approved plans.

The original planning permission (ref. 11/02002/FULL) granted permission for the erection of four detached dwellings and included the erection of a double garage to serve plots 2 and 3. This current application now seeks permission to provide a single garage for plots 1, 2 and 3, and a new driveway to provide two parking spaces to plot 4, which results in plot 4 having a larger rear garden than previously approved. The application also proposes to remove a protected Birch tree on plot 2 and replace it with a similar specimen further in the garden to allow the provision of parking spaces adjacent to plot 2.

The principle of the development, the number, layout and design of the dwellings have previously been approved. The determination of this application must therefore concentrate upon the acceptability of the changes to the scheme and whether there have been any changes to material planning considerations (including policy) since the approval of the previous scheme.

## 2.0 APPLICANT'S SUPPORTING INFORMATION

1. Supporting Statement
2. Letters from Advanced Arboriculture regarding the trees

## 3.0 RELEVANT PLANNING HISTORY

09/00727/OUT - Outline for the erection of 3 dwellings - Withdrawn July 2009.

09/01448/OUT - Outline for the erection of 3 dwellings (Revised Scheme) - Refused December 2009.

10/01217/FULL - Erection of 4 dwellings and associated works following demolition of existing bungalow (Appeal Dismissed 7<sup>th</sup> June 2011) - Refused January 2011

11/02002/FULL - Erection of 4 dwellings and associated works following demolition of existing bungalow (Revised Scheme) - Permitted September 2012.

13/01675/FULL - Variation of condition (2) of planning permission 11/02002/FULL to allow the substitution of previously approved plans - Withdrawn January 2014.

## 4.0 DEVELOPMENT PLAN POLICIES

### Mid Devon Core Strategy (Local Plan Part 1)

COR1 – Sustainable Communities

COR2 – Local Distinctiveness

COR17 – Villages

### Allocations and Infrastructure Development Plan Document (Local Plan Part 2)

AL/DE/3 – Affordable Housing Site Target

AL/IN/3 – Public Open Space



## **Local Plan Part 3 (Development Management Policies)**

DM2 – High Quality Design

DM8 – Parking

DM14 – Design of Housing

DM15 – Dwelling Sizes

## **National Planning Policy Framework**

### **5.0 CONSULTATIONS**

ENVIRONMENTAL HEALTH - 11th April 2014 - Contaminated Land - Not applicable.

Air Quality - Not applicable.

Drainage - Not applicable.

Noise & other nuisances - No objections.

Housing Standards - No objections.

Licensing - Not applicable.

Food Hygiene - Not applicable.

Private Water Supplies - No objections.

Health and Safety - No objections.

HIGHWAY AUTHORITY - 4th April 2014 - No comment.

WILLAND PARISH COUNCIL - 22nd April 2014 - 1. Recommendation to Refuse.

1.1 Willand Parish Council recommends refusal of this application for variation of condition 2 of the original permission. This is now the third application for variation to the original approval.

1.2 It is noted that considerable work has taken place on site, much of it in accord with the amended application and contrary to the original approval. The original approval contained certain conditions and as far as can be ascertained, without performing a detailed inspection on site, most of those conditions have not, and are still not, complied with. It is appreciated that the planning officer has received, and responded to, complaints to this effect BUT the developer appears not to have responded with compliance in most cases. It is concerning that compliance has not been sought in a more robust manner.

1.3 Accepting that permission was given for four houses with only two garages and limited parking on the site contrary to Parish Council concerns in 2012 an attempt is now made to achieve a very similar unacceptable density as was originally refused and turned down on appeal about four years ago. The current main reasons for recommending refusal, which will be expanded upon in following paragraphs, are:-

(a) The increase of building development/density on this garden site by the addition of garages;

(b) The increase in 'hard' surface area creating additional potential for increased surface water running from the site together with unsuitable parking provision;

(c) The proposed removal of one protected tree and the major encroachment onto the root protection area of the main Oak tree on the site.

1.4 Parish Council has no objection to the suggested change in materials to substitute PVCu for wood in windows etc.

## 2. Increase in density of site

2.1 What is now being applied for by adding garages to three of the properties will make the site very similar to the density of the application which was refused in January 2011 and the subject of the appeal dismissal dated 7 June 2011 by Mr Pope of the Planning Inspectorate.

2.2 By increasing the density it will bring the buildings into conflict with protected trees as identified in the Inspectors dismissal of appeal where he said "The proposed dwellings would be outside the Root Protection Areas of the protected trees as identified by the appellant's arboriculturalist. However some parts of units 1 and 2 would be very close to the protective fence that it is intended to erect around the Oak tree. Unit 4 would also be very close to a protected Cedar tree." The unit numbers are now different BUT the potential effect is the same. Plot 4 has, and will, conflict with the major Oak tree at the front of the site.

## 3. Potential Increase in surface water and Parking Issues

3.1 In the current permission it is understood that surface water will run from the site into the open ditch between the road and hedge at the front of the site. With the potential increase in 'hard' surface area on the site with this application the potential for surface water runoff and potential flooding is increased. During the construction period to date it has been noted that water is not finding its way into this ditch but going onto the road surface.

3.2 Some of the proposed parking areas for the houses do not appear to have sufficient width and would appear to be bounded by fences which could restrict their effective use by restricting the opening of car door. This has been the subject of comment by the Highways Officer in his response dated 23 January 2014 in respect of an earlier application.

3.3 The driveway, garage and 'turning area' for Plot 4 is still cause for concern and should not be permitted. Once someone occupies the house they will want to extend the drive width and turning provision to allow proper access to the garage. They will probably want to construct something similar to that proposed in the first application for amendment. All will encroach onto the root protection area of the key protected Oak tree.

## 4. Protected Trees

4.1 It is noted, with extreme concern, that the arboriculturalist reports have changed and become more 'liberal' in the interests of the developer as the varying applications have been submitted. The identity of those submitting the reports has also changed. There has also been change of advice from Mid Devon District Council's Tree Officers.

4.2 In the 2010 application which led to the refusal in January 2011 details set out for the retention and protection of trees was very detailed and recommended protection measures were quite stringent. Tree T13 - the Oak on the front bank was a Grade A tree. The Inspector in paragraph 12 states "I have doubts as to whether it would be possible to construct units without any incursion into the RPA of the Oak and Cedar trees growing within the site. This could cause harmful disturbance to important tree roots and affect the health and well-being of these important trees. However, even if it were possible to construct these houses without causing harm, I have greater concerns over the proposed alterations/relocation of site access." The Inspector in later paragraphs has much more to say on the preservation of the trees and the harm he considers would ensue from the construction to cause damage to affect their future wellbeing.

4.3 The 2011 application which was approved on 7 September 2012 also had a very detailed report from the arboriculturalist which set out quite stringent protection measures. It suggested the raising of the crown of the Birch tree [T5], the Oak tree [T13] is downgraded to Grade B and some convenient minor amendments appear to have been made to root protection areas but it was adamant that there was to be no construction or building of driveway over RPA's. If there were a need to temporarily encroach on an RPA very detailed procedures were set out.

4.4 We now have a new developer, a new arboriculturalist and a different Mid Devon District Council Tree Officer. They are now seeking to remove the Birch tree [T5] completely and place a substitute elsewhere on the site. This will allow a garage and further parking spaces. The Oak tree at the front of the site is to have a substantive part of its RPA covered with no-dig section and driveway which will give access to a garage and turning area. It is argued by the arboriculturalist that this is 'sustainable' but then sets out detailed advice that it should not be put in until all other works have been completed.

4.5 It should be remembered that in his report the Inspector used such phrases as "This would be likely to compromise the future well-being of the Oak tree and harm the character and appearance of the area." AND "It is very far from certain that the future well-being of this tree and to a lesser extent, the Cedar tree as well, would not be compromised by the rigours of the construction phase."

4.6 Even if the Planning Authority are minded to allow the removal of the Birch tree [T5] we would strongly urge that the proposed garage, driveway and turning area for plot 4 should not be allowed.

4.7 The permission has been given for the house, but not the garage, to be built at plot 4 but the Inspectors report is still very relevant where he stated "Even if these important trees could be adequately safeguarded during construction works, some of the proposed houses would have windows to habitable rooms very close to the crown spread of the Oak and Cedar trees. This would be likely to restrict the outlook from some of these rooms and cast shadows across parts of units 1, 2 and 4. This would increase over time as the trees continued to grow. This could be perceived as a nuisance by incoming residents who may also deem the trees, particularly the substantial and tall Oak, as overbearing. This 'nuisance factor' could be compounded by leaf litter/debris from the trees. As a consequence, pressure could be applied on the Council to fell these trees or remove branches, which it would have difficulty in resisting." Unit numbers differ but similar effect still applies.

## 5. Conclusion

5.1 A developer achieved a permission to build four houses with only two garages and parking areas. The land is sold on to another developer with that permission who now wishes to have amendments which have the potential to alter the site layout and affect the protected trees. It has been shown that current conditions have not been complied with and tree protection measures appear to have been compromised.

5.1 The current application should be refused on all of these grounds.

TREE OFFICER 8<sup>th</sup> May 2014 - The removal of the garage and driveway from plot 4 to me seems preferential. Whilst there is still some encroachment into the Root Protection Area (RPA) it is reduced. I would still like to see no dig construction methods for these parking areas and wonder whether it is possible to put some kind of physical barrier between the parking and the grass, just to reduce the likelihood of parking on the grass area which could cause compaction in the trees RPA in the future.

The replacement of the Birch tree is acceptable to me. The tree will have virtually no amenity value following the construction of plot 2 and 3 and the space here would limit any future growth of the tree, the location shown for the replacement tree is a better longer term option. I am not sure what advanced arboriculture specified but the *Betula utilis* var. *jacquemontii* is available in up to super semi mature size with a girth of 40-80cm. I would suggest a 35-40cm girth semi mature tree as a replacement. This tree would be over 6m tall. It would also be necessary to specify an establishment and maintenance programme for a tree of this size (in accordance with BS8545:2014 Trees: from nursery to independence in the landscape - Recommendations) and determine how that would be continued following the sale of the house.

It has been proposed that 4 trees will be planted within the RPA of the large Oak tree. I do not think this is a suitable planting scheme. I would prefer to see no new trees in such close proximity to the Oak, firstly it would be necessary to disturb the ground within the RPA to plant them and secondly the competition for light would make the growth of the new trees poor and good specimens are unlikely to be achieved.

There is scope for planting within the development and this should be addressed.

## 6.0 REPRESENTATIONS

Two letters of objection received, summarised as follows:

- The site is already over-developed;
- The original application was short of garage and car parking space;
- The assessment of the Birch tree proposed for removal on plot 2 was assessed as a category A tree in the 2011 application but is now downgraded in the assessment of its importance;
- The applicant's arboricultural consultant refers to visibility from a neighbouring property, which I assume to be our property but to the best of my knowledge he has never been to our property. The Birch tree is visible from two bedroom windows, the dining room and kitchen window;
- If the Birch is allowed for removal the replacement tree should be given a Tree Preservation Order;
- A lot of vegetation has been removed since the builders have been on site;
- The provision of a driveway at the front of plot 4 will encroach into the root protection area of the Oak tree at the front of the site;
- Concerns regarding the parking and the ability of achieving a safe turning head remain and are now greater than previously proposed;
- The parking spaces are narrower than normal;
- If fences are added then the parking spaces will not be viable for use;
- If vehicles park outside the parking spaces a turning head will be non-existent;
- The site is very close to the village Conservation Area.

## 7.0 MATERIAL CONSIDERATIONS AND OBSERVATIONS

### 1. Implications of alterations to the approved scheme

An application for the erection of four detached dwellings and a double garage was approved by the Planning Committee at their meeting on 9<sup>th</sup> May 2012 subject to the signing of a Section 106 Agreement. This approval came following a number of earlier applications to develop the site, one of which was refused by Planning Committee and dismissed at Appeal. Works to implement the existing planning permission have begun.

Since the granting of the earlier scheme the Local Plan Part 3 (Development Management Policies) has been adopted and has superseded the previous Local Plan and the Devon Structure Plan has been revoked. In addition a new Supplementary Planning Document on the provision of parking in new development has been adopted. The now relevant policies of the Local Plan Part 3 (Development Management Policies) are as follows:

Policy DM2 seeks to ensure high quality design through the creation of safe and accessible places, a positive contribution to local character and the creation of visually attractive places that are well integrated with surrounding buildings, streets and landscapes and do not have an unacceptably adverse effect on the privacy and amenity of the proposed or neighbouring properties.

Policy DM8 requires the provision of a minimum of 1.7 car parking spaces per dwelling; the Supplementary Planning Document on the provision of parking in new development sets out that garage spaces will not count toward this requirement.

Policy DM14 builds on Policy DM2 in its design requirements but relates solely to new housing development. It states that new housing should have suitably sized rooms, amenity space and adequate levels of daylight and maximise the natural benefits of the site.

The current proposal represents a net increase of one garage and two parking spaces on the site from the existing planning permission as a single garage is proposed in lieu of a double garage adjacent to plot 3 and then single garages are proposed on plots 1 and 2 with parking spaces in front of or adjacent to them. In addition, two parking spaces are now proposed in front of plot 4 and no parking spaces are proposed to the rear of that plot and a single parking space is proposed to the front of plot 1 also. The additional parking spaces are proposed as a result of the requirements of Policy DM8 and are now proposed closer to the respective dwellings than previously approved, which is considered to be an improvement over the earlier scheme and supports the guidance set out in the adopted parking SPD.

The Highway Authority has made no comments on the application but discussions have been had with the Highway Officer regarding the revised scheme. All of the parking spaces are of an adequate size and located in a safe location having regard to the low vehicle speeds which would be experienced within the site and there is sufficient space within the site for vehicles to turn, albeit this relies on vehicles only parking within the allocated spaces, as particularly if vehicles park in front of the garage for plot 3, it would be difficult for vehicles to reverse out of the parking spaces for plot 2. Having regard to this, an additional condition is recommended for imposition to restrict further parking within this part of the site.

In terms of site coverage, the alterations result in an increase in built development of approximately 28 square metres arising from an additional garage space and each garage now being a single garage. From Willand Old Village road the garages will not be easily seen and the increase in built development is not considered to have a detrimental impact upon the character of the area or upon the neighbouring Conservation Area, the boundary of which is approximately 70 metres to the north east. It is also noted that each of the garages proposed meets the minimums size requirements of the adopted parking SPD.

The provision of the garage and parking spaces for plot 2 would result in the proposed removal of the existing Birch tree which is subject of a Tree Preservation Order. It is proposed that this Birch tree be replaced with a new Birch tree further to the north-west but still in the garden of plot 2. Whilst the existing Birch tree may be visible from some properties in Harpitt Close, Mid Devon District Council 's Tree Officer is of the opinion that following the construction of plots 2 and 3, this tree will have virtually no public amenity and the space would restrict any future growth of the tree. The location of the replacement tree

is in a much better location in the long term. It is possible for the replacement tree to be planted as a semi-mature specimen, with a girth of at least 35-40 cm and which would have a height of more than 6 metres. This size of replacement tree has a circumference approximately half that of the existing Birch tree, however a replacement of this size is the largest size replacement which could reasonably be requested. The replacement tree would automatically be covered by the existing Tree Preservation Order as it would be a direct replacement for a tree covered by the existing Tree Preservation Order.

The driveway proposed to serve plot 4 encroaches into the root protection area of the large Oak tree at the front of the site. This tree is the most prominent specimen on the site and is highly visible from the surrounding area. In order to minimise any impact upon the Oak tree the driveway is proposed to be constructed using a no-dig method. The original dwelling which stood on the Portway site had a relatively large paved area in front of and to the site of the house and some of this paving came within the root protection area for the Oak tree and is likely to result in there being less roots to disturb in the areas which were previously paved. Based on these points, Mid Devon District Council's Tree Officer has raised no objection to the provision of the driveway but would like for there to be a physical barrier provided between the parking area and the grass to reduce the likelihood of parking on the grass area as this could cause compaction in the root protection area. An additional condition is recommended to secure such a barrier and the condition removing permitted development rights is amended to now also restrict the provision of further hard surfaces so as to minimise the potential impact on the protected trees having regard to the provision of additional parking spaces as part of this scheme.

The Landscaping scheme proposed has been amended following the comments of the Tree Officer.

The previously approved construction management plan included areas for storing materials and the parking of vehicles where some garaging is now proposed. For this reason a revised construction management plan is required by condition.

Details of drainage for the access, parking and turning areas are required by condition.

Although works for the construction of the garages proposed have not begun the development of the site has begun and so the condition setting a time limit for the commencement of the development has been amended to reflect this situation.

## **8.0 SUMMARY**

Subject to the imposed conditions, the proposed alterations to the previously approved scheme are considered to be acceptable. The redevelopment of the site will provide additional open market dwellings within the village of Willand and which will be served by adequate vehicular access, parking and turning facilities. The proposal allows for the safe retention of the majority of the trees on the site which are subject to a Tree Preservation Order and makes provision adequate replanting of the Birch tree proposed for removal. Additional landscaping is proposed in order to suitably assimilate the development with the character and appearance of the surrounding landscape and street scene, whilst also having no detrimental effect upon any protected species. Due to the distances from dwellings off-site and the orientation and positioning of habitable room windows the development will not cause demonstrable harm to the privacy or amenity of any neighbouring dwelling. The site will be served by mains drainage facilities and adequate provision is made for the storage of refuse bins. Appropriate financial contributions toward the provision and funding of Open Space within the parish and the provision of affordable housing within the district have been secured via a Section 106 Agreement and the proposal will generate additional income through the New Homes Bonus. Accordingly, the proposal meets with the requirements of Policies COR1, COR2 and COR17 of the Mid Devon Core Strategy (Local Plan Part 1),

Policies AL/DE/3 and AL/IN/3 of the Mid Devon Allocations and Infrastructure Development Plan Document (Local Plan Part 2), Policies DM2, DM8, DM14 and DM15 of the Mid Devon Local Plan Part 3 (Development Management Policies) and the National Planning Policy Framework.

## 9.0 CONDITIONS

1. The development hereby permitted shall be taken to have begun on 26<sup>th</sup> March 2014.
2. The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule on the decision notice.
3. Within two calendar months of the date of this decision or before works begin for the construction of the garages and parking spaces hereby approved, whichever is the earlier, a Construction Management Statement shall have been submitted to, and approved in writing by the Local Planning Authority. The Construction Management Statement shall include the following:

- a. Details of parking for vehicles of site personnel, operatives and visitors;
- b. Location and logistical arrangements for the loading and unloading of plant and materials;
- c. Location of the storage of plant and materials;
- d. A programme of works;
- e. The provision of boundary hoarding behind visibility splays;
- f. The provision of signs warning road users of the presence of the site access;

The approved details shall be implemented and strictly adhered to for the duration of the demolition and construction periods.

Until such a time that the Construction Management Statement required by this condition has been approved by the Local Planning Authority, the development shall be carried out in accordance with the Construction Management Statement approved by the Local Planning Authority on 22<sup>nd</sup> November 2013 as part of application reference 11/02002/FULL.

3. No part of the development hereby approved, other than the demolition of the existing dwelling and associated structures, shall begin until:
  - a. Visibility splays of 2.4 metres measured back from the nearside carriageway edge on the centreline of the access to points 43 metres on the nearside carriageway edge in both directions with all structures, land and vegetation enclosed within the splays reduced to a height not exceeding 600mm above adjacent carriageway level shall have been laid out, constructed and maintained for that purpose in accordance with the attached Diagram A. Following their provision, the visibility splays shall be so retained at all times.
  - b. The site access road has been widened and maintained to not less than 4.5 metres for its first 10 metres back from its junction with the public highway.
5. Before the development hereby permitted is first brought into use, the vehicular access, parking and turning areas indicated on the approved plans shall be surfaced and drained (to avoid surface water discharge onto the highway) in accordance with details to be submitted to, and be approved in writing by, the Local Planning Authority. Following their provision, these facilities shall be so retained.

6. All planting, seeding, turfing or earthworks comprised in the approved details of landscaping as shown on the submitted plans, shall be carried out within 9 months of the substantial completion of the development, (or phase thereof), whichever is the sooner; and any trees or plants which within a period of five years from the implementation of the scheme (or phase thereof), die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
7. Before and during the construction of each phase of the development hereby approved, the provisions set out in the Arboricultural Method Statement submitted with application reference 11/02002/FULL as amended by the letters from Advanced Arboriculture dated 12<sup>th</sup> March 2014 and 4<sup>th</sup> December 2014, received by the Local Planning Authority on 26<sup>th</sup> March 2014 and the Tree Protection Plan drawing number 6889-109 rev. B, shall be adhered to at all relevant times.
8. The driveway proposed to serve plot 4 shall be constructed using a no-dig method in accordance with the details contained in the letter and supporting documentation from Advanced Arboriculture dated 12<sup>th</sup> March 2014 and 4<sup>th</sup> December 2014, received by the Local Planning Authority on 26<sup>th</sup> March 2014.
9. The replacement tree for the Birch tree to be removed adjacent to plot 2 shall be planted within the next planting season following the tree's removal. The replacement tree shall be a *Betula utilis var.jacquemontii* semi-mature specimen of minimum girth 35 centimetres. Before the planting of the replacement tree a programme for the establishment and maintenance of the tree, to include measures for maintenance following the sale of plot 2 and written in accordance with BS8545:2014 'Trees: from nursery to independence in the landscape - Recommendations', shall have been submitted to and approved in writing by the Local Planning Authority. Once approved the programme shall be strictly adhered to at all times.
10. Before the first occupation of any dwelling on the site, measures to provide a physical barrier between the parking area for plot 4 and the adjacent grassed area shall have been provided in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority. Once provided, the barrier measures shall thereafter be retained as such.
11. Notwithstanding the provisions of Article 3 of The Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) Amendment (No.2) Order 2008 (or any Order revoking and re-enacting that Order with or without modification) no development of the types referred to in Classes A, E and F of Part 1, relating to the extension of dwellings, the provision of hardsurfaces and the provision of outbuildings, swimming pools and other structures within the curtilage of the dwellings, shall be undertaken within the application site without the Local Planning Authority first granting planning permission.
12. No vehicles or other obstructions shall be parked or placed in the hatched area identified as 'No parking area' on drawing number 6889-110 rev. A.
13. In the event that contamination that was not previously identified is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where necessary a remediation scheme must be prepared and which is subject to the prior approval in writing of the Local Planning Authority.



An investigation and risk assessment must include the following:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
  - human health,
  - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
  - adjoining land,
  - groundwaters and surface waters,
  - ecological systems,
  - archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

A remediation scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. A scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Following completion of measures identified in an approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be prepared and which is subject to the approval in writing of the Local Planning Authority within 3 months of the completion of the remediation scheme.

## **REASONS FOR CONDITIONS**

1. In order to set a legal commencement date for the development.
2. For the avoidance of doubt and in the interests of proper planning.
3. In the interest of highway safety, and to ensure that adequate on-site facilities are available for traffic attracted to the site in accordance with Policy DM2 of the Mid Devon Local Plan Part 3 (Development Management Policies).
4. In the interest of highway safety to ensure adequate visibility at the point of access and egress from vehicles entering or leaving the site in accordance with Policy DM2 of the Mid Devon Local Plan Part 3 (Development Management Policies).
5. In the interest of highway safety, and to ensure that adequate on-site facilities are available for traffic attracted to the site in accordance with Policy DM2 of the Mid Devon Local Plan Part 3 (Development Management Policies).
6. To ensure that the development makes a positive contribution to the character and amenity of the area in accordance with Policies DM2 and DM14 of the Mid Devon Local Plan Part 3 (Development Management Policies).
7. To ensure the development makes a positive contribution to the character and appearance of the area by protecting the existing trees during development in accordance with Policy DM2 of the Mid Devon Local Plan Part 3 (Development Management Policies).

8. To safeguard the health and safety of the Oak tree on the site which is subject to a Tree Preservation Order, in accordance with Policy DM2 of the Mid Devon Local Plan Part 3 (Development Management Policies).
9. In order to replace the amenity lost as a result of the removal of the Birch tree in accordance with Policy DM2 of the Mid Devon Local Plan Part 3 (Development Management Policies).
10. To safeguard the health and safety of the Oak tree on the site which is subject to a Tree Preservation Order, in accordance with Policy DM2 of the Mid Devon Local Plan Part 3 (Development Management Policies).
11. To safeguard the amenities of the area and the health and safety of the trees on the site which are subject to a Tree Preservation Order, in accordance with Policy DM2 of the Mid Devon Local Plan Part 3 (Development Management Policies).
12. In the interests of highway safety and to ensure adequate facilities are available for vehicles to park and turn within the application site, in accordance with Policy DM2 of the Mid Devon Local Plan Part 3 (Development Management Policies).
13. To ensure that risks from contamination are suitably managed so that the development can be carried out safely without unacceptable risks to workers, neighbouring and other offsite receptors in accordance with Policy DM2 of the Mid Devon Local Plan Part 3 (Development Management Policies).

**Contact for any more information**

Miss Thea Billeter, Area Planning Officer  
01884 234348

**Background Papers**

11/02002/FULL

**File Reference**

14/00468/FULL

**Circulation of the Report**

Councillor Richard Chesterton  
Members of Planning Committee