

Public Document Pack

Committee Administrator

Carole Oliphant

Tel: 01884 234229

E-Mail: coliphant@middevon.gov.uk

PLEASE NOTE: Members of the public wishing to speak to a planning application are requested to contact the Committee Administrator at least 24 hours before the meeting starts. We are unable to accommodate public speakers who have not pre registered but members of the public are welcome to attend and observe the meeting virtually.

Important - this meeting will be conducted and recorded by Zoom only. Please do not attend Phoenix House. The attached Protocol for Remote Meetings explains how this will work.

To join the Zoom Meeting please use the following link:

<https://zoom.us/j/98604307578?pwd=a0RwUXQwU2VqaFFydk5TMC81Rmx5dz09>

Meeting ID: 986 0430 7578

Password: 902722

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Meeting ID: 986 0430 7578

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MID DEVON DISTRICT COUNCIL

PLANNING COMMITTEE

A MEETING of the **PLANNING COMMITTEE** will be a virtual Meeting on Wednesday, 15 July 2020 at 2.15 pm

The next ordinary meeting of the Committee will take place on Wednesday, 12 August 2020 at 2.15 pm and will be a virtual meeting

STEPHEN WALFORD

Chief Executive

7 July 2020

Councillors: Mrs F J Colthorpe (Chairman), Mrs C P Daw, R F Radford, E J Berry, L J Cruwys, S J Clist, F W Letch, D J Knowles, B G J Warren and S J Penny

A G E N D A

MEMBERS ARE REMINDED OF THE NEED TO MAKE DECLARATIONS OF INTEREST PRIOR TO ANY DISCUSSION WHICH MAY TAKE PLACE

- 1 **VIRTUAL MEETING PROTOCOL** *(Pages 5 - 10)*
Members to note the Virtual Meeting Protocol
- 2 **APOLOGIES AND SUBSTITUTE MEMBERS**
To receive any apologies for absence and notices of appointment of substitute.
- 3 **PUBLIC QUESTION TIME**
To receive any questions relating to items on the Agenda from members of the public and replies thereto.

Note: A maximum of 30 minutes is allowed for this item.
- 4 **DECLARATION OF INTERESTS UNDER THE CODE OF CONDUCT**
Councillors are reminded of the requirement to declare any interest, including the type of interest, and reason for that interest at each item.
- 5 **MINUTES OF THE PREVIOUS MEETING** *(Pages 11 - 22)*
Members to consider whether to approve the minutes as a correct record of the meeting held on 17TH June 2020
- 6 **CHAIRMAN'S ANNOUNCEMENTS**
To receive any announcements the Chairman may wish to make.
- 7 **DEFERRALS FROM THE PLANS LIST**
To report any items appearing in the Plans List which have been deferred.
- 8 **THE PLANS LIST** *(Pages 23 - 66)*
To consider the planning applications contained in the list.
- 9 **MAJOR APPLICATIONS WITH NO DECISION** *(Pages 67 - 68)*
List attached for consideration of major applications and potential site visits.
- 10 **APPEAL DECISIONS** *(Pages 69 - 70)*
To receive for information a list of recent appeal decisions.
- 11 **19/01430/FULL HIGHFIELD FARM - ERECTION OF AN OFFICE BUILDING AND CHANGE OF USE OF AND CHANGE OF USE FROM AGRICULTURE TO GROUNDWORKS DEPOT** *(Pages 71 - 84)*
At the Planning Committee meeting on 17th June 2020, Members advised that they were minded to refuse the above application and invited an implications report for further consideration.
- 12 **19/01189/OUT LAND NORTH OF TOWN FARM BURLESCOMBE - OUTLINE FOR THE ERECTION OF TWO DWELLINGS (REVISED**

SCHEME) (Pages 85 - 112)

At the Planning Committee meeting on 17th December 2019, Members advised that they were minded to refuse the above application and invited an implications report for further consideration.

13 TREE PRESERVATION ORDER 20/00002 - FORMER PRIMARY SCHOOL, NEWTON ST CYRES, EXETER (Pages 113 - 118)

To receive a report of the Head of Planning, Economy and Regeneration regarding this Tree Preservation Order

14 TREE PRESERVATION ORDER 20/00003 - LAND AT MEADOW PARK, WILLAND, DEVON (Pages 119 - 122)

To receive a report of the Head of Planning, Economy and Regeneration regarding this Tree Preservation Order

15 ACCESS TO INFORMATION - EXCLUSION OF PRESS AND PUBLIC

It may be necessary to pass the following resolution to exclude the press and public having reflected on Article 12 12.02(d) (a presumption in favour of openness) of the Constitution. This decision may be required because consideration of this matter in public may disclose information falling within one of the descriptions of exempt information in Schedule 12A to the Local Government Act 1972. The Planning Committee will need to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption, outweighs the public interest in disclosing the information.

To consider passing the following resolution so that financial information and legal issues may be discussed.

Recommended that under Section 100A(4) of the Local Government Act 1972 the public be excluded from the next item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 respectively of Part 1 of Schedule 12A of the Act, namely information relating to the financial or business affairs of any particular person (including the authority holding that information) and paragraph 5, information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

16 APPEAL - APPLICATION 17/01359/MOUT - OUTLINE FOR THE ERECTION OF 60 DWELLINGS AND CONSTRUCTION OF NEW VEHICULAR ACCESS ONTO HIGHWAY TO THE WEST OF THE SITE - LAND AND BUILDINGS AT NGR 302469 114078, HIGHER TOWN, SAMPFORD PEVERELL (Pages 123 - 134)

To consider a report of the Head of Planning, Economy and Regeneration and the Head of Legal Services (Monitoring Officer).

The Human Rights Act 1998 came into force on 2nd October 2000. It requires all public authorities to act in a way which is compatible with the European Convention on Human Rights. The reports within this agenda have been prepared in light of the Council's obligations under the Act with regard to decisions to be informed by the principles of fair balance and non-discrimination.

Covid-19 and meetings

The Council will be holding some meetings in the next few weeks, but these will not be in person at Phoenix House until the Covid-19 crisis eases. Instead, the meetings will be held remotely via Zoom and you will be able to join these meetings via the internet. Please see the instructions on each agenda and read the Protocol on Remote Meetings before you join.

If you want to ask a question or speak, email your full name to Committee@middevon.gov.uk by no later than 4pm on the day before the meeting. This will ensure that your name is on the list to speak and will help us ensure that you are not missed – as you can imagine, it is easier to see and manage public speaking when everyone is physically present in the same room. Notification in this way will ensure the meeting runs as smoothly as possible.

If you require any further information please contact Carole Oliphant on:
E-Mail: coliphant@middevon.gov.uk

Mid Devon District Council - Remote Meetings Protocol

1. Introduction

The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations permit remote attendance in Local Authority meetings.

Remote attendance is permitted as long as certain conditions are satisfied. These include that the Member is able to hear and be heard by the other Members in attendance. Also, being able to hear and be heard by any members of the public entitled to attend the meeting (in line with the public participation scheme). A visual solution is preferred, but audio is sufficient.

This also relates to members of the public attending the meeting also being heard. The regulations are clear that a meeting is not limited to those present in the same place, but includes electronic, digital or virtual locations (internet locations, web addresses or conference call telephone numbers).

2. Zoom

Zoom is the system the Council will be using for the time-being to host remote / virtual meetings. It has functionality for audio, video, and screen sharing and you do not need to be a member of the Council or have a Zoom account to join a Zoom meeting.

3. Access to documents

Member Services will publish the agenda and reports for committee meetings on the Council's website in line with usual practice. Paper copies of agendas will only be made available to those who have previously requested this and also the Chair of a virtual meeting.

If any other Member wishes to have a paper copy, they must notify the Member Services before the agenda is published, so they can arrange to post directly – it may take longer to organise printing, so as much notice as possible is appreciated. Printed copies will not be available for inspection at the Council's offices and this requirement was removed by the Regulations.

4. Setting up the Meeting

This will be done by Member Services. They will send a meeting request via Outlook which will appear in Members' Outlook calendar. Members will receive a URL link to click on to join the meeting.

5. Public Access

Members of the public will be able to use a weblink and standard internet browser. This will be displayed on the front of the agenda.

6. Joining the Meeting

Councillors must join the meeting early (i.e. at least **five** minutes before the scheduled start time) in order to avoid disrupting or delaying the meeting. Councillors should remember that they may be visible and heard by others, including the public, during this time.

7. Starting the Meeting

At the start of the meeting, the Member Services Officer will check all required attendees are present (viewing the participant list) and that there is a quorum. If there is no quorum, the meeting will be adjourned. This applies if, during the meeting, it becomes inquorate for whatever reason.

The Chair will remind all Members, Officers and the Public that **all microphones will be automatically muted**, unless and until they are speaking. This prevents background noise, coughing etc. which is intrusive and disruptive during the meeting. The Hosting Officer will enforce this and will be able to turn off participant mics when they are not in use. Members would then need to turn their microphones back on when they wish to speak.

8. Public Participation

Participation by members of the public will continue in line with the Council's current arrangements as far as is practicable. However, to ensure that the meeting runs smoothly and that no member of the public is missed, all those who wish to speak must register **by 4pm on the day before the meeting**. They should email their full name to Committee@middevon.gov.uk. If they wish to circulate their question in advance, that would be helpful.

At public question time, the Chair will invite the public by name to speak at the appropriate time. At that point, all public microphones will be enabled. This means that, to avoid private conversations being overheard, no member of the public should speak until it is their turn and they should then refrain from speaking until the end of public question time, when all microphones will be muted again. In the normal way, the public should state their full name, the agenda item they wish to speak to **before** they proceed with their question.

Unless they have registered, a member of the public will not be called to speak.

If a member of the public wishes to ask a question but cannot attend the meeting for whatever reason, there is nothing to prevent them from emailing members of the Committee with their question, views or concern in advance. However, if they do so, it would be helpful if a copy could be sent to Committee@middevon.gov.uk as well.

9. Declaration of Interests

Councillors should declare their interests in the usual way. A councillor with a disclosable pecuniary interest is required to leave the room. For remote meetings, this means that they will be moved to a break-out room for the duration

of this item and will only be invited back into the meeting when discussion on the relevant item has finished.

10. The Meeting and Debate

The Council will not be using the Chat function.

The Chair will call each member of the Committee to speak - the Chair can choose to do this either by calling (i) each member in turn and continuing in this way until no member has anything more to add, or (ii) only those members who indicate a wish to speak using the 'raise hand' function within Zoom. This choice will be left entirely to the Chair's discretion depending on how they wish to manage the meeting and how comfortable they are using the one or the other approach.

Members are discouraged from physically raising their hand in the video to indicate a wish to speak – it can be distracting and easily missed/misinterpreted. No decision or outcome will be invalidated by a failure of the Chair to call a member to speak – the remote management of meetings is intensive and it is reasonable to expect that some requests will be inadvertently missed from time to time.

When referring to reports or making specific comments, Councillors should refer to the report and page number, so that all Members of the Committee have a clear understanding of what is being discussed at all times.

11. Voting

On a recommendation or motion being put to the vote, the Chair (or the Member Services Officer) will go round the virtual room and ask each member entitled to vote to say whether they are for or against or whether they abstain. The Member Services Officer will announce the numerical result of the vote.

12. Meeting Etiquette Reminder

- Mute your microphone – you will still be able to hear what is being said.
- Only speak when invited to do so by the Chair.
- Speak clearly and please state your name each time you speak
- If you're referring to a specific page, mention the page number.

13. Part 2 Reports and Debate

There are times when council meetings are not open to the public, when confidential, or "exempt" issues – as defined in Schedule 12A of the Local Government Act 1972 – are under consideration. It is important to ensure that there are no members of the public at remote locations able to hear or see the proceedings during such meetings.

Any Councillor in remote attendance must ensure that there is no other person present – a failure to do so could be in breach of the Council's Code of Conduct.

If there are members of the public and press listening to the open part of the meeting, then the Member Services Officer will, at the appropriate time, remove them to a break-out room for the duration of that item. They can then be invited back in when the business returns to Part 1.

Please turn off smart speakers such as Amazon Echo (Alexa), Google Home or smart music devices. These could inadvertently record phone or video conversations, which would not be appropriate during the consideration of confidential items.

14. Interpretation of standing orders

Where the Chair is required to interpret the Council's Constitution and procedural rules in light of the requirements of remote participation, they may take advice from the Member Services Officer or Monitoring Officer prior to making a ruling. However, the Chair's decision shall be final.

15. Disorderly Conduct by Members

If a Member behaves in the manner as outlined in the Constitution (persistently ignoring or disobeying the ruling of the Chair or behaving irregularly, improperly or offensively or deliberately obstructs the business of the meeting), any other Member may move 'That the member named be not further heard' which, if seconded, must be put to the vote without discussion.

If the same behaviour persists and a Motion is approved 'that the member named do leave the meeting', then they will be removed as a participant by the Member Services Officer.

16. Disturbance from Members of the Public

If any member of the public interrupts a meeting the Chair will warn them accordingly. If that person continues to interrupt or disrupt proceedings the Chair will ask the Member Services Officer to remove them as a participant from the meeting.

17. After the meeting

Please ensure you leave the meeting promptly by clicking on the red phone button to hang up.

18. Technical issues

In the event that the Chair, the Hosting Officer or the Member Services Officer identifies a problem with the systems from the Council's side, the Chair should declare a recess while the fault is addressed. If it is not possible to address the fault and the meeting becomes inquorate through this fault, the meeting will be adjourned until such time as it can be reconvened.

If the meeting was due to determine an urgent matter or one which is time-limited and it has not been possible to continue because of technical difficulties, the Chief Executive, Leader and relevant Cabinet Member, in consultation with the Monitoring Officer, shall explore such other means of taking the decision as may be permitted by the Council's constitution.

For members of the public and press who experience problems during the course of a meeting e.g. through internet connectivity or otherwise, the meeting will not be suspended or adjourned.

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MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **PLANNING COMMITTEE** held on 17 June 2020 at 2.15 pm

Present

Councillors

Mrs F J Colthorpe (Chairman)
E J Berry, L J Cruwys, S J Clist,
Mrs C P Daw, R J Dolley, F W Letch,
D J Knowles, S J Penny, R F Radford and
B G J Warren

Also Present

Councillor(s)

R Evans, B A Moore and R L Stanley

Present

Officers:

Kathryn Tebbey (Head of Legal (Monitoring Officer)), Eileen Paterson (Group Manager for Development), Lucy Hodgson (Area Team Leader), Oliver Dorrell (Planning Officer), John Millar (Principal Planning Officer) and Carole Oliphant (Member Services Officer)

15 **VIRTUAL MEETING PROTOCOL (00.04.37)**

The Committee had before it, and **NOTED**, the *'Protocol for Remote Meetings.

Note: *'Protocol for Remote Meetings' previously circulated and attached to the minutes.

16 **APOLOGIES AND SUBSTITUTE MEMBERS (00.04.54)**

There were no apologies or substitute members.

17 **PUBLIC QUESTION TIME (00.05.28)**

Mr Payne referring to item 3 on the plans list stated he would like to ask some questions in regard to the silage clamp application at Gibbet Moor:

- Are the members of the committee aware that the proposal is an industrial development, not an agricultural development as your officers seem to believe?
- Are the members of the committee aware that this proposal would remove nearly 2sq miles of land in North and Mid Devon from agricultural production?
- Are the members of the committee aware that the transport implications of the proposal are far worse than stated in the transport assessment because the transport statement only tells half the story?

- Are the members of the committee aware that the massive lorries taking the silage to Willand will be returning with liquid digestate that is spread on the land to which the grass has been harvested and will therefore be travelling along many local lanes?
- Are the members of the committee aware that the Highways authority have completely ignored the transport of silage and digestate using massive lorries along single track lanes along the proposed silage clamps and the farms supplying the silage?
- Are the members of the committee aware that your officers statement that 'The development is not considered to result in an unacceptable increase in traffic upon the local road network'. This is clearly wrong
- The application site is on the border with North Devon. In November 2018 North Devon District Council were consulted and they stated they considered the application to be for an industrial not an agricultural facility.
- The transport assessment which was issued in July 2019 show that most of the silage will be coming from farms in North Devon and therefore most of the transport issues will effect North Devon. Yet North Devon District Council does not seem to have been consulted since 2018. What happened to the 'Duty to Cooperate' between the neighbouring planning authorities?
- Will the existing field clamps at Gibbet Moor Farm continue to be used which will mean a doubling of the storage from 20,000 to 40,000 tonnes and a doubling of traffic?
- How will the Council stop the continued use of the field clamps?
- Since the traffic implications are a major cause for concern with this application why is there no conditions specifying the type and size of vehicles which can be used to transport the silage?
- Why is there no condition specifying the times by which the silage can be moved into and out of the proposed silage clamps?

18 DECLARATION OF INTERESTS UNDER THE CODE OF CONDUCT (00.09.13)

Members were reminded of the need to declare any interests when appropriate.

19 MINUTES OF THE PREVIOUS MEETING (00.09.22)

The minutes of the meeting held on 20th May 2020 were agreed as a true record.

20 CHAIRMAN'S ANNOUNCEMENTS (00.11.31)

The Chairman had no announcements to make.

21 DEFERRALS FROM THE PLANS LIST (00.11.53)

There were no deferrals from the Plans list.

22 THE PLANS LIST (00.12.00)

The Committee considered the applications in the *Plans List.

Note: *List previously circulated; copy attached to the signed Minutes.

(a) Applications dealt with without debate.

In accordance with its agreed procedure the Committee identified those applications contained in the Plans List which could be dealt with without debate.

RESOLVED that the following application be determined or otherwise dealt with in accordance with the various recommendations contained in the list namely:

- i) **No 4 on the Plans List (20/00111/FULL - Variation of condition (2) of planning permission 16/01007/FULL to allow the holiday lodge to be used as a permanent dwelling. Gilberts Lodge, Morebath, Tiverton)**
be approved as recommended by Head of Planning, Economy and Regeneration

(Proposed by the Chairman)

Notes:

- i) Cllr B A Moore declared a personal interest as the application was under his ownership and duly left the meeting for the entirety of the item;
ii) The following late information was provided:

Members will have noted that the recommendation of approval is made subject to the prior payment of a contribution towards Public Open Space, and the signing of an accompanying Unilateral Planning Obligation, or the completion of a Section 106 to cover this planning obligation, in accordance with the requirements of Local Plan policy AL/IN/3. It is confirmed that the required contribution has been paid and signed Deed returned. As such no further action is required in this respect should members resolve to grant planning permission

- b) **19/01862/FULL - (Change of use of farm buildings to mixed B1/A2/B8 use and retention of external works. Land and Buildings at NGR 299326 114323, Bradford Farm, Uplowman)**

The Principal Planning Officer explained that the committee had previously considered the application in February and had requested the Planning Working Group to visit in March to consider the following:

- The location, condition and proposal in relation to the portakabin/container
- The entrance and visibility from the public highway
- The surface of the entrance and the car park
- The relationship between the car park and the effect on the adjoining property in relation to noise and visual impact

The Officer outlined the contents of the report by way of a presentation highlighting the car park at the rear of the site, access points and elevations. He explained that the main concerns of the working group were of highway safety, the effect of the development on the neighbouring property and access into the site.

He explained that the Highway Authority had no objections to the development and that the applicant had agreed to a condition of installing an acoustic surface on the car park or fencing to shield the neighbouring property from headlights but that this had not been required by Environmental Health.

Consideration was given to:

- The previous applications and the changes made within the current application
- The traffic flows and the highway issues with the cumulative impact on other developments in the area
- The views of the objector with regard to: the proposal not being in an appropriate location, road safety issues and the change of advice by the previous Highways officer, the legal right to erect a fence, the fence negated all visibility to the east, the narrowness of the access track, the application was equal to the development of 10 houses with regard to vehicle movement, the visibility splays, the car park would have a detrimental effect on the amenity of the neighbouring property and whether there was a proven need for the office accommodation.
- The views of the agent with regard to the length of time it had taken to consider the application, repeated challenges had been met by the applicant, there had been no objection from Environmental Health or the Highway Authority, the application should be dealt with in accordance with policy, the erection of the fence, the application did include parking in the courtyard but this would be for electric cars (as there was a charging point) and disability access, concerns with regard to storage of common agricultural sprays.
- The views of the Ward Member with regard to the siting of the shipping container and whether the proposed cladding would make it a bigger obstruction to views from the neighbouring property, the siting of the car park and the impact on the neighbouring property, the conflict of opinion with regard to highways issues, vehicular movements to and from the site, the times the beekeepers would be visiting the site and a request that any condition require a fence and a silent surface.
- The size of the application and that the works already completed did not require planning permission
- The change of use was to B1/B8 and did not include A2
- The prospect of a fence at the entrance to the neighbouring property had been considered by the Highways Authority and was within expectations and did not require an additional survey
- The independent traffic report commissioned by the objector
- The condition for a solid surface in the car park or installation of fencing

It was therefore:

RESOLVED that:

Members were minded to refuse the application and therefore wished to defer the application for an implications report to consider the proposed reasons for refusal that of

- The application was not in line with Policy DM20 as Members felt that this was not an existing business

- The application was contrary to Policies DM11 and DM20 as Members felt that it was not a conversion of redundant buildings and there was no evidence of insufficient alternative sites in the area
- Construction of the car park was not in accordance with policy and the conversion would not be policy compliant
- The harmful effect on the amenity to the neighbour due to the dust from the chippings in the car park and the height of the proposed fence which would block out light to the windows
- That condition 8 should include both a silent car park surface and the height of the fence

(Proposed by Cllr B G J Warren and seconded by Cllr R F Radford)

Notes:

- i) Cllr B G J Warren declared an interest in accordance with Protocol of Good Practice for Councillors dealing with planning matters as he had had communication from the objector;
- ii) Cllrs R J Dolley, D J Knowles and R F Radford declared personal interests as they knew the objector;
- iii) Cllr L J Cruwys declared an interest in accordance Protocol and Good Practice for Councillors dealing with planning matters as he had spoken to the applicant;
- iv) Cllr S J Clist declared a personal interest as he knew the applicant;
- v) Mr Blackmore spoke as the objector;
- vi) Mr Firth (agent) spoke;
- vii) Cllr C Slade spoke as Ward Member;
- viii) Cllr E J Berry did not participate in the debate or vote in line with the Protocol of Good Practice for Councillors dealing in planning matters, due to a loss of internet connection part way through the presentation of the application and discussion thereon;
- ix) The following information was provided in the update sheet:
 1. Could Members please note that there is a typo on page 32 of the officer's report. Instead of reading "due to the close proximity of the two sites, and the presence of similar gravel drive and parking areas present at this adjoining property, it is not considered that the car park works adequately respect the character of the surrounding area, without harming the rural context", the 'not' should be omitted so the line reads as "due to the close proximity of the two sites, and the presence of similar gravel drive and parking areas present at this adjoining property, it is considered that the car park works adequately respect the character of the surrounding area, without harming the rural context." This was pointed out in the

updates for the previous meeting on 11th March 2020, however was not corrected in this latest committee report.

2. Members will have noted in the 'parking and access' section of the officer's report that since the Planning Working Group Site visit, the neighbouring landowner had raised further concerns over visibility to the east, as this crossed over land in their ownership, and unregistered land outside of the control of the applicant. In response the Highway Authority raised concerns, however were ultimately satisfied with the proposal from a highway safety point of view, following the submission of estimated vehicle movements should the extant agricultural use be recommenced. This was the position at the time of completing the committee report.

Since the completion of the committee report however, the neighbouring landowner, and his agent, have commented further on this matter. In particular it is advised that no commercial agricultural use has taken place since at least 2012, and that the prospect of the number of vehicle movements identified by the applicant occurring is unrealistic. It is also considered that the number of movements associated with the proposed use would be more than suggested in the applicant's submission. Concerns still remain in respect to visibility too. The neighbouring landowner has since commissioned a highway consultant to review the highway matters. In response they have submitted a technical statement, reiterating the concerns that the estimation of vehicle movements associated with an agricultural use is too high, and that those associated with the proposed use is too low. The technical statement suggests the daily vehicle movements would likely be approximately 17 (maximum) for an agricultural use with a more realistic estimation being between 10-16 movements, assuming that some traffic would be directed through other site entrances. Daily trips of 63 and 66 for the proposed business use are suggested. Further analysis is also given in respect to the access, with concerns raised about the levels of visibility accepted by the Highway Authority, noting in particular the potential for the adjoining landowner to obstruct visibility on land within their ownership, and surveyed speeds along the adjoining stretch of road.

In response, the Highway Authority have advised that based on the TRICS data parameters, the total daily trips created by the proposed use would be 18 trips. They have advised that if a pragmatic view was taken and that the lower figure of 10-16 trips suggested in the technical statement was accepted, this would only amount to 2 extra trips, which would not be considered to have a severe impact on the highway network. Further responses have been received in respect to the latest Highway Authority comments, however the Highway Officer has again confirmed that the impact of the proposed use would not be significantly greater than the extant use so as to have a severe impact on highway safety. As such, no objection is raised on highway safety grounds. It is further confirmed that the Highway Officer has fully considered the implications of the neighbouring landowner obstructing visibility within their own land, including noting the potential to seek possession of the unregistered land. The Highway Officer has also confirmed that they would not be able to defend a reason for refusal on highway grounds at appeal. For information,

it has since been noted that the adjoining landowner has proceeded to erect a fence adjacent to the access, in the last few days.

c) 19/01430/FULL – (*Erection of an office building and change of use of land from agriculture to groundworks depot. Land at NGR 286163 123831, (Highfield Farm), Oakford*).

The Planning Officer outlined the contents of the report by way of a presentation highlighting the location and topography of the site, the block plans, floor plans, proposed elevations, external finishes, lower yard area and office building access lane.

Consideration was given to:

- The views of the objector with regard to the history of the site, the industrial site in the countryside, the expansion of the site without application, no conditions had been applied to the site, the impact on the local residents, the noise on the site which had been reported to the Environmental Health Department, no restriction of working hours on the site and the noisy and heavy industrial process that were taking place
- The views of the applicant with regard to the proposal to regularise the use, the business had moved internally within the site, there would be no increase in traffic or noise, the business was a transitional business in nature, 90% of materials went straight to locations where work was taking place and the lack of objections from statutory authorities
- The views of the Ward Member with regard to the reasons for the call in, the impact of the application on local residents, the location of the application site which was 6 miles away from Bampton, the location was in remote heartland farming country, there were 8 businesses on the site, the application was not in accordance with Policy COR 18, whether enough research had taken place with regard to alternative sites in the area and the impact of the application on the local amenity
- Changes to condition 4 which limited use to Class B1(a) or Class B 1 (b) which prevented any change to residential use
- Changes to condition 6 which restricted external lighting

It was therefore:

RESOLVED that:

Members were minded to refuse the application and therefore wished to defer the application for an implications report to consider the proposed reasons for refusal that of

- Number of developments in the area
- Suitability of this particular business in this particular area
- Impact of noise on site and the number of hours worked

(Proposed by Cllr F W Letch and seconded by Cllr L J Cruwys)

Note:

- i) Mrs Hickman spoke as the objector;
- ii) Mr Friend spoke as the applicant;
- iii) Cllr B A Moore spoke as Ward Member;
- iv) The following late information was provided:

Additional Condition

Details of the proposed hydro-brake to serve the surface water drainage system of the development hereby approved shall be submitted to the Local Planning Authority within one month of the date of this permission. On approval of these details the hydro brake shall be installed and the surface water drainage system fully operational within two months of the date of the approval by the Local Planning Authority.

Reason:

To ensure that the surface water discharging from the site is satisfactorily drained, in accordance with policy DM2 of the Mid Devon Local Plan.

Amendment to condition 3 reason

To allow the Local Planning Authority to retain control over the future use of the site, in the interests of visual and residential amenity, in accordance with policy DM2.

Condition 4 and reason amended to read:

The building hereby approved shall be used for purpose falling within Use Class B1(a) or (b) only and for no other purpose (including any other purpose in any Use Class of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification), or any other use permitted under the provisions of Article 3 of The Town and Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification).

R: To allow the Local Planning Authority to retain control over the future use of the building in the interests of residential amenity and to protect the use of the site for employment purposes, in accordance with policies DM2 and DM21.

Condition 6 and reason amended to read:

No external lighting shall be installed on site unless details of such lighting, including the intensity of illumination and predicted lighting contours, have been first submitted to, and approved in writing by, the Local Planning Authority prior to its installation. Any external lighting that is installed shall accord with the details so approved.

R: In the interests of visual and residential amenity and to safeguard biodiversity, in accordance with policies COR2, DM2 and DM20

d) 18/01711/MFUL – (Formation of an open clamp (4630m²) for the storage of silage and provision of new access. Land and Buildings at NGR 288069 117081 (Gibbet Moor Farm), Rackenford)

The Area Team Leader outlined the contents of the report by way of a presentation which detailed the site location, proposed application, the location of the proposed silage clamps, the new access and concrete standing. She explained that an additional condition had been proposed to limit the height of the stored silage to 3m.

The officer then addressed the questions raised at public question time by a member of the public:

- The storage of silage on agricultural land is considered to be agricultural development and not an industrial development
- The size of the clamp was considerably less than 2sq miles
- A transport assessment was submitted with the application and that was reviewed by the Highways Authority and they have had opportunities to comment and they have raised no objections to the application
- With regards to the Highways assessment of the traffic to and from the site, all the evidence was provided to them in respect of the application
- The traffic part in the officers report quotes DM22 and states that development will be permitted where it will not have an unacceptable traffic impact on the local road network. This is a policy quote and reflect the wording in the Local Plan Policy
- North Devon District Council were consulted in July and November 2019 but no response was received
- Mid Devon District Council initially classed the proposal as industrial but this was reassessed and classed as agricultural development.
- There would be no planning restriction on providing field clamps for silage on this or any other land as a result of this application. There was some control on the creation of new clamps under other legislation beyond planning legislation
- The Planning application states that once the proposed open clamp was installed there would be no need for additional field clamps
- The Highways Authority would have advised the local planning authority if there was a need to control the type or size of vehicles using the site but have not done so
- Public Health did not raise any concerns with regard to the times of use of the site and we are not aware of any justification for that restriction at this time

Discussion took place with regard to:

- The highways report and the details of any legal advice
- The capacity of the existing field clamps and the proposed clamp
- The impact of heavy lorries on the local road network
- The attenuation areas for surface water
- The impact of the application on local water courses
- Legislation with regard to any pollution of water courses

- Government Guidance with regard to the purposes of agriculture
- The capacity of the attenuation tanks
- Travelling between sites
- Whether members had all the necessary information to consider the application
- The view of the objector with regard to the application not being agricultural but an industrial facility to feed the Willand AD plant, the distance to source grass for the clamps, the details of the Transport Assessment, the application did not satisfy policy DM22 and that the digestate from the AD plant would be returned to the fields
- The views of the local Ward member with regard to the transport assessment, industrial development, pollution, transport impact on the local road network, the concerns of local parish councils, the traffic arising from GFL sites and the concerns with regard to the calculations within the report.

It was therefore:

RESOLVED that:

A decision be deferred for a report to be received to address Members questions with regard to:

- Where was the legal advice sought from as stated on 4th February 2020
- Which NPPF was referred to under paragraphs 170 and 171 under Principle of Development
- What was the combined capacity of the existing field clamps and the proposed permanent clamp and the effect on traffic movements if they were both in operation
- Where does the Town and Country Planning Act define open clamps for the storage of silage as agricultural
- Are the size of the attenuation ponds sufficient for the run off water for both the silage coverings and the concrete hardstanding and is the drainage considered adequate for this site
- Had the climate change issue been addressed with the amount of proposed vehicle movements
- Had the public concerns that this is not an agricultural facility but an industrial one been addressed
- Had the Ward Members concerns with regard to the pollution and transport impact on the local area been addressed

(Proposed by the Chairman)

Notes:

- i) Cllr B G J Warren declared an interest in accordance with Protocol and Good Practice for Councillors dealing with planning matters as he had had communication from the objector and a personal interest as he was Chairman of Willand Parish Council;
- ii) Cllrs R J Dolley, D J Knowles and R F Radford and R J Stanley declared a personal interest as they knew the objector;

- iii) Cllr Mrs P J Colthorpe declared an interest in accordance with Protocol and Good Practice for Councillors dealing with planning matters as the site was in her County Ward and a personal interest as she knew the applicant;
- iv) Dr Phillip Bratby spoke as objector;
- v) Mr Waite spoken on behalf of the applicant;
- vi) Cllr R J Stanley spoke as Ward Member;
- vii) Cllrs B G J Warren and E J Berry request that their vote against the decision be recorded.

23 **APPEAL DECISIONS (03.34.40)**

The Committee had before it, and **NOTED**, a *list of appeal decisions providing information on the outcome of recent planning appeals.

Note: *list previously circulated and attached to the minutes.

(The meeting ended at 5.53 pm)

CHAIRMAN

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PLANNING COMMITTEE AGENDA - 15th July 2020

Applications of a non-delegated nature

<u>Item No.</u>	Description
01.	<p>20/00189/FULL - Conversion of agricultural building to dwelling, retention of office building with temporary use as living accommodation while barn conversion takes place, erection of garage/carport and summerhouse at Land and Buildings at NGR 279660 98291, Brookdale, Neopardy.</p> <p>RECOMMENDATION Grant permission subject to conditions.</p>
02.	<p>19/01309/FULL - Erection of a dwelling including demolition of a garage at Fair Havens, Mill Street, Crediton.</p> <p>RECOMMENDATION Grant permission subject to conditions.</p>
03.	<p>19/02013/FULL - Erection of dwelling and demolition of agricultural building at Land at NGR 306728 119836 (Wardmoor), Holcombe Rogus, Devon.</p> <p>RECOMMENDATION Grant permission subject to conditions.</p>

Application No. 20/00189/FULL

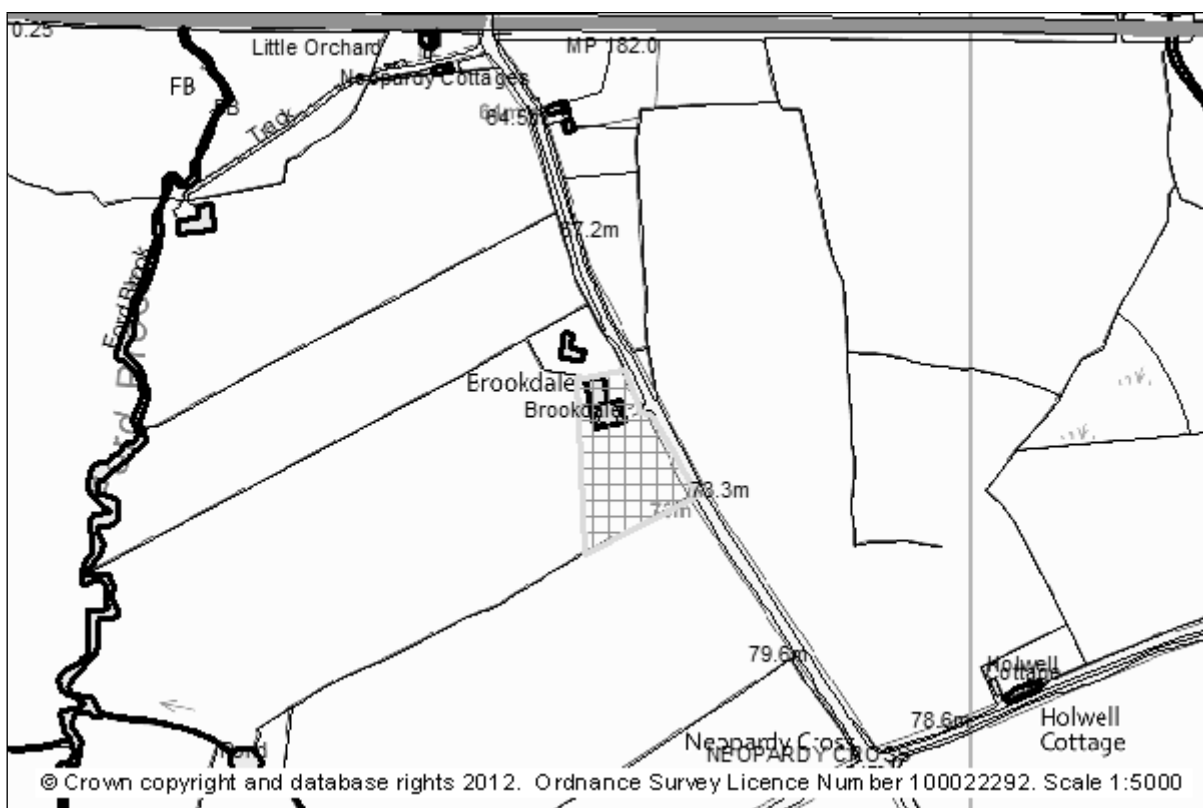
Grid Ref: 279606 : 98204

Applicant: Mr M Broster

Location: Land and Buildings at NGR 279660 98291
Brookdale
Neopardy
Devon

Proposal: Conversion of agricultural building to dwelling, retention of office building with temporary use as living accommodation while barn conversion takes place, erection of garage/carport and summerhouse

Date Valid: 14th February 2020



APPLICATION NO: 20/00189/FULL

MEMBER CALL-IN

This planning application has been called in by Councillor Penny for the following reasons:

If officers are of a mind to approve this application under delegated powers I would wish to call the application in to enable the planning committee to consider the detail of the application and its compliance with National and Local Planning Policy, both adopted and within the emerging Local Plan Review.

Specifically:

- Whether the proposal for an unrestricted dwelling in this location is acceptable
- Whether the proposal would represent a conversion of an existing building
- Consideration to whether the design of the dwelling will retain the original character of the building and its surroundings
- Consideration to the increase in curtilage area and the number of buildings proposed in this countryside location
- Whether the retention of the 'temporary' dwelling to an office would contribute positively to the character of the buildings or the area in general.'

RECOMMENDATION

Grant permission subject to conditions and the signing of a Unilateral Undertaking to secure a financial contribution towards Air Quality mitigation in Crediton.

PROPOSED DEVELOPMENT

The applicant seeks planning permission for the conversion of an agricultural building to a dwelling, retention of office building with temporary use as living accommodation while barn conversion takes place, erection of garage/carport and summerhouse on land and buildings at NGR 279660 98291, Brookdale, Neopardy.

The proposed office building (which meets the definition of a temporary structure) is initially to be used as on site accommodation whilst the development work takes place. This will provide a temporary dwelling but also act as a construction office and welfare facilities. After construction of the dwelling the applicant proposes that this building become an ancillary office and remain on site for use by the Applicant.

The materials to be used on the exterior of the dwelling are for external walls to be clad with Waney edge red cedar horizontal boards and Taylor Maxwell StonePanel cladding to the main entrance area; Kingspan KS1000 LP insulated roof sheets with PPC aluminium framed double glazed windows and doors.

This application follows the earlier approval of 19/00123/PNCOU - Prior notification for the change of use of an agricultural building to 2 dwellings under Class Q on the 22nd March 2019. As such the applicant can live in the temporary building (falling within the definition of a caravan) on site under permitted development rights and it is this temporary building on site which is proposed to be used as a home office once the conversion of the agricultural building into a dwelling has been completed.

APPLICANT'S SUPPORTING INFORMATION

Completed application form, plans, wildlife survey, surface water drainage strategy, Foul Drainage Assessment, structural survey/schedule of works, planning statement, landscape planting scheme, supporting information.

RELEVANT PLANNING HISTORY

08/02202/PNAG - PP date 9th January 2009

Prior notification for the erection of extension to agricultural building

09/00078/FULL - PERMIT date 4th March 2009

Erection of an open-sided agricultural building over existing yard

19/00123/PNCOU - APA date 22nd March 2019

Prior notification for the change of use of an agricultural building to 2 dwellings under Class Q

DEVELOPMENT PLAN POLICIES

Mid Devon Core Strategy (Local Plan 1)

COR1 - Sustainable Communities

COR2 - Local Distinctiveness

COR3 – Meeting housing needs

COR5 – Climate Change

COR9 - Access

COR12 - Development Focus

COR 18 – Countryside

Mid Devon Allocations and Infrastructure Development Plan (Local Plan 2)

AL/CRE/8 (Credon Air Quality)

Mid Devon Local Plan Part 3 (Development Management Policies)

DM1 - Presumption in favour of sustainable development

DM2 - High quality design

DM3 – Sustainable design

DM5 - Renewable and low carbon energy

DM7 - Pollution

DM8 – Parking

DM11 - Conversion of rural buildings

DM14 - Design of housing

DM15 – Dwelling sizes

Local Plan Review 2013 – 2033

S1 - Sustainable development priorities

S2 - Amount and distribution of development

S3 - Meeting housing needs

S8 - Infrastructure

S9 - Environment

S14 - Countryside

S12 - Credon

CRE11 - Credon Infrastructure

DM1 - High quality design

DM2 - Renewable and low carbon energy
DM4 - Pollution
DM5 - Parking
DM9 - Conversion of rural buildings
DM12 - Housing Standards

National Planning Policy Framework ("the NPPF")

CONSULTATIONS

Crediton Hamlets Parish Council – 9th June 2020

At their Parish Council meeting last night Councillors discussed the emails relating to the above application which you sent to Cllr Derek Coren on 26th May and 8th June.

Councillors do not feel that the imposition of the conditions you refer to in your email of the 26th address their concerns at all. Councillors request that this application be called in to the Planning Committee so that it receives full and proper scrutiny.

Crediton Hamlets Parish Council - 5th May 2020

Having considered the additional information provided the Parish Council objects and believes the application should be called in to the Planning Committee. Bearing in mind that the plans for the existing dwelling included an office, the structure at the top of the field (the temporary office) is oversized for its temporary use and is such a distance from the dwelling, the temporary office should be the subject of a separate planning application.

Crediton Hamlets Parish Council – 12th March 2020

"The building is oversized for an office and is too far from the curtilage of the dwelling. It is inappropriately sited. The structure does not reflect the intended use a temporary accommodation for a project manager. The application should be for retrospective consent, not intentional consent."

Public Health: 25th February 2020

Contaminated Land: No objection to this proposal. (24.02.20).

Air Quality: No objection to this proposal. (24.02.20).

Environmental Permitting: No objection to this proposal. (19.02.20).

Drainage: No objection to this proposal. (24.02.20).

Noise & other nuisances: No objection to this proposal. (24.02.20).

Housing Standards: There are no plans attached to be able to comment on layout. (19.02.20).

Licensing: No comments. (19.02.20).

Food Hygiene: No comments. (19.02.20).

Private Water Supplies: If a private supply is to be used by more than one property or has a commercial function, The Private Water Supply (England) Regulations 2016 as amended will apply. A risk assessment and sampling regime will be necessary. The supply must not be used until the Local Authority (Mid Devon District Council) is satisfied that the supply does not constitute a potential danger to human health, including single domestic use.

You must also register with the Local Authority (Mid Devon District Council) any private water supply. Failure to do so may result in a Section 85 Notice, with which failure to comply is an offence.

Please contact Public Health at Mid Devon District Council on completion of proposal.

IF MAINS WATER IS TO BE USED, WOULD HAVE NO COMMENT. (19.02.20).

Health and Safety: No comments. (19.02.20).

Local Highway Authority - 2nd March 2020

Standing advice applies - <https://www.devon.gov.uk/planning/apply-for-planning-permission/get-help-with-an-application/guidance-for-applicants>

REPRESENTATIONS

No letters of representation were received

MATERIAL CONSIDERATIONS AND OBSERVATIONS

The proposed development relates to the provision of a dwelling on the land adjacent to Brookdale, Neopardy, Crediton. As reported on, there is an approved Class Q scheme (reference 19/00123/PNCOU) for two dwellings, however the applicant wishes to convert the agricultural buildings into a single dwelling but has also applied for ancillary buildings on the plot in the form of a garage/carport, office and summer house/shed.

The main issues in the determination of this application are:

- 1. Policy and principle of development**
- 2. Highway, access and parking,**
- 3. Design and appearance of development and visual impact on landscape**
- 4. Impact on the amenity of nearby residential properties**
- 5. Planning obligations**
- 6. Other matters**
- 7. Planning balance**

1) Policy and principle of development

S.38 [6] of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The National Planning Policy Framework is noted as one such material consideration. The National Planning Policy Framework outlines three dependant objectives of sustainable development; economic, social and environmental.

Policy COR1 of the Mid Devon Core Strategy seeks to manage growth in a sustainable way to support the diverse needs of communities. COR2 seeks to ensure that development will sustain the distinctive quality, character and diversity of Mid Devon's environmental assets, particularly through requiring high quality sustainable design which will reinforce the character and legibility of its built environment. Policy COR3 sets a district wide target for new housing development and COR12 seeks to focus development in the most sustainable locations. The site is located in a countryside location where policy COR18 seeks to restrict development to enhance the character, appearance and biodiversity of the countryside. In terms of residential uses, COR18 provides in principle support for affordable housing to meet local needs, gypsy accommodation, replacement dwellings, housing essential to accommodate an agricultural or forestry worker and accommodation ancillary to a dwelling.

In addition to policies of the adopted Local Plan, on 26th June 2020, Mid Devon District Council published the Inspector's Report on the Mid Devon Local Plan Review. The Inspector has concluded that the Local Plan is 'sound' subject to a number of main modifications being made. The Mid Devon Local Plan Review, taking account of the Inspector's conclusions, will be recommended for adoption at a meeting of full Council

Consistent with National Planning Policy Framework paragraph 48, the publication of the Inspector's Reports increases substantially the weight that can be attributed to the Local Plan in decision making. The examination process has now concluded. The Inspector has concluded that the Local Plan is sound (subject to the main modifications which have been recommended) and, as such, there are no longer unresolved objections to the Local Plan Review. As such, substantial weight may now be attached to the policies of the Local Plan when making planning decisions.

The adopted development plan, in technical terms, remains the starting point for planning decision making. The Local Plan Review is however a material consideration to which substantial weight may now be attached. Given the state of advancement of the Local Plan Review in the process toward adoption, it is considered that, generally, in the context of a planning decision, where there is a conflict between the outcome which arises from the application of policies of the adopted development plan and those of the Local Plan Review, the Local Plan Review will generally outweigh the adopted plan and will prevail. Where there is consistency, then the policies of the Local Plan Review add substantial weight in favour of the outcome which accords with the application of policies of the adopted development plans and those of the Local Plan Review.

Therefore relevant policies within the Local Plan Review would be those of Policies S1 (Sustainable development priorities), S2 (Amount and distribution of development), S3 (Meeting housing needs), S8 (Infrastructure), S9 (Environment) and S14 (Countryside). Policy S14 has similar wording to Policy COR18 of the Local Plan which stipulates the circumstances in which development will be permitted in the open countryside, and the proposal does not meet any of the stated criteria.

It is noted that a Court of Appeal decision [Mansell v Tonbridge and Malling BC] concluded that a fall-back position could be considered whereby permitted development rights such as those under Class Q of part 3 of Schedule 2 of the Town and Country (General Permitted Development)(England) Order 2015 (as amended) could be considered as a material consideration. As prior approval has been granted for the conversion of the existing building under Class Q into two dwellings, this represents a fall-back position, which is a material consideration.

Through prior approval it has been demonstrated that the building is capable of being converted to residential use in accordance with the available permitted development rights and the submission of the Class Q notification could be considered to demonstrate a realistic prospect that residential development on the site would be pursued, by implementation of the Class Q approval, even if this planning application were refused.

Whilst the proposal now under consideration would not constitute permitted development given the amount of rebuild involved in the conversion works, it would result in a very similar form of development and one which is considered to be superior to the fall-back scheme, in terms of the fact that it would be for one dwelling rather than two, the quality of accommodation to be provided, the proposal's impact on the character of the area through the use of materials chosen and ecological impact through the planting of trees across the wider site. There is also a financial contribution towards Air Quality mitigation in Crediton.

On balance, bearing in mind the particular circumstances of this case, the proposal is considered to be acceptable in principle.

2. Highway, access and parking

The proposal utilises the existing access and a new driveway and garage/car port is to be provided. It is not considered that the provision of the driveway off the existing access would result in harm to the character or appearance of the area in accordance with policies COR2 and COR18

of the Mid Devon Core Strategy (LP1) or policy DM2 of the Local Plan part 3 (Development Management Policies), and Local Plan Review 2013 – 2033 policies S9 (Environment), S14 (Countryside) and DM1 (High quality design).

Policy DM2 of the Local Plan states that new development should be safe and accessible and Policy DM11 states that a suitable access should be in place, or able to be created without causing harm to the character of the area or highway capacity. Given the limited traffic movements associated with the access which has been utilised for agricultural activities, the use of the existing access for a single dwelling is not considered to result in any significant highway safety concerns. There is sufficient space within the site for two parking spaces in accordance with policy DM8 of the Local Plan part 3 (Development Management Policies) and DM5 (Parking) of the Local Plan Review 2013 - 2033. A condition is recommended to be imposed to secure the provision of the parking and manoeuvring area.

3. Design and appearance of development and visual impact on landscape

The initial concerns raised through this proposal were that the garden area is substantially increased for the plot compared to what was allowed under 19/00123/PNCOU, that the proposal results in an increase in the number of buildings on site with a new garage/carport, office building and summerhouse and that the position of the office building and summerhouse, are viewed as being isolated from the proposed dwelling, therefore viewed separately to the existing buildings on site and therefore introducing more buildings within this countryside location. Policy DM2 of the Local Plan states that the design of new development must be of high quality and demonstrate a number of principles, including efficient and effective use of the site, an understanding of the local context, and appropriate siting, layout, scale, and other design characteristics to ensure visually attractive and well integrated development. Policy DM14 states that new housing should be designed to deliver high quality, taking account of context, local character, density, and land use mix. Similar wording is used in policies DM1 and DM12 of the Local Plan Review.

The proposed change of use of the building to a single dwelling from the two approved dwellings is considered to be 'betterment'. The whole design is also considered as being an improvement on the approved design, which was limited in architectural terms due to the restrictive nature of the legislation. The applicant has commented that rather than consider a complete knock down and re build, their preference is to convert the barn. The original application proposed to retain the roof and side cladding whereas the proposal now is to improve the external appearance of the building by replacing these with new materials, whilst also improving the aesthetics with careful consideration of new interventions and glazing.

The existing agricultural building is located in an isolated location set back from the road so it would not necessarily need to be replaced in order to improve the relationship to other buildings on site or nearby or to be set back further from a main road. The accommodation which would be provided is considered to be an improvement on that which would be achieved through 19/00123/PNCOU and the overall design approach would be an improvement on the existing agricultural building to be converted. The design approach is considered to be supportable in accordance with policies DM2 and DM14 of the Local Plan and DM1 and DM12 of the Local Plan Review. The property would benefit from a suitable level of private amenity space reflecting the size, location, floor space and orientation of the property.

With regard to the call in reasons, as to whether the proposal would represent a conversion of an existing building is not particularly relevant as whilst there are policies allowing the conversion of agricultural buildings into dwellings (DM11 of Local Plan and DM9 of LPR), given the fact that in utilising a fall back position, the building could be demolished and a new dwelling (demonstrating a betterment) could be built. In any event, the proposal is for the conversion of the existing building

on site, utilising the existing form, scale and footprint of the existing building. Therefore in terms of the consideration as to whether the design of the dwelling will retain the original character of the building and its surroundings, the proposal is for a change of use of an existing agricultural building, which retains its volume and shape and seeks to provide an attractive, modern and environmentally friendly dwelling in the countryside.

Although it is recognised that the provision of the garage/carport, office building and summerhouse increases the scope of built development at the site, the design and siting of these buildings is considered to be acceptable and typical of ancillary structures of this nature and it is not considered that the presence of these buildings would result in harm to the character and appearance of the area in accordance with policies COR2, COR18 and DM2 of the Local Plan and Policies S9, S14 and DM1 of the Local Plan Review.

The garage has been positioned on the boundary between the two properties and sited to suit the proposed parking and turning area. The summerhouse would be additional and used ancillary to the house, but the applicant advised that this could be removed if necessary. The office building has been positioned on site temporarily in order to provide storage and welfare facilities and accommodation whilst the house is being constructed. This application seeks to retain this structure upon completion of the dwelling for use as an office for running applicant's business.

The temporary building on site is currently lawful as it is being used on the site for temporary accommodation whilst building work is being undertaken, plus providing welfare and storage facilities as required under the Construction Design and Management Regulations 2015. The applicant has outlined the business need for the office below and also wishes to use part of this building for garden storage such as a ride on mower. In terms of the position of this building and that of the summerhouse, being further away from the dwelling, the applicant has commented that a position by the roadside hedge would be too visible and equally this was thought to be the same should it put on the opposite boundary adjoining the field. The position chosen is low in the landscape and surrounded by existing vegetation thereby reducing views from public vantage points.

The applicant has advised that they are moving their office based business to Crediton. It will involve renting office space in Crediton and employing local staff as the local Hampshire staff will not be moving. As well as the Office in Crediton, working from home has become more prevalent over the last few months, to the extreme that they have approval from the Government to conduct all of their business remotely from home. The business involves monitoring, supporting, training and assessing merchant shipping to keep them safe at sea. The operation of working from home is often random hours of the day outside of the standard 0900 to 1700 at the actual business premises. The home office is run between the applicant and his fiancé only and to achieve working from home the office has to be secure, have reliable and secure internet and power, and preferably be completely out of view and remote as possible for security reasons. This is another reason for the tree planting to help further reduce any view to this building.

It is explained that the entire project is off-grid, not just for environmental reasons but reliability reasons. The wooden office has been placed with the roof south facing and houses 16 solar panels generating 5kw per hour. It also houses all the batteries and inverters for reliable and clean power and also houses a 4000 litre holding tank and its filtration equipment from the bore hole that is right next to the wooden office at the top of the garden. The applicant states that this will be sufficient enough to supply the main barn conversion into a family home. The only additional element to the project is that the applicant will be personally financing for fibre connectivity (over 100mps) to be connected to Neopardy and Crediton for the business, although this will also give good access to the local community.

It is recognised that the increased garden area will result in the loss of some agricultural land, this quantity of agricultural land is considered to be relatively minor and the boundary treatments can be conditioned to ensure that they are appropriate so as not to result in harm to the character or appearance of this part of the countryside in accordance to policy DM2 of the Local Plan and DM1 of the Local Plan Review. There is limited garden provided to the rear of the barn, whilst that immediately between the road and the barn will form the parking and turning area. Therefore this therefore leaves the area of land to the side of the barn up to the higher hedge line. The applicant has commented that they considered only using part of this area, however this would leave a section of land in their ownership which would have no beneficial use and would be too small to be used for agricultural purposes.

Whilst the proposal to create a dwelling would result in more rebuild of the existing building, the end result would have a very similar appearance to what is otherwise permitted and the proposal would enable the Council to secure additional planting. On balance, it is considered that the proposal would result in a marginal improvement compared to the fall-back position allowed by the permitted development regulations. Bearing in mind the fall-back position, and given the proposal's siting, scale, and design, it is considered that it would not result in unacceptable harm to the character of the area, subject to the use of conditions to secure the final materials referred to on the submitted plans, landscaping, boundary treatment, and the removal of permitted development rights. Providing these conditions are employed, in terms of its visual impact, the proposal is considered to be in accordance with Policies DM2 and DM14 of the Local Plan and DM1 and DM12 of the Local Plan Review.

4. Impact on the amenity of nearby residential properties

The proposed dwelling will be setback in the site from the existing country lane and there is also good degree of separation to the nearest neighbouring residential property so it is not considered to result in a significant detrimental impact on the amenity of a neighbouring property in accordance with policies DM2 and DM14 of the Local Plan and policies DM1 and DM12 of the Local Plan Review.

The increased garden area will change the nature of the use of this part of the site, which currently forms part of the agricultural field. However, having regard to the siting in relation to the neighbouring property and the intervening screening it is not considered that the use of the extended garden area would result in any significant adverse impacts to the amenities of neighbouring occupiers. The proposed boundary treatment details will need to be conditioned in order to ensure that this does not result in any detrimental impact on the landscape.

Overall, it is not considered that the proposed development, including the new ancillary buildings and extended garden area, would result in any significant adverse impacts to the amenities of neighbouring occupiers. Furthermore it is considered that the proposed scheme provides some improvements to the Class Q scheme, in terms of the design of property and accommodation achieved and measures that can be secured by condition.

5. Planning obligations

In accordance with Policy AL/CRE/8 (Crediton Air Quality) and the Council's Supplementary Planning Document (SPD) 'Air Quality and Development' the proposal has been judged to lead to an increase in traffic and will lead to a worsening effect on air quality in the area of Crediton. An Air Quality Contribution is required therefore to offset the impact of the development on air quality. This Contribution will be used to implement the Air Quality Action Plan. In this instance payment of

£4434.00 is required towards measures necessary to assist with the flow of traffic through the Western Gateway, St Lawrence Green and/or the High Street in Crediton. The applicant has confirmed that they are willing to enter into a Unilateral Undertaking and pay this contribution.

6. Other matters

The site (access and buildings) are not located within a flood risk area and there are therefore no concerns regarding flood risk of the site. The application form states that surface water drainage will be managed by soakaway and foul drainage will be managed via a package treatment plant. On this basis it is not considered that the proposed development is likely to result in any significant adverse impacts to neighbouring occupiers or the general amenity of the area. Solar panels are proposed on the south facing roof slope of the proposed office building which is also supported by policy DM5 of the Local Plan and policy DM2 of the Local Plan Review.

The submitted ecological information does not anticipate any harm to protected species as a result of the proposal subject to protective actions and measures during the construction phase of the development, and the installation of enhancement measures such as bat and bird boxes. There is an opportunity to secure an acceptable scheme of external lighting which minimises the proposal's impact in terms of light pollution and effects on protected species. It is considered that the proposal would result in a positive contribution to biodiversity compared to the fall-back position given the extensive tree planting across the site.

Subject to the use of conditions to secure all of the above, it is considered that the proposal's impact on nature conservation interests would be acceptable, and that the proposal would be in accordance with the guidance contained in the NPPF.

Section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between different people when carrying out their activities. This is called the Public Sector Equality Duty or "PSED". No persons that could be affected by the development have been identified as sharing any protected characteristic.

7. Planning balance

In light of the policies in the Core Strategy and Development Management Policies, the key issue to be considered in respect to this proposal is that of the principle of the development taking into consideration the adopted and emerging planning policy and the weight afforded to the 'fall back' position established by case law.

In this case it is considered that the existing Class Q approval represents a realistic fall-back position for development of two dwellings (by conversion) that could be achieved at the site without any further consent from the Local Planning Authority. The fall-back position is considered to be realistic in this case having regard to considerations as set out in the Mansell case.

The additional associated works, in terms of the enlarged garden area, ancillary buildings and driveway are considered to be supportable in accordance with the relevant development plan policies as set out above. Furthermore, it is considered that this additional development would have been supported had it come forward as a planning application subsequent to the Class Q development being carried out. As such, it is not considered that there are any material planning considerations that would justify refusal of the application for these associated works.

Weighing all matters in the balance, the proposal is considered to provide a betterment over and above the Class Q conversion (19/00123/PNCOU). The design is considered to be of a higher quality and the proposal has contributed towards air quality mitigation within the nearby Town of Crediton. Subject to the conditions imposed, the works involved in the creation of a new dwelling in this instance is considered to result in betterment and the fall-back position can be given significant weight.

To sum up, the proposal is considered acceptable, having regard to the Development Plan, Local Plan Review and all other material considerations, and therefore planning permission should be granted, subject to the conditions detailed below.

CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule on the decision notice.
3. Prior to their use on site, details/samples of the materials proposed to be used on the external surfaces of the buildings, shall be submitted to and approved in writing by the Local Planning Authority. The approved materials shall be so used and retained thereafter.
4. Notwithstanding the details submitted on the block plan for the proposed new tree planting to be planted across the site, prior to the use of any part of the development hereby approved, full details of the plant species to be used as part of the landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. All planting, seeding, turfing or earth reprofiling comprised in the approved details of landscaping shall be carried out within 9 months of the substantial completion of the development or first planting season (whichever is sooner). Any trees or plants which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species. Once provided, the landscaping scheme shall be so retained.
5. The garage building hereby approved shall only be constructed and used for purposes ancillary to and in connection with the proposed dwelling on the site and shall at no time be used, let, sold or otherwise disposed of as a separate unit of accommodation or for commercial purposes.
6. Notwithstanding the provisions of Article 3 of The Town and Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no development of the types referred to in Classes A, B, C, D, E, of Part 1 relating the extension and alteration of the dwelling, extensions or alterations to its roof, the insertion of windows and/or rooflights, and the provision of outbuildings of Class A of Part 2 relating to enclosures, shall be undertaken within the dwelling curtilage without the Local Planning Authority first granting planning permission.

7. The development hereby approved shall be undertaken in full accordance with the recommendations contained in the submitted Ecological Appraisal for Bats and Nesting Birds dated 9th January 2020 produced by the Ecological Consultant David F Wills. The development as approved shall include the installation of bat boxes and bird boxes within the development with details of the installation of these biodiversity enhancement measures (including a plan of the location of these boxes on site) to be submitted to and improved in writing by the Local Planning Authority prior to occupation of the dwelling. Once installed, the approved measures shall be retained indefinitely.
8. Any proposed scheme of external lighting for the site shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the dwelling hereby approved. The submitted scheme shall include a lighting assessment with measures to prevent light-spill into the surrounding area and harm to protected species, from both internal and external light sources. External lighting at the site shall only be installed in accordance with the approved details, and the approved scheme shall be provided in full prior to the first occupation of the dwelling hereby approved, and shall thereafter be retained indefinitely.
9. The dwelling hereby approved shall not be occupied or brought into use until the parking and turning areas detailed on the approved plans have been provided in full. These elements shall thereafter be retained for the use of the associated dwelling for the life of the development.
10. The home office created through retention of the temporary building hereby approved shall be used for purposes ancillary to the main converted agricultural building into a dwelling on site. It shall not be used for separate self-contained residential accommodation (Use Class C3) or be let, sold or otherwise occupied independently of the dwelling created through the barn conversion hereby approved.
11. On the detached office building becoming redundant for such purposes, it shall be demolished and all resultant materials removed from the site within 3 months of them becoming redundant for their approved use.

REASONS FOR CONDITIONS

1. In accordance with provisions of Section 51 of the Planning and Compulsory Purchase Act 2004
2. For the avoidance of doubt in the interests of proper planning.
3. To ensure the materials used are of a high quality and appropriate to the rural context in accordance with Policy DM2 of Local Plan Part 3: (Development Management Policies) and Policy DM1 of the Local Plan Review 2013 – 2033.
4. To ensure that the development makes a positive contribution to the character and amenity of the area in accordance with Policy DM2 of Local Plan Part 3: (Development Management Policies) and Policy DM1 of the Local Plan Review 2013 – 2033
5. To safeguard the amenities of the area and the amenities of neighbouring dwellings in accordance with Policies DM2 and DM14 of the Local Plan Part 3 (Development Management Policies) and Policies DM1 and DM12 of the Local Plan Review 2013-2033 and given the countryside location of the site, reflecting the restricted approach to

countryside development as established by Policy COR18 of the Mid Devon Core Strategy (Local Plan Part 1) and Policy S14 of the Local Plan Review 2013-2033.

6. To safeguard the visual amenities of the area and amenities of neighbouring dwellings in accordance with Policies DM2 and DM14 of the Local Plan Part 3 (Development Management Policies) and Policies DM1 and DM12 of the Local Plan Review 2013 – 2033.
7. In the interests of nature conservation and in accordance with the guidance contained in the National Planning Policy Framework.
8. In the interests of nature conservation and to prevent unacceptable levels of light pollution, in accordance with Policy DM7 of the Mid Devon Local Plan and Policy DM4 of the Local Plan Review 2013 – 2033.
9. In the interests of highway safety and amenity and in accordance with Policies DM2 and DM8 of the Mid Devon Local Plan and Policies DM1 and DM5 of the Local Plan Review 2013 – 2033.
10. New permanent independent residential use would require formal planning permission with an assessment required over the acceptability in policy terms given the location in the countryside and relationship to surrounding properties, in accordance with Policy COR18 of Mid Devon Core Strategy (Local Plan 1), Policies S9 and S14 of the Local Plan Review 2013-2033 and guidance in the National Planning Policy Framework.
11. To ensure removal of the office unit if no longer required for use by the occupier of the site in order to protect the character, appearance and general amenity of the area of countryside in accordance with Policy COR18 of the Mid Devon Core Strategy (Local Plan Part 1) and Policy S14 of Local Plan Review 2013 – 2033.

ADVISORY NOTES

1. If a private supply is to be used by more than one property or has a commercial function, The Private Water Supply (England) Regulations 2016 as amended will apply. A risk assessment and sampling regime will be necessary. The supply must not be used until the Local Authority (Mid Devon District Council) is satisfied that the supply does not constitute a potential danger to human health, including single domestic use. Please contact Public Health at Mid Devon District Council on completion of proposal.
2. The applicant should note that under the terms of the Wildlife and Countryside Act (1981) and the Habitats Regulations (2010) it is an offence to disturb or harm any protected species, or to damage or disturb their habitat or resting place. Please note that this consent does not override the statutory protection afforded to any such species. If bats are found, works must immediately cease and further advice be obtained from Natural England and / or a licensed bat consultant. Works must not resume until their advice has been followed. Nesting birds are also protected by law. During site clearance and construction works, suitable safeguards must be put in place to prevent threat of harm to legally protected species, including nesting birds and reptiles all of which are protected under the Wildlife & Countryside Act 1981 (as amended). Further details can be obtained from a suitably qualified and experienced ecological consultant, or please refer to published Natural England guidelines for protected species.

REASON FOR APPROVAL OF PERMISSION

The works involved to create a new dwelling as an alternative to converting the existing building into two dwellings which benefits from Class Q permitted development rights, is considered to be acceptable in this instance. The fall-back position is considered to be realistic and is a material consideration in the planning balance. The proposed development results in a higher quality design which affords a more comfortable relationship with neighbouring properties and provides an improvement on the landscape and has provided a contribution towards the provision of air quality mitigation. The additional works that include the provision of a driveway, garage, office building and an enlarged garden area is considered to be supportable in policy terms. It is not considered that the proposed development would result in significant harm to the character and appearance of the rural area. The proposed development is not likely to result in any adverse highway impacts. On this basis it is considered that in this instance the proposed development results in a betterment to the Class Q development that could be achieved, as such the fall-back position can be given significant weight and on this basis the proposal is supported in accordance with Policies COR2 of the Mid Devon Core Strategy (Local Plan Part 1), DM2, DM8 and DM14 of the Local Plan Part 3 (Development Management Policies) and AL/CRE/8 of the Allocations and Infrastructure Development Plan Document, Local Plan Review 2013 – 2033 Policies S9, DM1, DM2, DM5 and DM12 and the National Planning Policy Framework.

The Human Rights Act 1998 came into force on 2nd October 2000. It requires all public authorities to act in a way which is compatible with the European Convention on Human Rights. This report has been prepared in light of the Council's obligations under the Act with regard to decisions to be informed by the principles of fair balance and non-discrimination.

Application No. 19/01309/FULL

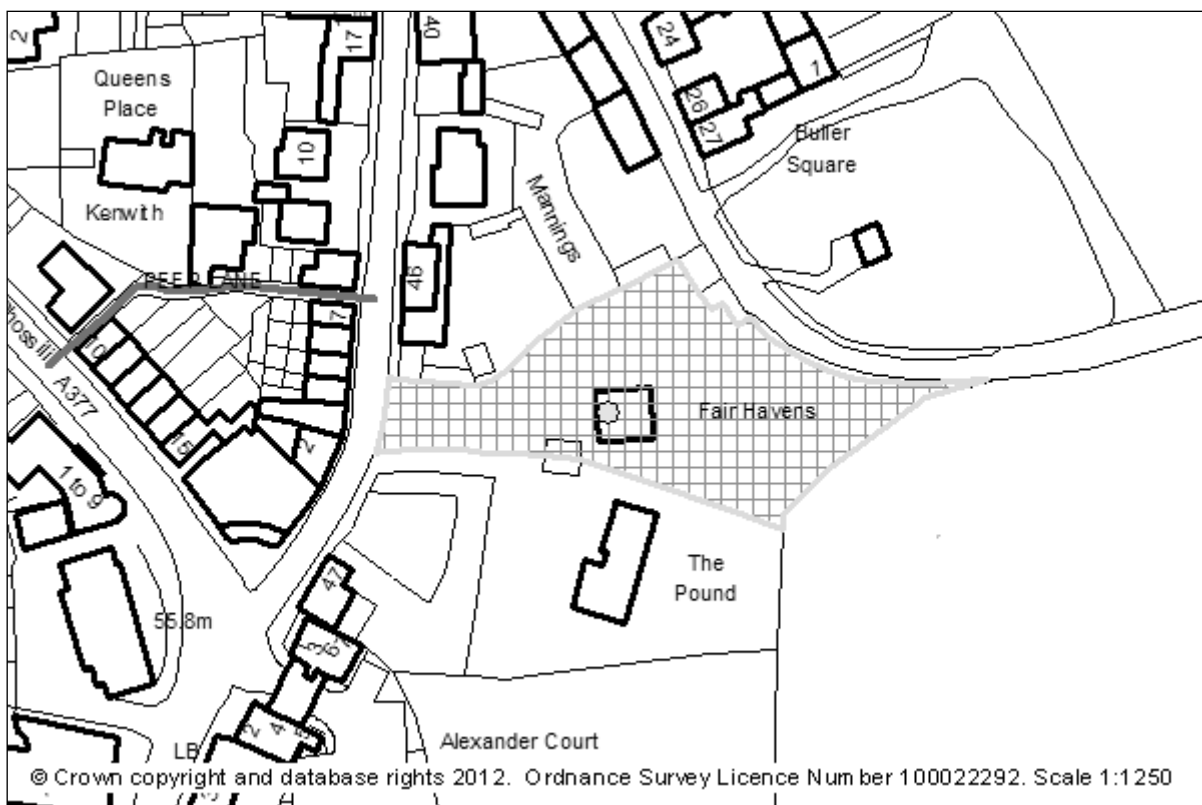
Grid Ref: 283951 : 100017

Applicant: Mr Chris Reed

Location: Fair Havens
Mill Street
Crediton
Devon

Proposal: Erection of a dwelling including demolition of a garage (Revised Scheme)

Date Valid: 15th August 2019



19/01309/FULL - ADDENDUM REPORT

Members considered this application at the meeting of 20th May 2020 and resolved that the application be deferred until detailed enforceable conditions could be defined to address Member concerns with regard to:

- The requirement for an enhanced landscaping scheme to include semi-mature tree planting to site boundaries
- The colour of the cladding
- The weathering of the roof tiles to tone down the colour
- The need for the amount of roof lights installed and the glare from those that had already been installed

The applicant has since considered these concerns and provided suggestions as to how these matters can be resolved. These are discussed in relation to each point below.

1. The requirement for an enhanced landscaping scheme to include semi-mature tree planting to site boundaries

The submitted revised landscaping scheme (drawing number JW719/07/C) demonstrates the provision of heavy standard tree planting comprising of seven semi-mature Holm Oaks. It is proposed to provide one of these to the front of the dwelling, on the grassed area adjacent to the access drive to seek to enhance the visual amenity of the site as viewed from Mill Street. The others are proposed to be planted along the north and eastern boundaries. It is understood that Holm Oaks are an evergreen species and should therefore offer screening benefits all year round. The planting scheme has been discussed with the Council's Tree Officer who has advised that extra heavy standard specimens would be expected to consist of a stem girth of 14-16cm at 1m in height, a clear stem of 1.75-2m in height and a total height in excess of 3.5m, as informed by BS8545: 2014. Furthermore it would be expected that the Holm Oaks would achieve a likely growth rate of 30cm per year, dependant on growth conditions which tend to be favourable in the South West. The applicant has confirmed they would be agreeable to the provision of extra heavy standards. The extra heavy standard tree planting is proposed in addition to the proposed hedgerow planting around the northern edge of the site which comprises a mix of native species including; Hawthorne, Crab Apple, Wild Cherry, Beech, Oak, Guelder Rose, Blackthorn, Field Maple and Holly.

In order to secure the landscaping scheme as shown on drawing number JW719/07/C revised conditions (to replace previous conditions 3 and 4) are suggested below. A timescale of 6 months from the date of this decision is proposed in order to enable the planting to take place within the optimum planting season; November to March.

Unless otherwise agreed in writing by the Local Planning Authority the existing trees on the site, as identified on drawing number JW719/07/C, shall be retained. The hedgerow and tree planting as shown on drawing number JW719/07/C shall be implemented in accordance with the approved details within 6 months of the date of this planning permission and within the next planting season (November to March). The proposed Holm Oak tree planting as shown on the approved plan shall be of extra heavy standard specimens (consisting a stem girth of at least 14-16cm at 1m in height, a clear stem of 1.75-2m in in height and a total height in excess of 3.5m as informed by BS8545: 2014). 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. Once provided, the landscaping scheme shall be so retained.

2. The colour of the cladding

Members raised concern with the colour of the cladding which has been provided below the bay windows to the rear elevation. As installed, this is a dark grey colour which matches the appearance of the window frames. The applicant has suggested two options for Members consideration, either replacement with hanging tiles or lead cladding. Officers have considered these options and are unconvinced that lead would be an appropriate solution in this instance and would add a further material to the material palette of the scheme. The use of hanging tiles could tie in with the appearance of the roof and is likely to provide a more traditional appearance than the current cladding. However given Member concerns in relation to the colour of the roof, consideration would need to be given to the visual impact of the addition of hanging tiles within the vertical plane of the building. Specific details of materials could be required by condition.

If members are minded to consider that the cladding to the box elements of the bay windows is replaced by hanging tiles, the following condition is suggested;

Within 3 months of the date of this decision or prior to occupation of the dwelling, whichever is the earliest, the grey cladding to the bay windows on the east elevation shall be removed and replaced with hanging tiles in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority.

3. Weathering of the roof tiles

To address the concerns previously raised in relation to the colour of the roof tiles in their new and un-weathered condition, the applicant is proposing to apply "Liquid Weather" to the roof. The effect is to instantly mimic the natural weathering process and tone down the appearance of the tiles. The product has been tested on a sample tile and photos will be provided to members within the officer presentation at the committee meeting.

If members are minded to require that the roof is treated with the liquid weather product, the following condition is suggested;

Within 3 months of the date of this decision or prior to occupation of the dwelling, whichever is the earliest, a weathering solution shall be applied to the roof of the dwelling. The product shall be as proposed in correspondence from the applicant dated 10th June and 23rd June, specified as Liquid Weather in undiluted form.

4. The need for the amount of roof lights installed and the glare from those that had already been installed

The dwelling includes a large roof light to the front (west) elevation over bedroom 3 and five smaller roof lights over the loft area. Officers have further considered the member concerns raised at the previous meeting as to whether the installation of the roof lights was permitted development. As the previously existing dwelling was substantially altered, to the extent that only the floor and one wall remained, it is considered that the dwelling would not benefit from permitted development rights until such time as the dwelling was substantially complete. This would normally be taken to be when it has the ability to afford facilities required for day to day existence. Had the 03/00835/FULL been built out to substantial completion, the subsequent installation of the roof lights would have been likely to constitute permitted development. In this case the roof lights have been installed during the construction of the dwelling at which point it did not benefit from permitted development rights.

The applicant has proposed to provide a Pilkington anti glare glass to the roof lights, or similar alternative product, with a sample to be provided for approval by the LPA prior to installation. It is understood that this would have the affect of reducing the glare from the glazing and also reducing the level of light that is allowed to pass through the glass. This would therefore help to reduce the visual prominence of the roof lights.

If members are minded to require that the existing roof lights are replaced with anti-glare glazing the following condition is suggested;

Within 3 months of the date of this decision or prior to the occupation of the dwelling, whichever is the earliest, Pilkington Anti-glare glazing, or a suitable alternative to be submitted to and approved by the LPA prior to its use on site, shall be applied to the velux roof lights to replace the existing glazing.

LOCAL PLAN REVIEW 2013- 2033 UPDATE

On 26th June 2020, Mid Devon District Council published the Inspector's Report on the Mid Devon Local Plan Review. The Inspector has concluded that the Local Plan is 'sound' subject to a number of main modifications being made. The Mid Devon Local Plan Review, taking account of the Inspector's conclusions, will be recommended for adoption at a meeting of full Council.

Consistent with National Planning Policy Framework paragraph 48, the publication of the Inspector's Reports increases substantially the weight that can be attributed to the Local Plan in decision making. The examination process has now concluded. The Inspector has concluded that the Local Plan is sound (subject to the main modifications which have been recommended) and, as such, there are no longer unresolved objections to the Local Plan Review. As such, substantial weight may now be attached to the policies of the Local Plan when making planning decisions.

The adopted development plan, in technical terms, remains the starting point for planning decision making. The Local Plan Review is however a material consideration to which substantial weight may now be attached.

Given the state of advancement of the Local Plan Review in the process toward adoption, it is considered that, generally, in the context of a planning decision, where there is a conflict between the outcome which arises from the application of policies of the adopted development plan and those of the Local Plan Review, the Local Plan Review will generally outweigh the adopted plan and will prevail. Where there is consistency, then the policies of the Local Plan Review add substantial weight in favour of the outcome which accords with the application of policies of the adopted development plans and those of the Local Plan Review.

In the case of this application, the relevant policies within the emerging plan have been reviewed and included within the original officer report below. However, in this case, the relevant policies are very similar and consistent with the corresponding policies in the adopted local plan and are not considered to materially change the assessment of the application.

PLANNING WORKING GROUP – 30 January 2020

Application 19/01309/FULL – Erection of a dwelling including demolition of a garage (revised scheme), Fair Havens, Mill Street, Crediton

There were 3 Members of Planning Working Group present.

Also present – the agent, an objector and a representative of the Town Council.

The Chairman indicated that the Planning Working Group had been requested to visit the site to consider: relevant parts of Policy DM2 as follows:

Policy DM2 requires designs of new development to be of high quality based upon and demonstrating the following principles:

- a) Clear understanding of the characteristics of the site, its wider context and the surrounding area
- c) Positive contribution to local character including any heritage or biodiversity assets and the setting of heritage assets
- e) Visually attractive places that are well integrated with surrounding buildings, streets and landscapes, and do not have an unacceptable adverse effect on the privacy and amenity of the proposed or neighbouring properties and uses, taking account of:
 - ii) Siting, layout, scale and massing
 - iv) Materials, landscaping and green infrastructure

The Chairman welcomed everyone to the site visit and introductions took place.

The Principal Planning Officer outlined the application and the history of development on the site: the 2003 consent for an extension to the existing bungalow which had been implemented. She provided the approved plans for the scheme and plans for the current proposal which included the addition of roof lights and other elevations, also the proposed landscaping scheme and the additional tree planting.

Questions were raised with regard to:

- The difference between the permitted and extant scheme
- Whether any of the original bungalow still existed
- The positioning of the fence and what sort of screening it would provide if it was at the bottom of the slope
- The landscaping scheme and what it would consist of
- Planning permission was not required for the demolition of the garage

The objector addressed the group stating that the dwelling would have a colossal impact on the town, she had provided photographs at committee taken from different parts of the town which highlighted the size of the dwelling and that it did not fit in with the local area. There would be considerable overlooking from the rear of the house into her bedroom windows and her garden. Her home was a listed property and the new dwelling would impact on the setting of the listed

building. She felt that the roof tiles were not consistent with the original bungalow and that these did not fit into the conservation area.

The agent then addressed the group providing photographs of the original bungalow, details of the 2003 application and the consent for the extension. He provided plans of the area of the dwelling which didn't have consent and that that did. He emphasised that this was not a new dwelling but an extension to the original bungalow and provided 'building regulations' documentation. He provided samples of the original roof tiles from the bungalow and the new tiles that were present on the roof.

The representative from the Town Council provided a photograph of the original bungalow, he felt that there was nothing else in the area that compared to the current dwelling, he felt that it was very prominent and dominant in its current setting.

The Ward Member provided photographs of the dwelling in its setting surrounded by listed properties looking from the top of the hill. He outlined the history of the conservation area and the listed properties in Buller Square, he felt that the applicant had used a loophole in planning law to erect the dwelling. He reminded members of the development at Wellparks that had been built using red brick with slates tiles to fit in with the local area.

The group then walked around to the rear of the dwellings where they were able to look down onto the neighbouring listed property and the buildings within Buller Square.

Those present then walked out of the site and down into Buller Square and up the lane. The objector highlighted the impact of the dwelling on her property and explained that she had permission for an additional dwelling and the hoops that she had had to go through to get planning permission.

Walking back to the site, the group considered the planting scheme proposed on the driveway.

The Planning Officer was requested seek the following advice:

- Clarity from Building Control with regard to what part of the structure was the original bungalow
- Legal clarification with regard to what was approved and what was not.

Members agreed that they would voice their views regarding the application at the next meeting of the Planning Committee.

FURTHER OFFICER COMMENTS

With regard to the queries raised at the Planning Working Group meeting, as set out above.

The Council's Building Control officer has confirmed that the foundations and floors of the original dwelling were retained. One external wall has been kept and is now internal. Where the external walls are in the same place as before they have been taken down to DPC level and rebuilt in new brickwork to create a cavity wall/ insulated wall to match the other external walls, they now significantly exceed minimum standards for thermal insulation.

The Council's Head of Legal has provided a response in relation to the clarification sought as to what was previously approved. The approved plans in relation to application 03/00835/FULL

demonstrate the scope of development previously approved. The plans submitted in respect of the current application demonstrate the extent of the proposed revisions to the scheme (the proposed alterations are summarised at section 2 of the officer's report). The question that needs to be considered is whether the deviations result in harm and give rise to conflict with the development plan such that planning permission should be refused.

Concerns have been raised with regard to the appearance of the roof tiles, particularly their colour. Condition 3 of planning permission 03/00835/FULL required that;

(3) The external surfaces of the extension(s) hereby approved shall be of materials to match those of the existing building. No other materials may be used unless the prior written consent of the Local Planning Authority is given to any variation thereto.

Reason: To safeguard the visual amenities of the area, and to ensure that the proposed development does not have an adverse effect on the appearance of the buildings.

The material palette at the time of that application was listed to match the existing dwelling; brick and render walling, tiled roof and white uPVC windows. Whilst the tiles that have been used are prominent in their un-weathered state, the wording of condition does not require that the tiles match the appearance of the existing tiles, only that the external surfaces be of materials to match the existing. However, it is relevant to consider whether the use of the tiles on the dwelling in its revised form (i.e. the impact of the tiles on the additional floor of the previously approved single storey extension at the northern end of the dwelling), causes harm having regard to the development plan and other material planning considerations. As members will be aware, officers are of the view that the alterations to the 2003 scheme sought through this application do not result in significant harm that would be considered to warrant refusal of the application.

If members are of the view that planning permission should be refused, it will be necessary to consider whether it is expedient to take enforcement action and if so, what remedial steps are reasonable and necessary in order to address the harm.

APPLICATION NO: 19/01309/FULL

MEMBER CALL-IN

Cllr John Downes called the application in to consider whether the proposal would result in overdevelopment of the site and non-compliance with the original approval.

RECOMMENDATION

Grant planning permission subject to conditions

PROPOSED DEVELOPMENT

Erection of a dwelling including demolition of a garage at Fairhavens, Mill Street, Crediton. The site is located within the town of Crediton and within the Crediton Conservation Area. The site was formerly occupied by a modest, single storey dwelling, however works have been undertaken to provide a larger dwelling on the site. Access is achieved via a shared private drive which rises steeply up from Mill Street to the west of the site.

The application seeks consent for the erection of a dwelling and demolition of the existing garage. The site area extends to approximately 1805sqm. At the time of the case officer site visit the external shell of the dwelling was largely complete (with roof, windows and doors installed) and the internal fit out was being undertaken.

The proposed dwelling is a two storey, 4 bedroom dwelling constructed of brick with a tile roof and black uPVC windows and doors. The design and form of the dwelling is similar to the scheme approved for extending the original building back in 2003 under planning permission 03/00835/FULL. It is proposed that foul drainage will be disposed to the mains system and the surface water will be managed via a soakaway.

APPLICANT'S SUPPORTING INFORMATION

Application form

Plans

Planning statement

Letter regarding wildlife survey

Letter re tree protection plan and arboricultural method statement (December 2017)

RELEVANT PLANNING HISTORY

01/02006/FULL - PERMIT date 27th August 2002 Erection of workshop/study building

02/00297/FULL - PERMIT date 3rd September 2002 Erection of conservatory, a single storey and a two storey extension and a main second storey together with retention of boundary wall

03/00835/FULL - PERMIT date 9th June 2003 Erection of single and two storey extensions to north and east elevations and verandah to west elevation and retention of boundary wall

04/00839/FULL - REFUSE date 24th June 2004 Erection of 1 no. dwelling with new access

14/00388/FULL - PERMIT date 6th January 2015 Erection of 3 dwellings with shared courtyard and parking areas, following demolition of existing dwelling

17/01744/FULL - WDN date 14th December 2017 Variation of conditions (8), (9) and (13) of planning permission 14/00388/FULL to allow early commencement of development

19/00625/NMA - WDN date 23rd May 2019 Non material amendment for 03/00835/FULL to increase the roof height of single storey North extension to include a room with associated dormer to front and bay window to rear, insertion of full height brick chimney to North elevation

DEVELOPMENT PLAN POLICIES

Mid Devon Core Strategy (Local Plan 1)

COR2 Local Distinctiveness
COR15 Crediton

Mid Devon Local Plan Part 3 (Development Management Policies)

DM1 Presumption in favour of sustainable development
DM2 High quality design
DM8 Parking
DM14 Design of housing
DM27 Development affecting heritage assets

LOCAL PLAN REVIEW 2013- 2033 Policies

S1 Sustainable development priorities
S12 Crediton
DM1 High quality design
DM5 Parking
DM12 Housing standards
DM25 Development affecting heritage assets

CONSULTATIONS

CREDITON TOWN COUNCIL- 22nd August 2019-

Crediton Town Council OBJECTS to this development. It appears to have been built without any permission and is not a variation of anything existing. This is illegal. It is a large 3-storey detached residence, as opposed to a garden shed, to ignore it, or accommodate it, would be a travesty of planning procedures and law. Had this come forward as a new application, the Town Council would have had the opportunity to comment on its impact on the conservation area in terms of its scale and use of materials. The Town Council would also have been able to look at its sustainability. Such a proposal would not have been supported by Crediton Town Council. To this end, the actual current development is unacceptable and should not have been built.

PUBLIC HEALTH- 22nd August 2019-

Contaminated Land: No objection to this proposal. (21.8.19).

Air Quality: No objection to this proposal. (15.8.19).

Environmental Permitting: No objection to this proposal. (15.8.19).

Drainage: No objection to this proposal. (21.8.19).

Noise & other nuisances: No work shall be carried out on the site on any Sunday, Christmas Day or Bank Holiday or other than between the hours of 0730 and 1900 hours on Monday to Fridays and 0730 and 1300 on Saturdays.

Reason: To ensure that the proposed development does not prejudice the amenities of neighbouring properties. (21.8.19).

Housing Standards: No comment. (20.8.19).

Licensing: No comment. (15.08.19).

Food Hygiene: Not applicable. (16.8.19).

Private Water Supplies: Not applicable. (16.08.19).

Health and Safety: No objection to this proposal enforced by HSE.

Informative: There is a foreseeable risk of asbestos being present in the structure. Please review the information in this link, so you are aware of the hazards, risks and your legal obligations with asbestos <http://www.hse.gov.uk/asbestos/> . If asbestos may be present a Refurbishment and Demolition Survey following HSG264 available at <http://www.hse.gov.uk/pUbns/priced/hsg264.pdf> should be carried out before work commences to identify precautions and legal requirements enforced by Health and Safety Executive. (16.8.19).

HIGHWAY AUTHORITY- 2nd September 2019- standing advice applies.

MDDC CONSERVATION OFFICER- 6th September 2019

I have visited the site which is a raised site accessed from Mill Street Crediton. The existing house replaces a former bungalow which originally gained planning permission in 2003.

The design and materials are not particularly sympathetic to the character of the Crediton Conservation Area however these have been approved previously. This application relates to raising the ridge of the north addition and it would appear that the main roof of the house has been converted with additional roof lights and gable windows which would be permitted development unless the ridge is built higher than the approved. The roof lights are visible features from views in the Conservation Area from Mill Street and Buller Square and are harmful to the character of the CA and should be removed if not permitted development.

The raising of the roof of the north side addition and added bay window are in the same style as the existing design and are still subservient. The large rooflight to the front elevation should be removed if not permitted development.

REPRESENTATIONS

At the time of writing this report 5 letters of objection have been received, the main issues raised are summarised below;

1. The site sits at a higher level than Downeshead Lane
2. The impact on the conservation area and houses in Downeshead Lane is not in keeping with current planning requirements
3. It is clearly visible from a wide surrounding area and is not in keeping with the local vernacular
4. The retrospective application makes a complete travesty of planning laws and a mockery of the planning committee
5. The 2003 permission for extension of the original bungalow lapsed
6. Our garden is now completely overlooked by the upper storey windows of the house
7. The materials are unsympathetic. The original bungalow had red tile roof but its height meant they were not very visible
8. The current bright terracotta coloured roof tiles are not the same as the original property and are out of keeping with the conservation area
9. There is no screening to the building
10. Concern that the building has not been built to building regulation approval
11. The increased height of the building is dominant in views from neighbouring properties
12. Concern as to how the garage will be demolished without impact to the neighbours garage which it attaches to
13. There is no plan to show areas of car parking and turning
14. The letter from Advanced Arboriculture is referred to despite having been submitted under a separate application (14/00388/FULL)
15. The existing access is in a poor state of repair

16. Trees and earth have been removed from the entrance to the drive to support the widening of the access, they have stated that there is no intention to change the access from Mill Street. Confirmation of their intention is required.

One letter of support has been received which states that the original bungalow had become derelict and a complete eyesore. The design is basically the same as the approved planning permission from 2003.

MATERIAL CONSIDERATIONS AND OBSERVATIONS

The main issues in the determination of this application are:

- 1. Policy, planning history and principal of development**
- 2. Design, impact on heritage assets**
- 3. Impact on the amenity of neighbouring occupiers**
- 4. Highway and parking issues**
- 5. Other issues**

1. Policy, planning history and principal of development

Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Although the application has been submitted on a retrospective basis is not considered to be material to determination of the application and the application should be considered on its merits.

The site is located within the settlement of Crediton where policy COR15 seeks for the town to continue to develop as a small market town by increasing the self-sufficiency of the town and its area and reduce the need to travel to Exeter by widening and expanding employment opportunities, enhancing retail provision and improving access to housing and services. Policy S12 of the emerging local plan review also supports these general policy objectives.

The application was submitted following discussions with the Council's Enforcement Team. The submitted planning statement sets out that the application was submitted as a retrospective application for variations to approved development 03/00835/FULL. Application 03/00835/FULL related to the previous bungalow that existed on the site and granted consent in 2003 for the erection of single and two storey extensions to north and east elevations and verandah to west elevation and retention of boundary wall. The applicant's case is that the 2003 consent was implemented within the 5 year timeframe and they considered that they were continuing with the lawful implementation of that scheme. It is stated that the description of development at that time did not reflect the scope of development approved by the plans which actually show a comprehensive redevelopment to create a 4 bedroomed, two storey dwelling.

It is understood from the drawings available in relation to the 2003 application, that the bungalow that existed on the site had an almost square shape foot print apart from a modest porch projection to the front. It provided a kitchen, lounge, bathroom and two bedrooms. It is understood to have been constructed with brick and a tile roof.

The approved plans (03/00835/FULL) demonstrate that the scheme that could have been achieved under that consent resulted in an enlarged footprint and increase in height to provide accommodation over two levels, it also included the installation of dormer and bay window features. At ground floor level it would have provided an enlarged kitchen breakfast room, utility, lounge, gym, shower room and study. At first floor level it would have provided four bedrooms, an en-suite and a bathroom. The proposed material palette comprised brick and render walling, tiled roof and white uPVC windows.

In 2014, consent for three dwellings was granted on the site. It is understood that this consent has been implemented but has not been built out.

The applicant has explained that the works under the 2003 consent were partially implemented and they had intended to complete the works under that consent. In May 2019 a non-material amendment application was submitted which sought some variations to the plans approved under 03/00835/FULL, the variations were not considered to be non-material and therefore this application has been submitted to seek to regularise the development.

In principle it is considered that the provision of a new dwelling on the site, replacing the previous bungalow, would be supportable in this location.

2. Design, impact on heritage assets

In terms of the design of development, DM14 (Design of housing) and DM2 (High quality design) are applicable.

Policy DM2 (and policy DM1 of the emerging Local Plan Review 2013- 2033) requires designs of new development to be of high quality based upon and demonstrating the following principles:

- a) Clear understanding of the characteristics of the site, its wider context and the surrounding area;
- b) Efficient and effective use of the site having regard to criterion (a);
- c) Positive contribution to local character including any heritage or biodiversity assets and the setting of heritage assets;
- d) Creation of safe and accessible places that also encourage sustainable modes of travel such as walking and cycling;
- e) Visually attractive places that are well integrated with surrounding buildings, streets and landscapes, and do not have an unacceptable adverse effect on the privacy and amenity of the proposed or neighbouring properties and uses, taking account of;
 - i) Architecture
 - ii) Siting, layout, scale and massing
 - iii) Orientation and fenestration
 - iv) Materials, landscaping and green infrastructure
- f) Appropriate drainage including sustainable drainage systems (SUDS) and connection of foul drainage to a mains sewer where available.

Policy DM14 outlines that 'New housing development should be designed to deliver;

- a) High quality local places taking into account physical context, local character, density and land use mix;
- b) Adequate levels of daylight, sunlight and privacy to private amenity spaces and principal windows;
- c) Suitable sized rooms and overall floorspace which allows for adequate storage and movement within the building together with external space for recycling, refuse and cycle storage;
- d) Adaptable dwellings that can accommodate a range of occupiers and their changing needs over time which will include the provision of a stairway suitable for stair lift installation or space for the provision of a lift in homes with more than one store;
- e) Private amenity space that reflects the size, location, floorspace and orientation of the property;
- f) Sustainable forms of development that maximise the natural benefits of the site through design, materials, technology and orientation;

- g) On sites of 10 houses or more the provision of 20% of dwellings built to the lifetime homes standard;
- h) Car parking in accordance with policy DM8.

Policy DM12 of the emerging Local Plan Review 2013- 2033 makes similar requirements in relation to design of housing albeit some of the criteria have been incorporated policy DM1 as a result of the Inspector's comments.

Section 72 of the Town and Country Planning Act (1990) requires that special attention be paid in the exercise of planning functions to the desirability of preserving or enhancing the character or appearance of a conservation area. Section 66 requires local planning authorities to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Policy DM27 (LP3) and policy DM25 of the Local Plan Review (2013- 2033) require development proposals likely to affect heritage assets and their settings to consider their significance, character, setting and local distinctiveness, and the opportunities to enhance them. Where proposals would lead to less than substantial harm, that harm will be weighed against any public benefit, including securing optimum viable use. The site is located within the Crediton Conservation Area. There are listed buildings located at Buller Square, north east of the site and 3 Mill Street, opposite the access point at the west of the site.

The design as sought for approval is for a two storey (with loft space) 4 bedroom dwelling with dormer window and bay window features. The design is considered to reflect the general design approach approved within the 2003 scheme, albeit with some alterations. The main alterations include amendments to the fenestration arrangement (including the addition of two roof lights to the west elevation, replacement of two ground floor windows on north elevation with one glazed double door opening, replacement of a window to east elevation with a glazed door opening and installation of three roof lights, installation of additional windows to south elevation), alterations to the internal layout and the addition of a chimney to the north elevation. The most significant alteration from the previously approved scheme relates to the increased height of the single storey extension to the north to increase it to provide accommodation at first floor level, this includes the provision of a large roof light to the west elevation and an additional bay window to the rear (east elevation).

There are some concerns that the design and materials are not entirely sympathetic to the character of the conservation area. This concern has been raised by the Conservation Officer, the full comments being set out above. Notwithstanding this, the planning history, including the scope of the scheme approved under the 2003 consent, are considered to be a material consideration. The alterations proposed to that scheme are considered to be relatively minor and generally in keeping with the character and appearance of the previously approved scheme. Whilst it is recognised that the roof lights result in interventions to the roof scape that causes some harm to the character and appearance of the conservation area, the level of harm is considered to be low, particularly having regard to the alterations that could have been achieved under permitted development. The material palette largely reflects the structure that previously existed on the site, whilst the roof is now more prominent within the wider street scene as a result of the increased height of the dwelling and the 'new' appearance of the tiles which are likely to soften in appearance when weathered. There is a varying material palette within the immediate area including brick and render walling, slate and tile roofs and timber and uPVC windows. On this basis it is not considered that the material palette is unacceptable or incongruous in this setting. Having regard to the design of the scheme previously approved under the 2003 consent and the scope of the proposed alterations, overall it is considered that the design is acceptable and the proposed development is considered to result in less than substantial harm to the character and appearance of the conservation area and the setting of the listed buildings nearby to the site.

The application has been called in to consider whether the proposal represents over development of the site. Whilst the proposal seeks consent for the erection of a dwelling on the site which is larger than the modest bungalow that previously existed, the proposal is for a single dwelling within a relatively large site area. The site would enable a relatively generous external area, including parking and garden space, to be retained for the benefit of the dwelling and the level of amenity space is considered to be appropriate for a dwelling of this size, particularly within this urban context having regard to the density of properties surrounding the site. Furthermore, it is noted that consent has previously been granted for the erection of three dwellings on the site.

3. Impact on the amenity of neighbouring occupiers

The property is detached and sits in a relatively large plot, notwithstanding this there are neighbouring residential properties surrounding the site. There are a number of residential properties to the north and north west of the site, by virtue of the existing land levels the site sits in an elevated position in relation to those properties. As such there are some relatively open views between the site and the rear parts of those properties including their garden areas. The revised design for which consent is now sought, proposes to replace two ground floor windows with a glazed double door opening to serve the lounge. Whilst this would offer views to the north, the dwelling is set back from the boundary by approximately 12m and it is not considered that the proposal results in an unacceptable relationship with the neighbouring properties particularly having regard to the screening which would be afforded by the proposed boundary hedgerow and the tree planting proposed directly north of the dwelling. Similarly it is considered that the additional accommodation and associated roof lights within the west elevation would not result in an unacceptable relationship with the neighbouring properties. Although the dwelling sits at an elevated level it is set back from the boundary and there is sufficient separation distance such that it is not considered to be overbearing despite the increased height at the northern elevation.

The neighbouring property which shares the access road is located to the south of the site. There is a substantial intervening hedgerow which provides screening between the two properties. This scheme seeks to replace a ground floor door with a window, move a first floor bedroom window and install a window within the loft. It is not considered that the proposal would result in any significant adverse impacts to the amenities of those occupiers, particularly having regard to the previously approved scheme.

Concerns have also been raised by the occupiers of the property located to the north west of the site on the other side of Downeshead Lane. The concerns are that the development is visible from all the rooms in their house and their garden which is now overlooked. Whilst it is recognised that there are now relatively open views between the site and that property, having regard to the separation distance it is not considered that the relationship between the properties would be unacceptable.

Overall, having regard to the separation distance to the surrounding properties it is not considered that the proposed development would result in harm to the amenities of neighbouring occupiers in terms of loss of light or overshadowing. Overall, the likely impact to the amenity of neighbouring properties is considered to be acceptable having regard to the previously approved scheme on the site, the separation distances to the neighbouring properties and the design, orientation and scale of the proposed development.

4. Highway and parking issues

It is proposed that the existing concrete driveway would be retained to serve the dwelling. The block plan demonstrates that there would be a parking area provided to the front of the dwelling which would provide sufficient room for parking and turning in accordance with policy DM8 (and

policy DM5 of the emerging Local Plan Review 2013-2033) and these facilities would prevent conflict with the traffic accessing the neighbouring site. It is not considered that the proposed development would result in any significant increase in traffic that would raise concerns in terms of highway safety or capacity issues.

5. Other issues

Some trees have been removed from the site during the course of the works. The applicant has submitted a letter containing a tree protection plan and arboricultural method statement, dated 13th December 2017, and originally submitted to discharge condition 10 of the 2014 permission for the erection of three dwellings on the site. In accordance with the 2014 consent a number of trees were agreed to be removed from the site. In addition, a further plan has been provided to clarify that two trees were removed from the front of the site as they were causing damage to the neighbours outbuilding. The holly bush in the north east corner of the site was also removed as it is stated that it was in a poor condition and damaging the subterranean building on Downeshead Lane. The trees are located in the Crediton Conservation Area and therefore it is likely that a notification in accordance with section 211 of the Town and Country Planning Act 1990 would have been required. It is also understood that there was an overgrown Leylandii hedge to the northern boundary of the site which was removed. The submitted landscaping plan indicates that much of the site would be laid to lawn, with borders in wild grasses. It is proposed to provide a replacement hedgerow to the northern boundary of the site which will be of mixed native species to be retained at a height of no more than 2m. It is also proposed to provide additional/ replacement tree planting including 2 Corkscrew Hazel trees at the front of the site, two weeping cherry trees to the north west of the dwelling, 3 silver birch directly north of the dwelling and an ornamental cherry to the north east. The proposed landscaping will help to soften the impact of the development and help to mitigate for the loss of trees which has taken place. The additional planting will provide a positive contribution to the character and appearance of the conservation area and a condition is proposed to secure the proposed planting.

The proposal seeks to remove the existing garage which serves the property. The garage is part of a double garage with the adjoining part belonging to the neighbouring property. The garage is a flat roof structure of brick construction, sited forward of the dwelling. The building is of no particular architectural or historic merit and there are no concerns with its partial removal in terms of the impact to the street scene or the character or appearance of the conservation area. The owner of the adjoining garage has raised concern with regard to how part of the structure will be demolished without adverse impact to the structural capability of the adjoining part of the building which is proposed to remain. The applicant has confirmed that the internal wall will be left in place and faced in brick, the roof and eaves will be made good. The developer will need to ensure compliance with other appropriate regimes including the party wall act and it is not considered that these matters are relevant to determination of the planning application.

The applicants have not submitted an ecological appraisal in respect of the works. They consider that the garage is a contemporary structure with a solid roof structure with no access for wildlife. The Local Planning Authority has previously granted consent for the erection of the demolition of the garage without benefit of an ecological appraisal. At this time the Local Planning Authority has no evidence to confirm that the building provides a suitable habitat for protected species, and in light of the history of the site it is not considered reasonable or necessary to require an ecology appraisal at this stage, however the applicant will be reminded of their duty in respect of protected species and habitats by way of an advisory note.

The comments of Public Health are noted, however given that the works on site are largely complete and no concerns have been raised in relation to the timing of the works it is not considered reasonable or necessary to limit working hours in this instance.

Section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between different people when carrying out their activities. This is called the Public Sector Equality Duty or "PSED". No persons that could be affected by the development have been identified as sharing any protected characteristic.

REASON FOR APPROVAL OF PERMISSION

The application for the erection of a dwelling including demolition of a garage is considered to be supportable in policy terms. Having regard to the development previously approved on the site and the scope of the proposed alterations, overall it is considered that the design is acceptable and the proposed development is considered to result in less than substantial harm to the character and appearance of the conservation area and the setting of the listed buildings nearby to the site. In this instance, the public benefits associated with the provision of a new build 4 bedroom dwelling replacing the previous structure on the site, is considered on balance to outweigh the harm arising to the heritage assets. The likely impact to the amenity of neighbouring properties is considered to be acceptable having regard to the separation distances to the neighbouring properties and the design, orientation and scale of the proposed development. The proposal does not raise any concerns in terms of highway safety or capacity issues and the proposed parking is compliant with policy DM8. Having regard to all material planning considerations, the application is recommended for approval in accordance with Policies COR2 and COR15 of the Mid Devon Core Strategy (Local Plan Part 1), DM1, DM2, DM8, DM14 and DM27 of the Local Plan Part 3 (Development Management Policies), policies S1, S12, DM1, DM5, DM12 and DM25 of the emerging Local Plan Review 2013- 2033 and the National Planning Policy Framework.

CONDITIONS

1. The commencement of the development shall be taken as 14th August 2019, the date the application was registered.
2. The development hereby permitted shall be carried out in accordance the approved plans listed in the schedule on the decision notice.
3. The proposed hedgerow and tree planting shall be carried out in accordance with the details shown on drawing number IW 719/07 (received by the Local Planning Authority on 3rd December 2019) within 9 months of the first occupation of the dwelling. Any species which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
4. The hedgerow as shown on drawing number IW 719/07 (received by the Local Planning Authority on 3rd December 2019), once established, shall be retained at a minimum height of 1m above the adjoining ground level and no higher than 2m.
5. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(or any Order revoking and re-enacting that Order with or without modification) no development of the types referred to in Classes A, B, C, D or E of Part 1 of Schedule 2, relating to extensions, additions and alterations to the roof, porches and outbuildings, shall be undertaken without the Local Planning Authority first granting planning permission.

REASONS FOR CONDITIONS

1. To provide a legal commencement date for the development.
2. For the avoidance of doubt and in the interests of proper planning.
3. In the interests of the visual amenity of the area and to safeguard the character and appearance of the Crediton Conservation Area in accordance with policies DM2 and DM27 of the Local Plan part 3 (Development Management Policies).
4. In the interests of the visual amenity of the area and to safeguard the character and appearance of the Crediton Conservation Area and the amenity of neighbouring occupiers in accordance with policies DM2 and DM27 of the Local Plan part 3 (Development Management Policies).
5. To safeguard the character and appearance of the Crediton Conservation Area in accordance with policies DM2 and DM27 of the Mid Devon Local Plan part 3 (Development Management Policies).

INFORMATIVES

None

The Human Rights Act 1998 came into force on 2nd October 2000. It requires all public authorities to act in a way which is compatible with the European Convention on Human Rights. This report has been prepared in light of the Council's obligations under the Act with regard to decisions to be informed by the principles of fair balance and non-discrimination.

Application No. 19/02013/FULL

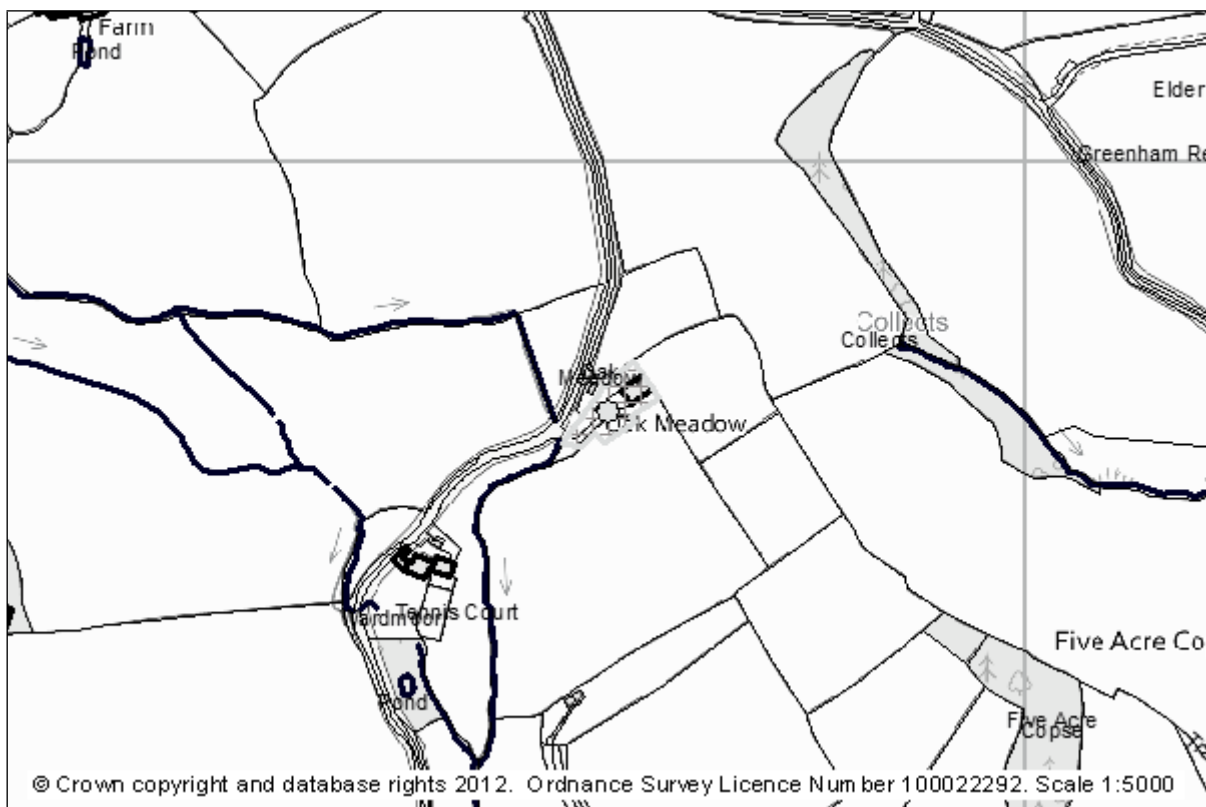
Grid Ref: 306760 : 119767

Applicant: F Gibbins

Location: Land at NGR 306728 119836 (Wardmoor)
Holcombe Rogus
Devon

Proposal: Erection of dwelling and demolition of agricultural building

Date Valid: 29th November 2019



APPLICATION NO: 19/02013/FULL

MEMBER CALL-IN

Councillor Jo Norton has requested this application be called in for the following reason:

To consider if the proposed replacement dwelling for the class Q conversion of the agricultural building is appropriate in this location bearing in mind the intended height and location of the building and its appearance in the landscape.

RECOMMENDATION

Subject to the prior signing of a s106 agreement, grant permission subject to conditions

PROPOSED DEVELOPMENT

Erection of dwelling and demolition of agricultural building

The applicant seeks planning permission for the erection of a dwelling following the demolition of an agricultural building utilising the Class Q fall-back position.

The site includes an area of garden around the proposed dwelling and is located to the North East of Holcombe Rogus.

The site comprises of a single agricultural building most recently in use for agricultural storage. The site itself is outside any recognised settlement limit and not within any designated landscape or identified flood zone.

APPLICANT'S SUPPORTING INFORMATION

Existing and proposed plans, design and access statement

RELEVANT PLANNING HISTORY

09/01028/FULL - PERMIT date 28th August 2009

Erection of an agricultural building

16/00061/PNCOU - RPA date 4th March 2016

Prior notification for the change of use of an agricultural building to a dwelling under Class Q -

APPEAL DISMISSED 04/11/2016

17/01279/FULL - REFUSE date 27th September 2017

Removal of condition 2 of planning permission 09/01028/FULL pertaining to removal of agricultural building within 3 years of cessation of use - APPEAL ALLOWED - PLANNING PERMISSION GRANTED 20.04.18

18/00891/PNCOU - PDA date 8th August 2018

Prior notification for the change of use of an agricultural building to dwelling under Class Q

19/02013/FULL - PCO date

Erection of dwelling and demolition of agricultural building

DEVELOPMENT PLAN POLICIES

Mid Devon Core Strategy (Local Plan Part 1)

COR1 – Sustainable Communities
COR2 – Local Distinctiveness
COR8 – Infrastructure Provision
COR9 – Access
COR11 – Flooding
COR18 – Countryside

Mid Devon Local Plan Part 2 (Allocations and Infrastructure DPD)

AL/IN/3 - Public Open Space

Mid Devon Local Plan Part 3 (Development Management Policies)

DM1 – Presumption in favour of sustainable development
DM2 – High quality design
DM7 – Pollution
DM8 – Parking
DM14 – Design of housing
DM15 – Dwelling sizes

Local Plan Review 2013-2033

S1 Sustainable development priorities
S9 Environment
S8 Infrastructure
S14 Countryside
DM1 High Quality Design,
DM4 Pollution,
DM5 Parking

CONSULTATIONS

Highway Authority - 13.12.19

Standing advice applies please see Devon County Council document
<https://www.devon.gov.uk/planning/apply-for-planning-permission/get-help-with-an-application/guidance-for-applicants>

HOLCOMBE ROGUS PARISH COUNCIL - 10 January 2020

The planning committee of Holcombe Rogus Parish Council (HRPC) considered the above application at its meeting yesterday evening. HRPC's comments on this application are as follows:

1. First HRPC has been informed that local residents, who would be most likely to be concerned about this application, received no notice of the application from MDDC. Moreover, the location of the development site is mis-described as 'Wardmoor'. The proposed development site is not part of the house and grounds known as 'Wardmoor'. In the circumstances HRPC suggest that MDDC give written notice to all local residents and give extra time for consideration of the proposals and to seek professional advice, if required.
2. HRPC has had sight of the objections submitted to MDDC and fully support the views expressed in those objections.

3 The applicant's Planning Design and Access Statement submitted with this application relies upon the so-called 'Class Q fallback position' based upon the Mansell v Tonbridge and Malling BC case in 2017. This case indicates that Class Q permitted development rights may be taken into account as a fallback position on the basis that it is a material planning consideration.

4. This case is not, in HRPC's opinion, authority for permitting a new dwelling in the open countryside which is, in terms of siting, scale, design and appearance generally, wholly inappropriate to this very special rural setting.

5. The proposed development does not accord with MDDC's Development Plan (in particular Policy DM2) or the Local Plan Review proposals. See in particular further details given in the submitted objections to the proposed development. Moreover, Chapter 12 of the revised NPPF (paragraph 127) referred to in the applicant's Planning Design and Access Statement says that planning decisions should ensure that developments will add to the overall quality of the area and are sympathetic to the local character and history including surrounding built environment and landscape setting. In HRPC's opinion the proposed development does not meet these criteria.

6. HRPC does not agree that the proposed development is an appropriate form of development in this location. The Mansell case does not sanction non-compliance with both national and local planning policy which are the primary material considerations in this case.

7 if the relevant planning officer of MDDC is minded to approve this application, HRPC ask that the application is called in for consideration by the Planning Committee.

8. Without prejudice to the submissions made in this letter if ultimately MDDC determine to grant planning permission, conditions should be imposed or a Section 106 agreement entered into relating to the following matters:

- oThe removal of the existing barn upon completion of the new development.
- oThe imposition of restrictions on lighting- see the objection letter received.
- oReservation for subsequent approval external materials.
- oImposition of a restriction on the height of the building to an acceptable level.
- oTo the extent permissible impose a restriction on the construction of further barns under permitted development rights on any part of the applicant's landholding.
- oAdditionally, there would need to be a section 106 Agreement securing a contribution to the Holcombe Rogus play area refurbishment.

NATURAL ENGLAND - 17 December 2019

Natural England has no comments to make on this application.

Natural England has not assessed this application for impacts on protected species. Natural England has published Standing Advice which you can use to assess impacts on protected species or you may wish to consult your own ecology services for advice.

Natural England and the Forestry Commission have also published standing advice on ancient woodland and veteran trees which you can use to assess any impacts on ancient woodland.

The lack of comment from Natural England does not imply that there are no impacts on the natural environment, but only that the application is not likely to result in significant impacts on statutory designated nature conservation sites or landscapes. It is for the local planning authority to determine whether or not this application is consistent with national and local policies on the natural environment. Other bodies and individuals may be able to provide information and advice

on the environmental value of this site and the impacts of the proposal to assist the decision making process. We advise LPAs to obtain specialist ecological or other environmental advice when determining the environmental impacts of development.

We recommend referring to our SSSI Impact Risk Zones (available on Magic and as a downloadable dataset) prior to consultation with Natural England. Further guidance on when to consult Natural England on planning and development

PUBLIC HEALTH - Contaminated Land: No objection to this proposal. (03.12.19).

Air Quality: No objection to this proposal. (03.12.19).

Environmental Permitting: No objection to this proposal. (03.12.19).

Drainage: No objection to this proposal. (03.12.19).

Noise & other nuisances: No objection to this proposal. (03.12.19).

Housing Standards: No comments. (05.12.19).

Licensing: No comments. (03.12.19).

Food Hygiene: Not applicable. (05.12.19).

Private Water Supplies: If a private supply is to be used by more than one property or has a commercial function, The Private Water Supply (England) Regulations 2016 as amended will apply. A risk assessment and sampling regime will be necessary. The supply must not be used until the Local Authority (Mid Devon District Council) is satisfied that the supply does not constitute a potential danger to human health, including single domestic use.

You must also register with the Local Authority (Mid Devon District Council) any private water supply. Failure to do so may result in a Section 85 Notice, with which failure to comply is an offence.

Please contact Public Health at Mid Devon District Council on completion of proposal.

IF MAINS WATER IS TO BE USED, WOULD HAVE NO COMMENT. (09.11.19).

Health and Safety: No objection to this proposal enforced by HSE.

Informative: There is a foreseeable risk of asbestos being present in the structure. Please review the information in this link, so you are aware of the hazards, risks and your legal obligations with asbestos <http://www.hse.gov.uk/asbestos/> . If asbestos may be present a Refurbishment and Demolition Survey following HSG264 available at <http://www.hse.gov.uk/pUbns/priced/hsg264.pdf> should be carried out before work commences to identify precautions and legal requirements enforced by Health and Safety Executive. (05.12.19).

REPRESENTATIONS

There have been 5 letters of objection to the proposal which are summarised below.

1. This is development via the back door
2. The proposal is not considered to be betterment
3. The building is much higher and will be seen from our property

4. The solar panels will cause reflection
5. Modern appearance which is abominable.
6. Contrary to development plan
7. Limited weight to fall back position
8. Not a replacement dwelling
9. Will set precedent

MATERIAL CONSIDERATIONS AND OBSERVATIONS

The application is for the demolition of an existing agricultural building, for which prior approval has been granted for conversion into a dwellinghouse. This application seeks to demolish the building in question instead and replace with a new build single dwellinghouse.

Local Plan Review

On 26th June 2020, Mid Devon District Council published the Inspector's Report on the Mid Devon Local Plan Review. The Inspector has concluded that the Local Plan is 'sound' subject to a number of main modifications being made. The Mid Devon Local Plan Review, taking account of the Inspector's conclusions, will be recommended for adoption at a meeting of full Council. Consistent with National Planning Policy Framework paragraph 48, the publication of the Inspector's Reports increases substantially the weight that can be attributed to the Local Plan in decision making. The examination process has now concluded. The Inspector has concluded that the Local Plan is sound (subject to the main modifications which have been recommended) and, as such, there are no longer unresolved objections to the Local Plan Review. As such, substantial weight may now be attached to the policies of the Local Plan when making planning decisions. The adopted development plan, in technical terms, remains the starting point for planning decision making. The Local Plan Review is however a material consideration to which substantial weight may now be attached.

Given the state of advancement of the Local Plan Review in the process toward adoption, it is considered that, generally, in the context of a planning decision, where there is a conflict between the outcome which arises from the application of policies of the adopted development plan and those of the Local Plan Review, the Local Plan Review will generally outweigh the adopted plan and will prevail. Where there is consistency, then the policies of the Local Plan Review add substantial weight in favour of the outcome which accords with the application of policies of the adopted development plans and those of the Local Plan Review.

This report reflects and considers the Local Plan Review and where appropriate are referenced in the report within brackets next to the existing policies.

The main material considerations in respect of this proposal are:

- 1) Principle of development in this location**
- 2) Design and impact on the character and appearance of the surrounding area**
- 3) Parking and access**
- 4) Impact on residential amenity**
- 5) Other**
- 6) Planning balance**

1) Principle for development in this location

The site is located in the countryside where policy COR18 (S14 Countryside) seeks to control development to enhance the character, appearance and biodiversity of the countryside whilst promoting sustainable diversification of the rural economy. The erection of an open market

dwelling in the open countryside is normally restricted to those specific circumstances set out in para 79 of the NPPF. In this case, none of the exceptions apply and therefore the erection of a dwelling would be contrary to policy.

However, in this case the application seeks to demolish an existing building, which has consent in place for conversion into a dwellinghouse, under Class Q of the GPDO 2015.

In considering this proposal, it is noted that recent case law and appeals establish that permission for a residential conversion gained through Class Q can establish a 'fall-back' position for a replacement dwelling in general terms i.e that a dwelling has been permitted in this location already. The case law does not make it clear how much weight should be applied, as it is clearly a matter for the decision maker to interpret on a case-by-case basis. The case law merely establishes the general principle that such a fall-back position can be given weight. On this basis, consideration will be given to the overall impact of the proposed development, with appropriate weight given to the fall-back position. Generally, it is expected that the proposed replacement development should represent a real and positive enhancement, or betterment, to the original scheme allowed under Class Q. As such, the principle of the development is considered to be broadly acceptable subject to consideration of the details in line with other relevant local and national policy.

2) Design and impact on the character and appearance of the surrounding area

Policy DM2 (DM1 High Quality Design) seeks high quality design upon a number of principles including a clear understanding of the site, efficient use of the site, making a positive contribution to local character, and creating visually attractive places that are well integrated with surrounding buildings, streets and landscapes, taking account of factors including architecture, siting, layout, scale, massing, orientation, fenestration, materials and landscaping.

Policy DM14 (DM1 High Quality Design) states that new housing development should be designed to deliver;

high quality local places taking into account physical context, local character, density and land use; Adequate levels of daylight, and privacy; suitably sized rooms and overall floor space which allows for adequate storage and movement within the building together with external space for recycling, refuse and cycle storage; and car parking etc.

The existing scheme benefiting from prior approval is for the conversion of the existing building located close to the highway and existing hedges, providing one dwelling. The dwelling now proposed is in the form of a two storey dwelling. It is of a slightly larger scale than the permitted dwellinghouse, however, it is still relatively low key in terms of overall scale, being of a more standard housing design. It is proposed to locate further away from the road, which would allow for reduced visibility within the wider area, and also for improved landscaping works.

In terms of design and materials, the proposal is considered to be acceptable. The proposed dwelling would be constructed using Cedar cladding to the upper part of the building and render and stone finish to the lower half with a slate roof covering. However although there have been some discussions with regard to materials this will still need to be conditioned to ensure the appropriate materials in this case are used. The building is well related to the site, and would be seen generally only from the highway through the existing trees and hedging. There may be views from other properties to the site although these will be relatively distant. The nearest property is a mobile home set in the field adjacent to the property but suitably screened by the native hedging. In addition windows to this side have been kept to a minimum to reduce any potential overlooking possibilities.

Taking this into account and noting the screening around the site, it is considered that the proposed development would appropriately respect the character of the surrounding area, without adversely impacting upon its rural context. Taking this into consideration, it is felt that the proposal satisfactorily accords with policies DM2 and DM14 (DM1 High Quality design) of the Development Management Policies (Local Plan 2013-2033).

3) Parking and Access

Policies COR 9 of the Core Strategy (S8 Infrastructure) and DM8 (DM5 Parking) and DM14 (DM1 (h) High Quality design) of the Development Management Policies (Local Plan 2013-2033) are relevant in respect to considering the impact of the development in respect to highway safety, specifically detailing the requirement of new development in respect to access and parking.

The proposed development would be accessed via the existing main site. This access is appropriate, properly surfaced and has reasonable visibility, more than sufficient for the proposed use in addition to the existing use. On the basis that the proposal would be a one for one replacement of an existing consent, there would be no change in the nature or volume of vehicle movements associated with the proposed dwellinghouse. In addition, the site provides adequate space for the provision of an appropriate level of parking.

Overall, the proposed development is deemed to be acceptable from a highway safety point of view, according with policy COR 9 of the Core Strategy (S8 Infrastructure) and policies DM8 and DM14 (DM5 and DM1) of the Development Management Policies (Local Plan 2013-2033).

4) Residential Amenity

The new building would be moved slightly further into the site, away from the nearest neighbour to provide some degree of separation and to be able to fully maintain the hedge and ditch which separate the sites.

Although possibly visible from other vantage points and dwellings these are set sufficiently distant not to be unduly impacted, and views are likely to be of the roof area only.

5) Other Issues

The application is supported by a Bat and Bird Report, providing details of internal and external inspection.

No evidence of use by bats was found, with the buildings identified as having negligible potential for roosting bats. Similarly, no evidence of nesting birds was found. As such, there is no identified harm to local ecology and the scheme appropriately accords with policies COR 2 and DM2 (S9 and DM1).

Policy AL/IN/3 of the AIDPD (S5 Public Open Space) concerns requirements for the provision of public open space and play areas that apply to all new residential development. The supplementary planning document entitled "The Provision and funding of Open Space through Development" sets out the level of contribution required to meet this increased demand on public services.

The applicant has submitted a signed Unilateral Undertaking Agreement in this regard and make a financial contributions £1442 toward the offsite provision of public open space toward the refurbishment of Holcombe Rogus Play area.

Section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between different people when carrying out their activities. This is called the Public Sector Equality Duty or "PSED".

In this regard the LPA are aware of the approval of a gypsy and traveller site adjacent. There has been no formal objection and it is understood the applicants have been in discussions with them and the LPA are not aware of any adverse impacts this proposal would have on the use of and enjoyment of the adjacent site.

6) Planning balance

In light of the policies in the adopted Development Plan and the Local Plan Review the key issue to be considered in respect to this proposal is the principle of the development, taking into

consideration adopted planning policy and the weight afforded to the 'fall back' position established by case law.

In this case it is considered that the existing Class Q approval represents a realistic fall-back position for development of a single dwelling (by conversion) that could be achieved at the site without any further consent from the Local Planning Authority. The fall-back position is considered to be realistic in this case having regard to considerations as set out in the Mansell case.

Although a new dwelling in this location would not be policy compliant, the fall-back position is a material consideration that can be afforded significant weight in determining the application. The design and layout proposed in this application represent a betterment in layout and design over the Class Q proposal. The increased separation distance from the proposed dwelling and the adjacent mature hedgerow and neighbouring property is also considered to be an improvement on the Class Q proposal. The application also makes a contribution towards the provision of public open space in the area.

On balance, the proposal is considered to provide a betterment over the Class Q conversion that could be achieved through the reuse of an existing modern agricultural building, and, subject to conditions, the planning balance is considered to weigh in favour of approval of the development as set out in this application.

CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule on the decision notice.
3. Prior to the use of any above ground materials first being used on site details or samples of the materials (including but not limited to colour and type of render, cladding, Slate, Brick, Stone, Mortar, windows and external doors paintwork and colourwash) 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 or samples and be so retained.
4. Prior to the first occupation of the property details/plans shall be submitted to, and approved in writing by, the Local Planning Authority indicating the height, positions, design, materials and type of boundary treatment to be erected on the site and a timescale for its implementation. The boundary treatment so approved shall be completed in accordance with the approved details and shall be so retained.
5. Notwithstanding the provisions of Article 3 of The Town and Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no development of the types referred to in Classes A, B, C, D and E of Part 1, or Class A of Part 2 of Schedule 2 relating to the enlargement, improvement or other alteration of a dwellinghouse, addition or alteration to the roof, provision of a porch, provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool, container for domestic heating purposes for storage of oil or liquid petroleum gas or the erection of a gate, fence wall or other means of enclosure, shall be undertaken within the application site without the Local Planning Authority first granting planning permission.

REASONS FOR CONDITIONS

1. In accordance with provisions of Section 51 of the Planning and Compulsory Purchase Act 2004.
2. For the avoidance of doubt in the interests of proper planning.
3. To ensure the use of materials appropriate to the development in order to safeguard the visual amenities of the area in accordance with Policies DM2 and DM14 of the Local Plan Part 3 (Development Management Policies), and the aims and objectives of the National Planning Policy Framework.
4. To safeguard the visual amenities of the area in accordance with Policy DM2 of the Local Plan Part 3 (Development Management Policies), and the aims and objectives of the National Planning Policy Framework.
5. To safeguard the visual amenities of the area in accordance with Policy DM2 of the Local Plan Part 3 (Development Management Policies), and the aims and objectives of the National Planning Policy Framework.

INFORMATIVES

1. If a private supply is to be used by more than one property or has a commercial function, The Private Water Supply (England) Regulations 2016 as amended will apply. A risk assessment and sampling regime will be necessary. The supply must not be used until the Local Authority (Mid Devon District Council) is satisfied that the supply does not constitute a potential danger to human health, including single domestic use. You must also register with the Local Authority (Mid Devon District Council) any private water supply.
Failure to do so may result in a Section 85 Notice, with which failure to comply is an offence. Please contact Public Health at Mid Devon District Council on completion of proposal.

2. Health and Safety: No objection to this proposal enforced by HSE. Informative: There is a foreseeable risk of asbestos being present in the structure. Please review the information in this link, so you are aware of the hazards, risks and your legal obligations with asbestos <http://www.hse.gov.uk/asbestos/>. If asbestos may be present a Refurbishment and Demolition Survey following HSG264 available at <http://www.hse.gov.uk/pUbns/priced/hsg264.pdf> should be carried out before work commences to identify precautions and legal requirements enforced by Health and Safety Executive.

REASON FOR APPROVAL OF PERMISSION

The erection of a new dwelling as an alternative to converting the existing building that benefits from Class Q permitted development rights, is considered to be acceptable in this instance. The fall-back position is considered to be realistic and is a material consideration in the planning balance. The proposed development results in a higher quality layout and design that would be achieved through conversion of the existing modern agricultural building. The additional development that includes the enlarged garden area for the dwelling, is considered to be acceptable and to improve the overall quality of the development. It is not considered that the proposed development would result in significant harm to the character and appearance of the rural area or result in any adverse highway impacts. On this basis it is considered that in this instance the proposed development results in a betterment to the Class Q development that would

be achieved, and the fall-back position can be given significant weight. The proposal conflicts with national and local planning policy relating to the principle of new dwellings in the countryside, however, the proposal is considered to be in accordance with Policies COR2 and COR9 of the Mid Devon Core Strategy (Local Plan Part 1), DM2, DM8, DM14 and DM15 of the Local Plan Part 3 (Development Management Policies) and Policies S8, S9, DM1, DM4 and DM5 of the Local Plan Review 2013-33

The Human Rights Act 1998 came into force on 2nd October 2000. It requires all public authorities to act in a way which is compatible with the European Convention on Human Rights. This report has been prepared in light of the Council's obligations under the Act with regard to decisions to be informed by the principles of fair balance and non-discrimination.

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Major Applications with no Decision (Since last Committee Close Date)

Members are asked to note that some major applications will be dealt with under the delegation scheme. Members are also requested to direct any questions about these applications to the relevant case officer. It was resolved at the meeting of Planning Committee on 21st March 2018 that with the exception of small scale proposals, applications for ground mounted solar PV arrays recommended for approval be brought before the Committee for determination.

Item No.	Weeks	TARGET DATE	REFVAL	PROPOSAL	LOCATION	NAME	Expected Decision Level	
							Delegated	Committee
1	1	18/09/2020	20/00876/MFUL	Construction of Cullompton Town Centre Relief Road comprising new 1350 metre road connecting Station F to Duke Street and associated works	Land at NGR 302456 107324 Cullompton Devon	Mr John Millar	DEL	
2	2	17/09/2020	20/00745/MOUT	Outline for the erection of 12 dwellings with all matters reserved	Land at NGR 286628 106165 R/O Barton Close Cheriton Fitzpaine Devon	Mr Adrian Devereaux	DEL	
3	2	16/09/2020	20/00832/MOUT	Outline for the erection of 60 dwellings and construction of new vehicular and pedestrian accesses with all other matters reserved	Land at NGR 295372 113642 Bolham Road Tiverton Devon	Miss Lucy Hodgson	DEL	
	3	04/09/2020	20/00747/MFUL	Change of use of agricultural land to mixed agricultural use, erection of a stable block, horse walker and manege	Land at NGR 276617 107945 (Harescombe) Morchard Bishop Devon	Miss Helen Govier	DEL	

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LIST OF APPEAL DECISIONS FROM 3rd June 2020 to 2nd July 2020

Application No	Description	Location	Officer Recommendation	Committee or Delegated	Decision	Appeal Type	Inspector Decision
19/01402/PNCOU	Prior notification for the change of use of an agricultural building to 3 dwellings under Class Q	Land and Buildings at NGR 269926 104480 (Lower Newton Farm) Zeal Monachorum Devon	Refusal of Prior Approval	Delegated Decision	Refusal of Prior Approval	Written Representations	Appeal Allowed
18/02019/MOUT	Outline for the erection of up to 20 dwellings and associated access	Land at NGR 295508 103228 (Silverdale) Silverton Devon	Subject to the provision of a S106 Com	Committee Decision	Refuse permission	Written Representations	Appeal Allowed

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AGENDA ITEM – Planning Committee 15th July 2020

Application No. 19/01430/FULL

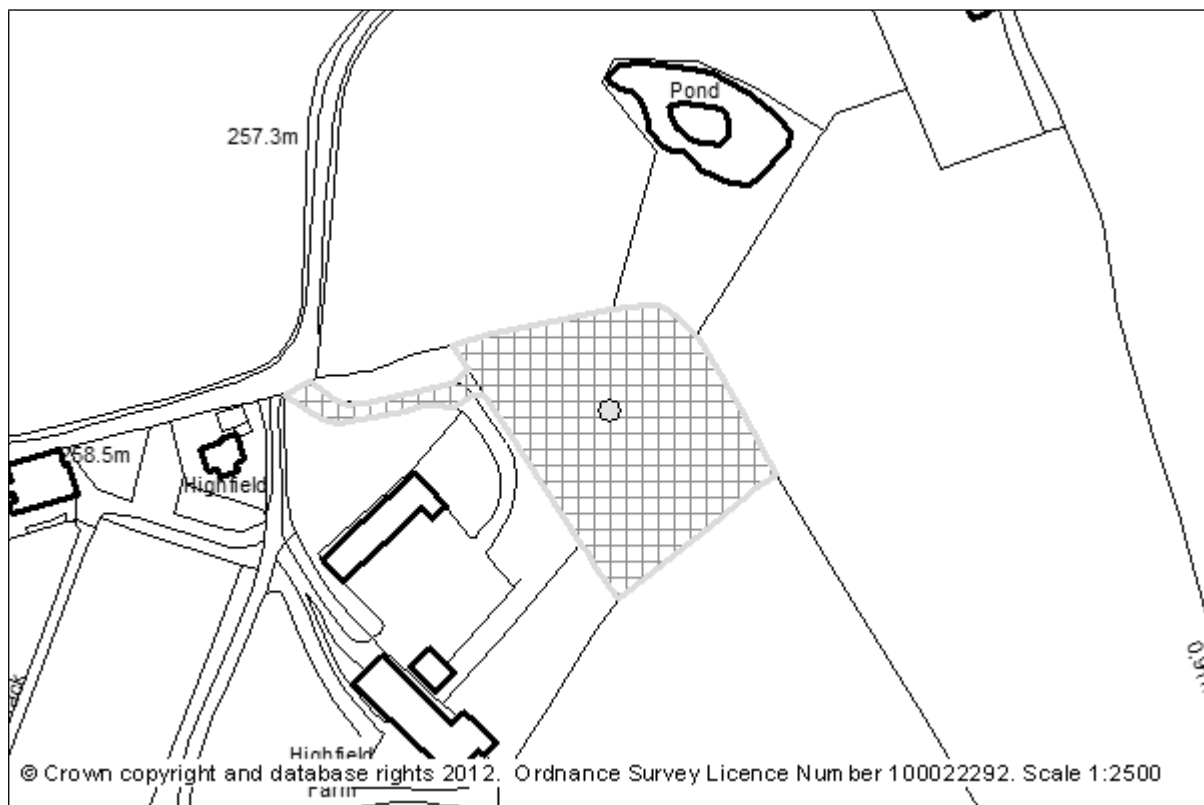
Grid Ref: 286163 : 123831

Applicant: Mr I Friend

Location: Land at NGR 286163
123831 (Highfield
Farm) Oakford

Proposal: Erection of an office
building and change
of use of land from
agriculture to
groundworks depot

Date Valid: 6th November 2019



REPORT OF THE HEAD OF PLANNING AND REGENERATION

19/01430/FULL - Erection of an office building and change of use of land from agriculture to groundworks depot

Description of Development:

Erection of an office building and change of use of land from agriculture to groundworks depot

REASON FOR REPORT:

To consider the reasons for refusal proposed by the Planning Committee at the meeting of 17th June 2020 in light of further advice from Officers.

RECOMMENDATION(S)

Grant permission subject to conditions

Relationship to Corporate Plan:

- Planning and enhancing the built environment

Financial Implications:

An 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—in line with the development plan and all other material considerations.

Legal Implications:

The report identifies the risks in proceeding with an appeal based on the reasons given by the Committee on 17th June 2020 – both in terms of outcome of an appeal and the risk of a costs decision. The Council will still need to prepare draft planning conditions for the appeal.

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 17th June 2020 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,

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

- Number of developments in the area
- Suitability of this particular business in this particular area
- Impact of noise on site and the number of hours worked

1. The Committee's reasons for refusal

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

- A) The proposed use of the site as a groundworks depot and office, having regard for the anticipated vehicle movements projected to be associated with this use and the type of equipment and materials which could be stored on the site, would, in combination with the existing adjacent employment site, constitute inappropriate development in the open countryside. It would erode the quality and character of this rural area and would therefore be contrary to policies COR2 and COR18 of the Mid Devon District Council Core Strategy, policies DM2 and DM20 of the Local Plan Part 3 (Development Management Policies), policies S9, S14 and DM18 of the Mid Devon Local Plan Review 2013-2033: Pre Adoption Draft and advice contained in the National Planning Policy Framework, in particular paragraph 170(b).
- B) The proposed development, given the nature of the proposed activity on site and the hours of operation, would result in an unacceptable level of disturbance for the occupiers of the nearby residential properties, contrary to policy DM2 of the Local Plan Part 3 (Development Management Policies), Policy DM1 of the Mid Devon Local Plan Review 2013-2033: Pre Adoption Draft and advice contained in the National Planning Policy Framework, in particular paragraphs 127(f) and 170(e).

2. The implications of refusing the application

2.1.1 In respect of the determination of planning applications, the Planning Acts (section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004) state that they should be determined in accordance with the development plan unless material considerations indicate otherwise.

2.1.2 On 26th June 2020, Mid Devon District Council published the Inspector's Report on the Mid Devon Local Plan Review. The Inspector has concluded that the Local Plan is 'sound' subject to a number of main modifications being made. The Mid Devon Local Plan Review, taking account of the Inspector's conclusions, will be recommended for adoption at a meeting of full Council.

2.1.3 Consistent with National Planning Policy Framework paragraph 48, the publication of the Inspector's Reports increases substantially the weight that can be attributed to the Local Plan in decision making. The examination process has now concluded. The Inspector has concluded that the Local Plan is sound (subject to the main modifications which have been recommended) and, as such, there are no longer unresolved objections to the Local Plan Review. As such, substantial weight may now be attached to the policies of the Local Plan when making planning decisions.

2.1.4 The adopted development plan, in technical terms, remains the starting point for planning decision making. The Local Plan Review is however a material consideration to which substantial weight may now be attached.

2.1.5 Given the state of advancement of the Local Plan Review in the process toward adoption, it is considered that, generally, in the context of a planning decision, where there is a conflict between the outcome which arises from the application of policies of the adopted development plan and those of the Local Plan Review, the Local Plan Review will generally outweigh the adopted plan and will prevail. Where there is consistency, then the policies of the Local Plan Review add substantial weight in favour of the outcome which accords with the application of policies of the adopted development plans and those of the Local Plan Review.

2.1.6 The development plan is therefore the primary consideration and the NPPF acts as non-statutory guidance which should be taken as a material consideration and this is clear from paragraph 2 of the NPPF which states that it is a material consideration in planning decisions.

3. Consideration of the proposed reasons for refusal

3.1 Reason for Refusal (A)

A) The proposed use of the site as a groundworks depot and office, having regard for the anticipated vehicle movements projected to be associated with this use and the type of equipment and materials which could be stored on the site, would, in combination with the existing adjacent employment site, constitute inappropriate development in the open countryside. It would erode the quality and character of this rural area and would therefore be contrary to policies COR2 and COR18 of the Mid Devon District Council Core Strategy, policies DM2 and DM20 of the Development Management Policies document, policies S9, S14 and DM18 of the Mid Devon Local Plan Review 2013-2033: Pre Adoption Draft and advice contained in the National Planning Policy Framework, in particular paragraph 170(b).

3.1.1 The following section will assess the evidence to support the aforementioned suggested reason for refusal.

3.1.2 Paragraph 83 of the NPPF states that planning decisions by Local Planning Authorities should enable the growth and expansion of all types of businesses in rural areas, both through conversion of existing buildings and well-designed new buildings. Policy DM20 of the adopted Development Management Policies plan aligns with the thrust of this paragraph, provided that the development is of an appropriate use and scale for its location and subject to the following criteria being met:

- a) The development would not lead to an unacceptable impact on the local road network;
- b) There would not be an unacceptable adverse impact to character and appearance of the countryside; and
- c) There are insufficient suitable sites or premises in the immediate area to meet the needs of the proposal.

This policy will be replaced in full by Policy DM18 of the Local Plan Review 2013-2033: Pre Adoption Draft when it is adopted.

3.1.3 The site at Highfield is a new employment site which has evolved from an existing business on the adjacent site at Wedgewood Buildings. The site is reasonably well contained in the landscape and is largely out of public view. It is located 0.2 miles from the Class B highway (B3223). The site is not a statutory protected wildlife site or within a

national or locally designated landscape and the change of use would not fall within the definition of 'major' development as defined by the Development Management Procedure Order. The Highways Authority has carried out a site visit and has not raised any objection based on the use of the existing access and projected vehicle movements. No alternative sites have been identified as being available for the proposed use in the immediate area. For these reasons Officers consider that the proposed development complies with the criteria set out in policy DM20. This policy does however require satisfaction that development in countryside locations are 'of an appropriate use and scale for their location' and would not result in 'an unacceptable impact on the character and appearance of the countryside'. Although officers maintain that the site is appropriate for the proposed use given the specific site characteristics it is acknowledged that there is subjectivity to this wording within the policy and that Members might take the view that the proposal is not acceptable, however to be successful at defending this reason at appeal it would need to be demonstrated that there would be unacceptable harm arising from the proposed development and given consideration of the above officers do not consider this argument could be substantiated at appeal.

3.1.4 Further, officers do not consider that the proposed development would be in conflict with policy COR2 which seeks to sustain local distinctiveness, character and environmental assets within the Mid Devon district area (to be replaced by Policy S9 of the Local Plan Review 2013-2033:Pre Adoption Draft) or policy COR18 which permits appropriately scaled employment development (to be replaced by Policy S14 of the Local Plan Review 2013-2033:Pre Adoption Draft).

3.2 Reason for refusal (B)

B) The proposed development, given the nature of the proposed activity on site and the hours of operation, would result in an unacceptable level of disturbance for the occupiers of the nearby residential properties, contrary to policy DM2 of the Local Plan Part 3 (Development Management Policies), Policy DM1 of the Mid Devon Local Plan Review 2013-2033:Pre Adoption Draft and advice contained in the National Planning Policy Framework, in particular paragraphs 127(f) and 170(e).

3.2.1 The following section will assess the evidence to support the aforementioned suggested reason for refusal.

3.2.2 Paragraph 127 (f) of the NPPF requires developments to have a high standard of amenity for existing and future users and paragraph 170(e) states planning policies and decisions should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Policy DM2 states that development should not have an unacceptable adverse effect on the amenity of neighbouring properties. This requirement is re-imposed in Policy DM1 of the Mid Devon Local Plan Review 2013-2033: Pre Adoption Draft. The Council's Public Health department has appraised the noise assessment submitted with the application and considers that with a restriction on hours that machinery could be operated on the site (set as between the hours of 0730 and 1900 hours on Mondays to Fridays and 0730 and 1300 on Saturdays, and excluding Sundays, Christmas Day and Bank Holidays) and a blanket restriction on the noise levels set on the curtilage boundaries of the nearest noise sensitive properties, that the amenities of the occupiers of the nearby dwellings would be protected. The conditions as set out in the

report do not restrict the times or dates that vehicles could access the site, only control of the use of machinery within the site. It is feasible therefore that Members might consider the disturbance from vehicles accessing/departing the site without restriction to present a situation which would be unacceptable from a residential amenity perspective. However should refusal of planning permission be given for this reason Members are advised that this would be contrary the professional judgement of the Council's own Public Health officers.

3.2.3 Members would also need to be clear that refusal for this reason would relate only to the application site and would not have any bearing on the operations carried out on the adjacent timber frame manufacturing site. Members would need to be satisfied that the impact from the proposed operations relating to the groundworks site alone would be harmful to the extent, even with the conditions proposed, that they would result in an unacceptable impact on residential amenity. Having regard for the professional advice received and all other material planning considerations, officers do not consider this to be the case.

3.2.4 In relation to costs applications, the Planning Practice Guidance states that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. The following are selected examples given in the Guidance:

- Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
- Failure to produce evidence to substantiate each reason for refusal on appeal;
- Vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
- Refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead;
- Imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations

Contact for any more information

Mr Oliver Dorrell, Planning Officer
01884 234394

Background Papers

Committee report

File Reference

19/01430/FULL

Circulation of the Report

Cllr Graeme Barnell
Members of Planning Committee

Attached - previous Committee report

APPLICATION NO: 19/01430/FULL

MEMBER CALL-IN

Cllr Moore - This is a wholly inappropriate, industrial development in deepest rural countryside. The immediate impact will be on local property amenity through additional activity, noise and traffic. The cumulative impact of this application is unacceptable given the nature of the proposed development in this location.

RECOMMENDATION

Grant permission subject to conditions

PROPOSED DEVELOPMENT

Erection of an office building and change of use of land from agriculture to groundworks depot

RELEVANT PLANNING HISTORY

12/01144/PNAG - NOBJ date 30th August 2012
Prior notification for the erection of an agricultural storage building

DEVELOPMENT PLAN POLICIES

Mid Devon Core Strategy (Local Plan 1)

COR2 – Local distinctiveness
COR4 – Meeting employment needs
COR18 - Countryside

Mid Devon Local Plan Part 3 (Development Management Policies)

DM1 – Presumption in favour of sustainable development
DM2 – High quality design
DM7 - Pollution
DM8 - Parking
DM20 – Rural employment

CONSULTATIONS

PUBLIC HEALTH

Contaminated Land: No objection to these proposals. (12.11.19).

Air Quality: No objections to the proposal. (12.11.19).

Environmental Permitting: No objections to the proposal. (12.11.19).

Drainage: No objection to these proposals. (12.11.19).

Noise & other nuisances:

I have reviewed the lighting report and I have no further objections in relation to light nuisance.

I have reviewed the information within the noise assessment and this has confirmed that the proposals are purely for the erection of an office building to serve the existing business and that no additional plant and/or machinery will be operating on the site under this application. Taking this into consideration I have no objection to the proposals as long as the suggested hours of operation are conditioned (11.03.20).

Recommending approval with conditions:

No machinery installed in the building(s) or on the site shall be operated on any Sunday, Christmas Day or Bank Holiday or other than between the hours of 0730 and 1900 hours on Mondays to Fridays and 0730 and 1300 on Saturdays.

Reason: To ensure that the proposed development does not prejudice the amenities of neighbouring properties.

Noise from operations conducted on the premises shall not exceed 50 dB _(LAeq 1hr) as measured at point A, point B and point C on the boundary of the site, as shown on the attached plan, between the hours of 0730 and 1900 on Mondays to Fridays and 0730 and 1300 on Saturdays.

Reason: To ensure that the proposed development does not prejudice the amenities of the locality by reason of noise (12.03.20)

Housing Standards: No comment. (19.11.19).

Licensing: No comments. (12.11.19).

Food Hygiene: Not applicable. (12.11.19).

Private Water Supplies: If a private supply is to be used by more than one property or has a commercial function, The Private Water Supply (England) Regulations 2016 as amended will apply. A risk assessment and sampling regime will be necessary. The supply must not be used until the Local Authority (Mid Devon District Council) is satisfied that the supply does not constitute a potential danger to human health, including single domestic use.

You must also register with the Local Authority (Mid Devon District Council) any private water supply. Failure to do so may result in a Section 85 Notice, with which failure to comply is an offence.

Please contact Public Health at Mid Devon District Council on completion of proposal.

If mains water is to be used, would have no comment. (12.11.19).

Health and Safety: No objection to this proposal. (12.11.19).

OAKFORD PARISH COUNCIL

There are matters which the Parish Council believes should be addressed before MDDC choose to grant consent.

Access - whilst this seems adequate for the existing development there are concerns that intensification of the use of the site should be catered for by improved access arrangements.

Noise - The PC Supports the proposal by Public Health that there should be a noise assessment & any resulting conditions should limit the use of machinery between certain hours

Lighting - the lighting should be controlled so while being appropriate for the site needs is not excessive in what is a very rural area (10.2.20)

HIGHWAYS

I have visited the site where the access has suitable visibility and radii and the approach roads are of sufficient width to cater for two cars passing and there are sufficient passing opportunities to cater for the number of commercial vehicles the site would attract therefore I have no objection to the proposal (12.03.20)

REPRESENTATIONS

1 letter of objection received: Summary of issues raised below:

Overdevelopment of site and inappropriate use of agricultural land in a very rural area

Establishment of a heavy industrial groundworks site would be a complete desecration of this very rural area

The vehicular access is very difficult and dangerous

There have been several near missed with neighbours cars and passing traffic and three incidents of damage to adjacent property

The proposed office accommodation is an agricultural barn on agricultural land

3 letters of support received. Summary of comments received:

The increase in noise since the agricultural use ceased has been minimal
The traffic increase has not been noticeable
Socio-economic considerations important
Applicants employ locally which helps local economy
There are a number of HGV's which use the access road as a cut through from the link road to the B3227

MATERIAL CONSIDERATIONS AND OBSERVATIONS

SITE DESCRIPTION

The site comprises a broadly rectangular shaped field. The site slopes north to south. The site is enclosed by hedgebanks with vegetation growing above. There is a drainage ditch running along the southern boundary. The vehicular access is located in the north-west corner.

Immediately to the west of the site is a commercial site which is currently occupied by a timber frame building company. Agricultural fields lie to the north, east and south.

In 2012 a prior notification application was submitted and approved for an agricultural storage building on the northern boundary of the site. A building has been recently constructed on this site to a different design. There is no evidence that the building has ever been occupied or used for agricultural purposes.

The building is proposed to be retained and used as offices for the groundworks business. The remainder of the site is proposed to be used as a groundworks depot

The site levels have been adjusted through the importation of hard core which has resulted in the upper part of the land being raised.

PRINCIPLE OF DEVELOPMENT

Paragraph 83 of the National Planning Policy 2018 supports a prosperous rural economy through:

- a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings;
- b) the development and diversification of agricultural and other land-based rural businesses;
- c) sustainable rural tourism and leisure developments which respect the character of the countryside; and
- d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.

Policy DM20 of the MDDC Local Plan supports new build employment development or expansion of existing businesses in countryside locations subject to the following criteria being met:

- a) The development would not lead to an unacceptable impact on the local road network;
- b) There would not be an unacceptable adverse impact to the character and appearance of the countryside; and

c) There are insufficient suitable sites or premises in the immediate area to meet the needs of the proposal.

The site in question immediately adjoins an existing employment site known as Wedgewood Buildings. This site has a lawful mixed use under ref: 12/00146/FULL for agricultural engineering and the manufacture of timber framed buildings with ancillary timber storage and treatment. As part of the 2012 a plan identified a small parcel of land within the site as 'groundworks storage and distribution place'. The applicant states that the proposed development has grown from this operation. It is now proposed to expand the groundworks business through occupation into the adjoining site, which is the subject of this application.

The proposed development comprises the erection of an office building on the northern boundary and the formation of a large open storage depot to the south (approx. 0.4 hectares). The depot would be used to store a range of building materials and construction equipment and as well as construction site welfare structures such as cabins and bunkabins. The equipment would be stored on the site awaiting dispatch to the construction sites.

While the site is described as being an expansion of an existing groundworks business it is for all intents and purpose a new combined B1 (office) and B8 (storage and distribution) business on a greenfield site in open countryside. It is therefore necessary under policy DM20 (c) to consider whether there are suitable alternative sites within the 'immediate' area to meet the needs of the proposal. To this end applicant has provided an email from a rural property and land valuation firm stating that at the time of the application there were no suitable alternative sites near to East Anstey for the B1 and B8 uses being proposed. No alternative sites have been presented by other parties. On the basis of this and property searches performed by officers through RightMove and Prime Location for commercial sites within a three mile radius of the site officers at the time of this report (16 March 2020) officers are satisfied that there are no suitable sites or premises in the immediate area to meet the needs of the proposal; therefore criterion (c) is considered to have been met.

The applicant states that the proposed office would require two full-time staff and three part-time staff to run operations. The Council's Economic Development Officer supports the proposed development on the basis that the provision of new employment would have a modest but welcome contribution to the local rural economy.

HIGHWAYS

Policy DM20 (a) states that rural employment development must demonstrate that it would not lead to an unacceptable impact on the local road network.

The access to the site would be shared with the access to the Wedgewood Buildings site to the west. The access junction with the public road is on the outside of a bend which is considered to provide adequate visibility in both directions for vehicles emerging from the site. A transport statement has been submitted which details the expected vehicle movements to and from the site including staff working in the office building and operational vehicle movements to service the groundworks depot. The highways engineer has appraised these details and carried out a site visit and has concluded that the access has suitable visibility and radii and the approach roads are of sufficient width to cater for two cars passing and there are sufficient passing opportunities to cater for the number of commercial vehicles the site would attract.

There is a residential access lane which emerges immediately adjacent to the site access on the same bend of the road and provides vehicular access to three residential properties. While there may appear some conflict with this and the site access the highways engineer

has not raised any objection to this continued arrangement to serve the proposed development.

On-site parking for five vehicles would be provided to the west of the office building on a newly formed tarmac surface. The parking levels proposed meet the threshold set out in Policy DM8 for the proposed B1 office use.

LANDSCAPE AND VISUAL IMPACT

Policy COR2 states that development should preserve and enhance the distinctive qualities of Mid Devon's natural landscape, supporting opportunities identified within landscape character areas. Policy DM20 (b) permits rural employment development which would not have an unacceptable adverse impact on the character and appearance of the countryside.

The site is within Landscape Character Type 1F (Farmed lowland moorland and Culm grassland). This LCT is characterised by flat to gently rolling moorland plateau with regular field patterns and areas of unenclosed moorland heath.

The site is enclosed by hedgebanks on all sides. There are rows of trees however the eastern boundary is less dense and the vegetation is less established. There are views into the site from the surrounding farmland and glimpsed views from the certain sections of the B3227 however from these points the field is viewed in the context of the existing industrial development on the site to the west.

The building constructed on the site (and proposed to be retained) is a one and half storey with a dual pitched roof structure. It is entirely timber clad with a dark grey sheet profile metal roof. The building has a simple vernacular appearance and is sited immediately adjacent to the northern boundary. There is no external lighting proposed. Having regard for its siting, design and external appearance the building is not considered to have an adverse impact on the surrounding countryside.

The proposed use of the site as a groundworks depot introduces the possibility of the storage of a variety of items. The transport assessment lists these to include ...'building materials such as steel work, cladding, geotextiles, drainage pipes and fittings externally'...and... 'equipment not being used on work sites such as fuel bowsers (bunded), equipment trailers, excavator attachments'. An area approximately 450 square metres adjacent to the western boundary is shown on the layout plan as being dedicated for the storage of welfare equipment such as containers/caravans and bunkabins).

The nature of groundworks depots are such that the items stored on site are transitory and individually do not have a permanent landscape impact however as an overall land use there are potential negative visual implications. While it is accepted that the storage of the type of groundworks equipment listed does not general compliment a countryside location the site is outside of any recognised landscape designation and is reasonably well enclosed with limited public views in. There are gaps in the vegetation on the eastern side of the site which currently provide some distant views in however officers consider that with additional planting on the eastern boundary (secured through condition) that the proposed use and development can be accommodated without an unacceptable impact on the character and appearance of the surrounding countryside.

No lighting is proposed to serve the depot.

IMPACT ON RESIDENTIAL AMENITIES

Paragraph 127 of the NPPF states that local planning authorities should make planning decisions which create places that are safe, inclusive and assessable and which promote health and well-being, with a high standard of amenity for existing or future users.

Policy DM2(e) requires new development not to have an unacceptably adverse effect on privacy and amenity of neighbouring properties and uses.

The site is in a countryside location where the expectation for tranquillity and quiet enjoyment is generally higher than in an urban area. The nearest residential property (Highfield Bungalow) is approximately 80m from the western boundary of the site. This property is located at the junction with the site access drive and therefore is sensitive to increase in traffic entering the site as well as from activity within the site itself. There are further residential uses to the south-west in the form of a gypsy-traveller pitch approximately 150m to the south west of the site.

A noise assessment has been submitted with the application to help to understand the impact of the proposed development on the amenities currently enjoyed by the nearby occupiers of residential properties. This report has been appraised by public health who have advised that in order to protect against disturbance from external activity within the site that a condition be attached to any permission limiting the noise levels on the boundaries of the nearby noise sensitive dwellings.

A lighting report has also been produced and there are no concerns raised in respect of light nuisance.

ECOLOGICAL IMPACT

The site is within a field. It does not fall within any designated site for wildlife interest and there are no statutory designated sites within 500m of the site.

The site has been appraised and an ecological report submitted. The report advises that the proposed development would not affect the favourable conservation status of any local bat population and no further survey work is deemed necessary. The hedgebanks around the site provide limited dormouse and bird breeding habitat. The hedgebanks are not proposed to be affected by the proposals.

Surface water for the building and hardstanding areas is proposed to drain into the existing ditch via a hydrobrake chamber which would be located in the south-eastern corner of the field. The site is not within a critical drainage area or within an area identified at risk of surface water flooding. Subject to details of the hydrobrake/attenuation to be submitted (secured through condition) it is considered the surface water strategy is acceptable.

Foul drainage from the office would be via an existing sewage treatment plant and soakaway.

SUMMARY/REASON FOR APPROVAL

The proposed office building and groundworks depot are considered supportable in policy terms. Although a greenfield site in the countryside it immediately adjoins an existing commercial site and it has been demonstrated that there are no alternative suitable sites in more sustainable locations within the immediate area. It is considered that the proposed development can be accommodated on the site without significant harm to the character and

appearance of the locality. It is not considered that the proposed development would result in harm to privacy or amenity of the occupiers of nearby dwellings or lead to an unacceptable traffic impact on the local road network. As such the proposal is considered to comply with Policies COR2 and COR18 of the Mid Devon Core Strategy (Local Plan Part 1), DM2, DM7, DM8 and DM20 of the Local Plan Part 3 (Development Management Policies) and the advice contained in the National Planning Policy Framework.

CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule on the decision notice.
3. The use of the site (excluding the building) hereby approved shall be as a groundworks depot and for no other purpose falling within B8 as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended).
4. The building hereby approved shall be as B1 (Office) only.
5. No machinery on the site shall be operated on any Sunday, Christmas Day or Bank Holiday or other than between the hours of 0730 and 1900 hours on Mondays to Fridays and 0730 and 1300 on Saturdays.
6. No external lighting shall be installed on the building or within the site.
7. Within one month of the date of this permission a scheme of landscaping to include additional planting on the eastern boundary of the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be carried out in the first planting season following approval. Any trees, shrubs or plants that die within a period of five years from the completion of each development phase, or are removed and/or become seriously damaged or diseased in that period, shall be replaced (and if necessary continue to be replaced) in the first available planting season with others of similar size and species, unless the Local Planning Authority gives prior written permission for any variation.
8. The area shown as car parking for the office on the approved block plan shall be drained and surfaced within 2 months of the date of approval of planning permission and that area shall not thereafter be used for any purpose other than the parking of vehicles for the office building hereby approved.
9. Noise from operations conducted on the site hereby approved shall not exceed 50 dB (LAeq 1hr) as measured at point A, point B and point C on the boundary of the site, as shown on approved drawing MDDC 01, between the hours of 0730 and 1900 on Mondays to Fridays and 0730 and 1300 on Saturdays.

REASONS FOR CONDITIONS

1. In accordance with the provisions of Section 51 of the Planning and Compulsory Purchase Act 2004.

2. For the avoidance of doubt and in the interests of proper planning.
3. To ensure that the development
4. To allow the Local Planning Authority to retain control over the future use of the building, in the interests of residential amenity, in accordance with Policy DM2 of the Local Plan Part 3 (Development Management Policies).
5. To protect the residential amenities of the occupiers of nearby properties, in accordance with Policy DM2 of the Local Plan Part 3 (Development Management Policies).
6. In the interests of visual and residential amenity, in accordance with Policies COR2 of the Mid Devon Core Strategy (Local Plan Part 1) and DM2 and DM20 of the Local Plan Part 3 (Development Management Policies)
7. To mitigate the impact of the approved development in the interests of visual amenity and in accordance with Policies DM2 and DM20 of the Local Plan Part 3 (Development Management Policies).
8. To ensure that the approved development is satisfactorily served by vehicle parking, in accordance with Policy DM8 of the Local Plan Part 3 (Development Management Policies).
9. To protect the residential amenities of the occupiers of nearby properties, in accordance with Policy DM2 of the Local Plan Part 3 (Development Management Policies).

The Human Rights Act 1998 came into force on 2nd October 2000. It requires all public authorities to act in a way which is compatible with the European Convention on Human Rights. This report has been prepared in light of the Council's obligations under the Act with regard to decisions to be informed by the principles of fair balance and non-discrimination.

Section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between different people when carrying out their activities. This is called the Public Sector Equality Duty or "PSED". No persons that could be affected by the development have been identified as sharing any protected characteristic.

AGENDA ITEM – Planning Committee 15th July 2020

Application No. 19/01189/OUT

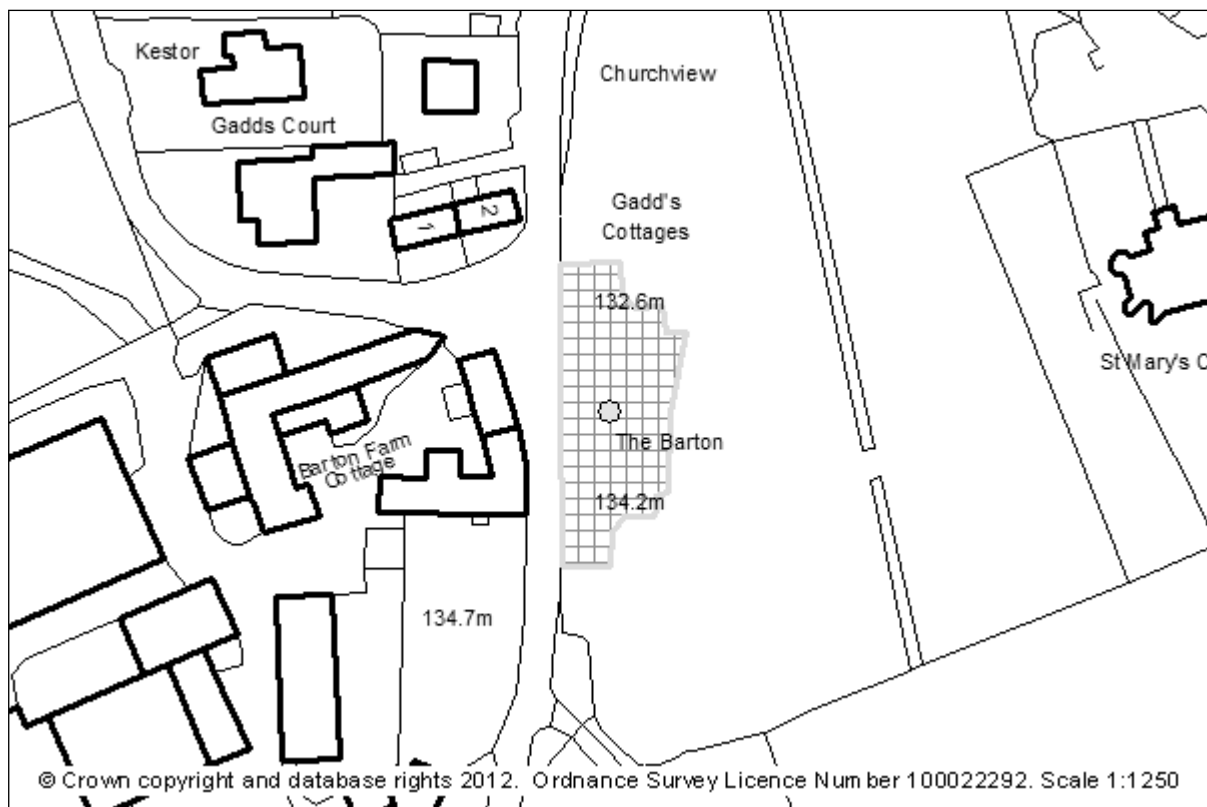
Grid Ref: 307538 : 116626

Applicant: Mr A Lehner

Location: Land at NGR 307538 116626 (North of Town Farm)
Burlescombe
Devon

Proposal: Outline for the erection of 2 dwellings (Revised Scheme)

Date Valid: 11th July 2019



REPORT OF THE HEAD OF PLANNING AND REGENERATION

19/01189/OUT Outline for the erection of 2 dwellings (Revised Scheme)

Description of Development:

Outline for the erection of 2 dwellings (Revised Scheme)

REASON FOR REPORT:

This is an implications report to consider the reasons for refusal proposed by the Planning Committee at the meeting of 17th December 2019 in light of further advice from Officers.

ORIGINAL OFFICER RECOMMENDATION(S)

Grant permission subject to conditions and section 106 agreement

Relationship to Corporate Plan:

Homes

- Facilitating the housing growth that Mid Devon needs, including contributions to Open Space within the area,
- Planning and enhancing the built 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:

The report identifies the risks in proceeding with an appeal based on the reasons given by the Committee on 17th December 2019 – both in terms of outcome of an appeal and the risk of a costs decision. The Council will still need to prepare draft planning conditions for the appeal. External legal representation may be required if the appeal proceeds to a public inquiry.

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.

BACKGROUND:

At the Planning Committee held on 17th December 2019, 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,

The Committee indicated it was minded to refuse the application on the following grounds:

- The impact of the proposal on the historic hedge/wall
- The impact of the proposal on the historic location
- The impact of the proposal on the setting of the Grade I listed church
- The lack of pavements in the area and the narrowness of the roads.

Taking the above into account, the following reasons for refusal could appear on the planning decision notice, the first two reasons have been combined as they deal ostensibly with the same issues:

1) The proposal requires the removal of 55m of hedge and stone retaining wall to facilitate the required visibility and frontage to the site. This hedge and stone retaining wall forms part of the historic settlement boundary to the original village. The loss of the wall and boundary hedge will have a severe impact on the character and setting of the oldest part of Burlescombe, and so is considered to be in conflict with policy DM27 of the Local Plan, DM25 of the Mid Devon Local Plan Review 2013 – 2033: Pre Adoption Draft and the National Planning Policy Framework 2019.

2) The proposal is within the setting of a Grade I listed Church with associated Grade 2 structures and monuments. The significance of the Church relates to views to and from the Church principally, in relation to this application, towards the east from the unnamed road to the west of the site, and from the Church and Church Yard out to the West. The LPA considers that the introduction of two dwellings in close proximity to the Grade 1 Church, would alter these views and would result in an unjustified distraction and intrusion into these important historic views and be harmful to the experience of this Grade 1 listed building contrary to the statutory duty under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Policy DM27 of the Local Plan, Policy DM25 of the Mid Devon Local Review 2103 -2033:Pre Adopted Draft and the National Planning Policy Framework 2019.

3) The proposal is located in an area where there are no pavements and road widths are narrow, exacerbating highway and pedestrian safety within the area.

2. The implications of refusing the application

2.1 In respect of the determination of planning applications, the planning Acts (section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004) state that they should be determined in accordance with the development plan unless material indications indicate otherwise. The development plan is therefore the primary consideration and the National Planning Policy Framework 2019

(NPPF) is a material consideration in the determination of a planning application. In this instance, significant regard must be had to the content of the NPPF in-so-far as it relates to housing delivery and the impact on designated heritage assets.

On 26th June 2020, Mid Devon District Council published the Inspector's Report on the Mid Devon Local Plan Review. The Inspector has concluded that the Local Plan is 'sound' subject to a number of main modifications being made. This recently confirmed Local Plan Review now carries significant weight. Given the state of advancement of the Local Plan Review in the process toward adoption, it is considered that, generally, in the context of a planning decision, where there is a conflict between the outcome which arises from the application of policies of the adopted development plan and those of the Local Plan Review, the Local Plan Review will generally outweigh the adopted plan and will prevail. This means that the policies of the Mid Devon Local Plan Review 2013 – 2033: Pre Adoption Draft can be taken into account in determining this application. This is a significant change since the application was considered by the Planning Committee on 17th December 2019 and will be covered in more detail later in this report.

3.0 Consideration of the proposed reasons for refusal

3.1 Reason for Refusal 1

The proposal requires the removal of 55m of hedge and stone retaining wall to facilitate the required visibility and frontage to the site. This hedge and stone retaining wall forms part of the historic settlement boundary to the original village. The loss of the wall and boundary hedge will have a severe visual and material impact on the character and setting of part of the oldest part of Burlescombe, and so is considered to be in conflict with policy DM27 of the Local Plan, DM25 of the Mid Devon Local Plan Review 2013 – 20133: Pre Adopted Draft and the National Planning Policy Framework 2019.

3.2 The following section will assess the evidence to support the aforementioned suggested reason for refusal.

3.3 The experience of moving along the lane is a bank with hedge on top to the east. The growth from the hedge covers the bank. At the south end of the site and within the bank is a natural stone wall. On the west side are dwellings and a range of farm buildings which are adjacent to the road. The house has a garden to the south. The composition is quite rural. Members may consider this to be an important rural aspect, locally significant, and distinctive of the edge of settlement position. Members may consider that the loss of the hedge, bank and part of the wall to be harmful to the character of the area and would create an openness to the lane, which will introduce a discordant element in this rural location. This position is defensible, but was not used as a reason for refusal in the previous application.

3.4 The second point to consider is whether the hedge and wall are a non-designated heritage asset, as it is not on the councils list of registered heritage assets but it does have some historic value having been in situ for many years. The impact of its removal will have a potential short term negative impact on the street scene as the rural nature of the lane will be interrupted by the presence of the new dwellings, although over time these will become part of the new rural landscape, and the historic boundary line of the village will still be in place. It is inevitable that there will be a change to the street scene although this needs to be balanced with the need to provide access to the site as part of this proposal.

3.5 The introduction of this reason for refusal could leave the Authority open to costs, particularly as it was not raised in the previous application which was refused. Even though

there will be a significant removal of hedge and wall along this part of the road, your officers are of the view that this is not a sufficient reason on its own to recommend refusal.

3.6 In relation to costs applications, the Planning Practice Guidance states that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. The following are selected examples given in the Guidance:

- Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
- Not determining similar cases in a consistent manner.

3.7 The two bullet point examples given above are considered relevant should this application be refused on the loss of the hedge and wall. An award of costs is therefore considered to be a distinct possibility should an appeal and corresponding costs application be made.

4.0 Reason for refusal 2

4.1 The proposal is within the setting of a Grade I listed Church with associated Grade 2 structures and monuments. The significance of the Church relates to views to and from the Church principally, in relation to this application, towards the east from the unnamed road to the west of the site, and from the Church and Church Yard out to the West. The Council considers that the introduction of two dwelling as per the submission, would alter these views by creating two dwellings that would result in an unjustified distraction and intrusion into these important historic views from the public highway and be harmful to the local experience of this Grade 1 listed building contrary to the statutory duty under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and contrary to Policy DM27 of the current Adopted Local Plan, Policy DM25 of the Mid Devon Local Plan review 2013- 2033:Pre Adoption Draft and the National Planning Policy Framework 2019

4.2 Members will need to consider the level of harm the proposal will have on the setting of the grade 1 listed church and its associated grade 2 structures and monuments. Paragraph 193 of the NPPF refers to any harm to the significance of a designated heritage asset (including from development within its setting) and states that this should have clear and convincing justification. Paragraph 196 of the NPPF refers to less than substantial harm to the significance of a designated heritage asset and advises that this harm should be weighed against the public benefits.

As substantial harm relates to the destruction of the asset or the complete loss of significance, this proposal will have less than substantial harm. This does not mean that it is not harmful, just that it does not meet the very high bar of substantial harm. Members do not need to consider the level of harm beyond that in any great detail, but they need to look at the balance with public benefits. The public benefit is the provision of two houses, which will make a small contribution to the Council meeting its 5 year housing land supply figures. These houses may provide a very small amount to the provision of houses in the district, but there is no reason why they cannot be provided elsewhere in the district, or perhaps the parish where there is no potential harm to heritage assets. There is no justification from the applicant with regard to public benefit. This is a requirement set out in the National Planning Policy Framework 2019 paragraph 196 which states that where development proposal will lead to less than substantial harm to the designated heritage asset, this harm should be weighed against the public benefit of the proposal. It is considered that the introduction of

two houses in this location would not outweigh the less than substantial harm in this case, as the proposal could be located elsewhere. So as long as members are satisfied that the harm identified outweighs any public benefits identified then cost implications are likely to be negligible.

5.0 Reason for refusal 3

5.1 The proposal is located in an area where there are no pavements and road widths are narrow, exacerbating highway and pedestrian safety within the area.

5.2 The footway network in Burlescombe is limited and does not start until the railway bridge which is located approximately 420m to the north east of the site. This means there are some 30 dwellings already which do not have a footway and there are no accident records to indicate it is unsafe. Members should consider carefully the support of a refusal reason based on no footways and narrow roads as that is the expected situation in the village. The Council has no evidence to show that there is an issue with highway and pedestrian safety in Burlescombe. The proposed reason for refusal could not be justified and would not be supported by the Local Highway Authority or your officers.

5.3 In relation to costs applications, the Planning Practice Guidance states that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. The following are selected examples given in the Guidance:

- Failure to provide evidence to substantiate a reason for refusal
- Vague, generalised or inaccurate assertions about a proposal's impact which are not supported by any objective analysis.

5.4 The two bullet point examples given above are considered relevant should this application be refused on the basis of lack of pavements in the area which would impact on highway and pedestrian safety. An award of costs is therefore considered to be a distinct possibility should an appeal and corresponding costs application be made using the above proposed reason for refusal

6.0 Further possible reason for refusal

6.1 Members will be aware that at the time of the committee meeting in December 2019, the application site was within the settlement limit of Burlescombe as set out in the adopted development plan.

6.2 Section on 38(6) of the Planning and Compulsory Purchase Act 2004 and s 70 (2) of the Town and Country Planning Act 1990, states that where they must determine applications in accordance with the development plan, unless material considerations indicate otherwise.

Members will be aware that on 26th June 2020, Mid Devon District Council published the Inspector's Report on the Mid Devon Local Plan Review (LPR). The Inspector has concluded that the LPR is 'sound' subject to a number of main modifications being made. The Mid Devon Local Plan Review, taking account of the Inspector's conclusions, will be recommended for adoption at a meeting of full Council

6.3 Consistent with National Planning Policy Framework paragraph 48, the publication of the Inspector's Reports increases substantially the weight that can be attributed to the LPR in decision making. The examination process has now concluded. The Inspector has concluded that the LPR is sound (subject to the main modifications which have been

recommended) and, as such, there are no longer unresolved objections to the Local Plan Review. As such, substantial weight may now be attached to the policies of the LPR when making planning decisions.

6.4 The adopted development plan, in technical terms, remains the starting point for planning decision making. The Local Plan Review is however a material consideration to which substantial weight may now be attached.

6.5 Given the state of advancement of the Local Plan Review in the process toward adoption, it is considered that, generally, in the context of a planning decision, where there is a conflict between the outcome which arises from the application of policies of the adopted development plan and those of the Local Plan Review, the Local Plan Review will generally outweigh the adopted plan and will prevail. Where there is consistency, then the policies of the Local Plan Review add substantial weight in favour of the outcome which accords with the application of policies of the adopted development plans and those of the Local Plan Review.

6.6 The application site falls outside of a settlement limit in the LPR and given that considerable weight is to be given to this emerging plan, the proposal has to be considered as development in a countryside location. This will mean that the proposal for housing in this location will be contrary to Policy S14 of the Mid Devon Local Plan Review 2013 – 2033: Pre Adoption Draft.

6.7 Your officers are of the view that a refusal would be justified on the basis of the following reason for refusal:

National and local planning policy states that local planning authorities should avoid new homes in the countryside unless there are special circumstances to justify an approval. A case has been submitted for the provision of two dwellings in this rural location; however this justification is not considered to amount to special circumstances and considered to carry insufficient weight so as to override local and national policy. The proposed residential development would be in an unsustainable location and is considered to be in conflict with policies S1, and S14 of the Mid Devon Local Plan Review 2013-2033: Pre Adoption Draft and the National Planning Policy Framework 2019

6.8 Any costs implications are likely to be negligible as this is a material change in circumstances since the earlier application and since members considered the application in December 2019

7.0 Conclusion:

7.1 This report has set out proposed reasons for refusal and the implications relating to the following:

1. The impact of the proposal on the historic hedge/wall,
2. The impact of the proposal on the historic location and the impact of the proposal on the setting of the Grade I listed church.
3. The lack of pavements in the area and the narrowness of the roads.
4. Countryside location

7.2 Your Officers are of the opinion that refusal of this current planning application in relation to reason 3 is not defensible and should not be pursued. However the other three identified issues are possible refusal reasons to consider, although relying on reason 1 may open the authority to possible costs as it was not considered in the original application for refusal, and would recommend the following reasons for refusal.

- 1) The proposal is within the setting of a Grade I listed Church of St. Mary. The significance of the Church relates to views to and from the Church principally, in relation to this application, towards the east from the unnamed road to the west of the site, and from the Church and Church Yard out to the West. The Council considers that the introduction of two dwelling as per the submission, would alter these views and would result in an unjustified distraction and intrusion into these important historic views and be harmful to the experience of this nationally important listed building of the highest grade conflicting with the statutory duty under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Policy DM27 of the current Adopted Local Plan and Policy DM25 of Mid Devon Local Plan Review 2013-2033: Pre Adoption Draft and the National Planning Policy Framework 2019
- 2) National and local planning policy states that local planning authorities should avoid new homes in the countryside unless there are special circumstances to justify an approval. A case has been submitted for the provision of two dwellings in this rural location; however this justification is not considered to amount to special circumstances and considered to carry insufficient weight so as to override local and national policy. The proposed residential development would be in an unsustainable location and is considered to be in conflict with policies S1, and S14 of the Mid Devon Local Plan Review 2013-2033: Pre Adoption Draft and the National Planning Policy Framework 2019

Contact for any more information

Mr Daniel Rance, Principal Planning Officer
01884 234929

Background Papers

Committee report

File Reference

19/01189/OUT

Circulation of the Report

Cllr Graeme Barnell
Members of Planning Committee

[Attach previous Committee report](#)

APPLICATION NO: 19/01189/OUT

RECOMMENDATION

Grant permission subject to conditions

PROPOSED DEVELOPMENT

Outline for the erection of 2 dwellings (Revised Scheme)

APPLICANT'S SUPPORTING INFORMATION

Application Form
Site Location Plan and Site Layout
Indicative Site Sections
Wildlife Checklist
Tree Constraints Plan
Tree Schedule and Impact Assessment
Drainage Strategy
Ecological Appraisal
Heritage Impact Assessment
Archaeology Report
Design and Access Statement

RELEVANT PLANNING HISTORY

96/01294/OUT - WD date 20th November 1996
Outline for residential development; new access to be formed off Class 3 road adjoining site to the west
03/05567/PE - REC date
Proposed land uses at Burlescombe
08/00251/PE - REC date
Proposed development
10/00242/PE - CLOSED date 17th February 2010
Proposed affordable housing
18/00504/OUT - REFUSE date 28th June 2019
Outline for the erection of 2 dwellings
19/01189/OUT - PCO date
Outline for the erection of 2 dwellings (Revised Scheme)

DEVELOPMENT PLAN POLICIES

Mid Devon Core Strategy (Local Plan 1)

COR1 – Sustainable Communities
COR2 – Local Distinctiveness
COR8 – Infrastructure Provision
COR9 – Access
COR12 – Development Focus
COR17 – Villages

Mid Devon Allocations and Infrastructure Development Plan (Local Plan 2)

AL/IN/3 - Public Open Space

Mid Devon Local Plan Part 3 (Development Management Policies)

DM1 - Presumption in favour of sustainable development

DM2 - High Quality Design

DM3 – Sustainable design

DM8 – Parking

DM14 - Design of housing

DM15 - Dwelling Sizes

DM27 - Development affecting Heritage Assets

National Planning Policy Framework

CONSULTATIONS

HISTORIC ENGLAND - 1 August 2019

Historic England Advice

Historic England has been consulted on various iterations of this scheme to construct a number of dwellings within the field due west of the Grade I listed church of St Mary, Burlescombe. The outline application has now been resubmitted following the refusal of the previous scheme. Our initial comments on the previous application expressed concerns about the impact that a housing development in this location would have on the significance which this highly significant church derives from its setting. This was both in terms of long and short range views but also importantly in relation to the loss of the rural and tranquil agricultural character of the immediate landscape. Subsequent revisions to the scheme significantly reduced the impact of the development by scaling back the access and parking arrangements and reducing the number of dwellings to two and consequently Historic England accepted that the impact of the scheme on the setting of the church would be such that the harm would no longer justify an objection on heritage grounds.

This new application has increased the scale of the parking and turning area from that previously considered, thereby encroaching further into the field, requiring much greater levels of excavation and consequently increasing the visual impact of the development on the setting of the adjacent Grade I church. We have expressed concerns about the level of infrastructure associated with the housing previously, and whilst the current scheme is not as extensive as some of the earlier iterations, the larger parking and turning area would result in a more suburban character in this highly rural location than that of the previous design.

Central to our consultation advice is the requirement of the Planning (Listed Buildings and Conservation Areas) Act 1990 in Section 66(1) for the local authority to "have special regard to the desirability of preserving the building or its setting or any features of architectural or historic interest which it possesses". When considering the current proposals, in line with Para 189 of the National Planning Policy Framework (NPPF), the significance of the asset's setting requires consideration. Para 193 states that in considering the impact of proposed development on significance great weight should be given to the asset's conservation and that the more important the asset the greater the weight should be. Para 194 goes on to say that clear and convincing justification is needed if there is loss or harm. When considering development that has the potential to affect setting Historic England's Advice Note 3, the Setting of Heritage Assets should be referred to.

Recommendation

In determining this application you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess and section 38(6) of the Planning and Compulsory Purchase Act 2004 to determine planning applications in accordance with the development plan unless material considerations indicate otherwise.

Your authority should take these representations into account in determining the application. If there are any material changes to the proposals, or you would like further advice, please contact us. Please advise us of the decision in due course.

HISTORIC ENVIRONMENT TEAM - 24/07/19

I refer to your recent re-consultation on this application for the construction of two new dwellings and the receipt of the revised scheme.

The Historic Environment Team has no additional comments to make and would reiterate its previous advice, namely:

With regard to the heritage assets with archaeological interest I would reiterate the HETs previous advice that given the presence of post-medieval archaeological deposits within the application area that the impact of the proposed development upon these heritage assets should be mitigated by a programme of archaeological fieldwork to investigate and record the archaeological deposits prior to any development commencing here.

The Historic Environment Team recommends that this application should be supported by the submission of a Written Scheme of Investigation (WSI) setting out a programme of archaeological work to be undertaken in mitigation for the loss of heritage assets and archaeological interest. The WSI should be based on national standards and guidance and be approved by the Historic Environment Team.

If a Written Scheme of Investigation is not submitted prior to determination the Historic Environment Team would advise, for the above reasons and in accordance with paragraph 199 of the National Planning Policy Framework (2018) and the supporting text in paragraph 5.3 of the Mid Devon Local Plan Part 3: Development Management Policy DM27 (2013), that any consent your Authority may be minded to issue should carry the condition as worded below, based on model Condition 55 as set out in Appendix A of Circular 11/95, whereby:

'No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.'

Reason

To ensure, in accordance with Policy DM27 and paragraph 199 of the National Planning Policy Framework, that an appropriate record is made of archaeological evidence that may be affected by the development'

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

I would envisage a suitable programme of work as taking the form of the archaeological excavation of the footprint of the proposed development prior to development commencing to ensure an appropriate record is made of the heritage assets prior to their destruction by the proposed development. The results of the fieldwork and any post-excavation analysis undertaken would need to be presented in an appropriately detailed and illustrated report, and the finds and archive deposited in accordance with relevant national and local guidelines.

I will be happy to discuss this further with you, the applicant or their agent. The Historic Environment Team can also provide the applicant with advice of the scope of the works required, as well as contact details for archaeological contractors who would be able to undertake this work. Provision of detailed advice to non-householder developers may incur a charge. For further information on the historic environment and planning, and our charging schedule please refer the applicant to:

<https://new.devon.gov.uk/historicenvironment/development-management/>

BURLESCOMBE PARISH COUNCIL

Burlescombe Parish Council gave consideration to all objections on the Mid Devon District Council website and those raised by residents of the parish and concluded the following:

Planning application 19/01189/OUT is practically identical to planning application 19/00504/MOUT which was rejected by Mid Devon District Council (MDDC) on grounds raised by Highways, that is, "the proposed development does not make adequate provision for the manoeuvring of vehicles within the site and would therefore be likely to result in vehicles reversing onto or manoeuvring on the highway, with consequent risk of additional danger to all users of the road contrary to the National Planning Policy Framework and policy COR9 of the Mid Devon Core Strategy (Local Plan Part 1) and policy DM2 of the Mid Devon Local Plan Part 3 (Development Management Policies)." A revised application has been amended to partially accommodate and reflect these comments. However, having revised one area they have fallen foul of other areas previously raised i.e. mass and scale.

Regarding the application's design issues, the Council maintains the view that the application's developments will still be visible from the Church of St Mary and, moving forward, form part of the Church's scene. This would cause significant and material harm to the Church and its setting as the Church is a focal point in the local area and can be seen from a great distance across the parish. It is also noted by the Council that no mention of the proposed development's style or considered materials is made raising questions about their aesthetic, with regards to the local character, and their quality. The application also appears to encompass the prospect of future development by means of making access readily available and expandable which would only amplify the aforementioned detriment that would be caused.

On the matter of privacy, it cannot go unsaid that both existing residents and future residents would suffer infringement. The developments proposed in the application contain bedrooms which are either at ground level next to the highway, meaning bathrooms would be visible from the roadside by passers-by or on the first floor, enabling developments opposite to view the bedrooms of those residents who would be opposite to them.

Further to this, any growth in population directly leads to growth in other factors, including, though not limited to, those relating to pollution. With new residents it is likely we would see an increase in complaints about noise pollution from new residents concerning pedestrians, roadside traffic, or farm vehicles in the active farms beside and directly opposite the developments.

Considering pedestrians further for a moment, it would be superfluous for the developers to pave next to the highway of the developments for at present Burlescombe has no other footpaths along the lane alluded to and primary access is proposed from behind the properties anyhow. However, what would be necessary is a sustainable drainage system. Though one has been suggested, not one specific proposal has been detailed. If this unit, for lack of better wording, would be above ground there would be a further impact on the landscape within the area of the Church, which is a Grade I (1) listed building, and its setting.

It is also accompanied by the Grade II (2) listed north gate and adjoining boundary of the Church yard's wall as well as a ten-strong list of other Grade II (2) listed headstones and tombs.

The application, with reference to the National Planning Policy Framework, Section 16, Paragraph (192), Section (C), 'The desirability of new development making a positive contribution to the local character and distinctiveness.', does not positively contribute to the village and is most obviously out of character and is liable to breach the peaceful setting of the Church and its surroundings. With further reference, specifically to the National Planning Policy Framework, Section 16, Paragraph (194), 'any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from a development within its settings) should require clear and convincing justification.', the Council fails to see the detailed criterion being met by this application. The design has not been created in keeping, within the Church setting and the applicants also have not mentioned any construction materials to be used in the creation of the new properties, which may visually impact the area even more.

Burlescombe is a village with a population of 982 residents according to a recent census. At present it bears no local amenities: no shops, no local pub, no regular bus services and even lacks footpaths in a great number of locations, including at the site of the proposed development. In fact, on the matter of Public Rights of Way, the development would, in fact, impact 'footpath 18'. We do not see this being remedied anytime soon and so too the case for this application not being one of sustainable development must be made.

Further thoughts to the recommendation of a program that investigates any archaeological remains on the site prior to any development commencing must also be seriously given consideration.

It is, therefore, the view of the Council that Mid Devon District Council should reject the Application.

PUBLIC HEALTH

Contaminated Land: No objection to this proposal. (24.7.19).

Air Quality: No objection to this proposal. (17.7.19).

Environmental Permitting: No objection to this proposal. (17.7.19).

Drainage: No objection to this proposal. (24.7.19).

Noise & other nuisances: No objection to this proposal. (24.7.19).

Housing Standards: No comment. (29.7.19).

Licensing: No comments. (17.7.19).

Food Hygiene: Not applicable. (18.7.19).

Private Water Supplies: If a private supply is to be used by more than one property or has a commercial function, The Private Water Supply (England) Regulations 2016 as amended will apply. A risk assessment and sampling regime will be necessary. The supply must not be used until the Local Authority (Mid Devon District Council) is satisfied that the supply does not constitute a potential danger to human health, including single domestic use. Please contact Public Health at Mid Devon District Council on completion of proposal.

If mains water is to be used, would have no comment. (17.07.19).

Health and Safety: No objection to this proposal enforced by HSE. (18.7.19).

NATURAL ENGLAND - 30 July 2019

Natural England has no comments to make on this application.

Natural England has not assessed this application for impacts on protected species. Natural England has published Standing Advice which you can use to assess impacts on protected species or you may wish to consult your own ecology services for advice.

Natural England and the Forestry Commission have also published standing advice on ancient woodland and veteran trees which you can use to assess any impacts on ancient woodland.

The lack of comment from Natural England does not imply that there are no impacts on the natural environment, but only that the application is not likely to result in significant impacts on statutory designated nature conservation sites or landscapes. It is for the local planning authority to determine whether or not this application is consistent with national and local policies on the natural environment. Other bodies and individuals may be able to provide information and advice on the environmental value of this site and the impacts of the proposal to assist the decision making process. We advise LPAs to obtain specialist ecological or other environmental advice when determining the environmental impacts of development.

We recommend referring to our SSSI Impact Risk Zones (available on Magic and as a downloadable dataset) prior to consultation with Natural England. Further guidance on when to consult Natural England on planning and development proposals is available on gov.uk at <https://www.gov.uk/guidance/local-planning-authorities-get-environmental-advice>

HIGHWAY AUTHORITY - 8th August 2019

The applicant has taken on board the Highway Authority observations from the previous application and based upon Drawing number 17.103.01H being conditional of any consent the Highway Authority would make no further observations.

Recommendation:

THE HEAD OF PLANNING, TRANSPORTATION AND ENVIRONMENT, ON BEHALF OF DEVON COUNTY COUNCIL, AS LOCAL HIGHWAY AUTHORITY, RECOMMENDS THAT THE FOLLOWING CONDITIONS SHALL BE INCORPORATED IN ANY GRANT OF PERMISSION

1. The site access road shall be hardened, surfaced, drained and maintained thereafter to the satisfaction of the Local Planning Authority for a distance of not less than 6.00 metres back from its junction with the public highway

REASON: To prevent mud and other debris being carried onto the public highway

2. In accordance with details that shall previously have been submitted to, and approved by, the Local Planning Authority, provision shall be made within the site for the disposal of surface water so that none drains on to any County Highway

REASON: In the interest of public safety and to prevent damage to the highway

HISTORIC ENVIRONMENT TEAM - 1 August 2019

I refer to your recent re-consultation on this application for the construction of two new dwellings and the receipt of the revised scheme.

With regard to the heritage assets with archaeological interest I would reiterate the Historic Environment Team's previous advice that given the presence of post-medieval archaeological deposits within the application area that the impact of the proposed development upon these heritage assets should be mitigated by a programme of archaeological fieldwork to investigate and record the archaeological deposits prior to any development commencing here.

The Historic Environment Team recommends that this application should be supported by the submission of a Written Scheme of Investigation (WSI) setting out a programme of archaeological work to be undertaken in mitigation for the loss of heritage assets and archaeological interest. The WSI should be based on national standards and guidance and be approved by the Historic Environment Team.

If a Written Scheme of Investigation is not submitted prior to determination the Historic Environment Team would advise, for the above reasons and in accordance with paragraph 199 of the National Planning Policy Framework (2018) and the supporting text in paragraph 5.3 of the Mid Devon Local Plan Part 3: Development Management Policy DM27 (2013), that any consent your Authority may be minded to issue should carry the condition as worded below, based on model Condition 55 as set out in Appendix A of Circular 11/95, whereby:

'No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.

Reason

To ensure, in accordance with Policy DM27 and paragraph 199 of the National Planning Policy Framework, that an appropriate record is made of archaeological evidence that may be affected by the development'

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

I would envisage a suitable programme of work as taking the form of the archaeological excavation of the footprint of the proposed development prior to development commencing to ensure an appropriate record is made of the heritage assets prior to their destruction by the proposed development. The results of the fieldwork and any post-excavation analysis undertaken would need to be presented in an appropriately detailed and illustrated report, and the finds and archive deposited in accordance with relevant national and local guidelines.

I will be happy to discuss this further with you, the applicant or their agent. The Historic Environment Team can also provide the applicant with advice of the scope of the works required, as well as contact details for archaeological contractors who would be able to undertake this work. Provision of detailed advice to non-householder developers may incur a charge. For further information on the historic environment and planning, and our charging

schedule please refer the applicant to:

<https://new.devon.gov.uk/historicenvironment/development-management/>

ENVIRONMENT AGENCY - 12 August 2019

Natural England has no comments to make on this proposal.

Natural England has not assessed this application for impacts on protected species. Natural England has published Standing Advice which you can use to assess impacts on protected species or you may wish to consult your own ecology services for advice.

Natural England and the Forestry Commission have also published standing advice on ancient woodland and veteran trees which you can use to assess any impacts on ancient woodland.

The lack of comment from Natural England does not imply that there are no impacts on the natural environment, but only that the application is not likely to result in significant impacts on statutory designated nature conservation sites or landscapes. It is for the local planning authority to determine whether or not this application is consistent with national and local policies on the natural environment. Other bodies and individuals may be able to provide information and advice on the environmental value of this site and the impacts of the proposal to assist the decision making process. We advise LPAs to obtain specialist ecological or other environmental advice when determining the environmental impacts of development.

We recommend referring to our SSSI Impact Risk Zones (available on Magic and as a downloadable dataset) prior to consultation with Natural England. Further guidance on when to consult Natural England on planning and development proposals is available on gov.uk at <https://www.gov.uk/guidance/local-planning-authorities-get-environmental-advice>

REPRESENTATIONS

22 Letters of objection received throughout the planning process, for the current scheme for two dwellings. In addition 26 letters of objection were received for the previous refused application 18/00504/MOUT these objections received are as summarised as follows:

- The proposed development would impact on views to and from the ancient grade I listed church which would be spoilt forever.
- It would compromise the setting of a historic and ancient monument and potential archaeological site.
- The Church of St. Mary, Burlescombe was undoubtedly built on a hill to make a statement. It is now floodlit at night to make it a beautiful landmark sight at night from miles around.
- NPPF – 16 – 192 states that *a new development should make a positive contribution to local character and distinctiveness*. The proposed development of two houses would not do that and more-over be very visible from the village and obstruct this view.
- The development would be out of character for the area and would have an adverse effect on the visual amenity of the area as a whole. No other property in the locality shares the features of the proposed development and the majority of the existing properties are more than 100 years old representing the vernacular for the area.
- The development would increase traffic to this area making it more dangerous to walk on this already busy narrow road.
- The road is already congested with cars, there are no pavements and it is dangerous for people including children walking.

- The farm house and surrounding buildings/houses would be overlooked by the development.
- The community does not wish for this development only the applicant.
- This land should be preserved as a green space and never built on.
- The development would impact on wildlife such as bats.
- There are many plots within the village which are owned by the same applicant that are much more suitable and would come up against much less objection.
- A scheme of 2 properties would still impact on views to the Grade I Listed Church.
- The access to both properties is dangerous. Both come on to a small road which is used as a rat run and used by very large agricultural machinery.
- Plot 1, the access looks very tight and if a large car/van was to wish to park in this space, coming from the property onto this small road may be a massive issue.
- The access to plot 2 is directly opposite an already dangerous turning as visibility is not great.
- The houses will overlook an existing property and in turn the occupiers of the proposed houses would be overlooked.
- Whilst the development has reduced in number, if approved, further development would follow.
- Houses being dug into the landscape, being upside down houses in design and right on the road would encourage antisocial behaviour.
- This beautiful village has no public house, shop or substantial bus service. As one of the younger people to live in the village, this is difficult. People moving here may find this hard, therefore the houses may be difficult to sell and remain empty.
- Concern that these houses would be bought as holiday/short term lets even though the site is within the Uffculme School catchment area.
- Further houses are needed to keep the school and surrounding businesses in trade but not on this site and with a development happening for 6 affordable houses further down the hill, does this village really warrant 10 more new houses at this time?
- The proposed development for two dwellings would result in a significant amount of hedgerow to the detriment of the amenity of the area.
- The recently planted leylandii hedge planted across "the churchyard field" must be removed as it is now totally out of control and is obscuring the views across the valley. It is an absolute eyesore. It does not specify within the application, what is going to happen to the hedge or who is responsible for the maintenance of the hedge or proposed community orchard.
- The drainage of the site would be seriously hazardous to the T Junction, in freezing weather conditions.
- The development is 150m above sea level +/- 10m and as such is colder than the surrounding area. This has meant that on many occasions there is freezing conditions on the lane when Tiverton and Wellington positive temperatures.
- The development would create a Dam for all rain waters from the field behind the 2 homes and drives which have retaining walls. Due to the contour of the roads and landscape the flood waters will go down the centre of the t junction, creating an extreme hazard if it was to freeze.
- The highways agency or Mid-Devon do not grit the lane or the junction.
- The developers have still described the single track lane as the main road, when it is not the main road through Burlescombe, it is still a 7,5 tonne restricted road.
- The removal of the leylandii hedge is being used as a bargaining tool to obtain development.

Most recent comments associated with this application are summarised below:

- The application has already been refused why the applicant doesn't appeal it.

- The application is still in the same location and impacting on the church.
- How can you and the MDDC allow this to happen there are narrow roads?
- Objections set out in previous application are still valid.
- There will be harm to the grade 1 Church and the land is integral to the setting of the church
- The houses will be visible from the church
- It will introduce an inappropriate urban look to one of the oldest parts of Burlescombe
- The visibility splays required by Highways will also create an inappropriate urban appearance.
- The location of the housing, close to the edge of a lane used by private and large farm vehicles and proximity to a T junction creates road safety issues.
- Most local authorities aim for the conservation of foliage and animal habitat, yet the entrances and visibility splays for these 2 dwellings will lead to the loss of 137 metres plus of native hedging.
- There is no intrinsic change to the previous.
- The road to the front is not a main highway but a country lane.
- Drainage is a concern especially in the winter months.
- Old documents re-submitted.
- Evidence suggests that there are bats within the vicinity.
- No advantages to the village from the building of these houses.
- The visibility splays required by Highways, the significant loss of native hedging, and new large modern housing with a high level of parking infrastructure means that Old Road would take on an inappropriate - and undesirable – urban appearance
- There is no housing need.

MATERIAL CONSIDERATIONS AND OBSERVATIONS

The main issues in the determination of this application are:

The main issues with this application relate to:

1. Previous Planning Application reason for refusal
2. Whether the application site is an appropriate location for new housing having regard to the provisions of the development plan;
3. Whether development on the site has an impact on the character and appearance of the area including the Grade I Listed Church on the hill to the east;
4. Highways matters of access and park and highway safety;
5. The living conditions of neighbouring properties and the living conditions of the occupants of the proposed dwellings;
6. S106 obligations; and
7. Other issues including previous refused application on site.

1. Previous Planning Application reason for refusal

Application 18/00504/OUT was refused on one reason

The proposed development does not make adequate provision for the manoeuvring of vehicles within the site and would therefore be likely to result in vehicles reversing onto or manoeuvring on the highway, with consequent risk of additional danger to all users of the road contrary to the National Planning Policy Framework and policy COR9 of the Mid Devon Core Strategy (Local Plan Part 1) and policy DM2 of the Mid Devon Local Plan Part 3 (Development Management Policies).

As this proposal relates to a revised proposal to overcome this reason for refusal the Authority are unable to consider any other aspects of the development that was previously considered under 18/00504/OUT, unless the changes made to overcome this reason for

refusal cause additional harm to the surrounding area and the heritage assets.

The proposed alteration to the parking and turning area is considered to overcome the previous concerns and so there are no other issues which have not been previously considered within 18/00504/OUT to recommend refusal of the proposal.

2. Appropriate location/policy considerations

The Development Plan in force consists of the Mid Devon Core Strategy 2007, adopted July 2007, the Allocations and Infrastructure DPD (2010) and LPP3 (DM policies). The site does not sit within a Neighbourhood Plan area. The NPPF requires that applications be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF is a material consideration. In relation to this current proposal, significant weight is given to the relevant policies produced by Mid Devon District Council.

This is a proposal for the erection of two new dwellings within the settlement boundary of Burlescombe, a recognised settlement in the Mid Devon Local Development Framework. Policy COR 17 of the Core Strategy allows for minor residential development within the defined settlement boundary for Burlescombe.

COR17 - Villages states:

'The following rural settlements with some local facilities and employment and access to public transport will be designated as villages: Bow, Bradninch, Burlescombe, Chawleigh, Cheriton Bishop, Cheriton Fitzpaine, Copplestone, Culmstock, Halberton, Hemyock, Kentisbeare, Lapford, Morchard Bishop, Newton St Cyres, Sampford Peverell, Sandford, Silverton, Thorverton, Uffculme, Willand and Yeoford.

Development will be limited to minor proposals within their defined settlement limits and to allocations for:

- a. affordable housing meeting a local need;
- b. small scale employment and tourism;
- c. services and facilities serving the locality; and
- d. other very limited development which enhances community vitality or meets a local social or economic need.'

Following on from the Written Ministerial Statement (2014), it is the case that a Local Planning Authority cannot request affordable housing on residential developments of below 5 dwellings and only a financial contribution towards the provision of affordable housing off-site would be required for residential developments of between 6 and 10 dwellings. The Written Statement was found to have more weight than Core Strategy Policies and as such the principle of a residential development for open market dwellings on a site such as this within a settlement limit would be supportable under COR17.

However, whilst the above policy would be supportive of residential development, this is not to say all residential development on a site within a settlement limit would be acceptable as S.38[6] of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. The National Planning Policy Framework (the Framework), published by the Government and revised in 2019, is noted as one such material consideration.

Of interest is the matter that there is the proposal within the emerging Local Plan for the deletion of the Settlement Limit, therefore as a result there would be no policy which would directly allow for small scale open market residential development on this field. The emerging local plan policy S14 – Countryside states that:

'Development outside the settlements defined by Policies S10-S13 will preserve and where possible enhance the character, appearance and biodiversity of the countryside while

promoting sustainable diversification of the rural economy. Detailed development management policies will permit agricultural and other appropriate rural uses, subject to the following criteria:

- a) Affordable and low cost housing to meet local needs, residential conversion of appropriate existing buildings, replacement dwellings, housing essential to accommodate a rural worker and accommodation ancillary to a dwelling;
- b) Appropriately scaled retail, employment, farm diversification, tourism and leisure related development (including appropriate conversion of existing buildings);
- c) Appropriately scaled and designed extensions and other physical alterations to existing buildings;
- d) Agricultural and equestrian development;
- e) Community facilities, such as educational facilities, buildings associated with public open space, transportation and infrastructure proposals (including green infrastructure); and
- f) Renewable energy and telecommunications.'

However whilst the above emerging policy outlines the direction of travel, the emerging local plan is still to be adopted and therefore has little weight attributed to it.

3. Whether development on the site has an impact on the character and appearance of the area including the Grade I Listed Church on the hill to the east.

A key issue of any proposal in this location relates to the potential impact on the setting of the Grade I Listed Church and the general character of the area. The application site is a field set lower down than the church with a high leylandii hedge along the boundary separating another field which adjoins the grounds of the church. The proposed dwellings would be two storey fronting the highway which would mean building into the existing bank removing a long stretch of hedgerow and stone wall banking.

3.1 Impact on Church

As can be seen from the consultee responses received from both the Council's Conservation Officer and Historic England, concerns were raised to the development of dwellings within the field identifying the harm to the setting of the listed St Mary's Church. The NPPF outlines that 'When considering the impact of the proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation'. There is also the duty of a Local Planning Authority under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which states that 'In considering whether to grant planning permission or permission in principle for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.'

Historic England have stated that this new application has increased the scale of the parking and turning area from that previously considered, thereby encroaching further into the field, requiring much greater levels of excavation and consequently increasing the visual impact of the development on the setting of the adjacent Grade I church. However following negotiation with the applicant this aspect of the application has been modified to reduce the impact of the proposed turning area by incorporation a roof over the turning area and introducing a grassed area over this to lessen the impact. We have expressed concerns about the level of infrastructure associated with the housing previously, and whilst the current scheme is not as extensive as some of the earlier iterations, the larger parking and turning area would result in a more suburban character in this highly rural location than that of the previous design.'

The Authorities Conservation officer has also re-assessed the application and has stated Applications for consent that affects a heritage asset must be able to justify their proposals. The NPPF says that the LPA should require an applicant to describe the significance of any

heritage asset affected including any contribution made to their setting. This should be sufficient to understand the potential impact of the proposal on its significance. As a minimum the Heritage Environment Record should have been consulted and the building assessed using appropriate expertise where necessary. When considering the impact of development, great weight should be given to the asset's conservation. Any harm or loss should require clear and convincing justification from the applicant. Any harm should be judged against the public benefit, including securing the optimum viable use. (The optimum use is the one that causes the least harm to the significance of the asset).

This approach is reinforced by policy DM27 LP3 and it requires development proposals likely to affect heritage assets and their settings, including new buildings, alterations, extensions, changes of use and demolitions to consider their significance, character, setting and local distinctiveness, and the opportunities to enhance them. It also goes on to state that where a development proposal would lead to less than substantial harm, that harm will be weighed against any public benefit.

The conservation Officers comments are set out below

I note in my comments from 19th of August I stated

This is a revised application after a previous refusal. It is noted that the Heritage Impact Assessment has not been updated. The Design and Access statement has been updated but does not consider the setting of the Church. I note the comments of Historic England and agree them.

The parking area is on the main view up the hill towards the Church tower. The extended parking area dug into rising ground with retaining wall would draw the eye and compete with the vista of the Church formed from opening up the hedge. Whilst the last scheme was acceptable in my view, this additional depth and height of the rear wall is harmful and is not acceptable

Whilst we have amended plans we do not have any amendments to the Design and Access Statement, and to that extent they do not put forward their case with regard to the setting of the church.

I remain of the view that this proposal is mainly without issues. However I do feel it is balanced with regard to the experience of the Church, principally looking up the road towards the Church tower opposite the north end of the proposal. This amendment looks to reduce the impact of the depth and height of the parking area, but this would rely on that area being unlit, uncluttered and plain and with no domestic paraphernalia on the raised land above. If we are of the view that this can be successfully conditioned, along with control of the materials/construction as raised by Historic England, then, on balance, I would not object with regard to the experience of the view from this viewpoint.

3.2 Impact on area and street scene

Another aspect has been raised with regard to the loss of the hedge and stone retaining wall which runs along the road side of the proposed development site.

The proposal requires the removal of approximately 55m of hedge and wall to facilitate the required visibility and frontage to the site. The road is an unclassified rural road and its appearance at present shows this clearly, although slightly overgrown the hedge and wall provide a suitable boundary to the existing field. This boundary forms part of the historic settlement boundary in addition the whereabouts of the Domesday settlement cannot be identified with any certainty but the open area next to church is likely to have formed an

original focus. Manor was held by wulfgeat before 1066 and shown in the DCC HER's mapping system. It is evident that the fields and associated area has some significance with regard to the development of Burlescombe, and the undertaking of any development in this area must be undertaken carefully. The loss of the wall and hedge is likely to severely impact on the character and setting of the oldest part of Burlescombe, and to lose the continuity of this ancient wall and hedge is considered in this instance not to be acceptable.

Therefore the development would be considered not to comply with policy DM27 and guidance within the NPPF. It is however important to note that this is a revised scheme where this element was not a reason for refusal previously so unfortunately we are unable to introduce such a reason for refusal now.

4. Highways matters of access and park and highway safety;

The proposed development is for two dwellings with access and parking to be located to either side of the dwellings. Policy DM8 of the Local Plan Part 3 (DMP) sets out that new development should provide a minimum of 1.7 car parking spaces per dwelling but allows for some variation on a case by case basis dependent upon the accessibility of the site and the type, mix and use of a site. The proposed development would meet the parking requirements.

However, the Local Highway Authority has noted that 'the applicant has indicated visibility splays measured to the centre of the carriageway. National Guidance is that visibility is measured to the nearside carriageway edge. However, the splays indicated are 43m which equates to 30mph. whilst this is the speed limit the actual speed of traffic is nearer to 20mph; drivers are either joining the road from the main Burlescombe road or approaching the junction with it, thus keeping speeds down. The indicated visibility available to the nearside edge is therefore acceptable in this instance.

Policy COR9 of the Core Strategy sets out the requirement to manage travel demand, reduce air pollution and enhance road safety through the management of car parking and traffic, whereas policy DM2 of the Development Management Policies identifies the requirement for the creation of safe and accessible places that also encourage sustainable modes of travel such as walking and cycling. Therefore the concerns of the Local Highway Authority mean that the development is contrary to these two policies.

As such the development is considered to be in conformity to policies COR9, DM8 and the National Planning Policy Framework.

5. The living conditions of neighbouring properties and the living conditions of the occupants of the proposed dwellings;

The NPPF states that planning policies and decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.

In terms of the design of the development, DM14 (Design of housing) and DM2 (High Quality Design) are applicable. Policy DM14 outlines that 'New housing development should be designed to deliver:

- a) High quality local places taking into account physical context, local character, density and land use mix;
- b) Adequate levels of daylight, sunlight and privacy to private amenity spaces and principal windows;
- c) Suitably sized rooms and overall floorspace which allows for adequate storage and movement within the building together with external space for recycling, refuse and cycle storage;
- d) Adaptable dwellings that can accommodate a range of occupiers and their changing

needs over time which will include the provision of a stairway suitable for stairlift installation or space for the provision of a lift in homes with more than one storey;

- e) Private amenity space that reflects the size, location, floorspace and orientation of the property;
- f) Sustainable forms of development that maximise the natural benefits of the site through design, materials, technology and orientation;
- g) On sites of 10 houses or more the provision of 20% of dwellings built to the lifetime homes standard;
- h) Car parking in accordance with Policy DM8.

Policy DM2 of the Development Management Policies relates to high quality design for new development and states the following:

‘Designs of new development must be of high quality, based upon and demonstrating the following principles:

- a) Clear understanding of the characteristics of the site, its wider context and the surrounding area;
- b) Efficient and effective use of the site, having regard to criterion (a);
- c) Positive contribution to local character including any heritage or biodiversity assets and the setting of heritage assets;
- d) Creation of safe and accessible places that also encourage sustainable modes of travel such as walking and cycling;
- e) 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 and uses, taking account of:

- i) Architecture
- ii) Siting, layout, scale and massing
- iii) Orientation and fenestration
- iv) Materials, landscaping and green infrastructure
- f) Appropriate drainage including sustainable drainage systems (SUDS) and connection of foul drainage to a mains sewer where available.’

Therefore as outlined above, adopted policy requires new development should respect the privacy and amenity of neighbouring residents and also the occupiers of the development. Concerns have been raised from objectors that there will be overlooking from the new dwellings to the farmhouse and vice versa with the development fronting the highway allowing pedestrians to view into the properties.

It is noted that this is an outline planning application with appearance of the development being a reserved matter for later consideration. Given the site layout proposed it is considered that subject to final positioning of windows, a scheme could be submitted whereby overlooking would not occur. Adequate amenity area and parking would be provided for the occupiers of the development and therefore it is considered that the development could comply with policies DM2 and DM14 subject to approval of the final details.

6. S106 Obligations

Policy AL/IN/3 of the Allocations and Infrastructure Development Plan Document (AIDPD) seeks to provide at least 60 square metres of public open space for each new market dwelling. Where it would be more appropriate the policy provides a mechanism in accordance with the adopted Supplementary Planning Document (SPD) on this matter, for off-site financial contributions toward the provision and funding of public open space to be made. The applicant is intending to provide a unilateral undertaking and payment of the appropriate sums to the Authority.

7. Other issues raised In terms of ecology, an ecological appraisal was included with the application documents. The site is currently a field and recommendations to avoid harm to protected species (including badgers, great crested newts, dormice, reptiles and nesting birds) are included within the report, in addition to hedgerow protection measures.

Recommendations for a sensitive lighting plan to avoid disturbance to bat species has also been provided.

It has been concluded that there are opportunities to enhance the site for biodiversity and that these include reinforcement planting of existing hedgerows and provision of bat tubes and bird boxes within new dwellings. Suggested measures to avoid, mitigate and compensate potential impacts on habitats and species (and enhance the site for biodiversity in line with the National Planning Policy Framework) are included within a Conservation Action Statement.

SUMMARY

The application site is located within the current settlement limits of Burlescombe where small scale residential development would be acceptable in principle subject to being designed to be in accordance with adopted policy and with this being an outline planning application with matters of access, layout, landscaping and scale included for consideration, the proposed is on balance considered to be compliant with the Local Planning Policy COR2 of the Mid Devon Core Strategy (Local Plan Part 1) and Policy DM27 of the Local Plan Part 3 (Development Management Policies) and guidance within the National Planning Policy Framework.

CONDITIONS

1. No development shall begin until detailed drawings to an appropriate scale of the access, layout, scale and appearance of the building(s), the means of access thereto and the landscaping of the site (hereinafter called the Reserved Matters) have been submitted to and approved in writing by the Local Planning Authority.
2. Application(s) for approval of all the Reserved Matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
3. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the Reserved Matters which have been approved, whichever is the later.
4. The detailed drawings required to be submitted by Condition CO1 shall include the following additional information: boundary treatments, hard and soft landscaping, existing site levels, proposed site levels, finished floor levels, materials, and surface water and foul drainage.
5. No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.
6. . No development shall begin until a Method of Construction Statement to include details of:
 - (a) parking for vehicles of site personnel, operatives and visitors
 - (b) loading and unloading of plant and materials
 - (c) storage of plant and materials

shall have been submitted to, and agreed in writing by, the Local Planning Authority. Only the approved details shall be implemented during the construction period.

7. Prior to their use on site, samples of the materials to be used for all the external surfaces of the building and any retaining walls have been submitted to and approved in writing by the Local Planning Authority.
8. As part of the landscaping reserved matters, detailed drawings shall show which existing trees and hedgerows are to be retained on the site as part of the development.
9. No part of the development hereby approved shall be brought into its intended use until the access driveway and parking spaces have been provided and maintained in accordance with details that shall have been submitted to, and approved in writing by, the Local Planning Authority and retained for that purpose at all times.
10. Construction works shall not take places outside 0800 hours to 1800 hours Mondays to Fridays and 0800 to 1200 hours (midday) on Saturdays and at no time on Sundays and Bank Holidays.
11. All telephone, electricity and mains gas services to the building shall be placed underground.
12. Prior to the first occupation of the dwelling details of refuse and recycling storage for the dwellings shall be submitted to and approved in writing by the Local Planning Authority hereby approved. Such approved refuse and recycling storage shall be retained thereafter.
13. Notwithstanding the provisions of Article 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no development of the types referred to in Classes A, B, C, D, E, F, G of Part 1, or Classes A, B, C of Part 2 of Schedule 2, relating to windows, doors, structures, means of enclosure , shall be undertaken within the application site without the Local Planning Authority first granting planning permission.
14. The roofed over vehicle turning area associated with this application shall not be used for parking of vehicles, storage of any items and is not to have any lighting which will be visible from outside the site.

REASONS

1. The application was submitted as an outline application in accordance with the provisions of Articles 4 & 5 of The Town and Country Planning (Development Management Procedure) Order 2010.
2. In accordance with the provisions of Section 92(2) of the Town and Country Planning Act 1990 as amended by Section 51 Planning and Compulsory Purchase Act 2004.
3. In accordance with the provisions of Section 92(2) of the Town and Country Planning Act 1990 as amended by Section 51 Planning and Compulsory Purchase Act 2004.

4. To enable the Local Planning Authority to consider the impact of the development particularly on the occupiers of the neighbouring properties in accordance with Policy DM2 of the adopted Mid Devon Local Plan Part 3 (Development Management Policies).
5. To ensure, in accordance with Policy DM27 and paragraph 199 of the National Planning Policy Framework, that an appropriate record is made of archaeological evidence that may be affected by the development.
6. To ensure the safety on the highway and to protect the privacy and amenities of neighbouring occupiers in accordance with Policies DM2 and DM14 of the Local Plan Part 3 (Development Management Policies).
7. To ensure the use of materials appropriate to the development in order to safeguard the character and appearance of the conservation area in accordance with Mid Devon Core Strategy (Local Plan 1) Policy COR2 and Local Plan Part 3: (Development Management Policies) Policies DM2 and DM15.
8. In the interest of the visual amenity of the area in accordance with Policy DM2 of the Local Plan Part 3: (Development Management Policies).
9. To ensure that adequate facilities are available for the traffic attracted to the site.
10. To protect the privacy and amenities of neighbouring occupiers in accordance with Policies DM2 and DM14 of the Local Plan Part 3 (Development Management Policies).
11. In order to safeguard visual amenity of area.
12. To ensure adequate refuse and recycling facilities are provided for the dwelling in accordance with Policy DM14 of the Local Plan Part 3 (Development Management Policies).
13. To safeguard the visual amenities of the area character and appearance of the listed building residential amenity of neighbouring residents in accordance with Mid Devon Core Strategy (Local Plan 1) Policy COR2 and Local Plan Part 3: (Development Management Policies) Policy DM2.
14. Reason to ensure there is no impacts from the proposal on the setting of the grade 1 church in accordance with DM27 of the Local Plan Part 3 (Development Management Policies).

REASON FOR APPROVAL OF PERMISSION

This application seeks to ascertain whether the siting of residential development on this site is acceptable. The proposal is on balance acceptable in principle as the site is considered to be a sustainable location and will be within the present defined settlement limit of Burlescombe, where minor residential development is supported in accordance with policy. Whilst the site sits within a relatively close residential context, it is considered likely that two dwellings could be accommodated on the site at a density compatible with its surroundings.

Furthermore the reserved matters application will ensure that the proposal would not result in harm to the character or appearance of the area, the amenity of neighbouring properties or any adverse impacts to the local highway network. The proposal is therefore in accordance with Policies COR1, and COR2 of the Mid Devon Core Strategy (Local Plan Part 1), together with Policy AL/IN/3 of the Allocations and Infrastructure Development Plan Document (Local Plan Part 2) and Policies DM1 and DM2 of the Local Plan Part 3 (Development Management Policies).

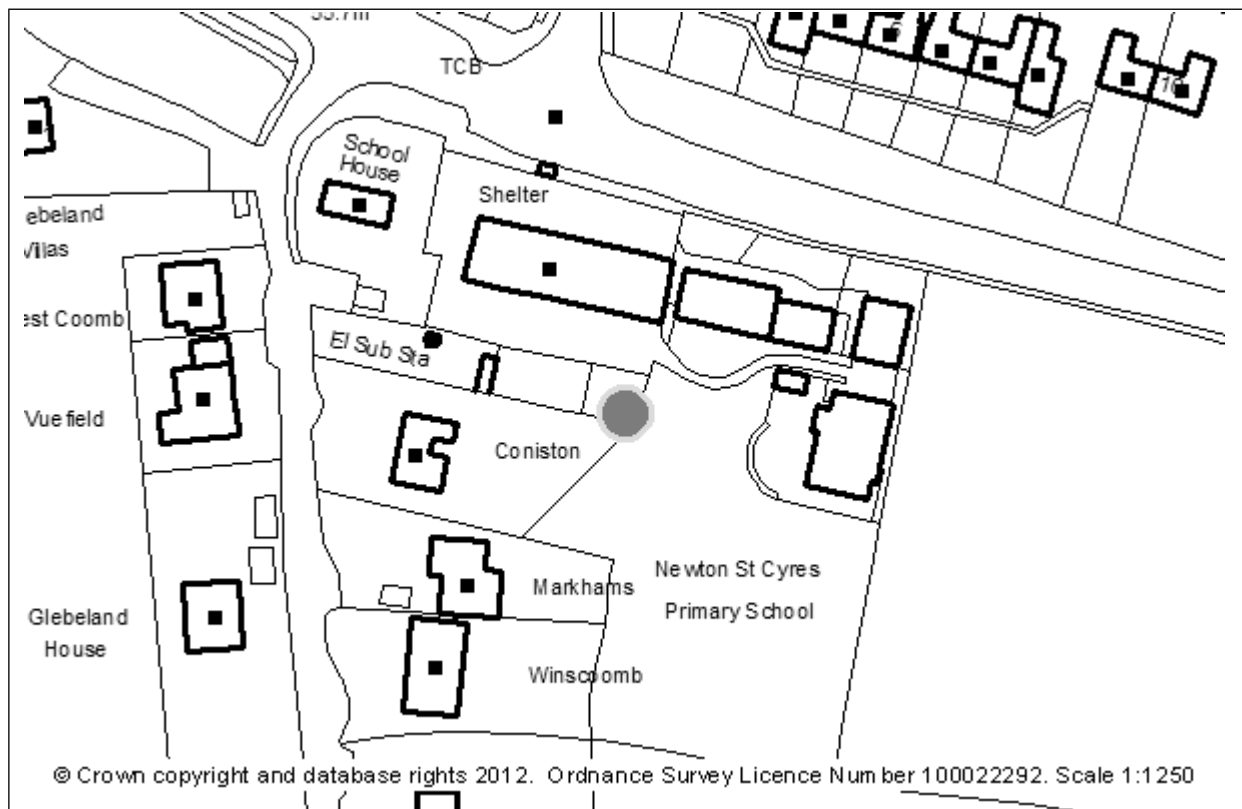
The Human Rights Act 1998 came into force on 2nd October 2000. It requires all public authorities to act in a way which is compatible with the European Convention on Human Rights. This report has been prepared in light of the Council's obligations under the Act with regard to decisions to be informed by the principles of fair balance and non-discrimination.

Tree Preservation Order: 20/00002/TPO

Grid Ref: 288408 : 97777

Location: Former Primary School Site
Newton St Cyres
Devon

Proposal: Tree Preservation Order for 1 Beech tree



TREE PRESERVATION ORDER: 20/00002/TPO

MEMBER CALL-IN

REPORT OF THE HEAD OF PLANNING AND REGENERATION

Reason for Report:

To consider whether a Tree Preservation Order should be confirmed in light of the objection that has been received.

RECOMMENDATION

That the Tree Preservation Order 20/00002/TPO is confirmed.

Relationship to Corporate Plan:

The proposal impacts upon the Corporate aim of 'Protecting the natural environment'

Financial Implications:

None

Legal Implications:

Tree Preservation Orders are made under the Town and Country Planning Act 1990 as amended by the Town and Country Planning (Tree Preservation) (England) Regulations 2012. Local Planning Authorities can make a Tree Preservation Order if it appears to them to be expedient in the interests of amenity to make provision for the preservation of trees or woodland in their area.

Risk Assessment:

None

Consultation carried out with:

1. The landowners have been notified of the imposition of the Tree Preservation Order and provided with the opportunity to object to its confirmation.

PROPOSAL:

Tree Preservation Order for 1 Beech tree

RELEVANT SITE HISTORY/DESCRIPTION:

This Tree Preservation Order was made following an assessment undertaken by the Tree Consultant acting for the Local Authority of the Beech tree following a request by a neighbouring occupier to its visual amenity merit and protection following the sale of the former Primary School in Newton St Cyres.

One letter of objection has been received in relation to Tree Preservation Order 20/00002/TPO from the new owners of the site.

The planning history of the site is as follows:

97/01394/FULL - PERMIT date 10th November 1997

Consultation by Devon County Council under Regulation 3 of the Town and Country Planning General Regulations 1993 for the erection of a new classroom

00/01380/FULL - PERMIT date 4th October 2000

Erection of a single storey extension, underneath existing canopy roof, to provide new lobby and headteachers room

04/01595/FULL - WDN date 22nd September 2004

Erection of new classroom block and associated works

04/02087/FULL - PERMIT date 23rd December 2004

Erection of new classroom block and associated works and infill under canopy with store and wc

08/01289/DCC - DCCGNT date 9th October 2008

Regulation 3 application for erection of two storey extension following demolition of existing kitchen and erection of first floor extension

10/00481/DCC - DCCGNT date 26th May 2010

Regulation 3 application for the erection of a new pre-school unit on school field, formation of new play area DCC - GRANTED PERMISSION (24/5/2010)

AMENITY EVALUATION:

The tree adds a significant amenity/landscape value to the surrounding area. An amenity evaluation undertaken by the Tree Consultant for the Council gave the tree a score of 18. Following this amenity evaluation of the Beech tree, it was deemed necessary to place further protection on it in the form of a Tree Preservation Order. A recent evaluation by the recently appointed Tree Officer for the Council following receipt of the objection resulted in a tree score of 15, therefore still being of merit to be protected.

REPRESENTATIONS:

One objection to the TPO has been made from a senior consultant at Advanced Arboriculture on behalf of the site owner on the following grounds:

1. The tree is in poor structural condition such that it offers negligible future potential as an amenity as detailed within Government guidance [see *Tree Preservation Orders and trees in conservation areas*, updated 6th March 2014, paragraph: 008 Reference ID: 36-008- 20140306];
2. No evidence has been provided to suggest that the decision to formally protect the tree has been informed by a structured and consistent evaluation undertaken by a suitably experienced arboricultural expert;
3. The Tree Preservation Order has significant potential to prejudice the balanced appraisal of any forthcoming planning application by members of the public;
4. The tree is of an inappropriate species for a confined space within a development environment.
5. Trees will inevitably form a material consideration within any forthcoming planning application, whereby the developer will be seeking to offer landscaping proposals which offer a significant enhancement to the long-term future potential of the local landscape,

as well as seeking to retain those additional trees on the site which are genuinely worthy of retention in a development context.

MATERIAL CONSIDERATIONS AND RESPONSE TO THE OBJECTIONS:

Background

A request was made for a tree protection order to be made on a tree on the site of the former school at Newton St Cyres School so that this is protected during any redevelopment. Following the request for a tree protection order a site visit and evaluation was carried out by a tree consultant (acting as tree officer for MDDC). The standard evaluation form (Poole System) was completed on the 27.11.2019. An evaluation score of 18 was recorded (>15 merits consideration for a Tree Preservation Order).

It is the understanding that the Tree Preservation Order (TPO) was served on the 10.02.2020. Formal objection of the tree preservation order was submitted by Mr Hurley, Senior Consultant of Advanced Arboriculture Ltd on the behalf of Mr Nicholas Jenner of Jenner Homes (client). Mr Hurley of Advanced Arboriculture Ltd has provided a tree report in accordance with Regulation 6 of the Town and Country Planning (Trees Preservation) (England) Regulations 2012, noting that that tree does not merit protection.

Following the objection to the tree preservation order a request was made for the Council Tree Officer to review the original tree evaluation by the tree consultant, review the objection and undertake an additional evaluation to determine in the tree merits protection.

Original Evaluation

The previous amenity evaluation rating for TPO carried out by a tree consultant on the behalf of MDDC awarded a combined score of 18 for the mature beech tree. Informing the tree should be protected. The consultant viewed the mature beech within the former school grounds but adjacent to rear of Coniston, observing from the garden of Coniston as there was no access to the school grounds, noting it appears in normal health, some included bark junctions but exhibiting compensatory natural bracing. The tree can be seen from parts of Sand Down Lane to the east and contributes significantly to local amenity, while it would merit a TPO.

The methodology used in the amenity assessment is a standard process as derived by the Poole system and is utilised by MDDC for all amenity evaluation rating for TPO's. This method is utilised by a number of local authorities.

Objection

Summarising Mr Hurley of Advanced Arboriculture Ltd objection reports notes the Beech in question is a mature specimen has significantly compromised structural form with a series of heavily included forks and unions.

The tree was unlikely planted with the intention of it becoming a large specimen tree and was likely planted originally as a hedge.

Crown management works has been previously carried out to mitigate structural weakness. This has been negated by the tree's continued growth and likely increases the decay within a major fork.

Tree roots are potentially conflicting with a clay pipe. This is currently under investigation.

Tree has limited amenity value due to its location in the wider landscape. Mr Hurley of Advanced Arboriculture Ltd has provided his own amenity valuation. This is the same method used by MDDC. In this instance Mr Hurley amenity valuing score is 12 informing the tree should not be protected.

A tree preservation order has significant potential to prejudice the balanced appraisal of any forthcoming planning application by members of the public and that the tree is inappropriate species for a confined space within a development environment.

No evidence has been provided to suggest that the decision to formally protect the tree has been informed by a structured and consistent evaluation undertaken by a suitably experienced arboricultural expert.

Tree Officer Amenity Evaluation and Appraisal

The site visit by the Council's Tree Officer was carried out on the 03.04.2020. The assessment is cursory and is not a detailed inspection of the tree/safety. Assessment of the tree was carried out from the A377, Sand Down Lane and from Tytheing Close. Amenity valuation or assessment of the tree was not carried out within the former school grounds.

The mature beech when viewed from the A377 is estimated to be very large (a crown m² size of greater than 200m²). The life expectancy and contribution amenity value for the beech tree is estimated to be between 15-40yrs. However, contribution could easily be much longer and more diverse as tree becomes over-mature to potentially veteran tree status. The current form of the beech is viewed as average.

The objection report by Mr Hurley of Advanced Arboriculture Ltd reports the tree has significant compromised structural form with a series of heavily included forks and unions. Bark included unions are not desirable features of trees due to their perceived heightened risk of failure but also because they can court diseases such as Phytophthora. However, bark included unions are common features on trees. The photographs included unions presented in the report are a cup-shaped unions with noticeable bulging and wide-mouthed back inclusions. Though such unions are noted to be weaker than a normal formed union, in general the likelihood of failure is low. Often these forms of bark included junctions that are weaker than a normal formed union are mitigated with the presence of natural braces. The original amenity assessment notes compensatory natural bracing present.

Previous crown management has been carried out on the tree to mitigate bark inclusions. These works do not overtly detract from the overall form of tree. Also the presence of a cavity highlighted in the objection report does not detract from the form of the tree. The presence of a cavity does not necessarily indicate a high likelihood of failure where it is present. In general the structural condition of the tree highlighted within the objection report does not detract from the tree from meriting a Tree Preservation Order where the tree was to merit it.

The views of the tree is limited and seen with difficulty. From the A377, only the upper aspect of the crown can be viewed when directly opposite the former school grounds within the public space. Similarly when on Sand Down Lane the upper crown is only visible from a public view point. From this point the opinion of the Tree Officer of the visibility of the tree differs from the original assessment and is in agreement with the objection report assessment. In reviewing the amenity evaluation carried out by the tree consultant acting on the behalf of MDDC, in viewing the tree from private garden space has influenced their score. The score awarded should be based on public view and not from a private space such as a garden where a tree might be clearly visible.

The tree is viewed as fairly suitable for its current location. The tree does not conflict with buildings and does not cause undue nuisance. Where the tree was to be served with a tree preservation order. This should not disproportionately prejudice the balanced appraisal of a forthcoming planning application. This is not viewed as a suitable justification to avoid meriting a tree protection.

The objection report notes that roots of the beech tree may be conflicting with an underground clay pipe. Trees are often blamed for causing damage to underground pipes. Often where roots are associated with damaged pipes, the pipes have previously deteriorated or broke, which allows tree roots to enter and block them. Older pipes with poor seals and rigid joints are most susceptible. In these instances, replacing the pipe will resolve the issue and should not be viewed as negative attribute on meriting a tree with a TPO.

Having carried out a further amenity evaluation for a tree preservation order, the tree has been assessed to still merit a tree preservation order were it viewed as expedient to serve. The total score is 15. In affording a tree a protection order this will not unduly limit future tree management works, where management works are viewed as reasonable. Where sites are to be developed, existing trees can be incorporated within development plans. Particularly those trees that are located near boundaries.

CONCLUSION:

A structured and consistent evaluation method was originally carried by MDDC. When at the time of the original assessment employed tree a tree consultant to act on their behalf. The objection report by Mr Hurley of Advanced Arboriculture notes a number of reasons why the tree should not merit protection and provides a second amenity evaluation justifying this. The objection raised in the report should not overtly detract from the tree being afforded a tree protection order where in the view of the current tree officer it would merit protection. In undertaking a third amenity evaluation, the score awarded to the tree would inform that the tree would merit a tree preservation order were it is viewed as expedient to serve.

The Human Rights Act 1998 came into force on 2nd October 2000. It requires all public authorities to act in a way which is compatible with the European Convention on Human Rights. This report has been prepared in light of the Council's obligations under the Act with regard to decisions to be informed by the principles of fair balance and non-discrimination.

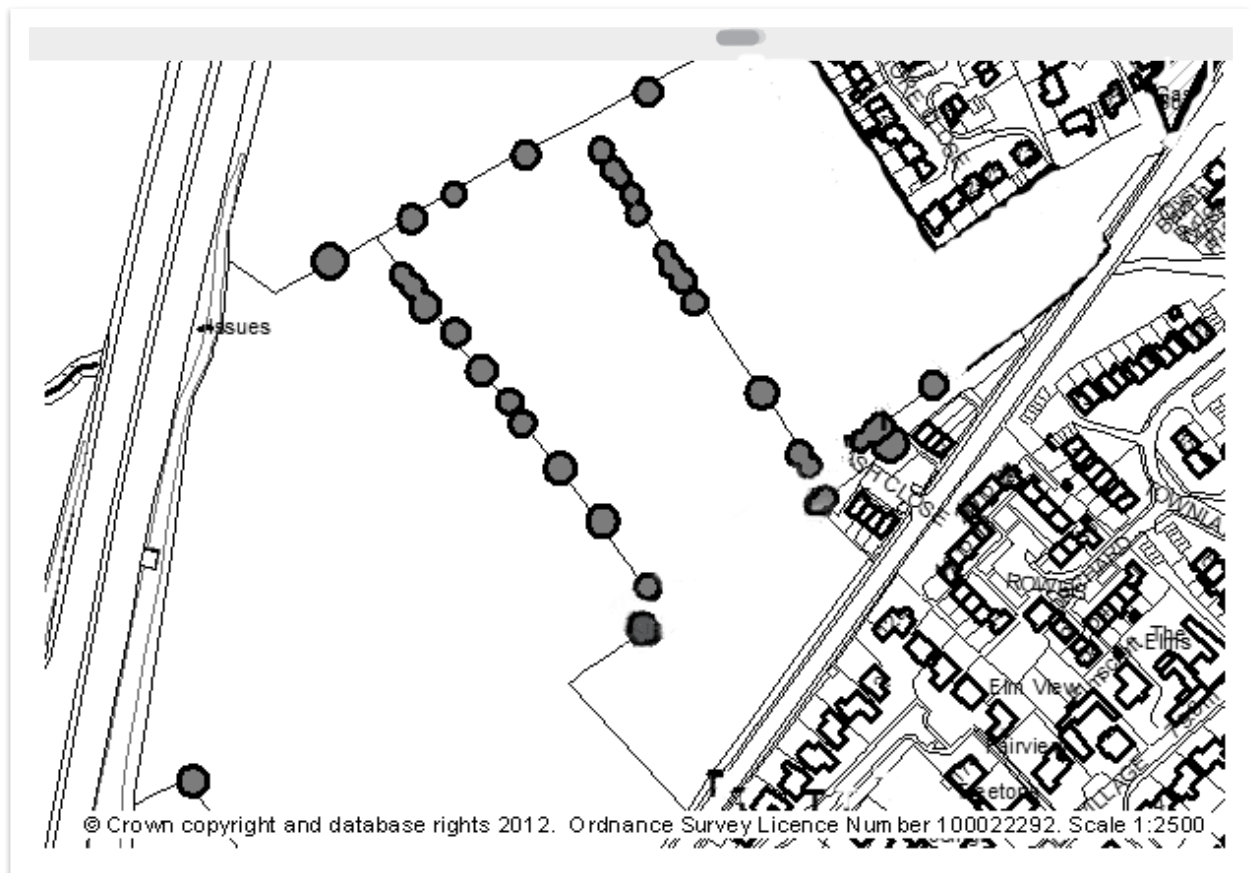
Contact for any more information	Tim Jarratt, Tree Officer 01884 234304
File Reference	20/00002/TPO
Circulation of the Report	Members of the Planning Committee

Tree Preservation Order: 20/00003/TPO

Grid Ref: 303288 : 110467

Location: Land at Meadow Park
Willand
Devon

Proposal: Tree Preservation Order for 45 Pedunculate Oaks and mixed broadleaved trees in woodland



TREE PRESERVATION ORDER: 20/00003/TPO

REPORT OF THE HEAD OF PLANNING AND REGENERATION

Reason for Report:

To consider whether a Tree Preservation Order should be confirmed in light of the objection that has been received.

RECOMMENDATION

That the Tree Preservation Order 20/00003/TPO is confirmed with modification to remove 2 trees identified as T5 and T6

Relationship to Corporate Plan:

The proposal impacts upon the Corporate aim of 'Protecting the natural environment'

Financial Implications:

None

Legal Implications:

Tree Preservation Orders are made under the Town and Country Planning Act 1990 as amended by the Town and Country Planning (Tree Preservation) (England) Regulations 2012. Local Planning Authorities can make a Tree Preservation Order if it appears to them to be expedient in the interests of amenity to make provision for the preservation of trees or woodland in their area.

Risk Assessment:

None

Consultation carried out with:

1. The landowners have been notified of the imposition of the Tree Preservation Order and provided with the opportunity to object to its confirmation.

PROPOSAL:

Tree Preservation Order for 45 Pedunculate Oaks and mixed broadleaved trees in woodland

RELEVANT SITE HISTORY/DESCRIPTION:

16/01811/MOUT - REFUSE date 17th March 2017

Outline for the erection of up to 259 dwellings, with public open space, landscaping and associated infrastructure (APPEAL DISMISSED 03.11.17)

18/00175/MOUT - REFUSE date 9th October 2018

Outline for the erection of up to 125 dwellings with public open space and associated infrastructure - APPEAL ALLOWED - PLANNING PERMISSION GRANTED 29/08/19

AMENITY EVALUATION:

The trees add a significant amenity/landscape value to the surrounding area as well as wildlife value. The trees also contribute to the local character of the area. Following planning consent for 125 houses, it is deemed necessary to place further protection on the trees in the form of a Tree Preservation Order in order to ensure current amenity is maintained and further future potential is safeguarded.

REPRESENTATIONS:

One objection to part of the TPO has been made from Ashfords LLP on the behalf of Mr M J Webber on the following grounds:

1. The TPO in part conflicts with the previously granted full consent for the entrance to the proposed development of the land granted under consent reference 18 /00177FULL.
2. The committee report for the access application accepts that some trees will need to be removed at the point of access.
3. It is our understanding that a TPO cannot now be imposed on trees for which consent has previously been granted authorising their removal.
4. Set out below a table referring to the trees as identified in the TPO and by the reference to the same trees in the attached Tree Quality Survey previously submitted in connection with the access.

TPO Ref.	TG Tree Ref.	Comments
T4	N/A	Not identified on tree survey as an individual tree. Appears to be a small specimen within the hedgerow (H2). Potentially requires removal to facilitate internal access.
T5	T18	Remove to facilitate main development parcel / access drive.
T6	T17	Remove to facilitate main development parcel / access drive.
W1	G8	Mostly retained. Removal of one tree to facilitate proposed access from Meadow Park
W2	G8	Mostly retained. Removal of 3 trees to facilitate proposed access from Meadow Park.
W3	G5 and G3	Mostly retained. Proposed reinstatement of overgrown green lane will include a new pedestrian link between the trees. Selective removal and management of understory vegetation will be required.

MAIN ISSUES:

The objection to T4, T5 and T6, (all Pedunculate Oak) are sited on the north-western field boundary between two adjoining fields. T5 and T6 have been identified as B (moderate value trees) on the Preliminary Arboriculture Impact Report carried out by Tyler Grange, provided by Ashfords LLP when raising the objection. Where removal of these trees has been previously identified as requiring removal to facilitate development parcel / access drive it would be prudent not to afford these two trees further protection. Where the order is

to be confirmed this can be done with modification. T4, Pedunculate oak has future amenity potential and provides an opportunity for successional tree canopy cover. The objection notes that the tree potentially requires removal to facilitate internal access. The tree should be afforded protection as it has not been determined as requiring removal. In affording the tree protection this will either allow for suitable mitigation if the tree needs removing or a preferred option which allows for the tree to be incorporated into the layout design that allows suitable space for the tree to continue growing and provide greater long-term amenity value.

Objections relating to trees identified as W1, W2 and W3, (all mixed broadleaf woodland collection) state that removal is required to facilitate proposed access from Meadow Park and reinstatement of overgrown green lane in the case of W3. It goes on to state also that the TPO in part conflicts with the previously granted full consent for the entrance to the proposed development. In each case the majority of the trees are to be retained.

Part 3, sub section 14 Exceptions of the Town and Country Planning (Tree Preservation) (England) Regulation 2012 informs “*so far as is necessary to implement a planning permission other than an outline planning permission or, without prejudice to paragraph (iii)(cc), a permission granted by or under the Town and Country Planning (General Permitted Development) Order 1995) granted on an application under Part III of the Town and Country Planning Act 1990 (control over development), or deemed to have been granted (whether for the purposes of that Part or otherwise)*”. In this instance in confirming the TPO it does not exceed the current planning permission for access from Meadow Park. The order should ensure that only trees required for removal to allow access are removed. W1, W2 and W3, are linear collections of trees providing high levels of amenity value to the landscape informing that it is necessary to place further protection on the trees in the form of a Tree Preservation Order.

SUMMARY:

In reviewing the objection it is recommended that the Order be confirmed with modification. Modification of the order is to note the exclusion of T5 and T6 Pedunculate oak. Tree preservation orders placed on W1 and W2, both mixed broadleaf collection trees does not exceed the current planning consent for access from Meadow Park. It will however, provide greater protection to the majority of trees that are to be retained. Including W3 within the order should not restrict suitable management/pruning works in the future. The owner of the trees should be encouraged to discuss these works with the Tree Officer and submit an application where the order is confirmed to include W3.

The Human Rights Act 1998 came into force on 2nd October 2000. It requires all public authorities to act in a way which is compatible with the European Convention on Human Rights. This report has been prepared in light of the Council's obligations under the Act with regard to decisions to be informed by the principles of fair balance and non-discrimination.

Contact for any more information

Tim Jarratt, Tree Officer
01884 234304

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Circulation of the Report

Members of the Planning Committee

By virtue of paragraph(s) 3, 5 of Part 1 of Schedule 12A
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