

# Public Document Pack

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**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

One tap mobile

08000315717,,98604307578#,,,0#,,902722# United Kingdom Toll-free  
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## **MID DEVON DISTRICT COUNCIL**

### **PLANNING COMMITTEE**

**A MEETING** of the **PLANNING COMMITTEE** will be held in the Phoenix Chamber, Phoenix House, Tiverton on Wednesday, 12 August 2020 at 2.15 pm

The next ordinary meeting of the Committee will take place on Wednesday, 9 September 2020 at 2.15 pm in the Phoenix Chamber, Phoenix House, Tiverton

### **STEPHEN WALFORD**

Chief Executive  
4 August 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, S J Penny and B G J Warren

## 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     **REMOTE MEETING PROTOCOL** *(Pages 5 - 10)*  
The Committee to note the remote meeting protocol.
  
- 2     **APOLOGIES AND SUBSTITUTE MEMBERS**  
To receive any apologies for absence and notices of appointment of a 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 - 30)*  
Members to consider whether to approve the minutes as a correct record of the meeting held on 15<sup>th</sup> July 2020.
  
- 6     **CHAIRMAN'S ANNOUNCEMENTS**  
To receive any announcements the Chairman may wish to make.
  
- 7     **ENFORCEMENT LIST**  
To consider the items contained in the Enforcement List.
  
- 8     **DEFERRALS FROM THE PLANS LIST**  
To report any items appearing in the Plans List which have been deferred.
  
- 9     **THE PLANS LIST** *(Pages 31 - 120)*  
To consider the planning applications contained in the list.
  
- 10    **MAJOR APPLICATIONS WITH NO DECISION** *(Pages 121 - 122)*  
List attached for consideration of major applications and potential site visits.
  
- 11    **APPEAL DECISIONS** *(Pages 123 - 124)*  
To receive for information a list of recent appeal decisions.
  
- 12    **19/01156/FULL - Land at NGR 302839 111143, Lloyd Maunder Road, Willand (Installation of a 24MW Reserve Power Plant with associated infrastructure)** *(Pages 125 - 144)*  
At the Planning Committee meeting on 12<sup>th</sup> February 2020, Members

advised that they were minded to refuse the above application and invited an implications report for further consideration.

- 13 **19/01862/FULL - Land and Buildings at NGR 299326 114323, Bradford Farm, Uplowman (Change of use of farm buildings to mixed B1/B8 use and retention of external works) (Pages 145 - 176)**  
At the Planning Committee meeting on 17<sup>th</sup> June 2020, Members advised that they were minded to refuse the above application and invited an implications report for further consideration.

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](mailto: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](mailto:coliphant@middevon.gov.uk)

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## **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](mailto: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](mailto: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 15 July 2020 at 2.15 pm

### **Present**

#### **Councillors**

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

### **Also Present**

#### **Councillor(s)**

G Barnell, D R Coren, R J Dolley,  
J M Downes, R Evans, B Holdman and  
B A Moore

### **Present**

#### **Officers:**

Jenny Clifford (Head of Planning, Economy and Regeneration), Kathryn Tebbey (Head of Legal (Monitoring Officer)), Lucy Hodgson (Area Team Leader), Eileen Paterson (Group Manager for Development), Alison Fish (Area Team Leader), Adrian Devereaux (Area Team Leader), Oliver Dorrell (Planning Officer), Daniel Rance (Principal Planning Officer), Helen Govier (Principal Planning Officer), Greg Venn (Conservation Officer), Tim Jarratt (Tree Officer), Sarah Lees (Member Services Officer) and Carole Oliphant (Member Services Officer)

## 24 **VIRTUAL MEETING PROTOCOL (00.04.40)**

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

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

## 25 **APOLOGIES AND SUBSTITUTE MEMBERS (00.05.26)**

There were no apologies or substitute members.

## 26 **PUBLIC QUESTION TIME (00.05.32)**

1. Mrs Hill spoke in relation to item 12 on the agenda, land north of Town Farm, Burlescombe. My questions relate mainly to the ancient boundary hedge. Context very quickly, Blackdown Environmental conducted an ecology assessment report in February 2018, the plan then was for 13 houses and Blackdown's understanding was that the ancient hedge would remain intact as per the design proposals. They refer to

the boundary hedge along Old Road as species rich, potential to be categorised as an important hedgerow under the Hedgerow Regulations Act 1997. There also exists a Devon biodiversity and geodiversity action plan from Devon County Council with policies to protect the hedgerows. Blackdown's views can still be viewed on MDDC Planning portal. It was never updated dated but revised in July 2019. That has significant differences from plans report in 2018.

Can Officers explain why they have not met the requirements of the Hedgerow Regulations Act 97 by requesting an up-to-date assessment to address the ecological, botanical and heritage importance of the ancient boundary hedge?

Can Officers also explain why they failed to reconsult the ecologists (as the ecologists advised in the report) and or ensure an opportunity for a revised consultation response addressing the now proposed removal of 55 metres of the boundary hedgerow?

Can Officers explain why they did not ensure this was done?

The Ecologists wanted retention and protection of this historically important hedgerow. Can Officers explain why MDDC subsequently recommended Approval on a Revised Scheme that would destroy it?

Can Officers explain the discounting of the documented historic background to the Boundary Hedge from Devon County's Historic Records team, reference to the Domesday, and the hedgerows importance?

You say there isn't sufficient reason to recommend refusal on its own but MDDC has failed to address these issues and failed to conduct a proper survey of the impact. So it leaves the authority in danger of a breaching the Hedgerow's Regulation Act of 1997 and the Environmental Impact Regulations too.

Would Councillors not agree that the hedgerow's historic origins and in particular the Ecologist's requirements for retention and protection of this Boundary is an additional and valid Reason for Refusal as is the imminent adoption of the Local Plan which puts this site out of the settlement limit?

2. Mrs Hill spoke on behalf of Cllr Lewis Worrow from Burlescombe Parish Council, in relation to the same item (as he had not been in attendance at this point in the meeting).

The preservation and importance of Burlescombe's Grade I listed church and its setting is now listed as a reason for Refusal, supported by MDDC's Statutory duty under Section 66 of the Planning Act of 1990 and Policies DM27 and DM25.

The starting point for Appeals Inspectors in cases such as these is a 'strong presumption against granting permission' if there is any harm to the heritage asset itself or its setting.

This Application does not overcome or negate even 'less than substantial' harm to the setting of the Church and Historic England has consistently advised MDDC to focus on whether the public benefit outweighs the harm.

To this end I have two (2) questions:

a) Have Members been clearly informed that the starting point for Planning authorities and Appeals Inspectors is a “strong presumption against granting permission if there is any harm to the heritage asset itself or its setting?”, particularly so when there is no public benefit but significant and less than significant harm?

b) Can Officers explain why, until now, there has been no acknowledgement of the absence of public benefit and why MDDC’s Statutory duty under Section 66 of The Planning Act 1990 has not been cited as a Refusal reason until now?

Further to this, the current Application is a Revised Scheme containing significant differences to that of the previous Application Refused in June 2019.

In the December 2019 Report, P32, Officers detail that the current scheme relates to revisions made to overcome the reason for Refusal (highways) and that the Authority cannot consider any other aspects of the development that was previously considered unless the changes made to overcome this reason for refusal cause additional harm to the surrounding area and the heritage assets.

This Revised Application includes a platform of additional and significant excavation to the proposed site: visibility splays, significantly increased parking/turning area and a covered roof not shown in the previous Application.

The Application also now requires the destruction of 55 metres of an historic, protected and irreplaceable boundary hedge, in contravention of the Hedgerows Protection Act 1997 and of the Environmental Impact Assessment Regulations.

To this end, I have three (3) subsequent questions for a total of five (5) questions:

a) Can Officers explain why they did not treat such significant changes to the Plans as material considerations, and why they seem not to have concluded the changes would cause additional harm to the surrounding area and the heritage assets, as they detailed in the December 2019 Report?

Officers incorrectly claim they cannot include new Reasons for Refusal, in contrast to their statement of December.

b). Would Councillors not agree that these material differences provide MDDC with compelling and in Planning terms, justifiable reasons that permit MDDC to take into account and introduce new, legitimate reasons for Refusal that were previously not included?

c). Would Councillors not agree there are flaws in this process, and that the Application should be finally Refused today?

3. Mr Jamie Byrom then spoke in relation to item 16, Appeal in relation to Higher Town, Sampford Peverell. After the closed session about this same site last October, this Council dropped one of its reasons for refusal, I therefore fear you are being asked to do something similar today, forgive me if I am mistaken. I urge you not to drop either of the remaining reasons for refusal.

Reason for refusal 3 concerns the safety of pedestrians who move in between the site and the village. A year ago you found that the Appellant’s proposals for the canal area would be unsafe and they still are. You will soon adopt our new Local Plan, its policy SP2 requires that access to and from the village must be improved. If you drop this reason for refusal just when the plan is about to be adopted you will in effect be

ignoring a Local Plan policy requirement and I think you will all agree this will be a very bad signal to send to the public at the moment.

The same is true of reason for refusal 1. This concerns landscape impact. A year ago you decided that the landscape proposal would do significant harm to the surrounding landscape character and appearance. This too is covered by policy SP2. It requires landscaping and design which respect the setting and character of the area, conservation of the area and listed building. To help achieve this the policy defines a large area of green infrastructure where there must be no development. The Local Plan Inspector described this area of green infrastructure as essential in providing the protection required but this Council's landscape expert witness for the Appeal never once mentions in his evidence how the Appellants proposals would harm this green infrastructure, something has held him back. In your private session councillors you might like to ask what this is. May be it is because the Local Plan had not yet been adopted when he wrote his evidence but the plan will soon have full force. This includes the requirement for the green infrastructure to remain undeveloped. Rather than give up on the landscape reason for refusal this committee should surely urge officers and your very capable experts to pursue it more aggressively backed up by the requirements of the soon to be adopted plan. If you drop reason for refusal 1 you will be ignoring the SP2 requirement for green infrastructure to remain undeveloped. Once again this is surely a very bad signal to send to the public.

In conclusion my question is, will officers give a clear undertaking here today that the Council and its experts will uphold in full every part of policy SP2 at the forthcoming Appeal enquiry? I am looking simply for a 'yes' or 'no' answer.

4. Professor Barney Dunn spoke in relation to item 13 on the agenda, the Tree Preservation Order at the former Primary School, Newton St Cyres. He stated that he wanted to comment on the appeal made to the imposition of the Tree Preservation Order. This first reason for objection was that the tree was in a poor structural condition. From a non-expert view it is beautiful and its thriving and I note that none of the other 2 experts that came out to see the tree said that it was in a poor state. There is a comment made that the process wasn't followed properly in placing the TPO. As far as I can tell the process has been followed properly.

There is some question about the amenity of the tree, I would just say that the tree has clear visual amenity and that there are multiple site points along Sand Down Lane and on the A377 whether you are a walker, a pedestrian or a cyclist and when they knock down the old school the visual amenity of the tree will potentially increase because it will be more visible.

Also the tree has some historical amenity in that generations of kids went to school there and remember having lessons under it and doing outdoor learning so it is kind of a cultural landmark in the village.

There were some questions raised that it will bias a subsequent planning application with views of the public. My understanding of planning law is that a TPO can be overturned at the planning stage but that it is good to have it there so that that tree is given due process.

The other reason for appeal is that the tree is an inappropriate species for a confined space within a development environment. Just to note the rival bidder for the site which was a Community Housing Trust had come up with a scheme that could successfully incorporate the tree and didn't see any problems with it. That bid was refused on the grounds of profitability for the Council not for viability of the proposal, that is my understanding.

For those reasons I think the original TPO was fine and I would hope that it continues to be upheld. Thank you.

5. Beverly Tolley then spoke in relation to item 12 on the agenda, land north of Town Farm, Burlescombe. She stated that MDDC would seem to be inconsistent in the consideration of applications and in its decisions regarding the harmful effect this proposal will have on the appearance of Old Road, one of the oldest parts Burlescombe has been discounted. On a recent application, outside of the settlement area of Craddick, policies of COR2 and DM 2 concerning local distinctiveness were fully considered and cited as reasons for refusal so my question is can MDDC officers explain why they did not explore and properly consider the relevance of COR2 and DM2 to this application and apply them instead of claiming that the application complied with both?

6. Caroline Pitchin also spoke in relation to land north of Town Farm, Burlescombe.

Good news for the village we now have a farm shop, however the location is in front of the proposed development. Visitors to the shop are already trying to park when the shop is busy, often parking two abreast as we simply do not have anywhere to park. The visitors in the shop are only parking for a few minutes but my question is where are the visitors to park for the proposed development? I cannot see that they will park in the proposed parking area as these are family homes that could mean several cars per household. We have measured the lane and it's 4.2 metres in width on the road outside the proposed development.

The Leylandii trees are growing out of control, spoiling the view for all in the Parish. This has been mentioned by several parties and in previous proposals these were to be cutback or replaced. However will these be allowed to grow even taller if the proposal is denied? I feel that the Leylandii is being used as a bargaining tool. Please will these be cut if the proposal is denied or if permission is given?

The hedge row is an ancient hedge and should remain. The developers Assessment report in 2018 does state that the ancient hedge needs to be protected and remain intact. I have also read on the Mid Devon website that you cannot simply remove an ancient hedge.

7. Cllr Andrew Moore, Ward Member for Clare and Shuttern, stated that he was speaking in relation to item 11 on the agenda – erection of an office building and a Change of Use from agriculture to a groundworks depot at Highfield Farm.

Members of the Committee, you will recall that I called this retrospective application in with concerns about cumulative impact, whether this is the right sort of development to be promoting in remote, heartland countryside and because of

potential amenity impact given the history on the wider site. I stand by those concerns.

You'll remember that a simple search uncovered 8 businesses at Highfield Farm, with this one, "a new employment site" per the report, proudly proclaiming that its growth had been "exponential" and employed 30 people. Taking into consideration everything else that goes on at Highfield Farm is this an appropriate scale or over-development? Is there sufficient adverse impact to refuse the application? You must decide, again in the context of other noisy operations in the immediate area: there must come a point where yet another business is the straw that breaks that particular camel's back.

We are told there are no other suitable sites in the area so the criteria for DM20 are met, but given that the business operates right across the south of England is a 3 km search radius enough? As for adverse impact to the "appearance and character of the countryside", or alternatively "sustaining local distinctiveness, character and environmental assets", you saw photos that showed that a green field site has been completely taken over by this business. Are you aware that, contrary to the report, this site does have a Statutory designation: part is in the North Devon Biosphere, a UNESCO-designated reserve? Are you entirely happy that the requirements of COR2 and COR18 are being fulfilled?

Amenity impact for the few local properties in this quiet area is an important consideration. The recommendations strongly restricting operating hours, lighting and noise are welcome. As this report mentions, a further restriction on vehicle access times might well be appropriate - within the past week there was reportedly regular activity from 5:30 am and vehicles were reportedly entering site with materials at 9:00 pm: Environmental Health Officers have been informed. As always, we rely on the integrity of the operator to honour the conditions, and so it has to be. But I worry that on this remote site with few neighbours, despite the controls, regular Enforcement visits will be needed. And there's a risk that this business's operation could spill conveniently onto the adjacent site where there are currently no specific controls on operating hours, lighting or noise and there have been several Enforcement actions. Are you happy that controls are enough to safely secure the wider policy requirements for the protection of the countryside environment?

So, is this the right thing to be approving, and if so, are you happy that the conditions are sufficient to ensure that all concerns are being comprehensively addressed?

The Chairman stated that the questions would be raised when the Committee got the relevant item on the agenda.

## **27 DECLARATION OF INTERESTS UNDER THE CODE OF CONDUCT (00.25.44)**

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

## **28 MINUTES OF THE PREVIOUS MEETING (00.25.55)**

The minutes of the meeting held on 17<sup>th</sup> June 2020 were agreed as a true record.

## 29 CHAIRMAN'S ANNOUNCEMENTS (00.27.55)

The Chairman had the following announcements to make:

- She informed the meeting that item 14 on the agenda - Tree Preservation Order 20/0003 – Land at Meadow Park, Willand, Devon had been deferred
- She informed Members that Lucy Hodgson would be leaving the authority after 16 years and she thanked her for her support of the Planning Committee and wished her well for the future

## 30 DEFERRALS FROM THE PLANS LIST (00.30.20)

There were no deferrals from the Plans list.

## 31 THE PLANS LIST (00.30.34)

The Committee considered the applications in the \*Plans List.

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

- a) 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).**

The Area Team Leader had informed the Committee that a completed Unilateral Undertaking had been received from the applicant providing a financial contribution towards Air Quality Management in Crediton.

He outlined the contents of the report by way of a presentation highlighting the location, the block plan including the proposed landscaping and the existing and proposed plans.

He explained that the application was seeking approval to convert an agricultural building into one dwelling. The log cabin on site was the same dimensions as a caravan and would be converted to an office building once the main house was completed.

He provided the Committee with a background to the previous Class Q approval for the site which approved the change of use of the agricultural building to 2 x 4 bedroomed dwellings. The prior approval allowed the applicant to live in a temporary building on site under permitted rights.

He explained the appeal decision of Mansell v Tonbridge and Malling Borough Council (2017) and deemed that an original decision of the Class Q application (2 x 4 bedroomed dwellings) would be a fall back position if the current application was refused and went to appeal.

The Area Team Leader stated that the revised application of one dwelling would reduce the amount of traffic and that the building would be completely off grid with extensive tree planting. He stated that the one neighbouring property would not be

overlooked and the log cabin would be repurposed into an office building once the conversion was complete.

Consideration was given to:

- The fall back position if the application was refused and went to appeal
- The log cabin would be converted to offices once the conversion was complete and could not be used as self contained residential accommodation
- The footprint of the proposed building was the same as the original
- Legislation which determined when Class Q could be applied for and possible restrictions through condition
- The views of the applicant who stated that the log cabin would be used as offices for his business once the conversion was completed and that he intended for this to be his forever home built to the highest quality
- The views of the Parish Council who were against the application and felt that the original application would have improved the area but the proposed dwelling was too large for 2 people and questioned the need for offices on site
- The views of the Ward Members with regard to the large mobile home on site that was built without requiring separate planning permission, that the proposal was not betterment when 2 buildings were reduced down to one, that it exceeded the original application, the design of the building and that the curtilage had been considerably increased by this new proposal
- The size of the log cabin
- Whether the application was sympathetic to agricultural heritage
- The ability of the Authority to impose conditions on the revised application with regard to materials and curtilage which could not be imposed with the current Class Q approved scheme

It was therefore:

**RESOLVED** that: Planning permission be granted subject to conditions as recommended by the Head of Planning, Economy and Regeneration

(Proposed by the Chairman)

Note:

- i.) Cllr Mrs F J Colthorpe, Cllr D R Coren and Cllr S J Penny made declarations in accordance with the Protocol of Good Practice for Councillors dealing with planning matters as they had received contact from the applicant.
- ii.) Mark Broster (applicant) spoke;
- iii.) Cllr Mortimer spoke on behalf of Crediton Hamlets Parish Council
- iv.) Cllrs D R Coren and S J Penny spoke as Ward Members;
- v.) Cllr B G J Warren requested that his vote against the decision be recorded

**b) 19/01309/FULL - Erection of a dwelling including demolition of a garage at Fair Havens, Mill Street, Crediton.**

The Principal Planning Officer outlined the contents of the report that had been produced to address Member concerns with:

- The requirement of 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

She highlighted by way of a presentation the elevations of the original agreed building to the one that had been built out, photographs of the site from various aspects, the revised landscaping scheme, the extra heavy standards trees and photographs of the previous bungalow showing the roof tiles in a less weathered state.

She informed members that the applicant had suggested two options to address the colour of the cladding, either replacement with hanging tiles or lead cladding but she informed members that officers were unconvinced that lead would be an appropriate solution.

Consideration was given to:

- The property was a 3 storey dwelling with rooms in the attic space
- The shared driveway and that the applicants garage would be removed
- The views of the objector who had concerns about the proposed tree planting in particular the Holm Oaks which she felt would be over whelming. Windows that were not included within the original application and the addition of a section of the building which was not permitted development and should be removed
- The views of the Agent who stated that the new landscaping proposals introduced larger trees and was based on Member discussions at the last meeting. The siting of the Holm Oaks and the proposal to replace the cladding on the bay window with leads which had been rejected by officers
- The views of the Ward Member who stated that the building had been built on an extant loophole and that the amenity could be improved if the extension was not approved but permission had been granted and the authority would need to ensure that any works carried out were in accordance with the plan.

It was therefore:

**RESOLVED** that: Planning permission be granted subject to conditions and including the additional conditions set out in the addendum report, as recommended by the Head of Planning, Economy and Regeneration

(Proposed by the Chairman)

(Vote 5 for: 5 against – Chairman’s casting vote)

Notes:

- i.) Cllr F W Letch declared a personal interest as he knew the occupants

- ii.) Cllr J Downes declared a personal interest as his property overlooked the application site
- iii.) Cllr Mrs C P Daw, Cllr S J Clist and Cllr B G J Warren made declarations in accordance with the Protocol of Good Practice for Councillors dealing with planning matters as they had received contact from the agent and objectors
- iv.) Sinead Partridge (objector) spoke
- v.) Joseph Marchant (Agent) spoke
- vi.) Cllr J Downes spoke as Ward Member
- vii.) The following late information was provided via the update sheet:

Since the officer report was completed a revised landscaping plan has been provided, drawing reference JW719/07/d, this supersedes drawing number JW719/07/c. The updated plan demonstrates the location of the dwarf brick wall which has recently been constructed on site to support the access path to the front of the property from the parking area. The applicant has confirmed that the maximum height of this wall is 900mm. The revision does not propose any amendments to the scope of landscaping as set out on the previous revision and discussed within the officer report.

**c) 19/02013/FULL - Erection of dwelling and demolition of agricultural building at Land at NGR 306728 119836 (Wardmoor), Holcombe Rogus, Devon.**

The Principal Planning Officer outlined the contents of the report by way of a presentation highlighting the location, site plan, proposed elevations, floor plans and photographs of the site.

He explained that Class Q had been granted in 2018 and that this original application would be the fall back position if the application was refused and went to appeal.

He explained that the ridge height of the new proposal was significantly higher than the original plans but there was no evidence that the new development would cause more significant harm than the original position.

Consideration was given to:

- The footprint of the proposed building compared to the original permission
- The views of the objector who stated COR18 required that development in the countryside should be strictly controlled and that this application should be no greater in scale than the original, be agricultural in style and be a betterment of the original granted permission.
- The views of the agent which confirmed that because there was existing permission on the site that a residential building of some form would be built out and referred Members to the fall back position. That solar panels would be installed and that no neighbouring properties would be affected
- The views of the Parish Council regarding the character of the proposed building bore no resemblance to the existing building and it was not betterment in the countryside.
- The views of the Ward Member who had visited the site and had concerns with the size and scale of the building and the relocation away from the hedge. That the new building style would be in keeping with the local area and that

local objections were due to the site being outside the settlement of Holcombe Rogus

- Members views on the visual impact of the new building
- A consistent approach to Class Q redevelopment proposals

It was therefore:

**RESOLVED** that: Planning permission be granted subject to conditions as recommended by the Head of Planning, Economy and Regeneration

(Proposed by the Chairman)

(Vote 5 for: 5 against – Chairman’s casting vote)

Note:

- i.) Cllr Mrs F J Colthorpe, Cllr E J Berry, Cllr S J Clist, Cllr L J Cruwys, Cllr Mrs C P Daw, Cllr D J Knowles, Cllr F W Letch, Cllr R F Radford, Cllr S J Penny and Cllr B G J Warren made declarations in accordance with the Protocol of Good Practice for Councillors dealing with planning matters as they had received contact from the applicant.
- ii.) Mr Grubb (Objector) spoke
- iii.) Hannah Cameron (Agent) spoke
- iv.) Cllr Pilgrim spoke on behalf of Holcome Rogus Parish Council
- v.) The Chairman read a statement on behalf of Cllr Mrs J Norton (Ward Member)
- vi.) The following late information was provided:

Letter of objection received:

Dear Councillor Colthorpe

I am writing to you personally as a neighbour of the application adjacent to Wardmoor to remove an agricultural barn and replace it with a modern house of very mediocre design. This is not a case of NIMBYism but a serious objection to development of the open countryside.

The application site is 1 mile from Holcombe Rogus and the Planning Officer in his report acknowledges that a new dwelling in this location would not be policy compliant because it is development of the open countryside. In particular Policy COR18 and Para 79 of the National Planning Policy Framework seek to prevent the provision of isolated new homes in the open countryside. The Planning Officer’s reason for approval is that the design and layout represents betterment over the Class Q proposal. I very strongly disagree with that point as the new agricultural barn, built in 2009/10, is in good condition and can be easily converted to a dwelling without extremely affecting the external appearance in the countryside. Plans for the Class Q conversion can be seen. Whereas the proposed building is a standard, modern building, more fit for an estate than its proposed location. There is no mention of sustainability or consideration for the environment other than the basic minimum with regard to building a low bank and hedge to surround the garden. The agricultural barn conversion (permitted by Class Q) would be far less intrusive and is therefore a much better solution than the application.

If the application is approved, this will lead others in the district, to argue that a new build should be permitted to replace any barn. The intention of Class Q is not to allow new build, but to convert existing barns into dwellings with minimal impact on the environment and local amenity.

I know that it may not be considered now, but when the application was first granted for an agricultural barn, the planning officer at the time included a condition to remove the barn when it was no longer required. A Planning Inspector deemed that condition unnecessary but it shows that in 2009 the planning officer wanted to avoid further development of the site.

There is absolutely no reason to permit this application, as there is no betterment in the application, so I would appreciate it, if you could follow your council's policies and refuse the application.

### 32 **MAJOR APPLICATIONS WITH NO DECISION (02.20.27)**

The Committee had before it, and **NOTED**, a \*list of major applications with no decision.

It was **AGREED** that:

- Application 20/00876/MFUL (Land at NGR 302456 107324 Cullompton Devon) be brought before the committee for determination
- Application 20/00745/MOUTH (Land at NGR 286628 106169 R/O Barton Close Cheriton Fitzpaine Devon) be brought before the committee if the officer recommendation was minded to approve, no site visit was requested
- Application 20/00832/MOUT (Land at NGR 295372 113642 Bolham Road Tiverton Devon) be brought before the committee for determination, no site visit was requested

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

### 33 **APPEAL DECISIONS (02.23.29)**

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.

### 34 **19/01430/FULL HIGHFIELD FARM - ERECTION OF AN OFFICE BUILDING AND CHANGE OF USE OF AND CHANGE OF USE FROM AGRICULTURE TO GROUNDWORKS DEPOT (02.24.54)**

At the Planning Committee meeting on 17<sup>th</sup> June 2020, Members advised that they were minded to refuse the above application and invited an implications report for further consideration. The Committee therefore had before it an \*implications report of the Head of Planning, Economy and Regeneration setting out the implications of refusal.

The Planning Officer explained the implications report highlighting the reasons for refusal that members had identified at the previous meeting:

- 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

He explained that Public Health had appraised the application and that they concluded that subject to restrictions on hours that the impact could be adequately mitigated.

He informed members that the north end of the site had been determined as in the fringes of the North Devon Biosphere, a UNESCO-designated reserve, that officers had considered this and that with regard to the scale and nature of the proposed development within that portion of the site that the proposed conditions were adequate.

He addressed the points submitted by the Ward Member at public question time:

- Alternative sites had been investigated within a 3 mile radius not 3km
- Members should only consider the noise impacts of the application site and not from other locations

Members requested confirmation of the additional and updated conditions which had been presented at the previous Committee meeting.

The Planning Officer confirmed the additional and updated conditions as:

- Additional Condition - 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.
- Amended reason for Condition 3 - 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.
- Amended Condition 4 - The building hereby approved shall be used for purposes 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).
- Amended Condition 6 - 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.

It was therefore:

**RESOLVED** that: Planning permission be granted subject to conditions as recommended by the Head of Planning, Economy and Regeneration

(Proposed by the Chairman)

(Vote 5 for: 5 against – Chairman’s casting vote)

Notes: \* implications report previously circulated and attached to the minutes

**35 19/01189/OUT LAND NORTH OF TOWN FARM BURLESCOMBE - OUTLINE FOR THE ERECTION OF TWO DWELLINGS (REVISED SCHEME) (02.41.59)**

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. The Committee therefore had before it an \*implications report of the Head of Planning, Economy and Regeneration setting out the implications of refusal.

The Principal Planning Officer explained the implications report highlighting the reasons for refusal that members had identified at the previous meeting:

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

He explained that the first two reasons for refusal could be combined as they dealt with the same. He explained this would leave 3 reasons for refusal:

1. The impact of the proposal on the historic hedge/wall & The impact of the proposal on the historic location
2. 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.

He further explained that reason 1 could be considered as a reason for refusal as this was a revised application but he would go into more details about this later on in his presentation. He explained that reason 2 could be considered as a reason for refusal and the Conservation Officer would give further details but reason 3 was not supported by Highways and therefore was unlikely to succeed.

He explained that a further reason for refusal could be considered as the application site was now deemed to be outside of the settlement limit as confirmed in the

published Mid Devon Local Plan review which carried substantial weight for a reasons for refusal.

The officer then went on to address the questions raised at public question time:

- Under section 6 of the Hedgerow Regulations planning applications were exempt from needing to be being considered so carrying out planning applications is deemed to be accepted and does fall to be considered under that regulation
- An Ecology assessment was submitted with the previous application it identified the potential for the hedge to be an important roadside hedge. Natural England were consulted on the application at every stage and the LPA should be reasonable in their requests for additional information from applicants, not putting them to any additional expense unless absolutely necessary. Given that the application was being refused and therefore there would be no need for the roadside hedge to be removed it was not considered proportionate to request additional survey work be undertaken. Where protected species are likely to be removed a licence is required from Natural England before works can progress. This is a requirement outside of the planning system.
- The issue of the loss of the hedge in the current application was addressed in the officer report to committee in December 2019 and also addressed in the implications report before Members today and your officers are stating that could be a defensible position but highlighted the possibility of costs being awarded due to this not being raised in the original reasons for refusal. There is clearly a lot of local feeling towards the hedge and Members may wish to include this as a reason for refusal if they are so minded.
- Hedgerow regulations fall outside of the the consideration of planning applications
- The revised scheme was dealing with original reasons for refusal and we are unable to introduce new reasons into a revised scheme
- Documented historic background has not been discounted and is included within the officers report however members could utilise the loss of the hedge as an additional reason
- Councillors are aware of the starting point with regard to harm to heritage assets and settings and members have been advised of section 66 of the Act and their statutory duty
- There is public benefit as two houses towards the housing need in the district and employment would be provided during the construction phase
- It was considered that the additional works were not substantial for the alterations made. Yes they were going to be digging more into the hillside however the initial application did show a very large wall in which we said we weren't keen with and that was replaced with a canopy which would then be covered with the earth to mimic the rest of the hill leaving a chamber underneath for the cars to turn around in. There are conditions with this in that there will be no lighting underneath and to be kept for a turning area only.
- The amended scheme limits the impact of the proposal with regard to the church is not a huge change and the appearance appears to be appropriate although main appearance and size and scale will be dealt with at reserved matters
- Complied with COR2 and DM2 and dealt with on December 2019 report

- Parking for the proposal does meet the planning policies under DM8 and the revised Local review Plan . There is no parking restrictions on this part of the road and not aware of anything we can control on that via planning legislation. The farm shop has the same issues.
- The Leylandii trees are not something the planning service can deal with and they would be the responsibility of the owner if minded to refuse
- The latest Historic England advice has been provided to members

The Conservation Officer then provided Members by way of a presentation views to and from the Church and historic monuments. He provided further details of Section 66 of the listed building act and that heritage assets and conservation was enforced by DM27 and repeated in DM25. He explained that in his balanced view the development did not cause harm to the Grade 1 Church but members may have an alternative view.

Consideration was given to:

- The hedge not being an original reason for refusal
- The original highways reason for refusal
- The possibility of costs being awarded against Council if the hedge was now introduced as a reason for refusal
- The significant weight of the Local Plan Review and that the Local Plan was due to be adopted prior to any appeal being received

It was therefore:

**RESOLVED** that that application be refused for the following reasons:

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 dwellings 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
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

(Proposed by Cllr B G J Warren and seconded by Cllr F W Letch)

Notes:

- i.) Cllr Mrs F J Colthorpe, Cllr E J Berry, Cllr S J Clist, Cllr L J Cruwys, Cllr Mrs C P Daw, Cllr D J Knowles, Cllr F W Letch, Cllr R F Radford, Cllr S J Penny and Cllr B G J Warren made declarations in accordance with the Protocol of Good Practice for Councillors dealing with planning matters as they had received contact from the applicant and objectors.
- ii.) Cllrs S J Clist and R F Radford declared a personal interest for personal reasons and left the meeting during the discussion thereon
- iii.) \* implications report previously circulated and attached to the minutes

**36 TREE PRESERVATION ORDER 20/00002 - FORMER PRIMARY SCHOOL, NEWTON ST CYRES, EXETER (03.31.10)**

The Committee had before it a \* report of the Head of Planning, Economy and Regeneration regarding the above application.

The Area Team Leader outlined the contents of the report via a presentation highlighting the location of the tree , photographs of the tree from various locations and the tree itself.

Consideration was given to:

- The views of the agent who stated that the tree was structurally poor and only some of the issues had been addressed by the tree officer and that the tree had many defects. The applicant was not looking to clear the site of all trees
- The Ward Member who said the challenge to the TPO was unnecessary and it was not to stop development but that the Parish Council were looking forward to development plans for the site be being brought forward. The tree had historic significance.
- Confirmation from the Council's Tree Officer to the age of the tree and how many years of useful life were remaining
- Whether the tree was safe
- The rooting system of the tree
- Responsibility for the tree

**RESOLVED** that the Tree Preservation Order be confirmed.

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

Notes: \*Report previously circulated copy attached to the minutes.

**37 TREE PRESERVATION ORDER 20/00003 - LAND AT MEADOW PARK, WILLAND, DEVON**

This item was deferred as stated in minute No 29

**38 ACCESS TO INFORMATION - EXCLUSION OF PRESS AND PUBLIC (04.00.02)**

Prior to considering the following item on the agenda, discussion took place as to whether it was necessary to pass the following resolution to exclude the press and

public having reflected on Article 15 15.02(d) (a presumption in favour of openness) of the Constitution with the following issues being raised:

- Legal advice with regard to information pertaining to individuals, financial and business affairs and legal professional privilege
- The financial and business affairs of the company and that much of that information was confidential or had been provided as such
- Members needed to be have a full and frank debate on the issues which should take place in closed session

The Planning Committee decided that in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

It was therefore:

**RESOLVED** 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 1 namely information relating to any individual; 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 namely information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

(Proposed by the Chairman)

Prior to going into closed session the Head of Planning, Economy and Regeneration provided answers to questions that had been asked at public question time:

**Public Question response Higher Town, Sampford Peverell**

- It is for Committee to instruct Officers over defence of reasons for refusal.
- As a public inquiry, consultants have been secured on behalf of the Council to defend the Council's position and will appear as expert witnesses and have submitted their proofs of evidence.
- The wording of policy SP2 in full, the Inspector's report on the Local Plan and its adoption status are material considerations at the appeal and the Council's case at appeal will take these into account.

39 **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**

Returning to open session:

The Planning Committee **RESOLVED** to continue with the defence of the appeal of Application 17/01359/MOUT in accordance with the current position.

(The meeting ended at 7.10 pm)

**CHAIRMAN**

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## PLANNING COMMITTEE AGENDA - 12th August 2020

### Applications of a non-delegated nature

- | <u>Item No.</u> | <u>Description</u>  |
|-----------------|---|
| 01.             | <p>19/01188/FULL - Change of use of agricultural land to allow 1 pitch for the siting of 1 static caravan, 2 touring caravans and associated works for the use of gypsy and traveller family at Land at NGR 276600 96594 (North of Shortacombe Farm), Shortacombe Lane, Yeoford.</p> <p><b>RECOMMENDATION</b><br/>Grant permission subject to conditions.</p>   |
| 02.             | <p>17/01904/MFUL - Change of use and refurbishment of house to hotel and spa with 24 letting rooms, Piazza garden, 36 letting rooms in Pavilion (60 letting rooms in total) with Botanical Gardens, restoration of walled garden with new orchard and amphitheatre, erection of 7 detached dwellings, all associated car parking and erection of bat house at Blackborough House, Blackborough, Cullompton.</p> <p><b>RECOMMENDATION</b><br/>Refuse permission.</p>   |
| 03.             | <p>17/01905/LBC - Listed Building Consent for the change of use and refurbishment of house to hotel and spa with 24 letting rooms, Piazza garden, 36 letting rooms in Pavilion (60 letting rooms in total) with Botanical Gardens, restoration of walled garden with new orchard and amphitheatre, erection of 7 detached dwellings, all associated car parking and erection of bat house at Blackborough House, Blackborough, Cullompton.</p> <p><b>RECOMMENDATION</b><br/>Refuse Listed Building Consent.</p> |

Application No. 19/01188/FULL

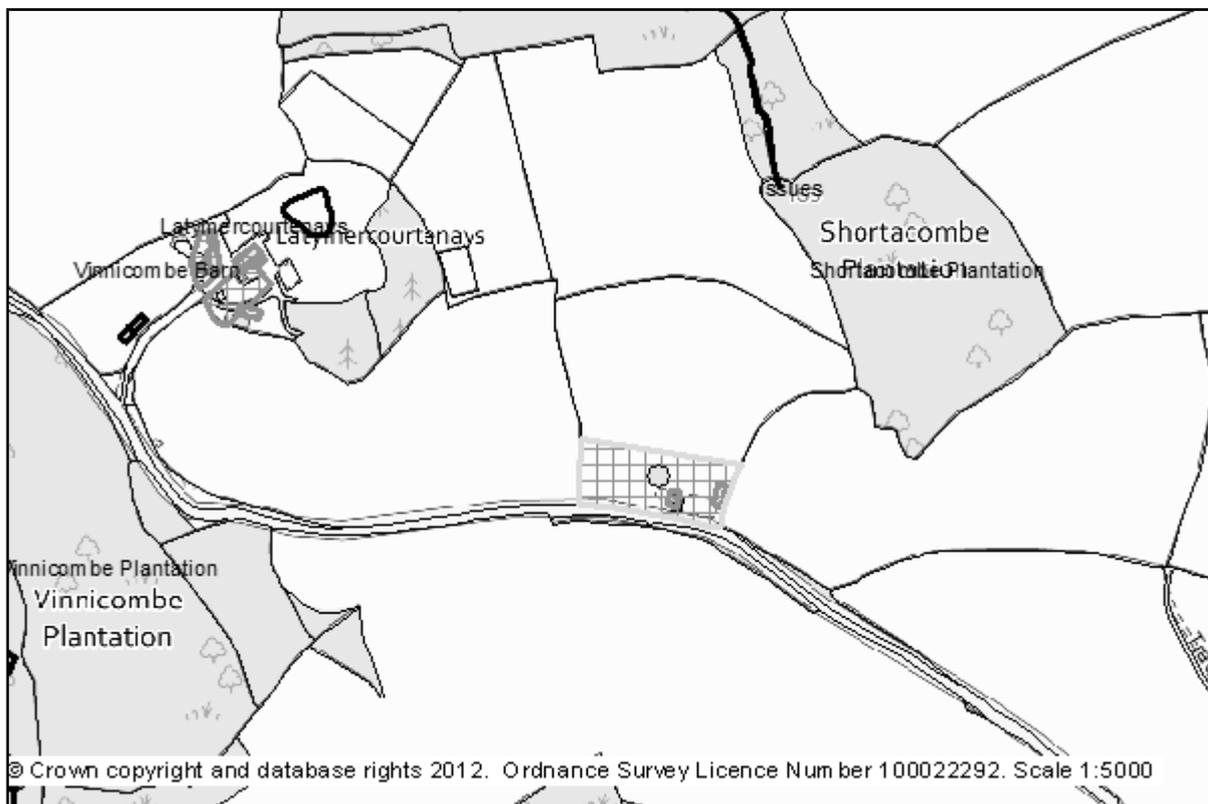
Grid Ref: 276612 : 96646

Applicant: Ms A Tyrer

Location: Land at NGR 276600 96594 (North of Shortacombe Farm)  
Shortacombe Lane  
Yeoford  
Devon

Proposal: Change of use of agricultural land to allow 1 pitch for the siting of 1 static caravan, 2 touring caravans and associated works for the use of gypsy and traveller family

Date Valid: 6th August 2019



## **APPLICATION NO: 19/01188/FULL**

### **MEMBER CALL-IN**

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

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 a development outside a defined settlement is acceptable in this case.
- Consideration to whether this application would give rise to significant levels of vehicular movement.
- Whether the development will sustain the distinctive quality, character and diversity of Mid Devon's environmental assets
- Consideration to the level of interest within the community.
- Whether it would be considered that adequate local infrastructure is in place.

### **RECOMMENDATION**

Grant planning permission, subject to the conditions detailed below.

### **PROPOSED DEVELOPMENT**

This planning application proposes the material change of use of agricultural land to residential use for a gypsy and traveller family. The proposal would involve the siting of a static caravan; parking for two touring caravans; the siting of a storage shed and car parking area; landscaping works, including tree planting and the creation of a landscaped bank; and works to create a safe access onto the public highway.

The original submission included the provision and use of a compost toilet and a reed-bed drainage system to deal with grey water but the proposal was amended following concerns received from members of the public and questions as to whether this type of drainage system was the most appropriate in this area given the standing advice from the Environment Agency. The proposal now involves the use of a toilet facility within the static caravan with a Vortex Treatment Plant proposed to deal with foul drainage. Confirmation has also been provided from the applicant that there is mains water running adjacent to the site and power will be provided from solar panels.

The site comprises an area of mostly open grassland, including an area surfaced with loose material, on which two touring caravans are currently being kept (these would be moved on site to the position shown on the layout plan and form part of any planning permission issued), along with a wooden storage structure. The site's western, northern, and eastern boundaries adjoin open fields in agricultural use. The southern boundary runs alongside the public highway and is formed by a mature hedgerow. The site is located outside settlement limits.

### **APPLICANT'S SUPPORTING INFORMATION**

Application form, plans, supporting information.

## **RELEVANT PLANNING HISTORY**

01/01704/FULL - PERMIT date 8th November 2001  
Retention of field shelter and hay store

99/02850/FULL - REFUSE date 1st October 1999  
Erection of stabling/tackroom

## **OTHER HISTORY**

18/01964/PREAPP - CLO date 30th January 2019  
Proposed traveller pitch

## **DEVELOPMENT PLAN POLICIES**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states 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.

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

COR1 - Sustainable Communities  
COR2 - Local Distinctiveness  
COR3 – Meeting housing needs  
COR9 - Access  
COR11 - Flooding  
COR 18 – Countryside

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

AL/DE/7 – Gypsy and Traveller Pitches

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

DM1 - Presumption in favour of sustainable development  
DM2 - High quality design  
DM7 - Pollution  
DM8 – Parking  
DM30 – Other protected sites

### **Mid Devon Local Plan Review 2013-2033 Pre adoption draft**

S3 - Meeting housing needs  
S8 - Infrastructure  
S9 - Environment  
S14 - Countryside  
DM1 - High quality design  
DM4 - Pollution  
DM5 - Parking  
DM7 – Traveller sites  
DM28 - Other protected sites

The National Planning Policy Framework (“the NPPF”)

## CONSULTATIONS

### Cheriton Bishop Parish Council – 17<sup>th</sup> June 2020

The revised information does not alter the Council's previously submitted objections which are: poor highway access, removal of ancient hedge, unsuitable site that does not meet government criteria and is in an isolated situation, MDDC had already identified sufficient sites to meet targets, there are no services on site and there are no transport links or services within reasonable distance.

### Cheriton Bishop Parish Council – 16<sup>th</sup> October 2019

*Cheriton Bishop Parish Council met last night and resolved to object to this application. They noted that further information was expected from consultees. The reasons for objection were as follows: highways access; removal of ancient hedge; unsuitable site that does not meet government criteria and is in an isolated situation; MDDC already had identified sufficient sites to meet targets; there are no services on site; and there are no transport links or services within reasonable distance.*

### Crediton Hamlets Parish Council – 7<sup>th</sup> July 2020

The revised drawings and additional information do not alter Crediton Hamlets Parish Council's stance. It continues to object to this application for the reasons already given, which are: Highways issues, environmental health issues, impact on the community, no evidence of need, unsuitable site in relation to access to infrastructure and local transport and concerns that the site, if allowed, would expand. In relation to highways it was also noted that the access road had a steep dip which would not allow the passage of caravans.

### Crediton Hamlets Parish Council – 8<sup>th</sup> October 2019

*Crediton Hamlets Parish Council met on the 7th October and resolved to object to this application. 67 people attended the Council meeting and 11 people spoke to object to the application. The Planning Officer was present to respond to questions. The material considerations identified by the Council were highways issues, environmental health issues, impact on the community, no evidence of need, unsuitable site in relation to access to infrastructure and local transport and concerns that the site, if allowed, would expand. In relation to highways it was also noted that the access road had a steep dip which would not allow the passage of caravans.*

### Hittisleigh Parish Council – 20<sup>th</sup> September 2019

*It is an inappropriate development in open countryside on a greenfield site with inadequate access particularly when provision of 5 traveller and gypsy sites is being made at nearby Crediton (which we understand is awaiting approval) which fits the PPTS criteria exactly.*

*Environmental concern over the proposed reed bed system - the gradient of the field and the amount of surface water in the autumn and winter months, in this location, could result in grey water entering the water course. We also understand that the nature of the soil is inappropriate for a reed bed system and where clay soil is predominant, industry standard advice is for a Klargest type digester.*

*Words and phrases from the national guidance are able to be interpreted both to support and oppose this application. This increases the importance of local awareness of the visual and environmental impacts.*

Gypsy and Traveller Liaison Officer - 3<sup>rd</sup> September 2019

*I am happy to make the following observations in line with National and County Policy, and also observations following a site visit to the above location with the applicant on Monday 2nd September.*

*Devon has only three local authority Gypsy sites: Sowton, Exeter; this site is a long-term residential site managed by Elim Housing, which holds a waiting list. Broadclyst, East Devon again, managed by Elim Housing is leased by the County Council and offering new pitches are governed by the terms set by the landowner. Haldon, Teignbridge offers the only pitches for those identifying as New Travellers and is managed by Teign Housing. This site again is oversubscribed and has a waiting list. The applicant and her son have been known to our service as a New Traveller family working and residing in Devon for at least 11 years.*

*Whilst accommodation for the settled community is increasing in the South West there is still little provision for Gypsy and Traveller families. There are no agreed/emergency or transit sites in Devon and most of the traditional stopping places have been blocked off or developed for other purposes. Due to this, it is becoming more essential for Gypsy and Traveller families to have an authorised stable base from which they may access services such as Health and Education that the rest of us may take for granted. It also provides the security to travel for economic purpose, knowing that there is an authorised base on return.*

*The Applicant would wish to reside her with her son. This enables both to access health provision, him to continue his schooling at the same school, and, for the applicant to maintain her employment both at this location and elsewhere when economic need arises.*

*They would wish for the planning to be a permanent to enable occupation to continue.*

*The family would use the tourers as individual sleeping and study vans, whilst the static would provide for communal activities as a family. The applicant would wish to place these vehicles further along the site at the top so that more shelter is permitted and walkers who regularly stop to view from the small passing space the entrance allows are not hindered in doing so.*

*The nature of the applicant's work is gardening related therefore there would be limited changes to the agricultural aspect of the land there. Small private sites continue to be the best option for local planning and housing authorities in relation to accommodation for Gypsies and Travellers. Meeting this need in Devon is important if the number of unauthorised encampments and unauthorised developments are to reduce across the county, at the same time it allows local planning authorities to fulfil their responsibility to meet the accommodation need alongside other communities in Devon.*

*The County Council has a range of responsibilities in these matters and, on education, health and welfare grounds this application is supported, recognising the lack of pitches available on authorised sites within Devon.*

Natural England – 17<sup>th</sup> September 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.*

Public Health – 23<sup>rd</sup> July 2020

Whilst a working and well managed reed bed would provide adequate drainage a treatment plant would be the preferred option as it's less prone to failure. I would support this option.

Public Health – 23<sup>rd</sup> August 2019

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

Air Quality: No objection to this proposal. (14.8.19).

Environmental Permitting: No objection to this proposal. (14.8.19).

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

Noise & other nuisances: No objection to this proposal. (21.8.19).

Housing Standards: No comment. (14.8.19).

Licensing: This may require a licence please contact the licensing team via email for further information [licensing@middevon.gov.uk](mailto:licensing@middevon.gov.uk) (22/08/19).

Food Hygiene: Not applicable. (14.8.19).

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. (14.08.19).

Health and Safety: I have no objection to this proposal enforced by HSE. (14.8.19).

Local Highway Authority – 20<sup>th</sup> January 2020

The plan overcomes the Highway Authority concern, and subject to the access construction e.g. Hard surface in abound material and drainage would not have any further observations. It will be a matter for LPA to consider sustainability in light of NPPF.

Local Highway Authority - 30<sup>th</sup> September 2019

The Highway Authority has recommended standing advice applies to this application, and subsequent to a request from the Planning Officer the Highway Authority has visited the site and have the following observations to make:

The site is located in open countryside outside of any walking distance to local facilities and will necessitate the use of private vehicles to access day to day facilities of convenience shopping and education. The applicant has indicated her son would walk to the bus, this is however on the substandard road without footway or lighting and with limited passing.

The site is located on a road with limited passing opportunities and can be considered to be lightly trafficked having witnessed a single vehicle in 45 minutes. While the road is a derestricted Speed limit I have observed speeds of 20 mph. However local residents have observed that speed have been in excess of 45 mph. The Highway Authority would request that the applicant obtain a 24 hour speed survey so that appropriate splays can be applied to any consent. With current observed speeds by the Highway Authority a splay of 2.4 m by 25m in either direction would be required but should the speeds be as identified locally at 45 mph then splays of 2.4m by 120m with no obstruction greater than 600 mm above road surface would be required. Both splays would necessitate the removal of hedge row to satisfy the splays. The Highway Authority would apply the 85% speed to any design for the splays.

The Highway Authority considers that the traffic movements from the residential development when the applicants are not travelling would be in the region of 7 vehicle movements per day as indicated by TRIC's data, this is a marginal increase from that of agricultural use however the type of traffic will be residential and not agricultural and the visibility splays are essential for a safe and suitable access to be achieved to comply with NPPF. The touring caravan use will be negligible over the course of the year, and it is not inconsistent with an Agricultural use of Tractor/ farm vehicle and trailers.

The access will need improvement with the access being constructed with a hard bound material for the first 6.0m and drained to prevent water entering the public highway. Improved radii will be require to cater for the swept path of caravans and the Highway Authority would seek a minimum of 4.5m. Any gates should be set back 4.5m and hung to open inwards. Therefore the Highway Authority would reserve judgement on the application until suitable speed survey has been provided and the implications of the required splays can be considered. The site in purely highway terms is in an unsustainable location fostering the need to travel by private vehicle, but it is a matter for the Local Planning Authority to weigh this with policies for travellers and other criteria.

#### Recommendation:

The Head of Planning, Transportation and Environment, on behalf of Devon County Council, as Local Highway Authority, may wish to recommend conditions on any grant of planning permission.

1. Adequate information has not been submitted to satisfy the Local Planning Authority that the proposal is acceptable in terms of access, visibility splays, contrary to paragraph 32 of the National Planning Policy Framework

Local Highway Authority – 2<sup>nd</sup> September 2019 - 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>

Environment Agency – 3<sup>rd</sup> March 2020

As I mentioned on the phone, I was not previously familiar with the use of a reed bed as part of the foul drainage arrangement, however, when checking in with a colleague, we both realised that, in fact we would not be able to provide site-specific comments because the application is not major. Therefore, our standing advice applies.

What will be also useful is what I have attached, which is our LPA Guidance for non-major non-mains drainage development. I draw your attention to the flow charts towards the end of the document which is of particular use.

If, by using this, it is still not clear whether the proposed arrangement is suitable, that may indicate that the applicant needs to submit further details. If further confirmation is required, it may be worth them discussing the arrangement with the National Permitting Service (within the EA) via [enquiries@environment-agency.gov.uk](mailto:enquiries@environment-agency.gov.uk)

## REPRESENTATIONS

51 representations have been received from the general public, 48 of which raise objections to the proposal, with 2 in support and 1 which is neutral.

The objectors raise the following concerns:

- The proposal is contrary to Local Plan, emerging Local Plan, and NPPF policies.
- The site is located outside settlement limits and is remote from established settlements.
- The proposal is not sustainable as it is not located near to services, including any hospital that has capacity, and there is a lack of access to public transport. The nearest bus stop provides a very limited service. The site is not located within 30mins of a hospital.
- The highway is very narrow, poorly drained and lacks a pedestrian footway and lighting, and is therefore unsafe and cannot accommodate additional traffic.
- The proposed access would not have adequate visibility onto the public highway.
- The drainage arrangements are not sufficient to cope with the number of people that the site would have the capacity to accommodate and the sloped nature of the site is such that, particularly during freezing conditions, the reed bed system is likely to fail and waste water will run off to neighbouring land and water courses.
- It is unclear how grey water from the touring caravans would be managed.
- The proposal would result in harm to wildlife.
- The proposal should be assessed in relation to the number of people that may live at the site rather than the number of caravans.
- The site occupies a prominent position in the landscape and the proposal would result in harm to the character of the area, and be contrary to the recommendations of the Mid Devon Landscape Character Assessment.
- The proposal is unlikely to promote peaceful co-existence of neighbouring communities.
- The proposal would result in the loss of part of a hedgerow.
- The status of the applicant, as a gypsy or traveller, has not been adequately demonstrated.
- The applicant already has access to accommodation in the local area.
- The site is in an isolated location remote from sewerage and other drainage arrangements.
- The proposal would not be well served by local services.
- Potential for noise nuisance as a result of music and use of a generator.
- There is no need for two travelling caravans, in addition to the static caravan, given that the applicant's son is 14 years old.
- The proposal does not seem to include access to running water or electricity.
- Permission has previously been refused for a stable and tack-room, based on the poor access arrangements, isolated location, and visual impact. These reasons for refusal apply all the more to the proposed development.
- The proposal could increase the probability of flooding.

In terms of material planning considerations, the letters of support state that:

- The site is well screened and further landscaping is proposed.
- The site is a considerable distance from neighbouring properties.
- The applicant is a member of the travelling community, and travels to festivals and other events for work throughout the year.

- The applicant would integrate well with the local community and there would be minimal disruption as a result of the proposal.
- The site is within walking/cycling distance of public transport and school transport.
- There is a need for the proposal given the absence of designated alternatives.

## **MATERIAL CONSIDERATIONS AND OBSERVATIONS**

### **The main issues in the determination of this application are:**

#### 1) Principle of Development:

The Parish Councils and members of the public have objected to the proposal, stating that it is for residential development in the countryside and that the need for the proposal has not been demonstrated. Concerns are also raised about the sustainability of the location in terms of its access to services, and the traveller status of the applicant is also questioned. The application, and representations received from supporters, state that there is a need for the proposal given the absence of alternative gypsy and traveller provision in the area, and refer to the applicant's status as a gypsy/traveller.

The main national policy in relation to gypsy and traveller accommodation is contained within the Planning Policy for Traveller Sites (PPTS). The PPTS states that applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies in the National Planning Policy Framework. It requires that Local Planning Authorities should consider the following issues, amongst other relevant matters, when considering planning applications for traveller sites:

- the existing level of local provision and need for sites;
- the availability (or lack) of alternative accommodation for the applicants;
- other personal circumstances of the applicant;
- that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites;
- that Councils should determine applications for sites from any travellers and not just those with local connections.

With respect to the relevant policies within the Local Plan and the emerging Local Plan Review, at the time of writing this report, the current status is that on 26<sup>th</sup> 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 on the 29<sup>th</sup> July 2020.

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 in terms of adopted policies at the time of writing this report, development outside settlement limits is strictly controlled by Policy COR18 of the Local Plan, which provides a list of exceptions, which are subject to detailed criteria-based development control policies. These include gypsy accommodation. Within the Local Plan Review, Policy S14 contains similar wording allowing for gypsy and traveller accommodation within the countryside subject to meeting other criteria such as preserving and where possible enhance the character, appearance and biodiversity of the countryside.

Policy AL/DE/7 of the Local Plan indicates that planning permission will be granted for new gypsy and traveller sites in the countryside provided three criteria are met. It states that pitches will be permitted provided that: a) the need cannot reasonably be met on another site within Mid Devon which has consent or is allocated for gypsy and traveller pitches; b) that the site is within 30 minutes travel by means of public transport, walking and/or cycling of a hospital and secondary school; and c) that occupation is limited to those meeting the definition of Gypsies and Travellers in the relevant national policy.

*a) The need for and provision of gypsy/traveller sites*

The PPTS states that Councils, through their local plans, should be able to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of sites for gypsies and travellers set against local targets and broad locations for future growth.

The Devon Partnership Gypsy and Traveller Accommodation Assessment 2015 (GTAA) indicates that for Mid-Devon there was a need for 15 additional pitches in the period 2014-2019 and a further 6 pitches in the period 2019-2024. At a recent appeal (APP/Y1138/W/322285), which was concluded in November 2019, the Inspector stated that:

*“With the degree of doubt present over the delivery of sites put forward for the windfall allowance and within the urban extensions, I find that the table of pitch-supply presented at the hearing does not reasonably demonstrate that the Council can show a five year supply at the moment bearing in mind the shortfall of sites carried over from the previous period. I conclude that there is an unmet need for gypsy and traveller sites in the district at the moment. This finding is a significant factor in favour of the appellant’s case...*

*In terms of the availability of alternative sites, neither the Council or the appellant are able to identify any alternative site available at the moment that the appellant could turn to for residential accommodation. This appears to reflect a lack of available private sites in the district over some time as the previous Inspectors reached similar conclusion in 2012 and 2014. Moreover, the Council accepts that there is no public site for gypsies and travellers in Mid Devon. There is therefore little other scope available to the appellant to meet his accommodation needs. This is a factor to which I attach significant weight.”*

At the time of writing this report, as there has not been any significant change in circumstances since this appeal in November, it is concluded that the Council is still unable to show a five year supply of gypsy and traveller sites, meaning that there continues to be an unmet need for such sites. There continues to be a lack of availability of alternative sites, either public or private, for the

applicant to meet their accommodation needs in a manner that is conducive to their travelling lifestyle. As such, the proposal is considered to be in accordance with part a) of Policy AL/DE/7.

*b) Proximity to Public Transport and Services*

Policy AL/DE/7 requires sites to be within 30 minutes travel, by means of public transport, walking and/or cycling, of a hospital and secondary school. It is noted that the emerging policy, DM7, instead requires that proposals have “*safe and convenient access to local facilities...*”

The County’s Gypsy and Traveller Liaison Officer has made comments about the application, stating that, given the absence of adequate sites in the area:

*“... it is becoming more essential for Gypsy and Traveller families to have an authorised stable base from which they may access services such as Health and Education, that the rest of us may take for granted. It also provides the security to travel for economic purpose, knowing that there is an authorised base on return.*”

*The Applicant would wish to reside her with her son. This enables both to access health provision, him to continue his schooling at the same school, and, for the applicant to maintain her employment both at this location and elsewhere when economic need arises.”*

The applicant’s son is able to reach school within half an hour, using a school bus service that is within walking distance of the site. In relation to medical care, the site is located around 5.5 miles from Crediton Hospital, which is approximately 15 minutes away by car, but would take around 35 minutes to reach using a bicycle. The journey times would be considerably longer on foot or using public transport, access to the latter being distant from the site and the local bus service is understood to be infrequent. It is noted that Crediton Hospital does not include an accident and emergency facility.

Given the lack of alternative sites available, more weight is attributed to meeting an unmet need and that given the status of the Local Plan Review, more weight can be attributed to Policy DM7 where the criteria of a 30 minute distance from certain services is removed and replaced with ‘safe and convenient access to local facilities is provided’. Therefore it could then be argued that the Village of Yeoford is 2.6miles by road from the application site which equates to 7 minute car drive or 14 minute bike ride and the village of Cheriton Bishop is 2.8miles from the site, which equates to an 8 minute car ride or 17 minute bike ride. At these villages, there would be access to a number of facilities such as primary schools, public houses, doctor’s surgery shop, railway station etc.

*c) Provenance of the Applicant*

The County’s Gypsy and Traveller Liaison Officer has confirmed that the applicant and her son are a Traveller family working and residing in Devon, and who have been known to the County for 11 years. If Members are concerned on this issue, it would be possible to request a statutory declaration from the applicants and third parties to give more assurance of the eligibility of the applicant to propose accommodation for a Traveller pitch in accordance with adopted policy.

In light of the above, the proposal is considered to be in accordance with the requirements of Policy AL/DE/7 and is therefore acceptable in principle, subject to the use of conditions to limit occupation at the site to those gypsy/traveller descent and to the overall number of caravans on site, with only one to be a static caravan.

As referred to earlier within this report, Policy AL/DE/7 would be replaced by Policy DM7 (Traveller Sites) following the adoption of the Local Plan Review and the policy states:

#### 1. Planning applications for Pitches and Plots

*'Planning applications for gypsy and traveller pitches, or plots for travelling showpeople, will be permitted where:*

- a) Suitable onsite facilities will be provided including space for children's play;*
- b) The proposal will have suitable environmental quality for residents including non-isolating boundary treatments; and*
- c) The site will not cause unacceptable landscape or ecological impact and is not located in an area at high risk of flooding;*
- d) Occupation will be limited to those who meet the Government's published definition of gypsies and travellers, including travelling showpeople or their dependents; and.*
- e) Safe and convenient access to local facilities is provided*

*Sites with associated employment or storage elements will be permitted where there is specific justification and the location, scale, and nature of the proposed development will not have harmful impacts on local amenity or the local environment. Gypsy and traveller accommodation may be included as part of the affordable housing requirement.'*

Therefore in light of the above some of the more stringent requirements have been removed from Policy AL/DE/7 and it is considered that there would be ample space on site for children to play, extensive landscaping would be provided which in turn could help in increasing biodiversity and the area is not located in an area at high risk of flooding, being outside of flood zones 2 and 3. Other matters such as occupation and access to local facilities have been discussed earlier within this report. Subject to limiting any harmful impacts on local amenity or the local authority, storage elements can be supported and it is noted that this type of proposal can be viewed as an affordable housing requirement.

#### 2) Visual Impact

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 DM1 of the Local Plan Review contains similar wording.

The PPTS requires that planning authorities should give consideration to whether proposed gypsy and traveller sites would be *"well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness"* and avoid *"enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community."*

Objectors have raised concerns about the proposal's visual impact, whereas supporters have stated that the proposal would be sufficiently screened by the existing hedgerow and proposed planting.

Currently on site there is an existing field shelter which the applicant has outlined as being required for agricultural purposes. The applicant is also currently storing two tourers and it is these two tourers which are shown on the proposed site layout, moving them further over and lower down within the field. In terms of new structures, a static caravan is proposed and storage shed with the former proposal for a compost toilet removed. Surrounding the area to the north of the

caravan and two tourers, extensive landscaping is proposed to provide a screen from long range views across the valley.

It is considered that planning conditions relating to landscaping, boundary treatment, refuse storage and removal of Part 2 Permitted Development rights would be possible help to mitigate against any harm. Notwithstanding this, it is acknowledged that the proposal would result in some visual harm at the site, even if landscaping can acceptably address the effects in terms of the wider landscape. After all, the proposal introduces the siting of caravans on open grassland and therefore any harm would be contrary to DM2 of the Local Plan or DM1 of the Local Plan Review, but with the proposed mitigation, the harm is considered to be outweighed by other material considerations such as the need for the proposal, which is to be afforded considerable weight and can allow for this exception.

Subject to the use of the aforementioned conditions, the proposal is considered to be acceptable having regard to Policy DM2 of the Local Plan and the guidance contained in the PPTS.

### 3) Amenity

Policy DM2 of the Local Plan and DM1 of the Local Plan Review states that development proposals should not result in unacceptable impacts on the privacy and amenities of those occupying existing or proposed dwellings.

Objectors have raised concerns about potential noise and other disturbance as a result of the proposal.

The Council's Public Health team have raised no objections to the proposal in terms of noise, contamination, or air quality impacts. The proposal is not located in close proximity to any neighbouring occupiers and given the nature of the proposed use, along with its siting, scale, and design, it is considered that it would not result in unacceptable harm to the amenities of neighbours, in terms of disturbance, their outlook, privacy, or access to light. In this respect, the proposal is in accordance with Policy DM2 of the Local Plan.

A condition is recommended to secure details of the proposal's refuse and recycling storage arrangements.

### 4) Access Arrangements

Policy DM2 of the Local Plan and DM1 of the Local Plan Review states that new development should be safe and accessible. Policy DM8 of the Local Plan and Policy DM5 of the Local Plan Review states that sufficient vehicle parking and bicycle storage must be provided.

Objectors have raised concerns about the safety of the site access and the ability of the public highway to accommodate the proposal in this location.

Following a traffic speed survey along this lane and amendments to the submitted scheme, the Highway Authority has removed its objection to the proposal, being satisfied that adequate visibility splays can be achieved onto the public highway from the site's access/egress point. The proposal would involve the partial removal of an existing hedgerow, running along the site's southern boundary, but this would be replaced further into the site, and following the line of the required splays. The proposal would give rise to a very small number of vehicle movements and there is adequate space within the site, on an existing area of permeable hardstanding, for the parking and manoeuvring of vehicles. Conditions are recommended to secure the required visibility splays and

replacement hedge planting; to ensure the provision of the proposed parking and manoeuvring area; and to achieve an acceptable area of drained surface at the site access.

Subject to the use of these conditions, in terms of its access and parking arrangements, the proposal is considered to be in accordance with Policies DM2 and DM8 of the Local Plan and Policies DM1 and DM5 of the Local Plan Review.

#### 5) Drainage Arrangements

Policy DM7 of the Local Plan states that development will be permitted where the effects of pollution would not have unacceptable impacts in relation to health, the natural environment, and general amenity. Policy DM4 of the Local Plan Review contains similar wording.

The initial proposals were for a compost toilet and a reed-bed system to deal with grey water. Objectors raised concerns about the proposed grey water, surface water, and foul drainage arrangements and their ability to properly serve the development. There were also concerns about potential run-off and pollution in relation to neighbouring land and watercourses.

As a result the proposals have been amended removing the reed-bed drainage system and the compost toilet, with a new low powered Vortex treatment plant proposed which has been outlined as being suitable for use off grid and a conventional drainage field. The Public Health Officer has noted that this is preferable to the original reed-bed drainage system. The applicant has outlined that it would be installed according to manufacturer's specification and UK Government Building Regs 2010 H document with maintenance undertaken by a British Water Approved engineer and in accordance with The British Water Code of Practice.

The application site is not in a Water Source Protection zone or a Flood Zone with there being no residential properties adjacent to the application site with it being a sloping field. Subject to the use of a condition to secure these arrangements, the proposal is considered to be acceptable and in accordance with Policy DM2 of the Local Plan and DM1 of the Local Plan Review.

#### 6) Nature Conservation

Policy COR18 of the Core Strategy states that the biodiversity of the countryside will be enhanced and Policy S14 of the Local Plan Review contains similar wording.

Objectors have raised concerns about the proposal's potential impact on wildlife. The submitted ecological assessment concludes that the proposal would not result in unacceptable harm to protected species or biodiversity in general subject to the use of mitigation and enhancement measures. Should planning permission be granted, it is recommended that a condition be imposed to secure the recommended measures, including the installation and subsequent retention of dormice nest boxes, and the replacement of the hedgerow which would be removed as part of the access visibility works. A scheme of external lighting should also be employed to prevent spill-lighting beyond the site boundaries to the greatest extent possible. An informative is also recommended to draw the applicant's attention to their legal obligations in relation to protected species.

Subject to the use of the aforementioned condition to secure these arrangements, it is considered that there would not be unacceptable harm in relation to biodiversity, and the proposal is in accordance with Policy COR18 of the Local Plan and Policy S14 of the Local Plan Review.

## 7) Other Considerations

Objectors have questioned the necessity of having two touring caravans at the site. According to the submitted information and representations received from supporters of the proposal, the applicant does travel for work to festivals and other events, and a touring caravan is considered necessary for the applicant's travelling lifestyle. Officers consider this to be a reasonable requirement given the traveller status of the applicant. With regard to there being two touring caravans, the applicant has outlined that it is entirely normal for teenagers to have their own touring caravan to sleep in on Traveller sites and that it should be noted that there will not be running water facilities within the touring caravans.

Objectors also raised concerns about the proposal's connection to utilities, such as running water and electricity. As referred to earlier within the report, the applicant has stated that there is mains water running adjacent to the site which can be connected to and power will be provided from small portable solar panels, providing power.

Objectors have also referred to the previous refusal of an application for a stable and tack-room at the site. That decision was made over twenty years ago and there have been various changes in the planning policy context since that time. In any case, planning applications must be determined on their own merits. In this case, it is considered that the proposal would result in some visual harm in relation to the site area, but with various mitigation measures to be secured using planning conditions, the harm to the character of the area is considered to be limited and, in any case, outweighed by other material considerations.

## 8) Conclusion

The proposal is considered to be acceptable, having regard to the Development Plan and all other material considerations, subject to the use of the conditions outlined below.

## REASON FOR DECISION

**The change of use of agricultural land to allow 1 pitch for the siting of 1 static caravan, 2 touring caravans and associated works for the use of gypsy and traveller family, is considered to be acceptable in this instance, being 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 subject to the imposition of planning conditions or detrimentally impact amenity to any neighbouring property. The proposed development is not likely to result in any significant adverse highway impacts. On this basis the proposal is supported in accordance with policies COR2 and COR18 of the Mid Devon Core Strategy (LP1), DM2 and DM8 of the Local Plan part 3 (Development Management Policies) and AL/DE/7 of the Mid Devon Local Plan, Local Plan Review 2013 – 2033 Policies S9, S14, DM1, DM5, DM7 and 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 development hereby permitted allows for the provision of 1 pitch only involving the siting of 1 static caravan, 2 touring caravans and associated works for the use of a gypsy and traveller family. Occupiers of this site will need to comply with the definition of a gypsy or traveller, being persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
4. No more than 3 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, as amended (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time. Any caravans positioned on the site shall be capable of being lawfully moved on the public highway, without division into separate parts.
5. On the family traveller pitch becoming redundant for such purposes, within a period of 3 months, all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored to its condition before the development took place.
6. Prior to the first use of the static caravan hereby approved, notwithstanding the information submitted, a scheme of hard and soft landscaping, including specimens to be retained, shall be submitted to and approved in writing by the Local Planning Authority. The proposed planting scheme shall follow the recommendations of the submitted ecology appraisal (Andrew McCarthy Ecology, dated January 2020).

All planting, seeding and turfing comprised within the approved scheme, including the proposed new bank depicted on the approved plans, shall be carried out in the first planting season following the commencement of development and any trees or plants, including existing specimens to be retained, which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species. The approved hard landscaping shall be provided within four weeks of the development being brought into use, and shall be retained for the life of the development.
7. The development hereby approved shall not be brought into use until the surface water drainage arrangements, including the package treatment plant shown on the approved plans, have been provided in full. The approved measures shall thereafter be retained for the life of the development.
8. Prior to the first use of the static caravan hereby approved, the on-site parking and manoeuvring area shall be provided in full and thereafter retained for the life of the development.
9. The development shall be undertaken in full accordance with the recommendations contained in the submitted ecological appraisal (Andrew McCarthy Ecology, dated January 2020).
10. Prior to the first occupation of the static caravan hereby approved, dormouse nest boxes shall be installed in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority, and shall thereafter be retained for the life of the development.

11. All external lighting at the site shall be installed in full accordance with a scheme which shall previously have been submitted to and approved in writing by the Local Planning Authority. External lighting at the site shall be kept to a minimum and shall be designed to prevent overspill lighting beyond the site's boundaries, particularly in relation to the hedgerow running alongside the site's southern boundary.
12. All new fencing at the site shall be installed in accordance with a scheme which shall previously have been submitted to and approved in writing by the Local Planning Authority, and shall thereafter be retained as such.
13. Notwithstanding the provisions of Schedule 1, Part 2, Classes A and B, of the Town and Country Planning (General Permitted Development) Order, 2015 (as amended) no new means of enclosure or access points shall be created at the site.
14. The access construction shall be a hard surface in a bound material and drainage shall be provided to prevent surface water discharge on to the highway. Visibility splays shall be provided, laid out and maintained for that purpose at the site access where the visibility splays provide inter visibility between any points on the X and Y axes at a height of 0.60 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway (identified as X) shall be 2.40 metres and the visibility distances along the nearer edge of the carriageway of the public highway (identified as Y) shall be 55 metres in both directions. For the avoidance of doubt, to the right on exiting access the splay should be measured to the nearside carriageway edge and to the left it should be measured to Centre line of the carriageway.
15. Notwithstanding the details as submitted with the application, detail plans shall be submitted to and approved in writing by the Local Planning Authority to identify refuse and recycling storage facilities on site. No caravan shall be first occupied until final details of the refuse and recycling storage have been approved and provided on site in accordance with the approved details. Once provided, the bin stores shall be permanently retained for such purposes.

## 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. For the avoidance of doubt and to outline the special circumstances for this development within a countryside location in line with Policy COR18 of the Local Plan and Policy S14 of the Local Plan Review.
4. 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.
5. 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.
6. 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.

7. In the interests of sustainable drainage and to prevent water pollution and in accordance with Policy DM2 of the Mid Devon Local Plan and Policy DM1 of the Local Plan Review 2013 – 2033.
8. 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.
9. In the interests of nature conservation and in accordance with the guidance contained in the National Planning Policy Framework.
10. In the interests of nature conservation and in accordance with the guidance contained in the National Planning Policy Framework.
11. 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.
12. 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.
13. To safeguard the visual amenities of the area in accordance with policy DM2 of the Local Plan part 3 (Development Management Policies) and Policy DM1 of the Local Plan Review 2013 – 2033.
14. In the interest of highway safety and in order to provide adequate visibility from and of emerging vehicles.
15. To ensure adequate facilities are provided for bin and recycling storage and to protect the character and appearance of the area in accordance with policy DM2 of the Local Plan part 3 (Development Management Policies) and policy DM1 of the Mid Devon Local Plan Review 2013-2033.

## **INFORMATIVE**

### **1. Protected Species**

All bats are protected by law. 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). Where works are to involve cutting or clearance of shrubs, hedges or other vegetation, which can form nesting sites for birds, such operations should be carried out at a time other than in the bird breeding season (which lasts between 1 March - 15 September inclusive in any year). Further details can be obtained from a suitably qualified and experienced ecological consultant, or please refer to published Natural England guidelines for protected species.

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. 17/01904/MFUL

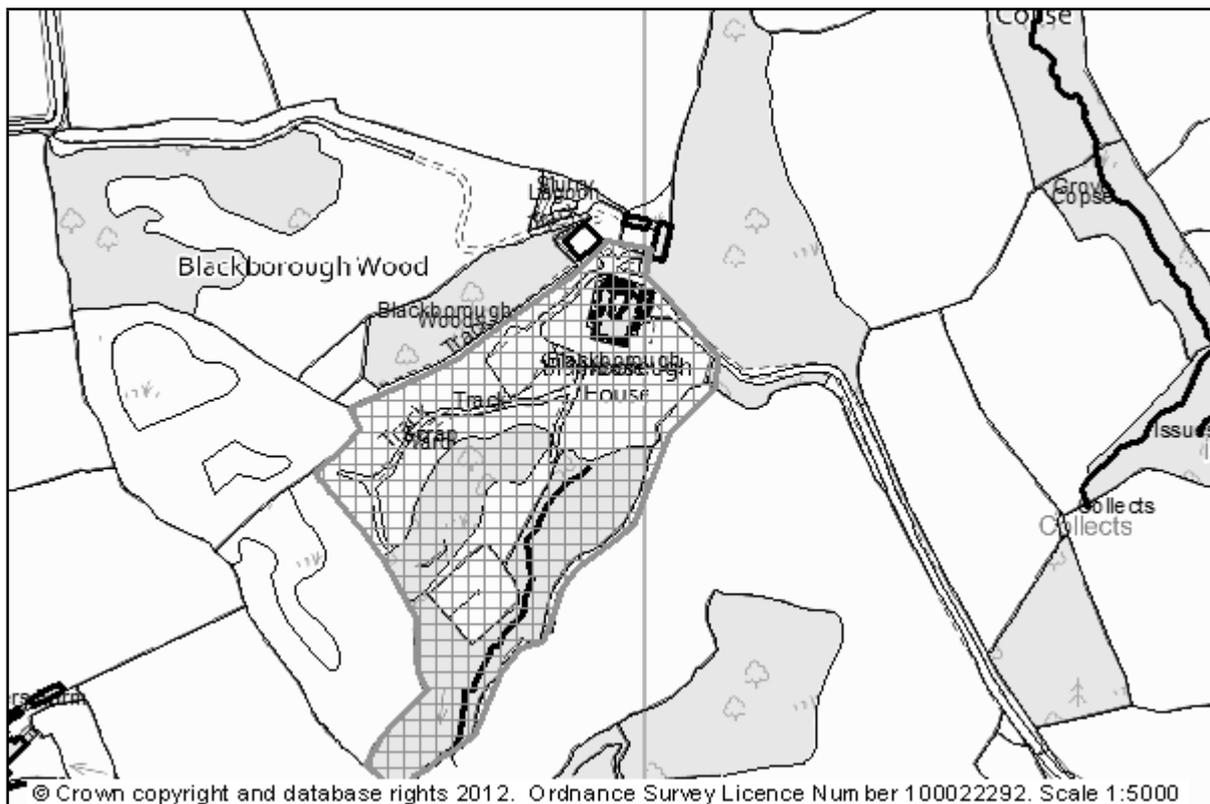
Grid Ref: 308980 : 109676

Applicant: Mr M Crane

Location: Blackborough House  
Blackborough  
Cullompton  
Devon

Proposal: Change of use and refurbishment of house to hotel and spa with 24 letting rooms, Piazza garden, 36 letting rooms in Pavilion (60 letting rooms in total) with Botanical Gardens, restoration of walled garden with new orchard and amphitheatre, erection of 7 detached dwellings, all associated car parking and erection of bat house

Date Valid: 23rd January 2018



## **APPLICATION NO: 17/01904/MFUL**

### **RECOMMENDATION**

Refuse permission

### **DESCRIPTION OF SITE AND PROPOSED DEVELOPMENT**

Blackborough House is located approximately 600m to the west of Blackborough, along an un-adopted lane which also doubles as a public right of way. Blackborough House sits in an area of land set on an escarpment surrounded by woods and extensive hedging with one immediate neighbouring property directly to the north east (converted Barn).

The existing property has been used for many purposes which are outlined in the accompanying Listed Building Application. However presently the building is in a very poor state of repair with some areas having collapsed. The last use of the property was as a scrap yard and associated functions although this has now ceased trading and the majority of the scrap has been removed.

The proposal is to provide for the main house to accommodate 24 letting rooms, bathrooms, lifts and kitchen facilities reasonably required for a hotel within the existing building and to provide, at lower ground floor a spa and function area, to the south of the main house utilising the existing basement area to access this new extension, the overall size of the extension is 33m wide x 20m deep with a flat roof providing a terrace.

Set approximately 25 metres past the botanical gardens consisting of an area of planting and footpaths. To the south west of Blackborough House is the 36 room new build Pavilion (letting bedrooms) with associated parking, and plaza area. The Pavilion is set around a courtyard/plaza to replicate a typical stable block, but picking up on the Italianate style of Blackborough House.

Beyond the pavilion and set to the south west of Blackborough House are the proposed 7 dwellings/villas to facilitate the enabling aspect of this application. These 7 dwellings/villas are to be set in a slight curve orientated North – South. Each property will provide 4 bedrooms, 3 bathrooms to the first floor and open plan accommodation generally on the ground floor. All these units will be similar and be of a modern cubist appearance clad with off white marble panels to the upper floor and local stone to the ground floor along with full height vertical timber cladding to the rear portion of the properties set under a green flat roof. Each property will have a small front garden.

To the south of the 7 dwellings/villas and set down in the landscape is the proposed bat building will be to be surrounded by trees and set to the edge of the site halfway between the 7 dwellings and the walled garden/open air theatre. The bat building is proposed to accommodate the existing bats within Blackborough house and will be constructed of local stone and timber cladding.

The walled garden located to the south of the house close to the extremity of the site will be utilised as an open air theatre incorporating stone seating within the sloping site, a small orchard will also be provided.

Located around the northern side of the building will be the new access road which will provide a number of the parking spaces required for the site, a small area will also be provided to the eastern side of the house close to the main access point from the lane.

The application is accompanied by an Environmental Statement prepared under the Environmental Impact Assessment Regulations.

## **APPLICANT'S SUPPORTING INFORMATION**

Plans  
LVIA  
Lighting Strategy  
Cost plan & feasibility study  
Environment statement  
Enabling development review  
Transport assessment

## **RELEVANT PLANNING HISTORY**

17/01905/LBC - Pending  
Listed Building Consent for the change of use and refurbishment of house to hotel and spa with 24 letting rooms, Piazza garden, 36 letting rooms in Pavilion (60 letting rooms in total) with Botanical Gardens, restoration of walled garden with new orchard and amphitheatre, erection of 7 detached dwellings, all associated car parking and erection of bat house

## **DEVELOPMENT PLAN POLICIES**

### **Local Plan Review 2013-2033**

S1 Sustainable development priorities  
S8 Infrastructure  
S9 Environment  
S14 Countryside

DM1 High quality design  
DM3 Transport and air quality  
DM4: Pollution  
DM5 Parking  
DM18 Rural employment development  
DM22 Tourism and leisure development  
DM23 Community facilities  
DM25 Development affecting heritage assets  
DM27 Protected landscapes

### **Planning (Listed Buildings and Conservation Areas) Act 1990**

Section 66 General duty in respect of listed buildings in the exercise of planning functions.

### **National Planning Policy Framework 2019**

### **Additional material consideration**

**Blackdown Hills Area of Outstanding Natural Beauty Management Plan 2019-2024**

## **CONSULTATIONS**

### **KENTISBEARE PARISH COUNCIL - 21st March 2018**

Whilst the Parish Council is not against a scheme to restore Blackborough House, there are significant concerns about the scale of the proposal, and the impact that it will have on the community, and the surrounding area being within an AONB:

•Highways: Access to this site is inadequate for the scale of the proposed 60 bed hotel with single track narrow country lanes from every direction with very few passing places. The few passing places available are mainly entrances to private properties.

•PROW and Foot Traffic: The peace and quiet of the area, together with fantastic views towards Dartmoor, attracts a large number of walkers. There are a number of public rights of way including bridleways and green lanes. DCC has recently invested in these rights of way, which has resulted in an increase in user groups using these roads in order to join these rights of way, and there is no pavement. There are currently two holiday complexes within Blackborough, and a considerable amount of pedestrian traffic comes from these.

•Vehicle Movements and Foot Traffic: There are approximately 40 houses within the small village of Blackborough consisting of a large number of families with young children. The scale of the proposal will result in a large number of vehicle movements along narrow county roads - visitors to the hotel, supplies being brought in and staffing requirements.

•Heavy Vehicle Movements: We refer to the recommendation from Environmental Health regarding the removal and replacement of 600mm of natural ground throughout the site. This will incur a large amount of heavy vehicle movements over a number of months, resulting in the need to transport hazardous material through Blackborough. There is also concern about the structural integrity of the roads being able to support the number of heavy traffic movements, in particular the road from the village hall heading towards Broad Road.

•Noise Disturbance: It is essential that the large amount of construction traffic which will be required for a project of this size is properly managed. There will need to be strict control with reference to the proposed hours of operation during any construction period, and a Construction Management Plan will be necessary.

•Noise Disturbance from The Proposed Venue: If permission is granted, this should be strictly controlled.

•Bats: There is concern for the future of the five bat species which a survey has revealed inhabit the house; these will be at risk from any development and it is hoped that the bat house will suffice.

•Proposed New Dwellings: The design and scale of the proposed 7 enabling new dwellings is out of character; these should have been more sympathetically designed to fit in with the surrounding area.

•Boundary Issues: It is imperative that there are no boundary issues, and it is hoped that the district council will put strong conditions around this.

•It is essential that a viability assessment submitted by the applicant is thoroughly investigated.

•S106: Should permission be granted, the Parish Council recommends that any Public Open Space Contributions that the proposal attracts, are allocated for the benefit of the community of Blackborough if a suitable project can be identified.

•Community Benefit: Consideration should be given to a financial contribution for the benefit of the community, and to enhance the area.

The Parish Council suggests that members of the Planning Committee attend the site to familiarise themselves with the area; it is considered that there will be a number of objections to the proposal as it stands, and the concerns raised by those objectors are fully understood.

Having done some research on country hotels, it appears that the number of bedrooms within hotels in similar settings seems to be considerably less. Residential apartments or a smaller hotel would seem more appropriate in this location.

It is understood that some reports have not yet been received, and the Parish Council reserves the right to submit further comments if it is considered necessary.

To reiterate, the restoration of Blackborough House is supported in principle by the Parish Council, but not at the proposed scale. Any proposal should be sensitive, modest and sympathetically planned to fit in with the surrounding area.

#### **KENTISBEARE PARISH COUNCIL – 19<sup>th</sup> March 2020**

The Parish Council notes that the changes to the proposal are minimal in its effect, comprising some adjustments to the basement design, a change in the proposed stone work of the houses, and adjustment of some internal layout considerations.

We therefore stand by original comments submitted by the Parish Council when the plans were first submitted; namely that the proposal is vastly out of proportion with sensitive and appropriate development within the AONB.

We note the applicant has submitted suggestions for passing places, however these do nothing to address the pinch points and the built up area of the main street in Blackborough; they are too far away from where the congestion will be concentrated. We also note that the Environment Agency has stated that the ground will need to be decontaminated before work can begin - this is a huge undertaking that the Parish Council considers further undermines the financial viability of the scheme.

**HISTORIC ENGLAND - 12th April 2018** - On the basis of the information available to date, we offer the following advice to assist your authority in determining the applications.

#### Historic England Advice

Thank you for consulting us on these applications for the change of use and associated refurbishment of Blackborough House to a hotel and spa, the construction of an additional 36 bedrooms in a pavilion to create a total of 60 letting rooms, and erection of 7 detached dwellings.

Blackborough House is an interesting example of a property built to quite extravagant plans for a wealthy family in the mid nineteenth century in the fashionable Italianate style. However, it seems that shortly after the death of its builder, the house was, for a while at least, occupied as two independent dwellings before going into a progressive decline in the twentieth century.

As a grade II listed building, applications for works either to Blackborough House itself, or affecting its setting, would not normally fall within the planning remit of Historic England. However, we are aware of the unusual circumstances affecting the house which have placed it at serious physical risk. Those circumstances have now led to the submission of these applications for extensive works to the house itself and for development within its grounds. The proposals are being justified on the grounds of enabling development to secure the restoration of the house and the viability of its use in the future.

Since an informed assessment of these applications will require a thorough knowledge of Historic England's enabling development policy and guidance, as well as the specialist skills needed to apply that policy, we are willing to regard this case as a special request for advice.

We are prepared to provide the Council with advice on how it should apply the enabling development tests set out in our published guidance to the particular circumstances of this case.

This will include:

- Guidance on the Council commissioning and interpreting independent expert advice on the financial justification for the development.

- Help in assessing whether the works proposed to repair Blackborough House are appropriate, necessary and correctly costed.

We will not, however, be taking the lead in any negotiations on this case. Nor will Historic England be making its own recommendations regarding the final determination of the applications, beyond the extent to which the works to the house are structurally necessary, and the development meets the financial tests for Historic England's enabling development guidance.

We have discussed the protocols for your Authority commissioning independent advice on the financial and viability aspects of these applications, and are happy to liaise with you as necessary, once that process gets underway.

#### Recommendation

We recommend that your Authority commissions independent expert advice on the financial and viability arguments being put forward to justify this scheme as enabling development for the restoration of Blackborough House. This advice should be a strong material consideration when considering the planning merits of the applications.

#### **HISTORIC ENGLAND - 13 June 2019**

We have previously set out the basis on which we are offering advice to your Authority on the proposals affecting grade II listed Blackborough House.

Information was submitted by the applicant to justify the enabling development proposed for Blackborough House, including the change of use to a hotel. The Council, with our support, commissioned an independent consultant to review that information and verify the case for, and amount of, enabling development proposed. That consultant's report has been shared with Historic England and feedback has been sought from our Development Director who has specialist knowledge in this field. I would stress, however, that we have not made a site visit and his response relies on the information provided in the Council's report, which was provided by a consultant known by us to be a reputable firm with experience in this field of development evaluation.

The report gives clear cause for concern regarding both the viability of the development and whether it meets the accepted tests for enabling development. Notwithstanding the views of the Council's consultant, we believe that serious questions could be asked regarding both the marketing of Blackborough House in 2012-13 and the eventual price for which the applicants purchased it - which was considerably in excess of the asking price in 2017. We consider that the owners need to provide good reasons as to why the property should not be re-marketed at a realistic price which reflects the conservation deficit, something that appears not to have been reflected in the price for which they purchased it.

For a number of reasons the hotel proposal lacks credibility to us. The applicant is not a specialist in that field nor does he have an end-user in prospect who is them self an experienced hotel operator. The evidence of the report demonstrates that the economic model being used for the hotel is not financially viable and it is also very unclear how it would be funded. The figures put forward by the applicant for the repair and conversion works seem high, but on the other hand, they do not include specific finance costs, which seems most unrealistic.

Overall, the hotel scheme seems to be very high risk, taking either the applicant's costs/return or those suggested as more realistic by the Council's consultant, and if approved, there would be a high probability that the applicants - or any developer who subsequently took on the project - would need to return for a 'second bite of the cherry'. That risks increasing the harm to Blackborough House or its setting even further than in the scheme currently proposed.

Whilst we have not tested the repair and conversion costs ourselves, we believe it is quite likely that a conservation deficit may exist at Blackborough House - although clearly a more realistic market value would reduce that deficit. The evidence presented suggests that a hotel use may be far from the most sustainable use for the building, in either the long or short term, and is certainly not the optimum viable use referred to in paragraph 196 of the NPPF.

The proposed conversion of the house would result in considerable change to it, and whilst we note that the applicant has tried to minimise loss of historic fabric on the principal floors of accommodation, the impact at basement level is considerable both in terms of the removal of original walls within it, and the addition to it of a large extension. The limitation of the applicant's land ownership around Blackborough House means that the 'enabling' development of the hotel pavilion and the seven independent dwellings must all be built in close proximity to it. In our view the considerable visual impact caused by the proximity of that development to the principle listed building would compromise the house's current primacy within the surrounding landscape, and thereby harm its setting.

Overall, therefore, the development appear to have harmful consequences for the listed building in physical and visual terms, but does not provide the required certainty of bringing the house back into long-term beneficial use. This brings the applications into conflict with Historic England's enabling development policy as well as with paragraphs 202 and 196 of the NPPF, unless they deliver other meaningful public benefits which would outweigh that harm and cannot be delivered in a less harmful way. From an enabling development perspective, we do not believe that this application should be supported.

#### Recommendation

Historic England has concerns regarding the applications on heritage grounds and their conformity to the relevant policies of the NPPF. In determining these applications you should bear in mind the statutory duty of sections 16(2) and 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.

Your authority should take these representations into account in determining the applications. 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 ENGLAND - 15th April 2020**

Thank you for your letters regarding further information on the above applications for listed building consent and planning permission. On the basis of this information, we offer the following advice to assist your authority in determining the applications.

Historic England has provided comments on these proposals affecting Blackborough House on two previous occasions, 11 April 2018 and 11 June 2019. Our most recent correspondence expressed concerns about the application on heritage grounds. We considered that the application was in conflict with our Enabling Development and the Conservation of Significant Places guidance (2008) as a result of the physical and visual harm to the listed building and within its setting and the lack of certainty over whether the proposed scheme would result in a long-term beneficial use for the building.

## Historic England Advice

As we have stated previously, Historic England's advice on this application will focus on the extent to which the proposal meets the tests set out within our Enabling Development Guidance.

We note that the demolition at basement level has been substantially reduced in the revised scheme. Given the Grade II status of Blackborough House, consideration of the detail of the alterations to the listed building will be subject to detailed assessment by your Authority's Conservation Officer and therefore we do not propose to duplicate this advice.

Since our 2019 letter, a number of additional documents have been compiled and have informed our latest advice:

- Response to JLL Enabling Development Review – NBA
- Financial Forecasts and Viability Appraisals (Feb 2020) – NBA
- Letter from Donald Insall Associates in response to previous Historic England advice (ref. OX.BH.01)
- Letter of interest (20 Feb 2020)

Following a detailed review of this information, Historic England is able to confirm that our advice on the previously raised key issues remains unchanged. The new documentation has not addressed our concerns regarding the credibility of the development or that it will secure the long-term beneficial use of the site, despite the enabling development proposed. As previously, our advice has drawn upon the specialist knowledge of our Development Director. For clarity we list these issues below, with a summary of our position in the light of the additional information submitted:

- We remain of the opinion that insufficient marketing has taken place. However, we accept the conclusions of the JLL report that further marketing would be of little additional value at this stage.
- We remain of the opinion that the hotel proposal lacks credibility. We do not consider that a brief 'letter of interest' from a hotel operator is sufficient evidence of the viability of this hotel scheme.
- Despite the additional financial forecasts supplied, we remain concerned that the proposed hotel scheme is very high risk and that consequently, further development would be requested in due course.

## Planning Policy Context

Taking account of the above advice, in determining any application of this kind, the key issue that your Authority needs to be satisfied about, is whether the proposal will deliver the restoration and sustainable future of the listed building. Any harm to the significance of a listed building, including from development within its setting, requires clear and convincing justification (NPPF 194). Such clear and convincing justification needs to be made in the context of securing the optimum viable use for the listed building (NPPF 196). This would be considered a public benefit in heritage terms. For the harm resulting from the enabling development to be considered acceptable, your Authority must be convinced that it will deliver a secure, long-term future for the listed building in its optimum viable use (NPPF 196 & 202).

You will need to be satisfied that the amount of enabling development is the minimum necessary to secure the future of the place in line with our published guidance.

The current unprecedented health crisis has resulted in an unpredictable economic climate which serves to intensify our concerns about the security of the proposals for this Grade II listed building. Consequently, in the event your Authority is minded to grant consent for this scheme in its current form, your decision must be made on the basis of the credibility of the proposal at this time and the justification provided in the light of the unpredictability of the current economic situation.

If your Authority accepts that the scheme meets the policy tests set out within the NPPF, you should also ensure that you are satisfied that;

- you have received sufficient information to precisely define the impact of the development;

- the achievement of the heritage objective is securely linked to it with appropriate and enforceable safeguards under planning conditions;
- setting an agreed standard for the repairs to the listed building as guided by the specialist advice of your own conservation officer as early as possible in the course of the enabling development, ideally at the outset and certainly before completion or occupation; and
- you are able to closely monitor the implementation of the scheme to ensure that any conditions/obligations are fulfilled.

#### Recommendation

It is now for your Authority to make a determination on this case taking account of the advice above and that Historic England have provided previously and that from your own Conservation Officer. Historic England recommends that in doing so, your Authority will need to consider very carefully whether an economically viable case has been made in relation to this application. Your Authority will be aware, as are Historic England, that given the current economic situation, certainty that the proposed scheme will deliver the benefits for the listed building is particularly critical.

Additionally, in general in determining these applications, you should also bear in mind the statutory duty of sections 16(2) and 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.

#### **HISTORIC ENGLAND – 7<sup>th</sup> July 2020**

The revised Enabling Development guidance was released last week however we were aware that this was planned and had read the draft content of the revised document whilst responding to the Blackborough application. I do not therefore consider that Historic England's advice on this case would be in any way altered by the release of the new GPA4.

#### **BLACKDOWN HILLS AONB PARTNERSHIP - 26th June 2018**

Thank you for requesting comments from the Blackdown Hills AONB Partnership and for allowing us more time to consider the details of the application before submitting our response.

The key purpose of an AONB is conservation and enhancement of the landscape's natural beauty. As such we are concerned with any development that may be contrary to this purpose and the AONB Partnership wishes to object to the above planning application. While the AONB Partnership is not against a sensitive scheme to restore Blackborough House, we consider this proposal to be of a scale inappropriate in the AONB.

Essentially, a major commercial activity is being proposed which is not compatible with the site's location in the AONB. Although described as restoration and refurbishment, the proposal comprises extensive new building with associated features such as parking and hard landscaping as well as introducing new housing development. The new hotel and residential buildings do not conserve or enhance the natural beauty of the area, nor do we consider the scheme to be sensitive to the listed building, and the corresponding intensification of use from a variety of activities with associated traffic and is not compatible with quiet enjoyment of the AONB.

The AONB Partnership supports its local planning authorities in the application of national and local planning policy in order to ensure that any development in the AONB conserves and enhances the natural beauty of this nationally designated landscape, which is afforded the highest level of protection by national policy.

In this case the AONB Partnership consider that the development of a 60-room hotel, with associated features, and 7 dwellings in a remote location to be of a nature and scale to be considered major development in the AONB, and as such the local planning authority should consider and apply the 'tests' in Paragraph 116 of the NPPF.

In support of planning policy, the Blackdown Hills AONB Management Plan 2014-19 is the agreed policy framework for conserving and enhancing the AONB and seeks to ensure that all development affecting the AONB is of the highest quality. It contains the following policies of particular relevance to this proposal:

PD 1/B Seek to ensure that any necessary new developments or conversions within the AONB or affecting its setting conserve and enhance natural beauty and special qualities, particularly by respecting the area's landscape character and the local character of the built environment, reinforce local distinctiveness and seek to enhance biodiversity.

PD 1/C Protect the AONB from inappropriate and unnecessary development, including promoting the use of existing buildings to accommodate new uses where appropriate and compatible with current planning policies and the special qualities of the AONB.

PD 5/A Encourage quiet enjoyment of the AONB and avoid or restrict developments, activities and events, including artificial light installations, which detract from the tranquillity of the Blackdown Hills.

BG 1/C Avoid and reduce the impacts of development on biodiversity and ensure biodiversity enhancements are delivered.

RET 1/C Support the development of sustainable tourism activities within the AONB that are compatible with conserving and enhancing natural beauty and the special qualities of the AONB, increase understanding and appreciation of the Blackdown Hills and benefit the local economy.

TH 1/A Work to ensure road and transport schemes (including road design, maintenance, signage, landscaping and safety measures) within or affecting the AONB have regard to the purpose of AONB designation and conserve and enhance the area's special qualities.

It appears that while much is made in the application about the listed building itself, there seems to be scant regard to the AONB and its special qualities, which should also be key considerations. We note that no landscape and visual impact assessment has been submitted, which would assist with understanding the potential impacts of the proposal. Some of the most relevant special qualities include:

- It is an isolated, unspoilt rural area and remains relatively undisturbed by modern development
- There is a sense of stepping back in time in the winding lanes, the hidden valleys and relatively remote villages
- It is a landscape with architectural appeal. The landscape pattern is punctuated by a wealth of small villages, hamlets and isolated farmsteads of architectural value and distinctive character
- A special concentration of buildings where the vernacular character is particularly well preserved
- Unspoilt, panoramic views across flat-topped plateau and straight undisturbed ridge tops and over hidden valleys
- Narrow, enclosed, high-hedged winding lanes in the valleys
- A sense of remoteness enhanced by the exposure of the plateau and more intimate extensive woodland of the upper slopes and hidden valleys
- Area of high tranquillity spared many of the intrusions of modern life
- Dark night-time star-filled skies contrasting with the light pollution of the surrounding towns
- The presence of straight, uninterrupted ridges are evident as a visual backdrop over a wide area
- The varied landscape supports a rich assemblage of wildlife including many species of bats, butterflies and meadow flowers

In relation to all of the above and in response to the application material and various consultation responses, the Blackdown Hills AONB Partnership has several concerns as follows:

Access to the site is via a network of winding lanes, often narrow, single track with steep gradients and numerous bends. There are no footpaths and the lanes are often used by walkers, local pedestrians, cyclists and horse riders. There is therefore a very real concern about additional vehicle movements - at all stages from site remediation, construction, deliveries, hotel guests, event attendees, staff and residents - in terms of highway safety and disturbance. We would be very concerned if measures and 'improvements' to the network were to be proposed to address these issues that in themselves have a negative effect on local character.

The application makes no reference to lighting requirements, such as security and flood lighting, which one might expect in view of the activities and usage outlined in the application. This, along with light spill from internal lighting, has the potential to contribute to the urbanisation of the area and result in light pollution, detracting from the dark night time environment of the AONB and detrimental to its character. All lighting should also be wildlife friendly, particularly with reference to the presence of bats within the house and around the site.

Given the importance of the house in its present condition for several species of bats, we would wish to be assured that the proposed bat house is the most appropriate solution and is to be constructed and sited so as provide the most suitable alternative on site, and also that the range of other uses and activities do not compromise its usage. The bat survey information appears to date from 2-3 years ago, and decisions should be made using up to date data.

If it is accepted that the remains of the House are worthy of refurbishment and that some form of enabling development is necessary, the form of it must be the minimum required and least harmful to both the integrity of the listed building and its setting, and the AONB. There is a strong vernacular domestic style in the Blackdown Hills; traditional buildings have a functional simplicity, built from locally available materials. It is reasonable to conclude that any ancillary dwellings that may have historically been built to support Blackborough House would have been of modest, simple form reflecting locally building traditions (and thus not detracting from the 'statement' made by the main house in this setting). The proposed Italianate aggrandisement is not an appropriate design solution in this remote and very rural part of the AONB.

The cumulative impact of works to the house, new hotel related features and accommodation, and new houses is considered inappropriate in both scale and design in respect of the listed building. In respect of the AONB, the proposal does not appear to have been developed in a way that responds to the defining characteristics of the AONB and therefore does not contribute to conserving or enhancing natural beauty.

The introduction of a sizeable hotel with corresponding events and activities plus seven dwellings will inevitably introduce levels of daytime and night-time activity, noise, light and traffic that will have an adverse impact on the special qualities of the AONB including tranquillity, built environment, local distinctiveness and quiet enjoyment.

If, despite the concerns outlined in respect of impact on the Blackdown Hills AONB, the local planning authority are minded to approve this application then the AONB Partnership would want to be assured that they will secure all necessary and appropriate controls through condition or obligation to mitigate the negative impacts and concerns, to seek biodiversity gains, environmental improvements and enhancement of heritage assets.

Comments are made on behalf of the Blackdown Hills AONB Partnership in respect of its role to safeguard the distinctive landscape, wildlife, historical and architectural character of the Blackdown Hills whilst fostering the social and economic wellbeing of communities. It is recognised that the AONB Partnership comprises a wide range of interests and organisations and that the comments made will not necessarily always be consistent with the views of individual organisations, or responses made by organisations as statutory consultees.

**BLACKDOWN HILLS AONB PARTNERSHIP 11th October 2018** - Thank you for advising of additional and revised information in respect of the above application.

In our original response the AONB Partnership noted that an LVIA would assist with understanding the potential impacts of this proposal. We therefore welcome the submission of one amongst other amendments and additional information. Given the central importance of this report, the advice of the Devon County Council Landscape Officer was sought and the remainder of this response consists of her professional consideration of the submitted LVIA document, and some associated observations on other material such as the lighting strategies, made on behalf of the Blackdown Hills AONB Partnership. It also includes the attached review document which provides detailed observations, comments and recommendations.

Whilst some mitigation measures are proposed, these are insufficient to address key concerns. The EIA process, if pursued, is likely to identify scope for further mitigation. However, it is likely that this would require fundamental changes to and scaling down of the proposals to be consistent with policies of the AONB Management Plan.

The LVIA has been carried out by a suitably qualified landscape professional. It accords with best practice guidance<sup>1</sup> in some respects but lacks robustness in others, including identifying sensitive landscape receptors, assessing significance of effects, presentation of viewpoints used in the assessment and communication of likely change. Information in the LVIA allows a general understanding of the landscape and visual context, the nature and scale of the proposals, and mitigation measures. However, the scope and level of detail is insufficient in proportion to the high sensitivity of the AONB context, the scale and nature of the development, and the potential for significant effects on the AONB's special qualities as highlighted in the Blackdown Hills AONB Partnership's consultation response letter to MDDC dated 26 June 2018, including rural tranquillity, locally distinctive buildings, the quality of views, and dark skies. (In this respect, I agree with the AONB Partnership that the proposals should be considered a 'major development', with reference to the National Planning Policy Framework 2018<sup>2</sup> and the policy tests that should apply.)

The proposed development has recently been screened by the Secretary of State as requiring formal Environmental Impact Assessment (EIA). Because the LVIA was submitted prior to this decision, it has not been subject to formal scoping as part of the EIA process. However, it is disappointing that the LVIA has not addressed the issues raised by the AONB Partnership in their letter dated 26 June.

Should the applicant wish to pursue the project and carry out a formal EIA, it is recommended that the detailed review comments attached are addressed and used to inform the scope and level of detail that it is considered are required to satisfy EIA Regulations insofar as these relate to effects on the AONB.

[1] The Landscape Institute (LI) and IEMA (2013) Guidelines for Landscape and Visual Impact Assessment ("GLVIA3"), and LI Advice Note 01/11 Photography and Photomontage in Landscape and Visual Impact assessment

2 See NPPF 2018 paragraph 172 and associated footnote 55.

I trust that these comments are helpful to your consideration of this application.

**BLACKDOWN HILLS AONB PARTNERSHIP - 15th March 2019** - Although I understand that the formal period of consultation has passed, I trust that you will be able to take account of these comments in relation to the EIA Environmental Statement.

The further consideration of Heritage as part of the EIA is welcomed, however the overall impression is that the opportunity to examine the impact of this development on the AONB has been missed, and this is a significant shortcoming. The requirement for this development to be subject to EIA reiterates our initial view that this be considered 'major development', and therefore the impact on the AONB is a fundamental part of determining this application.

Our response in October 2018 included a review by the DCC landscape officer of the LVIA submitted at the time, which included commentary on the assessment's gaps and weaknesses. It appears that elements of this have been considered to some extent, however many issues are not adequately addressed, including:

- o Lacks relevant information on construction as outlined in GLVIA3, such as the construction duration timing, methods, area of land take required beyond the development footprint, effect upon trees and woodland, the nature and quantity of materials to be imported to site, where these would be stored, the type, size and quantity of construction traffic, access routes between the site and the strategic road network, the duration, timing and hours of working, and the type and quantity of emissions from construction, including noise and dust. All these have potential to affect the special qualities, features and distinctive character of the AONB, and the way these are enjoyed by people.
- o References to lighting lack details of the location, type and cumulative effects of proposed luminaries to enable a proper assessment of the effects of lighting upon the dark skies of the AONB and is contradictory (e.g. referring to limiting light spill, but referring to up lighting, including of trees).
- o Fundamentally, with reference to landscape capacity and sensitivity, the LVIA does not evaluate the key characteristics of the published landscape character type and area and does not evaluate the special qualities of the AONB, therefore it does not properly identify the effects the proposals may have on key landscape receptors (or in other words the AONB and key components of its distinctive character).
- o Advice on photographs and baseline views has not been taken, notably the inclusion of twilight views to help understand the effects of lighting.

Overall, the impression is that impact of this proposal is being judged against the car scrap yard (and even then in terms of worst case scenario/anecdotal evidence rather than the lawful use position), not in its own right, and of only the built form, not the resultant use and activity. In assessing alternatives and options, alternative forms of enabling development and/or the design approach appear not to have been considered. We therefore remain of the view that the impact of this proposal on the AONB has not been adequately addressed.

**BLACKDOWN HILLS AONB PARTNERSHIP 3<sup>rd</sup> April 2020**

Change of use and refurbishment, etc. at Blackborough House

Thank you for notifying the Blackdown Hills AONB Partnership of revised and additional drawings and additional information in respect of this application (and the corresponding one for Listed Building Consent).

As you will know, the AONB Partnership supports its local planning authorities in the application of national and local planning policy in order to ensure that any development in or affecting the AONB conserves and enhances the natural beauty of this nationally designated landscape, which

is afforded the highest level of protection by national policy. In support of this is the Blackdown Hills AONB Management Plan, which is the agreed policy framework for conserving and enhancing the AONB and seeks to ensure that all development affecting the AONB is of the highest quality. Given the passage of time in determining this application, I thought it would be helpful to highlight that the AONB Management Plan policies referred to in our original response have been superseded by those in the revised 2019-2024 Management Plan. The following policies are considered to be the most relevant/nearest equivalent in respect of the application:

LC3 Promote high levels of peace and tranquillity with dark night skies by minimising noise, intrusive development and light pollution

BG3 Priority species (including Section 41, Devon Special Species, Protected Species) will be conserved. Targeted action will be taken to support the recovery of priority species

PD2 All necessary development affecting the AONB will conserve and enhance natural beauty and special qualities by:

- Respecting landscape character, settlement patterns and local character of the built environment,
- Being sensitively sited and of appropriate scale,
- Reinforcing local distinctiveness, and
- Seeking to protect and enhance natural features and biodiversity

TH1 Road and transport schemes (including design, maintenance, signage, landscaping and safety measures) affecting the AONB will be undertaken in a manner that is sensitive and appropriate to landscape character, having regard to the purpose of AONB designation and conserving and enhancing the area's special qualities. The landscape and cultural features of the AONB's road network (including hedge banks, flower-rich verges, and locally distinctive historic highway furniture) will be protected and conserved

RET3 Tourism and recreation provision will contribute to the local economy without harming the Blackdown Hills landscape, historic environment, biodiversity or tranquillity, and respecting the special qualities of the AONB

Additionally the AONB Management Plan provides a valuable reference for guiding development in, or affecting, the AONB, in particular describing special qualities, a planning chapter that sets out principles for development in the AONB, and appendices that provide a checklist for development and consideration of major applications.

We would take the opportunity to reiterate that while the AONB Partnership is not against a sensitive scheme to restore Blackborough House, there are concerns regarding the scale and nature of this proposal. As such, although the applicant has sought to make some alterations, these do not overcome the previously expressed concerns and so it is confirmed that our previous comments still stand.

On specific aspects of the recently provided material, we would note that the alterations to the basement plans are a welcome move in respect of retaining the building's internal historic integrity. It is unclear on what basis the locations for the proposed passing places have been identified, and we question whether that decision process has had any reference to the character and special qualities of the AONB. For instance, considerations should not just be about avoiding harm to hedgerbanks but also impact on verges and the effect of measures on local character. The proposed use of more vernacular materials for the dwellings is noted, but this does not overcome reservations about the overall design and layout of them.

We would just reiterate that as noted in March 2019, it is disappointing that potential impact on the AONB and its special qualities has not been fully addressed. It is noted that the applicant considers that such matters were addressed in the Environmental Statement, but as highlighted previously some of the references are scant and the landscape assessment is quite general, not identifying components of the landscape character type or AONB special qualities as landscape receptors for example.

I trust these further comments are helpful to your consideration of this application.

### **DCC Highways 21<sup>st</sup> March 2019**

Observations:

The Highway Authority have received the supplemental highway transport statement (TS) and have reviewed its contents and have the following observations

The applicant has reviewed the traffic generations of the proposed development and has used more local sites for comparison the latest figures are more in keeping with expected generations from Country hotels in the Devon area as experienced by highway officers, however the use of Lypstone Manor is considered to give lower reading than would be anticipated due to its location and access to public transport and sustainable travel options, the use of the Highbullen hotel is more in keeping.

The applicant have submitted the traffic generations of the existing uses of the Site and have included trip generations for car sales during the Edmonds occupation. These rates are very high and are based upon TRICs Car sales usage rather than spare parts usage and are greater than that of the Patronage estimate by Mr Edmonds (Mr Edmonds identifying some 200 trips per day as compared to larger movements for TRICs. The Highway Authority have estimated that based on the site location the car sales using TRICs would be 25% less than those indicated in the TS. Notwithstanding these figures the remaining uses are considered acceptable.

The objectors have indicated that long standing residents have not recognised these high levels, and while this may be the case the highway Authority is speaking to others have had the opposite advice. However these are here say and are discounted in our consideration from both sides.

The Highway Authority while acknowledging that car sales may have been undertaken, and that the parts sales would have generated the levels of activity indicated by Mr Edmonds and may have been of a substantial nature concerns have been raised by objectors that the car sales do not form part of the certificate of lawful use and should not be included in the assessment calculations.

The Highway Authority have therefore considered the applications existing uses without the Car sales element and consider that notwithstanding the high levels of movement on weekends by the part sales ( these mainly constrained to weekends) the application would generate a significant increase in traffic over average daily movements from the existing use and the objectors consultant WSP report indication in the region of 100 movements a day would be more acceptable figure , and as an average rate for the daily movements I would not disagree, but concentrated movements on weekends are not unreasonable either. Based on the average movements and the reasonable arguments put forward the application proposal could generate an additional 246 movements per day over the highway network.

This represents an average of 15 movements per hour based on a 16 hour operation 8 am until 12 pm. While significant the Highway Authority do not consider it to be severe in capacity terms and would seek further mitigation in the form of passing places between the site and Honiton road both along the advised preferred route passed Forest glade but also on the route towards Kentisbeare.

It will be a matter for the Local planning Authority to consider the environmental impact on amenity and they may wish to have the appraisal reassessed based on the increase in traffic of 246. Which is likely to raise the overall results to moderate. Albeit the Altitude village festival would generate a significantly higher level of traffic movement over the one day and is a factor to consider although this is over a fixed period and not a constant daily increase. Never the less this festival has operated without problems to date.

It will be essential for a construction management plan to be in operation and the deliveries to follow those proposed for the Hotel and avoid peak hour traffic and are advised that smaller vehicles be employed.

Therefore the Highway Authority would raise no objection to the proposal subject to the following condition. The Highway Authority would also seek the securing of a travel plan and traffic management plan through a legal agreement under the Town and country planning act  
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. Prior to commencement of any part of the site the Planning Authority shall have received and approved a Construction Management Plan (CMP) including:

- (a) the timetable of the works;
- (b) daily hours of construction;
- (c) any road closure;
- (d) hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8:00am and 6pm Mondays to Fridays inc.; 9.00am to 1.00pm Saturdays, and no such vehicular movements taking place on Sundays and Bank/Public Holidays unless agreed by the planning Authority in advance;
- (e) the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;
- (f) the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
- (g) areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the County highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;
- (h) hours during which no construction traffic will be present at the site;
- (i) the means of enclosure of the site during construction works; and
- (j) details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site
- (k) details of wheel washing facilities and obligations
- (l) The proposed route of all construction traffic exceeding 7.5 tonnes.
- (m) Details of the amount and location of construction worker parking.
- (n) Photographic evidence of the condition of adjacent public highway prior to commencement of any work;

2. Off-Site Highway Works No development shall take place on site until the off-site highway works for the provision of a system of passing places is designed , approved in writing by the Local planning Authority, funded and have been constructed and made available for use.

REASON: To minimise the impact of the development on the highway network in accordance with NPPF

3. Off-Site Highway Works No occupation of the development shall take place on site until the off-site signing of the hotel has been submitted and approved in writing by the Local Planning Authority and has been installed and made available for use.

REASON: To minimise the impact of the development on the highway network in accordance with Traffic management act

**PUBLIC HEALTH - 6th February 2018** - The proposed development will involve the demolition of existing premises or structures, which may contain hazardous liquid or solid materials (including asbestos). Therefore, the following conditions are recommended if permission is granted.

Demolition should be carried out in such a manner as to minimise the potential for airborne nuisance, additional land contamination and/or the creation of additional contamination pathways either on the site or at adjacent properties/other sensitive receptors.

Prior to demolition commencing, a works plan and risk assessment shall be submitted for approval to the Local Planning Authority for consultation with Environmental Health Services. This plan and assessment should identify and risk-assess any potential hazardous material in above or below ground structures that will be removed or disturbed during demolition and measures to deal with these safely. All potentially hazardous materials should be assessed.

The phase II contaminated land report identified elevated levels of arsenic, lead and bezo[a]pyrene. These contaminants are deemed to be unsuitable at the identified level within the surface of any residential gardens or landscaped areas.

Therefore the following applies:

For any residential gardens connected to the villas or main house, the underlying top 600mm of natural ground shall be removed and replaced with a 600m capping of clean inert soil.

If the garden for the main house or any other area on site is used for the production of root vegetables, this area shall contain a physical barrier. This physical barrier (geotextile membrane) shall be installed at the base of the inert soil as a visual marker to discourage digging and reduce intermixing of soils and to prevent the exposure of contaminants to people using the site.

Landscaped areas shall be capped with a 450mm capping of clean inert soil. This area includes all areas of soft-landscaping, common areas or public open spaces. This relaxation of cover depth is designed to reflect the reduced risk afforded by diminished exposure of human health receptors to potentially contaminated soils within these public areas via direct contact (dermal, ingestion, inhalation).

Following the completion of any required works, remediation validation reports shall be submitted for each garden area and the soft-landscaping area to the LPA for approval in writing. Occupation on the site, or parts of the site affected by land contamination, shall not take place until approval of the validation report has been granted.

Reason: In the interests of public health and protection of the environment.

**PUBLIC HEALTH – 10<sup>th</sup> September 2018**

Contaminated Land	No objection to this proposal
Air Quality	No objection to this proposal
Environmental Permitting	No objection to this proposal
Drainage	No objection to this proposal
Noise & other nuisances	No objection to this proposal
Housing Standards	No comment
Licensing	This will require a premises licence under the Licensing Act 2003
	- for more information please contact the licensing team via email <a href="mailto:licensing@middevon.gov.uk">licensing@middevon.gov.uk</a>
Food Hygiene	No objection to this proposal

Informative: If food or drink is provided, stored, processed this is considered a food business. All new food businesses are required to register with their Local Authority 28 days prior to opening.

The appropriate form can be found in this link.

<https://www.middevon.gov.uk/media/114739/foodregistrationform.pdf>

Free advice on requirements can be given by Environmental Health. For structural requirements this is ideally sought before works start. The Food Standards Agency's website is also a useful source of information <https://www.food.gov.uk/>.

**Private Water Supplies** If a private supply is to be used, 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.

**Health and Safety** No objection to this proposal

Informative: Please consider compliance with Health and Safety at work requirements for example when designing the spa and any pools. Information and advice can be found on HSE's website [www.hse.gov.uk](http://www.hse.gov.uk) or discussions with the Environmental Health Department.

### **FLOOD and COASTAL RISK MANAGEMENT TEAM - 26th February 2018**

At this stage, we object to this planning application because we do not believe it satisfactorily conforms to Policy DM2, specifically part (f), of Mid Devon District Council's Local Plan (Adopted October 2013), which requires developments to include sustainable drainage systems. The applicant will therefore be required to submit additional information in order to demonstrate that all aspects of the proposed surface water drainage management system have been considered.

Observations:

It is noted within section 4.3 of the submitted Flood Risk Assessment (Rev. Initial Issue; dated 14th November 2017) that a freeboard of 300mm will be maintained within the detention basin, however, this is not reflected in the Micro Drainage outputs contained in Appendix E of the Flood Risk Assessment.

The applicant should also note that in accordance with the SuDS Management Train, surface water should be managed at source in the first instance. The applicant will therefore be required to explore the use of a variety of above-ground source control components across the whole site to avoid managing all of the surface water from the proposed development at one concentrated point (e.g. a single attenuation pond).

Examples of these source control components could include permeable paving (which could be under drained), formalised tree pits or other bio-retention features such as rain gardens, as well as green roofs, swales and filter drains.

Further details of the long-term storage should be submitted.

The applicant must submit information regarding the adoption and maintenance of the proposed surface water drainage management system in order to demonstrate that all components will remain fully operational throughout the lifetime of the development.

It is noted within section 4.14 of the Flood Risk Assessment (Rev. Initial Issue; dated 14th November

2017) that overland flows will be routed towards the detention basin. However, exceedance of the basin is not clarified.

### **NATURAL ENGLAND - 13th February 2018**

Designated sites: Based upon the information provided, Natural England advises the Council that the proposal is unlikely to affect any statutorily protected sites as no relevant Natural England Impact Risk Zones (IRZs) have been triggered.

Landscape - further information advised. The proposal is within the Blackdown Hills Area of Outstanding Natural Beauty (AONB). A Landscape and Visual Impact Assessment (LVIA) or similar assessment is advised. Further advice is provided below.

Natural England's advice on other natural environment issues is set out in Annex A.

Landscape - further information advised

The proposed development site is within the Blackdown Hills Area of Outstanding Natural Beauty (AONB) which is a nationally designated landscape.

Given the location of the proposal, Natural England's advice is that more information, via a Landscape and Visual Impact Assessment (LVIA) or similar, is necessary to understand the potential impacts of the proposal on the special qualities of the AONB and allow your Authority to make a properly informed decision.

Such an assessment should be based on good practice guidelines such as those produced jointly by the Landscape Institute/Institute of Environmental Assessment 20131. Landscape character assessment (LCA) provides a sound basis for guiding, informing and understanding the ability of any location to accommodate change, and to make positive proposals for conserving, enhancing or regenerating character, as detailed proposals are developed.

We would also strongly advise you to seek the advice of the AONB Partnership. Their knowledge of the location and wider landscape setting of the development further informed by an LVIA will help to confirm whether or not it would impact significantly on the purposes of the AONB designation. They will also be able to advise on whether the development accords with the aims and policies set out in the AONB management plan.

We are aware that one of the key areas of concern is ensuring the scale and design of the associated enabling development is sympathetic to the AONB and the setting of the house.

The policy and statutory framework to guide your decision and the role of local advice are explained at Annex A.

Further advice on the consideration of protected species and other natural environment issues is provided at Annex A.

### **DEVON COUNTY EDUCATION - 30th January 2018**

Regarding the above planning application, Devon County Council would need to request an education contribution to mitigate its impact.

The proposed increase of 6 family-type dwellings will generate an additional 1.5 primary pupils and 0.9 secondary pupils.

There is currently capacity at the nearest primary for the number of pupils likely to be generated by the proposed development. Devon County Council will however seek a contribution towards additional education infrastructure at the local secondary school that serves the address of the proposed development. The contribution sought is £19,728 (based on the current DfE extension rate of £21,921 per pupil) which will be used to provide education facilities for those living in the development.

We would also require a contribution towards primary and secondary school transport costs due to the development being further than 1.5 miles from Kentisbeare C of E Primary and further than 2.25 miles from Uffculme School. The costs required are as follows: -

2.00 primary pupils

£6.39 per day x 2 pupils x 190 academic days x 7 years = £16,997

1.00 secondary pupil

£4.64 per day x 1 pupils x 190 academic days x 5 years = £4,408

In addition to the contribution figures quoted above, the County Council would wish to recover legal costs incurred as a result of the preparation and completion of the Agreement. Legal costs are not expected to exceed £500.00 where the agreement relates solely to the education contribution. However, if the agreement involves other issues or if the matter becomes protracted, the legal costs are likely to be in excess of this sum.

#### **ENVIRONMENT AGENCY - 14th March 2018 and 2<sup>nd</sup> March 2020**

##### Environment Agency position

We consider that the proposed development will only be acceptable if the subsequent planning permission includes conditions to ensure the appropriate investigation, management and remediation of contaminated land. Without these conditions we would consider the proposed development to pose an unacceptable risk to the environment. Our recommended conditions, along with the reasons for our positions and advice in respect of Environmental Permitting Regulations requirements are set out below.

##### Condition - Contamination Investigation and Remediation

No development approved by this planning permission shall take place until a remediation strategy that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:

1. A detailed site investigation scheme, based on the existing desk top study (2015) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
2. The results of the site investigation and the detailed risk assessment referred to in (1) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
3. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express written consent of the local planning authority. The scheme shall be implemented as approved.

Reason: For protection of controlled waters from release of contaminants from made ground

##### Condition - Unsuspected Contamination

If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

Reason: For protection of controlled waters from release of contaminants from made ground

##### Condition - Surface Water Infiltration

No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

Reason: For protection of controlled waters from leaching of contaminants from made ground

#### Advice - Groundwater and contaminated land

We have reviewed the Desk Study Report (Geo-Environmental 2015) and the Ground Investigation report (Ground Engineering Ref. C13939). We consider that the reports are not sufficiently detailed to conclude that the risk to groundwater is low, when previously the risk was identified as medium in the geo-environmental report.

Neither of the reports provide a figure that shows which parts of the site were used for storing and dismantling vehicles and where storage drums and the like were found. The desk study refers to the existence of a swimming pool that is backfilled with scrap materials and tyres, however, this is not referred to in the ground investigation report so the assumption we have made is that it was not investigated. The geo-environmental report refers to an area of hard-standing with significant hydrocarbon staining, however, it is not clear where this is and whether it was investigated sufficiently.

From the information available, it is not possible to determine whether the locations investigated by intrusive works were sufficient or adequately placed. The presence of dissolved TPH in groundwater within the Mercia Mudstone at WS1 (and a significant percentage of methane in ground gas) is not sufficiently explained and, as no background to the setting is available, the source and extent of contamination has not been adequately determined. It is not explained how the water levels change on site or where the groundwater flows to, or if the groundwater contamination is migrating at all or considered stable.

The walled garden does not appear to have been investigated at all, although it was also reported (Geo-environmental, 2015) to have been used for scrapyards purposes. There does not appear to have been any query made to the relevant bodies to determine whether there are historical waste oil or other tanks that were used by the site and may still be on-site.

We also consider that the remediation strategy with regards to removal of materials is not sufficiently well defined.

It has not been explained why the ground investigation is so scarce in detail in comparison to the recommendations made by Geo-environmental (2015), which have not been regarded, including:

- o A coal authority mining brine report
- o A desk top and physical cavities search
- o Three rotary boreholes and in situ-testing to depths of 20 m, installation as groundwater monitoring standpipes
- o Installation of six groundwater and gas monitoring standpipes
- o Groundwater and gas monitoring on six occasions

A Construction Environment Management Plan should be prepared prior to construction.

#### Advice - Environment Permitting (Waste)

This site has a long history of undertaking a variety of waste management activities including operating as a metal recycling site along with the de-pollution, storage and dismantling of end of life vehicles. Part of the area covered by this planning application is still subject to an Environmental Permit (Ref. EPR/QP3991HT/A001) which was issued to Mr Ralph Sanders on the 10 November 2004. The conditions relating to this Environmental Permit remain applicable until it has been formally surrendered with us.

While the site has not been operational for a number of years we are aware of pollution incidents linked to the depollution and storage of end of life vehicles at the site and a number of end of life vehicles were still on site awaiting disposal at the time of our last inspection. As indicated above, part of the area covered by this planning application will have become contaminated during the

course of the site's operational life but we are not able to advise where these areas may be or their extent at this time (the detailed investigation should identify this).

Before we are able to accept the surrender of the environmental permit we would need to be satisfied there is no residual waste at the site that the extent and level of any contamination from the site operations were fully investigated and that appropriate remedial measures have been taken to address any contamination.

#### Advice - Environment Permitting (Foul Drainage)

It is indicated that foul water from the development will be treated by a private sewage treatment plant discharging to a watercourse. The applicant will likely require an Environmental Permit for such discharge from us.

Concern has been raised in respect of the suitability of the receiving watercourse for both foul and surface water. If, following an Environmental Permit application, we decide to grant a permit for a discharge to watercourse it does not imply the suitability, with regard to volumetric capacity, of the receiving watercourse. It is the permit holder's responsibility to identify and negotiate any requirement for downstream improvement works with the riparian owners concerned. Failure to do so could result in a Common Law action by the riparian owner.

#### **DEVON, CORNWALL & DORSET POLICE - 5th February 2018**

Following a recent site visit Police have no objections in principle to this application. However, having read the Design and Access Statement and reviewed the available drawings and in the absence of a Crime & Disorder Statement, it is not possible to comment in any detail.

Therefore, please note the following information, initial advice and recommendations, from a designing out crime, fear of crime, antisocial behaviour (ASB) and conflict perspective.

It is now widely accepted that a key strand in the design of a 'sustainable' development is its resistance to crime and anti-social behaviour. The new security element within the Building Regulations, namely Approved Document Q (ADQ), creates security requirements in relation to all new dwellings, including those resulting from a change of use; for example, commercial, warehouse or barns undergoing conversion into dwellings. It also applies to conservation areas. The elements of Crime Prevention through Environmental Design (CPTED) combined with the principles and practices of Secured by Design (SBD) provide an effective method in creating safe, secure, cohesive and sustainable communities where residents, visitors, businesses and legitimate business users are able to go about their daily routine without undue fear of crime or insecurity:-

- Access and movement: places with well-defined and well used routes with spaces and entrances that provide for convenient movement without compromising security
- Structure: places that are structured so that different uses do not cause conflict
- Surveillance: places where all publicly accessible spaces are overlooked
- Ownership: places that promote a sense of ownership, respect, territorial responsibility and community
- Physical protection: places that include necessary, well-designed security features
- Activity: places where the level of human activity is appropriate to the location and creates a reduced risk of crime and a sense of safety at all times
- Management and maintenance: places that are designed with management and maintenance in mind, to discourage crime and disorder in the present and the future

Given the site's close proximity to public footpaths and bridleways, as well as the intended future use, it must be secure. However, whether this means the whole perimeter or the individual areas, (main house, pavilions, botanical gardens, private dwellings, car parks etc.) will obviously have to be decided.

It is recommended that should the intention be to complete the refurbishment and construction in phases, as seems likely, each individual site is secured to protect materials, tools and plant equipment.

The physical security element of the application should not be overlooked. All doors at the entrance to a building, including garage doors where there is a connecting door to the dwelling, in addition to all ground floor, basement and other easily accessible windows, including roof lights, must be shown to have been manufactured to a design that has been tested to an acceptable security standard i.e. PAS 24 2016 or equivalent.

To assist with this requirement and to ensure compliance with ADQ it is recommended that all doors and windows are sourced from a Secured by Design (SBD) Member Company.

Perimeter security is one of the basic principles of crime prevention; being the first line of defence against unwanted trespassers. As such all rear boundary treatments must be 1.8m high, as a minimum requirement, and be solid and robust to prevent being breached - close boarded fencing or walls would be deemed appropriate. If more surveillance is required or 1.8m would feel too closed-in for smaller gardens, then a 1.5m solid structure with a .3m trellis topping would be acceptable. It is accepted that on some occasions gradients of land or other permanent solid structures can have an impact on the need, choice and height of boundary treatments but these should be assessed on their own merits to ensure the selected boundary treatment is appropriate to any potential risk of trespass.

If necessary I would ask that consideration is given to a suitable planning condition to ensure rear/side garden boundaries provided adequate and proper security for residents.

The 'whole site plan' would appear to indicate open access around the 7 private dwellings, thus increasing their vulnerability. If this is the case, consideration will need to be given to making this space 'private' and including defensive planting against walls and fences.

All proposed car parking areas should be well illuminated to provide the potential for natural surveillance during hours of darkness.

CCTV & Intruder alarm:-

In the prevention and detection of crime and anti-social behaviour, consideration should be given to the installation of an appropriate monitored CCTV and intruder alarm system, with compatible lighting. I would request that even at this early stage, consideration is given to this being made a planning condition.

There should be appropriate, clear signage throughout the site, particularly in those areas either adjacent to or shared with the public footpath network.

Lighting should be placed so that there is even and consistent lighting around the site. Such lighting should also be suitable for CCTV, and aid CCTV colour rendition.

Landscaping should not, where possible, hinder natural surveillance across the site.

## **REPRESENTATIONS**

There have been a number of representations submitted to the planning authority these are to be summarised below.

Support 8 responses:-

- This will be of benefit to the locals.
- Will provide quality accommodation, services and jobs for the locality.
- It's been an eyesore for years and time the site was used for good instead of becoming yet another exhibit of a faded country house preserved in aspic or more usually left to decay.
- There is little in the way of high quality, high value accommodation in the vicinity.
- I have a 40 year association with this property now and have seen some very large trucks delivering cars and extracting scrap so the traffic argument is nonsense.
- The building is listed and thus has been identified as needing to be preserved.

Objection 60 responses:-

- 7 new dwellings outside the village boundary breach/reverses previous planning decisions.
- Massive traffic increase in traffic movements from 1 to 3 per week to 90 to 120 per day over single track roads will be dangerous to residents and particularly children and again reverse previous planning decisions. The dramatic and inadequately assessed impact on our tiny rural road network in terms of traffic volume & minimal passing places.
- Theatre/ Outside Music licence will destroy a peaceful community, and lead to further urbanisation.
- Concern that when the 7 new dwellings are completed and sold the Company will go into liquidation without any restoration to Blackborough House.
- Current infrastructure and support services are overloaded and can cope with no more demand.
- The safety of our residents, in particular our children
- The noise pollution, ruining what is currently a rural idyll
- In the village of Blackborough there are no pavements, several blind spots, steep roads.
- Concern over the scale of the proposal
- The benefits of the scheme are outweighed by its detrimental effects.
- The design of the 7 villas is out of keeping with the AONB and will adversely impact on the setting of the listed building.
- Light and noise pollution.
- The scale of the development is far greater than the original footprint of the house, this will affect the wildlife and plants in an AONB.
- The Travel Assessment cites the use of public/alternative transport. There is no public transport and given the steep hills any alternative to car use is impractical for most. Employees are likely to be on shifts and car sharing unlikely to be feasible. Therefore the proposal is unsustainable in this respect.
- I object to the planning application because of the severe impact it will have on Blackborough village as a community, hazards to residents, damage to roads and properties, noise and sound pollution in an ANOB, farm stock and vehicle movement and a financial plan that lacks the ability to fulfil the obligations regarding the Enabling development (i.e. refurbishment of Blackborough House)
- We consider that lighting designs should form part of this planning application in order that its impact be properly assessed to ensure dark skies.
- What happens if there is not enough funding from the sale of the seven houses and/or additional investment to carry out the restoration of Blackborough House made available. Will there then be a requirement for more executive houses or will the project cease leaving the village with houses it didn't want or need and still a decaying ruin.

## **MATERIAL CONSIDERATIONS AND OBSERVATIONS**

### **1.0 Background information**

Blackborough House is a grade two listed building located in Mid Devon and within the Blackdown Hills Area of Outstanding Natural Beauty (AONB). In the grounds to the south of the house and within the proposed site boundary, there is a walled garden which is considered to be curtilage listed building due to its association and shared ownership with the principal listed building.

The landscape surrounding the site comprises undulating hills with planted borders and wooded areas, including Blackborough Wood to the north west of the site. While the location of the house is rural and isolated, Blackborough house sits on a plateau/escarpment, facing south, providing views to the house from the north east from the Blackdown Hills.

It is not intended within this report to go through the historical background and the construction of Blackborough house as this will be dealt with in more detail within the listed building application, placed before you for consideration.

However it is considered appropriate to discuss the most recent use of the site from 1973 when the house was opened as a repair garage and vehicle dismantlers.

In 1987 the building was listed at grade two and the list description notes that at the time it was in a semi derelict state. The condition of the building has further declined and parts are now structurally unstable, notably the rear of the building where the original internal walls are exposed.

The house and grounds subsequently became used as a scrap yard and a certificate of lawfulness was sought in 1993 in respect of the use of land for the storage and dismantling of motor vehicles and this was granted. This use persisted when the estate was sold to a previous owner in 1999, and indeed it is still the lawful use of most of the site today. The site now has been largely cleared of scrap etc. since the current owner purchased the property in 2014/15.

During the previous owner's time, it is understood machinery was used to alter the landscape of the gardens including lowering the terrace in front of the south side of the house creating tracks, and concrete hard standing to the west of the house. This means the scrapyards use, has destroyed some of the landscape setting of the building.

## **2.0 The Proposal**

The proposal is to provide for the main house to accommodate 24 letting rooms, bathrooms, lifts and kitchen facilities reasonably required for a hotel within the existing building and to provide, at lower ground floor a spa and function area.

As originally conceived, Blackborough House included a number of unique features and the restoration of these features forms part of the proposals:

- Two towers, nearly seventy feet high. Unfortunately, the upper sections of the towers were demolished in 1910 the intention is to provide new tower tops.
- Still remaining but in great need of attention, an Italian-style loggia or colonnade, surrounds three sides of the ground floor, this is to be repaired and re-instated where it has been removed to build the existing more modern workshop.
- Twelve large chimneys.
- The central courtyard, now exposed to the elements, three stories high and to be covered with an inverted glass structure.

A new lower ground floor extension is proposed that utilises the natural slope of the land. The topography to the south of the house allows an extension to be built that sits entirely below the existing ground floor of Blackborough House. This would have a minimal impact on the original building whilst also creating a ground floor terrace from which both the house and the landscape can be viewed.

The newly created spaces within the building will provide facilities for a diverse number of functions and activities including weddings, exhibitions and could also act as a gallery. A restaurant with an approximate capacity of 40 people is to be located on the ground floor and 24 bedrooms are to be provided within the house, primarily on the first and second floor levels. Spa facilities will also be provided within the extended basement floor.

To the north of the building a balcony/terrace will be provided at first floor level.

The proposed extension to the building located to the south of the main house utilising the existing basement area to access is 33m wide x 20m deep with a flat roof providing a terrace.

Set approximately 25 metres past the botanical gardens to the south west of Blackborough House is the 36 room new build Pavilion with associated parking, and plaza area. The Pavilion is set around a courtyard/plaza to replicate a typical stable block, but picking up on the Italianate style of Blackborough House.

Beyond the pavilion and set to the south west of Blackborough House are the proposed 7 dwellings/villas to facilitate the enabling aspect of this application.

These 7 dwellings/villas are to be set in a slight curve orientated North – South each property will provide 4 bedrooms, 3 bathrooms to the first floor and an open plan accommodation generally on the ground floor.

All these units will be similar and be of a modern cubist appearance clad with off white marble panels to the upper floor and local stone to the ground floor along with full height vertical timber cladding to the rear portion of the properties set under a green sedum flat roof.

Each property will have a small front garden and parking facilities.

To the south of the 7 dwellings/villas and set down in the landscape the bat building will be located surrounded by trees and set to the edge of the site halfway between the 7 dwellings and the walled garden/open air theatre.

The bat building is proposed to accommodate the existing bats within Blackborough house and will be constructed of local stone and timber cladding.

The walled garden located to the south of the house close to the extremity of the site will be utilised as an open air theatre incorporating stone seating within the sloping site, a small orchard will also be provided.

Located around the northern side of the building will be the new access road which will provide a number of the parking spaces required for the site, a small area will also be provided to the eastern side of the house close to the main access point from the lane.

### **3.0 Environmental Impact Assessment (EIA)**

A determination of whether the application should be accompanied by an Environmental Statement prepared under the Environmental Impact Assessment Regulations was sought from the Secretary of State by some of the residents of Blackborough during the application process. The Secretary of State concluded that the scale of the Blackborough House development within the Blackdown Hills Area of Outstanding Natural Beauty represents a major physical change in the locality sufficient to indicate to the Secretary of State that the development proposed was likely to have significant effects on the environment. The Secretary of State considered all the evidence and concluded that the proposal could potentially have a significant impact on the AONB, could potentially have a significant impact on Grade 2 Listed Building and its setting and that in highway terms it may have significant effects on the environment. In reaching this conclusion the Secretary of State has also considered measures proposed by the applicant to mitigate the environmental impacts. He concluded that the proposed measures were not sufficient to obviate the need for an Environmental Impact Assessment because the extent of the impacts are unknown.

Following this recommendation from the Secretary of State (dated 14th September 2018) the applicant was required to undertake an environmental statement (ES) as it is considered that the described development constitutes “EIA Development” and submit it for consideration with the application.

The ES was received from the applicant and is available to the Committee to review on the planning file. Your officers were of the view that the Environmental Statement should be subject to independent scrutiny and this was undertaken by Temple Group. The full report is available also on the application file and a summary of the findings is attached at **Appendix 1** to this report.

The independent assessment found a number of issues associated with the ES report which would require further information, however as the proposal is to be recommended for refusal it was considered that the Authority would not request the additional information. If however the Committee are minded to approve the application it would be prudent to seek further information as set out in Temple Group report and **Appendix 1** to this report

#### **4.0 Principle of development**

Policy S14 of the Local Plan Review 2013-2033 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.

Policy DM22 of the Local Plan Review 2013-2033 states proposals for new or expanded tourism, visitor or leisure facilities will be supported within or adjacent to defined settlements. Elsewhere, the nature of the proposed development must justify a countryside location and minimise environmental impacts, avoiding an unacceptable traffic impact on the local road network. Development proposals must:

- a) Respect the character and appearance of the location;
- b) Where appropriate, involve conversion or replacement of existing buildings; and
- c) Demonstrate that the need is not met by existing provision within nearby settlements.

The 7 new open market dwellings are therefore contrary to policy and would not normally be considered as appropriate development in the countryside. However this can be outweighed by the need to provide for the restoration of a listed building and to provide necessary funding for its upkeep as set out in the guidance from Historic England (known as ‘Enabling development’).

The NPPF 2019 and Historic England Guidance (both referenced, above) provide a framework for considering applications that are contrary to policy, but justified as necessary to provide funding for the conservation of a heritage asset. Both documents have been used in the deliberation of the enabling exercise. The following paragraphs specifically examine the guidance in greater detail to provide an appropriate background for consideration of the current application.

Firstly, any negative gap between the final value of the restored heritage asset and the cost of restoration is known as the “Conservation Gap” or deficit, with the additional proposals known as “Enabling Development”.

Secondly, it should be noted that enabling development is only applicable in situations where the cost of conserving the heritage asset cannot be met via developments that

accord with policy. This is relevant to the current case where the landholding is wholly within the open countryside where new market housing would be contrary to policy.

The key guidance is set out in paragraph 202 of the NPPF 2019:

“Local Planning Authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the dis-benefits of departing from those policies.”

The English Heritage Guidance “Enabling Development and Conservation of Significant Places” and the new paper by Historic England “Enabling Development and Heritage Assets” provides detailed advice on how to address this.

In such cases, enabling development is an entirely legitimate planning tool.

The guidance establishes various criteria to be satisfied:

“Enabling development that would secure the future of a significant place, but contravene other planning policy objectives, should be unacceptable unless:

- a. it will not materially harm the heritage values of the place or its setting
- b. it avoids detrimental fragmentation of management of the place
- c. it will secure the long-term future of the place and, where applicable, its continued use for a sympathetic purpose
- d. it is necessary to resolve problems arising from the inherent needs of the place, rather than the circumstances of the present owner, or the purchase price paid
- e. sufficient subsidy is not available from any other source
- f. it is demonstrated that the amount of enabling development is the minimum necessary to secure the future of the place, and that its form minimises harm to other public interests”
- g. the public benefit of securing the future of the significant place through such enabling development decisively outweighs the dis-benefits of breaching other public policies.

These are robust criteria, to ensure that any permission granted for such enabling development can be accepted as a justifiable departure from normal policy. The final criterion is the most critical as it deals with the potential extent of departure from normal policy.

The Policy is then expanded into further guidance:

“If it is decided that a scheme of enabling development meets all these criteria, Historic England believes that planning permission should only be granted if:

- a. the impact of the development is precisely defined at the outset, normally through the granting of full, rather than outline, planning permission
- b. the achievement of the heritage objective is secure and enforceable linked to it, bearing in mind the guidance in the NPPF.
- c. the place concerned is repaired to an agreed standard, or the funds to do so are made available, as early as possible in the course of the enabling development, ideally at the outset and certainly before completion or occupation.
- d. the planning authority closely monitors implementation, if necessary acting promptly to ensure that obligations are fulfilled.”

This is intended to ensure that anything granted permission as an exception to normal policy can be justified as providing a net gain as “enabling development” and then be implemented as such. For this reason, it is also implicit that the planning application(s) for enabling development be submitted at the same time as those for the heritage asset. The current application is assessed against the English Heritage/Historic England Policy and guidance later in this report.

## 5.0 Heritage and enabling

The starting point for the considering of applications which affects a listed building or its setting is the statutory requirement on 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' (section 66 Planning (Listed Buildings and Conservation Areas) Act 1990).

The Court of Appeal has made it clear that the statutory duties in relation to sections 66 and 72 Planning (Listed Buildings and Conservation Areas) Act 1990 do not allow a local planning authority to treat the desirability of preserving the settings of listed building and the character and appearance of conservation areas as mere material considerations to which it can simply attach such weight as it sees fit. When an authority finds that a development would harm the setting of a listed building or character or appearance of a conservation area, it must give that harm considerable importance and weight. Finding of harm gives rise to a strong presumption against planning permission being granted. This presumption is a powerful one, but not irrefutable. It can only be outweighed by material considerations powerful enough to do so.

Applications for listed building consent that affects a heritage asset must be able to justify their proposals. The NPPF 2019 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).

Policy DM25 of the Local Plan Review 2013-2033 relates to heritage assets and reiterates that heritage assets and their setting are an irreplaceable resource. It sets out a presumption in favour of preservation in situ in respect of the most important heritage assets. 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, the opportunities and to enhance them and also requires that where a development proposal would lead to less than substantial harm, that harm will be weighed against any a public benefit, including securing optimum viable use.

This aspect of the proposal will be considered in depth within the Listed Building report and should be read in conjunction with this application. It is not intended to go into full detail and repeat parts of the listed building application, although this planning application must consider the impact of the development on setting of the listed building.

The MDDC Conservation Officer has considered the proposal in depth and is in agreement with Historic England that there is harm to the setting of the listed building as per their letter of June 2019:

"The proposed conversion of the house would result in considerable change to it, and whilst we note that the applicant has tried to minimise loss of historic fabric of accommodation, and the addition to it of a large extension. The limitation of the applicant's land ownership around Blackborough House means that the 'enabling' development of the

hotel pavilion and the seven independent dwellings must all be built in close proximity to it. In our view the considerable visual impact caused by the proximity of that development to the principle listed building would compromise the house's current primacy within the surrounding landscape, and thereby harm its setting”.

Overall, therefore, the development will have harmful consequences for the listed building in physical and visual terms, but does not provide the required certainty of bringing the house back into long-term beneficial use. This brings the applications into conflict with Historic England's enabling development policy as well as with paragraphs 202 and 196 of the NPPF 2019, unless they deliver other meaningful public benefits which would outweigh that harm and cannot be delivered in a less harmful way.’ Enabling development is further considered below.

### **5.1 Enabling**

The applicant has submitted a financial viability appraisal which concludes that 7 luxury units are necessary to raise sufficient funds to finance the proposed works to the house. The contents and conclusions of this report have been independently reviewed by a different viability assessor acting on behalf of the Council.

The independent review undertaken by JLL Chartered Surveyors in association with Randall Simmons concludes that the proposed works to the site realistically would cost substantially more than that estimated within the applicants submitted figures (these are available for the Committee to view). Comments relating to the review undertaken by JLL and Randall Simmins (both acting for the Council) are set out below

### **5.2 JLL and Randall Simmins**

The information supplied regarding the trading of the proposed hotel is limited and lacking in detail. For a project of this size, it would be expected to be, far more in-depth, with analysis of the trading of the hotel.

- for a hotel of this standard and in this location, the proposed development is too large to achieve room rates and occupancy levels at the quoted levels.
- there are a number of competing boutique / luxury hotels in Devon which will be considered to be in more prime locations with either sea views or situated on or near the moors. These hotels are often long established and/or run by renowned operators.
- there is concern that there may be insufficient car parking at times of full occupancy, for example when there is a large function or event.

### **5.3 The conclusions are as follows:**

- Details of the marketing history are limited. Information provided to us shows the property has been marketed by the previous owner both regionally and nationally over a period of several years. Its existing use and condition was clear from the marketing particulars provided. The marketing does not meet all the requirements of English Heritage (Historic England's) Enabling Development guidance. However, it is likely the previous owner, who was using the property as a scrapyard, simply wished to dispose of the property for the best price achievable and was not aware of, or seeking to, meet these requirements. Although, as the Applicant has not made any allowance for Site Value in its appraisals, a re-marketing exercise is not likely to impact on the viability of the proposed development.
- The purchase price of £850,000 appears high having regard to its current use as a scrapyard or as a residential restoration project. Given the very poor condition of the

property, it is not likely to have any value as a residential restoration project. Therefore, the value of the property is likely to stem from its current use as a scrapyard / woodland / storage space, although, given its remote location and poor access demand for this property as a scrapyard would be limited. We note that the Applicant has not made any allowance for Site Value in their appraisals and therefore this conclusion adopts a nil value within the assessment.

- Randall Simmonds opinion of the costs of the essential repairs and restoration works to the Main House at £6m (including fees) significantly exceeds JLL's opinion of the anticipated end values for residential or hotel use of £3m and would result in a negative site value as a development project.
- Adopting the above figures and making an allowance for fees, finance and profit results in a conservation deficit of approximately £3.77m for Blackborough House as a restored building.
- Enabling development on the site, from a purely financial viability perspective and subject to other policy considerations, would be justified in principle.

The proposal does not include any consideration with regard to the provision of funds for the 7 dwellings and to provide for open space contributions.

The report undertaken by JLL and Randall Simons along with the submitted documents were passed to Historic England for consideration, their response is set out in the consultation section but for clarity is included here.

Following the changes undertaken to the proposal and the reduction in the works to the basement the applicant is of the view that the preferred option which represents the application proposal will result in the lowest remaining deficit of £0.5 million; therefore, this is the most viable option. The applicant is also of the view that the balance of this deficit could be further reduced to essentially zero, if the profit element is removed from the calculation and the developer's profit margin is obtained via future hotel operating profits, or the sale of the asset after a short period of ownership and operation.

However Historic England have reconsidered the proposal in light of this information and have still raised concerns as to the viability and that advice on the previously raised key issues remains unchanged. The new documentation has not addressed their concerns regarding the credibility of the development or that it will secure the long term beneficial use of the site, despite the enabling development proposed. Despite the additional financial forecasts supplied, they remain concerned that the proposed hotel scheme is very high risk and that consequently, further development would be requested in due course.

#### **5.4 Historic England response**

"The report gives clear cause for concern regarding both the viability of the development and whether it meets the accepted tests for enabling development. Notwithstanding the views of the Council's consultant, we believe that serious questions could be asked regarding both the marketing of Blackborough House in 2012-13 and the eventual price for which the applicants purchased it - which was considerably in excess of the asking price in 2017. We consider that the owners need to provide good reasons as to why the property should not be re-marketed at a realistic price which reflects the conservation deficit, something that appears not to have been reflected in the price for which they purchased it.

For a number of reasons the hotel proposal lacks credibility to us. The applicant is not a specialist in that field nor does he have an end-user in prospect who is themselves an experienced hotel operator. The evidence of the report demonstrates that the economic model being used for the hotel is not financially viable and it is also very unclear how it

would be funded. The figures put forward by the applicant for the repair and conversion works seem high, but on the other hand, they do not include specific finance costs, which seems most unrealistic.

Overall, the hotel scheme seems to be very high risk, taking either the applicant's costs/return or those suggested as more realistic by the Council's consultant, and if approved, there would be a high probability that the applicants - or any developer who subsequently took on the project - would need to return for a 'second bite of the cherry'. That risks increasing the harm to Blackborough House or its setting even further than in the scheme currently proposed”.

The Applicant has refuted a number of the assertions set out by JLL and Historic England details of which are set out in their response and attached to this report at **Appendix 2**.

The Authority is of the view that there is a substantial short fall in the conservation deficit, which cannot be overcome with this specific application, and it is likely that further dwellings would be required to provide for this shortfall, or a fundamental change to the proposal before the Council. The former is likely to further adversely impact on the setting of the listed building, the AONB and increase potential traffic issues to the site in the long-term.

## **6.0 Highways**

The site is located within the Blackborough area of the Blackdown Hills Area of Outstanding Natural Beauty where access is gained to the site via relatively narrow country roads. Concerns have been raised by locals regarding traffic generation during events. However Devon County Council as Highway Authority has set out its response above which indicates that although there are some issues, overall, while significant, the Highway Authority does not consider it to be severe in capacity terms and would seek further mitigation in the form of passing places between the site and Honiton road both along the advised preferred route past Forest Glade but also on the route towards Kentisbeare.

It will be essential for a construction management plan to be in operation and the deliveries to follow those proposed for the Hotel and avoid peak hour traffic and that smaller vehicles be employed. Therefore the Highway Authority would raise no objection to the proposal subject to specific conditions.

It is evident that Devon County Council as Highway Authority has some concerns with regard to the provision of passing bays along the roads associated with access to the proposal. However it considers this to be potentially an acceptable approach provided suitable locations can be found for these passing areas.

The local group Blackborough Area Community Organisation (BACO) has undertaken their own survey and conclude there will be substantial traffic issues relating to the proposal. They have concluded that additional work is required to provide for the justification of the proposed development and its subsequent impact on the highway network. The BACO's consultant states that research into previous applications has demonstrated that the characteristics of the roads are such that the concern over very low levels of traffic increase have resulted in highway objections being sustained. The objector's consultant states that as a result of increased traffic for the proposal, it demonstrates a significant impact for which the scope for robust mitigation is extremely limited if not non-existent. It is considered by the objector's consultant that the application will result in a greater level of traffic on the road network and that this will therefore inevitably result in a road network that

is already substandard becoming more unsafe for pedestrians, children, cyclists, and horse riders.

It is concluded that insufficient information has been provided by the applicant to be able to fully consider the impacts of the proposal on the highway network and its impact on the area as a whole. Although locations for passing bays have been provided it is clear these are already utilised by motorists and do not provide a significant increase in passing areas especially within the confines of Blackborough itself where the streets are very narrow. In addition no substantive details have been provided as to how these will be assimilated into the landscape without the removal of specific landscape features such as hedges and banks. It is therefore unclear how the proposed will impact on the AONB.

The conclusion is that any increase in traffic generation will be unacceptable if suitable mitigation is unable to be provided and it is considered that the proposed passing bays are not a suitable solution as set out in the details submitted by the applicant,; despite this being to some degree supported by the Highway Authority it is your Officers view that in terms of the provision of passing bays, the environmental impact of these bays have not been fully assessed and given sufficient consideration by the applicant in regard to the impacts on the AONB and the wildlife the proposal may have.

## **7.0 Impact on Blackdown Hills Area of Outstanding Natural Beauty (AONB)**

The main policy in considering the potential impacts of this proposal on the AONB is policy DM27 Local Plan Review 2013-2033, which relates to protected landscaped such as the AONB and requires that development proposals must demonstrate that:

- a) Cultural heritage and the character, appearance, setting and other special qualities of the landscape will be conserved or, where possible, enhanced; and
- b) Biodiversity will be conserved and enhanced where possible through improved linking of habitats, appropriate landscaping and habitat creation.

AONBs are designated under the National Parks and Access to the Countryside Act 1949. The purposes of the AONB designation were updated and confirmed by the Countryside Commission in 1991 as follows:

- The primary purpose of the designation is to conserve and enhance natural beauty.
- In pursuing the primary purpose, account should be taken of the needs of agriculture, forestry, other rural industries and the economic and social needs of local communities. Particular regard should be paid to promoting sustainable forms of social and economic development that in themselves conserve and enhance the environment.
- Recreation is not an objective of designation, but the demand for recreation should be met so far as this is consistent with the conservation of natural beauty and the needs of agriculture, forestry and other uses.

The NPPF 2019 states:

Paragraph 172 -Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads. The scale and extent of development within these designated areas should be limited. Planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:

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

The Countryside and Rights of Way Act 2000 confirmed the significance of AONBs and created improved arrangements for their management. There are two key sections of the Act for AONBs:

- Section 85 places a statutory duty on all 'relevant authorities' to have regard to the purpose of conserving and enhancing natural beauty when exercising or performing any function affecting land in AONBs.
- Section 89 places a statutory duty on local authorities to prepare and review a Management Plan for each AONB in their administrative area.

The **Blackdown Hills AONB Management Plan 2019-24** is a statutory Management Plan which sets out the policy framework for the conservation and enhancement of the Blackdown Hills AONB for the next five years. It is a revised and updated version of the previous Management Plan 2014-2019. Its purpose is to:

- Highlight the special qualities and significance of the AONB
- Present a vision for the future of the AONB
- Set out objectives and policies to secure the vision
- Identify what needs to be done, and by whom
- State the condition of the AONB and how the effectiveness of its management will be monitored
- Reflect the views and aspirations of a wide range of AONB stakeholders and parties with an interest in it
- Coordinate the work of different partner organisations

As the statutory policy document for the AONB, this plan can be used to guide, inform and support all other plans and activities developed by public bodies and statutory undertakers that may affect the AONB, in line with their duty to have regard to conserving and enhancing natural beauty. It does not override the plans and policies of other organisations, who may also be the lead body in respect of responsibility for decision making and implementation.

It is important to establish that the Local Authority planning policies are those which need to be considered first of carrying more weight when considering development within be AONB but that this does not disregard the policies associated with the Management Plan for the AONB which are a material consideration for planning purposes.

When considering the policies in relation to this proposal the Authority must balance the requirements of the development against the potential harm there may be to the AONB if the development were to be undertaken.

Access to the site is via a network of winding lanes, often narrow, single track with steep gradients and numerous bends. There are no footpaths and the lanes are often used by walkers, local pedestrians, cyclists and horse riders. There is therefore a very real concern about additional vehicle movements - at all stages from site remediation, construction, deliveries, hotel guests, event attendees, staff and residents - in terms of highway safety and disturbance. Furthermore any mitigation of the impact of vehicle movements in the

locality is likely to have a detrimental impact on the character and appearance of the area with the loss of wildlife habitats and the road.

It is understood that the AONB Partnership requested DCC landscape officers to review the submitted landscape and visual amenity assessment (LVIA).

Their comments are:-

The LVIA has been carried out by a suitably qualified landscape professional on behalf of the applicant. It accords with best practice guidance in some respects but lacks robustness in others, including identifying sensitive landscape receptors, assessing significance of effects, presentation of viewpoints used in the assessment and communication of likely change. Information in the LVIA allows a general understanding of the landscape and visual context, the nature and scale of the proposals, and mitigation measures. However, the scope and level of detail is insufficient in proportion to the high sensitivity of the AONB context, the scale and nature of the development, and the potential for significant effects on the AONB's special qualities

Concern has been raised in terms of the EIA assessment and further detail is required to be able to fully appreciate the impact the proposal will have on the AONB. The 3 points set out below are still to be fully considered and requires more detail to be able to consider the impacts of the proposal.

- Potential impact on the Blackdown Hills Area of Outstanding Natural Beauty (AONB)
- Potential impact on Blackborough House as a Grade 2 Listed Building and its setting
- Potential impact of increased traffic and road safety

Therefore the Authority remains of the view that the impact of this proposal on the AONB has not been adequately addressed and is not compliant with policy DM27 of the Local Plan 2013-2033.

## **8.0 Design and impact of new dwellings and other new build**

### **8.1 7 Proposed New Dwellings**

As previously stated in this report the need for the 7 dwellings is set out in the enabling section above. This section is to concentrate on the design of the proposed and the possible impacts on the AONB, Listed Building and its setting.

The proposal is to provide 7 number villas set to the western end of the site set in a gentle curve generally facing north. All are to be identical although the end unit is to be handed. The original design was to provide a modern cuboid appearance with large glazed areas, flat green roofs with light marble panel walls, to simulate an Italian villa. However materials have been amended to take into consideration the local materials to include timber, chert and stone.

Each unit is to be provided with appropriate parking and enclosed garden area to the rear.

The AONB Partnership (and objectors) have commented on the design of the proposed houses as follows: It is reasonable to conclude that any ancillary dwellings that may have historically been built to support Blackborough House would have been of modest, simple form reflecting local building traditions (and thus not detracting from the 'statement' made by the main house in this setting). The proposed Italianate aggrandisement is not an appropriate design solution in this remote and very rural part of the AONB.

Your officer agrees with the comments made by the AONB officer in terms of the materials proposed for the units although a simple cubist design, is not necessarily a cause for undue concern in terms of being a suitable shape. The cubist design provides a low profile unit and subject to alternative locally sourced materials which have now been introduced may well be appropriate in this location. The houses will be set some distance from the main house and screened by the proposed new Pavilion.

However the houses will be seen in the context of the main listed house and Historic England (HE) have raised concerns about the setting of the listed building.

Views into and out of the site are generally limited although the position of the proposed dwellings are to the south western corner of the site. They are screened to some extent by the trees although they can be seen through these trees from distant views. The inclusion of additional planting may reduce this. However the large glazed gables are likely to give rise to a certain amount of light pollution within the AONB; this is a factor which needs to be considered when assessing the impact of the proposal on the surrounding area. Although the materials for the new dwellings have been toned down and will utilise local materials they will nonetheless have a detrimental impact on the setting of the listed building.

## **8.2 34 room pavilion and parking**

The proposed pavilion to provide additional parking and accommodation is designed to replicate a typical small stately home stable complex with a hint at an Italian style within the design to complement the listed building. Although the design could be considered a little pastiche it does take its inspiration from similar style properties around the country providing a suitable structure not to overtly compete with the main house.

Whilst the design is considered to complement the principal building, the proximity and amount of development including parking in close proximity to the listed building is considered to be harmful to the house's current primacy within the surrounding landscape and its setting. There has been no justification for this harm.

Although sufficient parking for the proposed hotel and associated dwellings is to be provided this parking provision is set around the proposal and along the internal road requiring parallel parking along its length which is likely to compromise the access road within the site and potentially be a hazard to the seven new dwellings at the far end of the site and the associated pavilion, causing undue manoeuvring issues when people are trying to park. A more appropriate parking layout is required.

## **8.3 Walled Garden**

The proposed use of the walled garden to provide for entertainment is considered to be an acceptable use. The proposed works envisaged and designed, although interrupting the internal stone retaining wall which splits the area to two levels, are considered to be satisfactory. It is considered that the use of the walled garden for entertainment purposes would be an appropriate use, without detrimentally harming the overall design of the walled garden.

## **9.0 Ecology**

The landscape surrounding the site comprises undulating hills with planted borders and wooded areas, including Blackborough wood to the north west of the site.

An ecology report was undertaken by Quantock ecology, environmental consulting group on the 23rd May 2017.

The scope of the report describes the baseline ecological conditions at the site; evaluates habitats within the survey area in the context; and describes the suitability of those habitats for notable or protected species.

The report clearly requires further survey work in particular relating to the presence of dormouse, which has not been undertaken. When determining a planning application, the authority should not impose a condition requiring further work to identify the likely environmental effects after permission has been granted. It is a well-established principle that the planning authority should ensure it takes account of all material considerations before making its decision. It is therefore crucial that all information about the potentially significant ecological effects of the proposal is available to the planning authority before it grants permission. This has not been undertaken and so would either need to be dealt with prior to a decision or included as part of any refusal decision.

## **10.0 Lighting/noise/contamination/drainage**

### **10.1 Lighting**

The applicant has provided a summary lighting proposal and although indicating the type of lighting proposed, it does not provide sufficient information to fully assess the impacts of the scheme on the wider surrounding environs. There is no clear indication of the location of the lights their output and impacts on the countryside and wildlife.

There has been no assessment of light spill or indeed the likely impact there will be to the wildlife or the views of the site at night from outside.

It is clear that further information will be required to fully assess this aspect, although a specific condition could be placed on any permission to provide this prior to development it is better to have this information before and to be fully assessed.

The submitted details of the lighting are insufficient to clearly understand the impacts it may have on immediate neighbours and the effects it may have on the AONB. As such further information is required to carry out a reasonable assessment and reach a conclusion.

### **10.2 Noise**

This can be broken into two phases, construction and operation.

#### Construction

It is likely there will be significant noise issues during the construction phase to some extent this can be mitigated by way of a Construction Management plan which could limit the operating hours to some degree. However the process is noisy and will be subject to the usual environmental health legislation with regard to the level of noise associated with the construction, including vehicles in and around the site.

#### Operation

Concern has been raised with regard to noise levels during the operation time of the proposed hotel and in particular when there are functions and especially late into the evening with the potential for fireworks and music.

There is likely to be some elements of noise associated with the proposal which could be mitigated by way of appropriate conditions, which could limit noise levels and timings already proposed with events. An example would be to limit the use of amplified music in an outdoor setting. However the authority does need to balance these conditions against the needs of the hotel to ensure the proposed conditions do not interfere with the viability of the hotel operations.

Noise will always be a potential issue however the Environmental Health team have raised no objection concerning noise and it would seem that this can be controlled by way of other legislation which is considered by the Environmental Health department of MDDC.

### **10.3 Contamination**

Environmental Health has responded and their consultation is set out earlier in the report.

The Environment Agency's response to the application sets out a substantial list of concerns about the lack of information provided by the applicant relating to the satisfactory assessment of on-site contamination. Clearly there are concerns that there is a high risk that the actual levels of contamination are far greater than the current report provide by the applicant suggests. If this is the case then the costs associated with remediating the site could quickly and very substantially escalate.

The Environment Agency has requested a number of stringent conditions to be applied to any decision notice with regard to contamination. It is preferable to have the required details relating to the contamination, prior to decision making however this is not always possible bearing in mind the potential cost to the applicant without a guarantee of recouping this cost.

However, without having the results of a full programme of contamination testing at this time, it is not possible to accurately assess these remediation costs and to properly assess how the contamination remediation costs would impact upon the developer's Viability Appraisal.

### **10.4 Drainage**

The Lead Local Flood Authority (DCC) has assessed the proposed drainage for the site and consider that there is a requirement for further information to be provided, and are minded that the Authority should refuse the proposal until such time as the following items have been considered further and provided with appropriate information.

- The Local Authority Policy DM1 (2013-2033) requires developments to include sustainable drainage systems. The applicant will therefore be required to submit additional information in order to demonstrate that all aspects of the proposed surface water drainage management system have been considered. These are set out in the consultation response dated 26<sup>th</sup> February 2018
- The applicant must submit information regarding the adoption and maintenance of the proposed surface water drainage management system in order to demonstrate that all components will remain fully operational throughout the lifetime of the

development. The exceedance of the basin is also not clarified and requires additional information.

It is concluded that without this additional information the Authority is not in a position to be able to recommend approval until such time as these points have been dealt with and confirmed appropriate by the Local Lead Flood Authority.

### **11.0 Amenity of neighbours**

The immediate neighbouring property is located approximately 20m to the north of the rear of the main house, set slightly down from the main house. It is proposed to provide the bin storage at the rear of the main house and will be within 10m of neighbouring property. On the rear of the main Blackborough House there is to be a terrace, which raises concerns over potential overlooking of the neighbouring property with a commensurate loss of privacy for the occupiers. This can be dealt with by way of a suitable screen which could be conditioned.

Environmental Health has raised no specific concerns over these aspects in terms of noise and so it is not considered that the proposed neighbouring property is likely to be adversely impacted by the proposal, when compared to the likely impacts of a scrap yard should that use recommence, then it needs to be considered which is the most problematical and likely to have the most detrimental impact on the neighbouring property.

Taking into account the previous scrap yard use and lack of objection from Environmental Health, it is concluded that although the neighbouring property will be likely to be detrimentally impacted by the proposed development, this is not to such a degree as to warrant a reason for refusal.

### **12.0 Tourism and Employment**

Tourism has an important role within Mid Devon providing employment and generating income for local residents. The current proposal fails to meet the criteria of policy DM22 of the Local Plan Review 2013 – 20133, in that the proposed hotel would generate an unacceptable impact on the surrounding local road network. Furthermore the applicant has not demonstrated how the harm to the locality would be outweighed by the benefit of the development.

The proposed development would create employment opportunities for the Mid Devon area, through the construction work and the operation of the hotel. Policy DM18 of the Local Plan Review 2013- 2033 seeks to support development within the rural areas provided the development does not have a detriment impact on the local area. With this application the proposal would have a detrimental impact upon the local road network, as explained above. Furthermore there is little confidence that the overall development would be viable.

### **13.0 Discussion around 106 agreement**

Although the proposal is to be recommended for refusal, if Committee were minded to approve, then the proposal will need to be subject to a section 106 agreement to cover the required education contributions sought by DCC, affordable housing requirements (in this case a single dwelling) and the securing of monies and payments relating to the enabling development, to ensure they are protected for the required enabling process, to allow the works to Blackborough House to be undertaken.

#### **14.0 Other matters**

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

#### **15.0 Balance/summary**

It is concluded that there is harm on a number of points, and whilst some of the harm is slight, it is locally magnified to levels of moderate/large impact on the setting and significance of heritage assets. We must also consider the cumulative impacts.

A finding of harm brings sections 66 of the Act into play and requires the decision maker to apply the statutory tests. The Courts have held that where harm is found there is a strong presumption against planning permission being granted. It is possible to overcome this presumption against harmful development, but it is a high bar, and must not be set aside lightly. It can only be set aside in exceptional circumstances. Combined with the great weight requirement in the NPPF 2019. The planning balance is heavily weighted against development.

The report gives clear cause for concern regarding both the viability of the development and whether it meets the accepted tests for enabling development.

There are serious questions to be asked regarding both the marketing of Blackborough House in 2012-13 and the eventual price for which the applicants purchased it - which was considerably in excess of the asking price in 2017.

For a number of reasons outlined below the hotel proposal lacks robustness and justification.

The evidence of the report demonstrates that the economic model being used for the hotel is not financially viable and it is also very unclear how it would be funded. The figures put forward by the applicant for the repair and conversion works seem high, but on the other hand, they do not include specific finance costs, which is considered unrealistic.

Overall, the hotel scheme seems to be very high risk, taking either the applicant's costs/return or those suggested as more realistic by the consultant acting for this authority, and if approved, there would be a high probability that the applicants - or any developer who subsequently took on the project - would need to return for a 'second bite of the cherry'. That risks increasing the harm to Blackborough House or its setting even further than in the scheme currently proposed.

The evidence presented suggests that a hotel use may be far from the most sustainable use for the building, in either the long or short term, and is certainly not the optimum viable use referred to in paragraph 196 of the NPPF 2019.

The proposed conversion of the House would result in change to it, and whilst it is noted that the applicant has tried to minimise loss of historic fabric there is the addition a large extension to the House. The limitation of the applicant's land ownership around Blackborough House means that the 'enabling' development of the seven independent dwellings and the associated pavilion must all be built in close proximity to it. In your officers view the visual impact caused by the proximity of that development to the principal listed building would compromise the house's current primacy within the surrounding landscape, and thereby harm its setting.

Overall, therefore, the development is considered to have harmful consequences for the listed building in physical and visual terms, but does not provide the required certainty of bringing the house back into long-term beneficial use. This brings the application into conflict with Historic England's enabling development policy as well as with paragraphs 202 and 196 of the NPPF 2019, unless the application can deliver other meaningful public benefits which would outweigh that harm and cannot be delivered in a less harmful way.

Historic England has concerns regarding the planning and listed building consent applications on heritage grounds and their conformity to the relevant policies of the NPPF 2019. In determining these applications the Committee should bear in mind the statutory duty of sections 16(2) and 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.

In addition it is concluded that insufficient information has been provided by the applicant to be able to fully consider the impacts of the proposal on the highway network and its impact on the area as a whole. Although locations have been provided for suitable passing places, detail is poor as to how these will be assimilated into the landscape without the removal of specific landscape features such as hedges and banks.

The ecology report has not been followed to its conclusion with a requirement for a dormouse survey to ascertain the presence or absence of the species on site, as such a positive decision is unable to be made until such time as this has been carried out and the results implemented, or conditioned.

Although some details have been provided with regard to lighting there has been only minimal information which does not allow for a clear understanding of the possible impacts this lighting will have on the wider environs and the use of the site.

In conclusion it is considered that the proposed scheme to convert the listed house to a hotel with the provision of an extension, 34 room annex building and 7 dwellings is in conflict with Historic England enabling policy and the policies of the Development Plan.

## **Reasons for Refusal**

1 The proposed overall development by virtue of its size and location will have a detrimental impact on the listed building and fails to have special regard to the desirability to preserve the listed building itself and its setting. Furthermore the proposal does not provide certainty that the listed building known as Blackborough House will be brought back into a long term beneficial use. Therefore the proposal does not meet the statutory duty as stated in sections 16(2) and 66(1) of

the Planning (Listed Buildings and Conservation Areas) Act 1990. The proposal also fails to meet the requirements of policy DM25 of the Mid Devon Local Plan Review 2013 – 20133 and guidance given in the National Planning Policy Framework 2019.

2 The nature of the proposed development and the submitted supporting documentation fail to show that the development is viable and that a suitable form of development can be accommodated on the site. The considerable shortfall in the conservation funding has not been overcome and the proposal is in conflict with Historic England's policy on Enabling Development and guidance given in the National Planning Policy Framework 2019.

3 Insufficient information has been provided by the applicant to be able to fully consider the impacts of the proposal on the highway network and its impact on the area as a whole and in particular the Blackdown Hills AONB. No suitable details have been provided as to how proposed highway works will be assimilated into the landscape without the removal of specific landscape features such as hedges and banks. In addition the proposed sites do not constitute new passing areas, as these are already utilised on the highway network. The proposed is therefore in conflict with Policies DM22, DM26 and DM 27 of the Local Plan Review 2013-2033 and the Blackdown Hills Area of Outstanding Natural Beauty Management Plan 2014 – 2019 policies PD 1/C and TH 1/A

4 Insufficient information has been provided by the applicant to be able to fully consider the impacts of the lighting proposal on the AONB and listed building and ecology. The proposed is therefore in conflict with Policies DM25, DM26 and DM27 of the Local Plan 2013-2033 and the Blackdown Hills Area of Outstanding Natural Beauty Management Plan 2014 – 2019 policies PD 1/C and TH 1/A

5 Insufficient information has been provided by the applicant to be able to fully consider the impacts the proposed development may have on dormice as a survey has not been undertaken. The proposed is therefore in conflict with Policy DM9 of the Local Plan 2013-2033.

6 Insufficient information has been provided by the applicant to be able to fully consider the impacts the proposed development may have on the drainage system to be utilised and is therefore in conflict with policy DM1 of the Local Plan 2013-2033

7 The submitted environmental statement associated with the EIA submission is lacking in clarity and information requiring further additional information to be able to clearly establish the impacts the proposed will have on the AONB, road network and surrounding area. The proposal is therefore in conflict with The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and amendments 2018

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.

## **Appendix 1**

### **Review of Blackborough House Environmental Statement by Temple Group**

The report is broken down into a number of sections equivalent to that of the submitted ES:-

- 1.0 Introduction to the review
- 2.0 Review of scheme and site information
- 3.0 Review of ES format, presentation and scope
- 4.0 Landscape and visual
- 5.0 Heritage
- 6.0 Traffic and transport
- 7.0 Ecology
- 8.0 Drainage and flood risk
- 9.0 Ground conditions
- 10.0 Mitigation measures

The report is available to the committee and it is not my intention to run through each section in detail, but to clarify, where possible, the results of Temple group's assessment.

#### Chapter 1 Introduction to the review

This is relatively self-explanatory and provides an overview of how the company consider the aspects of the ES provided by the applicant's agent.

#### Chapter 2 Review of scheme and site information

Initially runs through the description of the application site where indicates that the playroom site has not been provided. I consider there is limited detail in this section, traffic and transport context of the site beyond the immediate access to the site, but raised in later chapters. They consider there are inconsistent descriptions with regard to a stream/ditch and where it is located on the site. Although the site history provided in detail. There are concerns that the use of the previous sites operation as scrapyards and car sales is not appropriate as the main baseline for assessing some of the key impacts relating to traffic noise equality and amenity. This should have been a baseline representative of the prevailing or foreseeable conditions, the scrapyards had not been operating for some time, as such, basis of some of the subsequent assessments considered not to be valid.

Proposed development construction period, provides no phasing, it is important to understand the reasonable worst case scenario potential for sensitive receptors and the impacts of later phases

on those earlier phases undertaken. Details of construction traffic not provided, which should provide peak HGV is anticipated as well as averages.

Proposed development operation period, information supplied is considered acceptable to provide summaries of current site layout, uses, building material, palette, landscaping details, lighting, parking numbers. However, it is unclear what the aspirations are for the associated spa, bar, restaurant and event space. Significant effects could occur from aspects such as odour from the bar, noise from the events, along with traffic accessing egressing the site at antisocial times, or in an un-staggered fashion.

#### Summary of Clarifications Required

1. Total area of the Site within the Site boundary
2. Location and nature of streams and watercourses on Site
3. Details of any off-site highway improvements
4. Details of any likely air emissions from the proposed energy strategy
5. The wider environmental effects of pursuing the do nothing option

#### Summary of Potential Regulation 25 Information Requests

7. Sufficient details about construction activity to inform likely effects, such as construction phasing or order of work.
8. Type and quantity of waste for construction and operation phases.

#### Chapter 3 Review of ES format, presentation and scope

I do not consider there is a requirement to deliberate this section as it relates to the format and presentation of the report, but will provide the summary of MDDC's agents Temple Group.

#### Summary of Clarifications Required

9. The Applicant should clarify on what basis the statement that no archaeological remains are likely to be present is made.
10. The Applicant should clarify the method used to assess economic effects, and whether any effects on the community or human health have been considered
11. The Applicant should clarify whether there is considered to be any risk from mining instability or from the structure of the derelict building that would merit consideration as a cause of major accidents or disasters
12. The Applicant should clarify how consultee comments have informed the scope of the ES
13. Relevant qualifications and competence for all specialists involved in the ES assessment should be provided
14. The Applicant should clarify whether any planning applications have been submitted since December 2018 that have the potential to be determined before this application and that have not been included in the cumulative effects assessment.

#### Summary of Potential Regulation 25 Information Requests

15. The Applicant should provide an estimate for traffic associated with the construction of the Proposed Development, and an assessment of the air quality and noise effects of this traffic if HDV/LDV traffic exceeds screening criteria
16. The Applicant should provide an assessment of noise effects to include construction and operational traffic, construction activities and outdoor performances. This should include the identification of all appropriate receptors.

17. The ES should detail the limitations and assumptions associated with the environmental assessment
18. The NTS should include a description of construction activity
19. The NTS should be updated to reflect all amendments to the ES made in response to this review.

#### Chapter 4 Landscape and Visual

The submission is based on the third edition guidelines for landscape and visual impact assessment. But there is no mention made to National planning guidance or compliant with planning policy. Scope of the LVIA appropriate for the scale of the proposed development. There are issues relating to methodology, study area, viewpoint locations, and the quality of some of the photography.

Photomontage as described within the Landscape Institute technical Guidance Note TGN 06/19, would have been appropriate for a scheme with such significant potential impacts upon a nationally designated landscape. There omission limits the level of confidence that can be ascribed to the assessment.

The LVIA provides an adequate description of the baseline conditions including a review of landscape character areas within the study area. However there are some areas which require more information, this includes the methodology is not clear as to how the ZTV was produced, It is stated that, "The local landscape receptors have not been individually assessed as each are located within the wider LCA3A which has been assessed. The AONB, as a whole, has not been assessed for the same reason." The assessor does not agree with this approach as it does not afford sufficient review and assessment of the wider landscape/AONB which is considered valued in NPPF terms. This omission should be addressed even if the applicant deems all effects to be positive.

The assessment of construction effects is not considered adequate. No indication is provided with regard to timescale or phasing and no levels of effect are included. Considering the tranquil and valued nature of the area this is considered an omission.

#### Summary of Clarifications Required

20. No comment provided with regard national planning guidance and no reference to whether the development is compliant with that and other planning policy listed.
21. Confirmation of what consultation was undertaken with regard to the contents of the LVIA and presentation of visualisations.
22. Clarification as to the quality of images and the size that panoramic views should be printed at.
23. Clarification and justification for the design process included as mitigation should be referenced within the LVIA.
24. Clarification that monitoring of the planting and landscape strategy and a long-term landscape management plan has been provided elsewhere.

#### Summary of Potential Regulation 25 Information Requests

25. Preparation of photomontage to enable confidence in the levels of assessment prescribed.
26. Details of ZTV methodology and cumulative effects methodology required.
27. Individual local landscape receptors should be addressed
28. Construction effects including timescales such be detailed.

#### Chapter 5 Heritage

The four heritage assets set out in the report should have been mentioned in the heritage assessment along with an appraisal as to why the Proposed Development would not have any impact on their significance rather than leaving them out. There is a potential for the inclusion of these heritage assets to introduce new potential significance effects.

The Heritage Chapter gives a well-reasoned conclusion with Table 5.5 summarising for each Heritage Asset the 'Sensitivity of Receptor', 'Magnitude of Impact', 'Scale and Significance of Effect' (although 'Magnitude of Impact' needs to be checked for the Pavilion and Villas). The reviewer agrees that restoring the two designated heritage assets on the Site and bringing Blackborough House back into use as a hotel will have a major positive and significant effect on these two Heritage Assets, that the Proposed Pavilion and Villas will have a minor negative but not significant and moderate negative and significant effect on the setting of Grade II Blackborough House, respectively.

#### Summary of Clarifications Required

29. Clarify the magnitude of impact of the proposed new Pavilion and Villas on the setting of the Grade II Listed Blackborough House is High (Pages 5-23, 5-24 and 5-26 of the Heritage Chapter). The reviewer thinks that the author has made a mistake and actually meant to make an assessment of Low for the impact of the proposed Pavilion on the setting of Blackborough House and an assessment of Medium for the proposed Villas.

#### Summary of Potential Regulation 25 Information Requests

30. Please state whether the changes at Blackborough House will have an effect on the significance of the four Grade II Listed Buildings mentioned in the Introduction Chapter, including a full assessment where the potential for a change to the setting is identified.

#### Chapter 6 Traffic and Transport

There is minimal discussion of public transport opportunities, the 2 PRoWs that cross the site, or the nature (and therefore sensitivity) of the road network in the local area. In particular, there is no discussion of the narrowness of a number of roads in the local area and the potential for congestion and distress to residential pedestrian receptors that increases in traffic may cause.

The construction assessment, no estimate is provided on the number of construction vehicles. Instead, the applicant states that construction traffic will be no worse than operational traffic and assesses all effects as negligible. The assessment does not take into account (or even mention) Heavy Goods Vehicles. The volume of HGVs during construction is likely to be higher than during operation. There is no appreciation of the environmental effects caused by Heavy Goods Vehicles during construction and that the effects differ from cars and other light duty vehicles. For example, the fear and intimidation experienced from HGVs is greater than that of light duty vehicles at a similar volume. In accordance with GEART, the volume of HGVs from the Proposed Development should be compared against the volume of HGVs present in the existing baseline. Given the lack of evidence basis for the assessment of construction effects presented, the assessment cannot be relied upon.

For the operational assessment, there is no assessment of the Proposed Development against the observed and prevailing baseline conditions. The Proposed Development is instead only compared against an estimate of the traffic associated with a scrapyards if it were to still be utilised. This is not the approach taken in the Transport Assessment, which presents both. The Transport Assessment assessed firstly the Proposed Development against the baseline conditions, and then a Transport Statement Addendum assessed the former use of a scrapyards. A similar approach should have been taken with the EIA, as the current information presented is not transparent. It is

misleading to only compare the Proposed Development against an estimate of the traffic from the scrapyard instead of comparing the Proposed Development against the real existing conditions.

Given that the existing baseline conditions were measured via Automatic Traffic Counters and that this measured data represents the environment currently experienced by the receptors, the assessment should reflect the Proposed Development against the existing baseline, rather than a hypothetical alternative.

Given that the baseline conditions are much lower than the estimated scrapyard vehicle trips, the updated assessment is very unlikely to show beneficial effects from the Proposed Development. It is unlikely that a prediction of beneficial effects would be considered acceptable following the revision of the assessment.

#### Summary of Clarifications Required

31. The Applicant should clarify how they have considered the nature of roads surrounding the area in their assessment, including roads that are one-lane, the availability of passing places, points where pedestrian activity may be anticipated that do not have pavements, and points where homes are immediately adjacent to the road.

32. The Applicant should clarify whether off site highway improvement works are proposed and, if so, detail the nature of these works and any effects on transport or otherwise that might arise from their construction

33. The Applicant should clarify whether peak traffic associated with attendees all wanting to leave a venue at the same time (for example at the end of an outdoor performance) has been considered

34. The assumptions and limitations in the assessment of transport should be detailed.

35. The Applicant should clarify whether the redirection of public rights of way during construction has been considered in the assessment of pedestrian amenity.

#### Summary of Potential Regulation 25 Information Requests

36. An estimate of construction traffic must be provided and used to assess the construction effects.

37. An assessment of the Proposed Development against the existing baseline conditions must be provided.

#### Chapter 7 Ecology

No acknowledgment or consideration of the age of survey data or the omissions in terms of survey work have been presented in the ES chapter.

In addition to the age of survey data used to inform the assessment, it is considered that a number of additional surveys have been omitted from the assessment, including badger, bat foraging/commuting/ground level roost assessments for trees (and any further roost activity/characterisation surveys), badger and dormouse.

There is no discussion as to the methods and approach actually employed to assess significance of receptors and any identified impacts. This should be considered in terms of the ecological importance of receptors and the effects of each impact.

There is no consideration of Biodiversity Net Gain. Whilst the concept of 'Biodiversity Net Gain' is relatively new, the underlying principles have underpinned the work of ecologists since their inception more than 20 years ago.

The Preliminary Ecological Appraisal (PEA) does not provide recommendations for a number of surveys that are considered essential to inform the proposed development design and

subsequently assessment of impacts. Furthermore, the ES Chapter fails to acknowledge the limitations of the baseline as presented.

There is no formal assessment of the importance of ecological receptors in line with current best practice and the submission falls short of what would be expected under BS42020:2013. Specifically: Amphibians, Reptiles, Badger, Dormouse and bats, although whilst the two buildings (note that the PEA omits to mention the smaller building in the introductory sections) have been surveyed (but require repeat visits to provide up to date information), there has been no assessment of the potential for roosting bats in any trees likely to be affected by the proposals

#### Summary of Clarifications Required

None.

#### Summary of Potential Regulation 25 Information Requests

38. Updated PEA and baseline ecology surveys as required including but not limited to bats, barn owl and badger

39. Submission of an Ecological Impact Assessment based on current best practice and BS4202:2013

40. Consideration of fragmentation effects at the landscape scale on ancient/HPI woodland

#### Chapter 8 Drainage and flood risk

The assessment concludes there are no outstanding issues with regard to this chapter

#### Summary of Clarifications Required

None.

#### Summary of Potential Regulation 25 Information Requests

None.

#### Chapter 9 Ground Conditions

Given the site's recent use as a scrapyards, a number of potential contaminants may be associated with the site including metals, inorganic compounds, acids, alkalis, asbestos, organic compounds including fuels, hydraulic oils, paints, phenols, PCB's and solvents, other contaminants including radioactive materials and biodegradable items. The potential risk from contamination on site is considered moderate to high.

It is noted that the scope of the investigation is limited and that a more detailed investigation should be secured through a planning condition. The ground investigation report states that elevated levels of methane and carbon dioxide were detected in the north western plateau of the site. The report recommends further gas monitoring at the site. This should be secured through a planning condition.

#### Summary of Clarifications Required

41. The reviewer notes that not all identified potential contaminants have been tested for. Further clarification is required as to the potential risks associated with determinants not tested for.

42. The Applicant should clarify the nature of comments made by the Environment Agency. EA correspondence to be included in the supporting documents so their requirements can be assessed.

43. The water environment is not adequately assessed in Table 9.3. Groundwater monitoring is not a pathway. Run off from site to the surface water feature should be considered.

44. Incorporation of Environmental Permit information into the baseline conditions required.

## Summary of Potential Regulation 25 Information Requests

45. Prediction of Impact Magnitude and Significance: Pre mitigation assessment is required on which to base the benefits of the mitigation measures proposed.
46. Assessment of land stability (mining, slopes, retaining walls is required
47. Prediction of Impact Magnitude and Significance - Assessment of contamination on surface water required
48. Prediction of Impact Magnitude and Significance - Assessment on new materials and built structures placed in the ground required
49. Adjacent properties / users should be considered
50. Prediction of Impact Magnitude and Significance -Flora to be assessed separately to Controlled waters
51. Prediction of Impact Magnitude and Significance – All items to be assessed at completed development stage not just Human Health

## Chapter 10 Summary of Mitigation Measures

These are set out in a table within the report and it is not intended to replicate it here, as it can be viewed in its entirety within the report undertaken by Temple Group.

The main points relate to Construction Environmental Management Plan (CEMP), Construction Traffic Management Plan, Construction Method Plan, Travel Plan,

Barn owl survey, avoidance of the breeding bird season (March to August inclusive) or a nesting bird check prior to removal.

Purpose built bat house, sensitive lighting strategy, and sensitive vegetation clearance, covering trenches or provision of ramps for access to avoid trapping badgers. Further Ground investigation, risk assessment, remedial options appraisal and action plan, verification report and suspect material strategy – secured via a planning condition

Surrender of the Environmental Permit to the satisfaction of the EA.- EA require there to be no residual waste, the extent and level of any contamination from the site operations fully investigated and that appropriate remedial measures have been taken to address contamination.

CEMP – secured via a planning condition.

## Appendix 2

### Blackborough House, Cullompton, Devon, EX15

We write to provide our comments in response to the points raised in the letter from Historic England, dated 15 April 2020, which was written in response to the information and documents that were submitted as part of applications 17/01905/LBC & 17/01904/MFUL, to convert and restore the presently derelict Grade-II listed Blackborough House into a hotel, with associated alterations supported by enabling development. These documents included:

- Response to JLL Enabling Development Review;
- Financial Forecasts and Viability Appraisals (Feb 2020);
- Letter from Donald Insall Associates (9 March 2020); and
- Letter of interest from a UK hotelier (20 Feb 2020).

We have copied the comments that are relevant for us to address below, set out in bold, italicized font, with our responses included underneath. In our view and experience, the Council should apply appropriate weight to our responses when determining this application, in accordance with their statutory duties.

Firstly, it is important to note that Historic England have reached the same conclusion that the proposal does not '*overcome their concerns that the development will secure the long-term beneficial use of the site, despite the enabling development proposed,*' but provide no reason as to why the additional information that was submitted did not overcome their concerns. In it we had sought to answer their specific questions and, hopefully, allay their concerns. However, there has been no engagement with the additional financial information or with our explanations on heritage matters which were contained in our letter of 9 March 2020, and Historic England do not provide any reasons why they have maintained their original stance. .

We address each of their key comments in turn below.

***We remain of the opinion that insufficient marketing has taken place. However, we accept the conclusions of the JLL report that further marketing would be of little additional value at this stage***

Historic England fail to note that the financial documents submitted with the application are based on the omission of the purchase price, which was listed as zero in the conservation deficit calculations. As such, remarketing the property would not change the conclusions of the financial viability assessments and justification for enabling development. In this context, not only would further marketing be of little additional value, it would be totally irrelevant and would only allow further time for the building to deteriorate.

In addition, given that the building was on the market for a period of at least 8 years, with both local and national estate agents, as well as being listed online and advertised in newspapers and magazines, we question how this can be considered 'insufficient marketing'. This is particularly relevant to note as the 8-

year period is more than the length of time stated in Historic England's *Enabling Development* policy. The way in which it was marketed is also in full accordance with their own guidance as set out herein,

Due to this extensive period of previous marketing, it is also reasonable to suggest that no other less harmful development or proposed use would realistically be found if it were marketed in the medium term, and nor would that be appropriate given the poor and rapidly deteriorating structural condition of the building.

***We remain of the opinion that the hotel proposal lacks credibility. We do not consider that a brief letter of interest is sufficient evidence of the viability of this hotel scheme.***

We fail to understand on what basis the proposed hotel lacks credibility. The scheme has been developed by experienced architects and advisors who have worked on numerous hotel developments and it has been specifically designed to include the features expected of an upmarket hotel to ensure it would be viable and could compete in the local and national hotel market. The credibility of the design has lent itself to expressions of interest from the UK's leading hoteliers, who are interested in bringing the proposed scheme to fruition through their management.

In addition, planning and listed building consent are frequently granted for hotels without an end user being specified and there is ample evidence to demonstrate that credible schemes can be achieved without hoteliers being appointed prior to the grant of permission. Notable recent examples include the Grade-II\* listed Old War Office in Whitehall, London where we have been heritage advisors for the last 5 years and have seen at close hand how proposals can be sensibly brought forward, and an end-user attracted after the grant of consent.

***Despite the additional financial forecasts supplied, we remain concerned that the proposed hotel scheme is very high risk and consequently, further development would be requested in due course.***

In regards to the comments on the economic model of the proposed hotel, given the submitted financial documents demonstrate that the hotel could be appropriately funded during construction and hotel operation, and the forecasts demonstrate an adequate yearly profit, it is questioned on what basis Historic England consider the hotel scheme to be high risk. As it has also been demonstrated that the current scheme would be viable with the proposed extent of development, which has been carefully considered to ensure it would provide the hotel with an adequate number of rooms and facilities, it is very unlikely any further development would be required. Any future planning applications would be considered on their own merits, and this planning application cannot be prejudiced by what *might* happen in the future.

It is also important to note that in our previous letter to Historic England dated 9 March 2020, we demonstrated that the proposed hotel is the only realistic optimum-viable use for the site. This is because the hotel presents the least harmful and most financially viable use that will enable the buildings repair and long-term conservation. Other uses that could be viable include a single residential dwelling or a conversion into multiple residential dwellings. However, a single dwelling would not be a realistic or viable use for the building given the extensive period of previous marketing and the scale of the conservation deficit. A multiple residential dwelling scheme is also likely to cause more harm than the proposed hotel as it would result in further subdivision to the interior and, due to the lower end value of the units, would require more enabling development to fund the project. The proposed hotel is therefore considered to be the most reasonable, financially viable use for the site, and indeed the one that would cause the least harm overall.

The letter also states:

***The current unprecedented health crisis has resulted in an unpredictable economic climate which serves to intensify our concerns about the security of this proposal for this Grade-II listed building.***

It is important to note that the long-term impact this unprecedented crisis will have the economy is, as of yet, unknown. In any event, if the council is minded to approve the application there are three years in which to implement the scheme, arguably allowing sufficient time for the market to recover. It is frankly incredible –

and incredibly short-sighted – that Historic England would attempt to use this as a reason to object to a planning application to rescue this building.

In summary, we question on what basis the conclusions have been reached by Historic England in light of the additional information that was submitted with the application. We repeat the conclusions contained in our previous letter, as we strongly consider the proposed scheme complies with the enabling development policy and offers the certainty of restoring the listed building and providing it with a new long-term and sustainable use. This is a use that would constitute an optimum-viable use under the NPPF, as it is not only financially viable, but would also result in the least impact on the overall significance of the listed building, its setting and the curtilage listed walled garden.

Indeed, the benefits of this scheme, which primarily rest on saving and restoring the listed building, the walled garden and the surviving parts of the landscape, cannot be underestimated. The condition of the building is so poor that in areas it has already started to collapse and it is seriously at risk of being lost in the very near future. In our extensive experience of working with historic buildings, both for Donald Insall Associates and in my previous role as an Inspector for Historic England, it is in one of the worst conditions I have encountered, beyond that of ruin. The benefit of restoring the Grade-II listed building and curtilage listed walled garden is therefore of paramount importance, and by virtue of their listed status, it is within the national interest to save and restore them.

Yours sincerely

A handwritten signature in black ink, appearing to read 'HE ENSOR', with a long horizontal flourish extending to the right.

**Helen Ensor**  
Associate Director  
For and on behalf of Donald Insall Associates

Helen.Ensor@insall-architects.co.uk

Application No. 17/01905/LBC

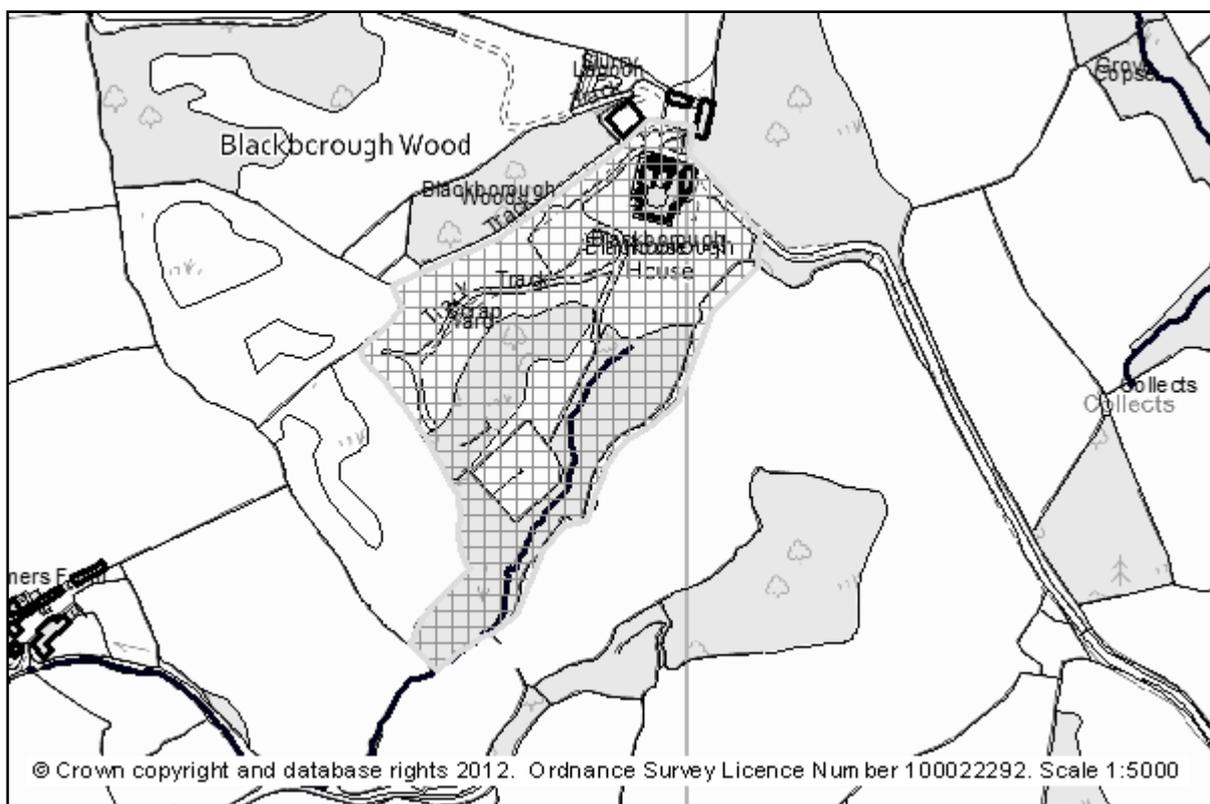
Grid Ref: 308980 : 109676

Applicant: Mr M Crane

Location: Blackborough House  
Blackborough  
Cullompton  
Devon

Proposal: Change of use and refurbishment of house to hotel and spa with 24 letting rooms, Piazza garden, 36 letting rooms in Pavilion (60 letting rooms in total) with Botanical Gardens, restoration of walled garden with new orchard and amphitheatre, erection of 7 detached dwellings, all associated car parking and erection of bat house

Date Valid: 23rd January 2018



**APPLICATION NO: 17/01905/LBC**

**RECOMMENDATION**

Refuse Listed Building Consent

**PROPOSAL**

Change of use and refurbishment of house to hotel and spa with 24 letting rooms, restoration of walled garden with new orchard and amphitheatre.

Note that the listed building application only relates to alterations to the listed building itself and the curtilage listed walled garden. It does not relate to the free standing new building works. The works to the listed buildings are discussed fully in 'material considerations and observations' below.

**APPLICANT'S SUPPORTING INFORMATION**

- Plans
- LVIA
- Lighting Strategy
- Cost plan & feasibility study
- Environment statement
- Enabling development review
- Transport assessment
- Historic Evaluation of the building and site.

**RELEVANT PLANNING HISTORY**

17/01904/MFUL - Pending  
Change of use and refurbishment of house to hotel and spa with 24 letting rooms, Piazza garden, 36 letting rooms in Pavilion (60 letting rooms in total) with Botanical Gardens, restoration of walled garden with new orchard and amphitheatre, erection of 7 detached dwellings, all associated car parking and erection of bat house

**DEVELOPMENT PLAN POLICIES**

**Local Plan Policy:**

As this application is only for listed building consent, section 38(6) of the Planning Act is not relevant and there is no statutory requirement to determine the listed building application in accordance with the development plan. However the development plan is a material consideration and the policies reinforce the NPPF, and sections 16 and 66 of the Listed Building Act.

Of particular relevance to the determination of the listed building application are the following policies:

- Mid Devon Local Plan 2013-2033 Review**
- S9 Environment
- DM1 High quality design
- DM25 Development affecting heritage assets
- DM27 Protected landscapes

## **Legislation and Policy Context:**

### **The Planning (Listed Buildings and Conservation Area) Act 1990.**

In determining these applications, of particular importance is section 16(2).

Section 16(2) of the Act states “In considering whether to grant listed building consent for any works the local planning authority or 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”.

### **National Policies of relevance include**

#### **The National Planning Policy Framework [NPPF]:**

Chapters 12 – Achieving well designed places - and 16 - Conserving and enhancing the historic environment - of are particular relevance, where the creation of high quality buildings and places is fundamental to what the planning and development process should achieve and that and great weight given to the conservation of heritage assets.

#### **Planning Practice Guidance. (March 2014)**

National Planning guidance advises on planning decisions with regard to the NPPF. This advises that the conservation of heritage assets in a manner appropriate to their significance is a core planning principle.

#### **Historic England Guidance and Advice:**

##### **Conservation Principles, Policies and Guidance – 2008**

##### **Enabling Development and the Conservation of Significant Places – 2008**

##### **The Historic Environment Good Practice Advice in Planning: 2 - ‘Managing Significance in Decision-Taking in the Historic Environment’ - July 2015**

##### **The Historic Environment Good Practice Advice in Planning: 3 – The setting of Heritage Assets - March 2015 (GPA3)**

##### **Historic Environment Good Practice Advice in Planning: 4 - Enabling Development and Heritage Assets – June 2020**

## **CONSULTATIONS**

*Note these consultations responses are often a response to the Listed Building Application the subject of this report and the following associated planning application. As such some comments may not be material to the determination of the listed building application. The date that consultee comments been received are set out below but the full details are included on the related planning application report to save duplication. The responses from Historic England are set out in full as they relate to listed building considerations.*

##### **KENTISBEARE PARISH COUNCIL - 21st March 2018 & 19th March 2020**

##### **NATURAL ENGLAND - 13th February 2018 & 26<sup>th</sup> February 2020**

**BLACKDOWN HILLS AONB PARTNERSHIP - 26th June 2018, 15th March 2019, 11th October 2018 & 3rd April 2020**

**HISTORIC ENGLAND - 13 June 2019**

We have previously set out the basis on which we are offering advice to your Authority on the proposals affecting grade II listed Blackborough House.

Information was submitted by the applicant to justify the enabling development proposed for Blackborough House, including the change of use to a hotel. The Council, with our support, commissioned an independent consultant to review that information and verify the case for, and amount of, enabling development proposed. That consultant's report has been shared with Historic England and feedback has been sought from our Development Director who has specialist knowledge in this field. I would stress, however, that we have not made a site visit and his response relies on the information provided in the Council's report, which was provided by a consultant known by us to be a reputable firm with experience in this field of development evaluation.

The report gives clear cause for concern regarding both the viability of the development and whether it meets the accepted tests for enabling development. Notwithstanding the views of the Council's consultant, we believe that serious questions could be asked regarding both the marketing of Blackborough House in 2012-13 and the eventual price for which the applicants purchased it - which was considerably in excess of the asking price in 2017. We consider that the owners need to provide good reasons as to why the property should not be re-marketed at a realistic price which reflects the conservation deficit, something that appears not to have been reflected in the price for which they purchased it.

For a number of reasons the hotel proposal lacks credibility to us. The applicant is not a specialist in that field nor does he have an end-user in prospect who is them self an experienced hotel operator. The evidence of the report demonstrates that the economic model being used for the hotel is not financially viable and it is also very unclear how it would be funded. The figures put forward by the applicant for the repair and conversion works seem high, but on the other hand, they do not include specific finance costs, which seems most unrealistic.

Overall, the hotel scheme seems to be very high risk, taking either the applicant's costs/return or those suggested as more realistic by the Council's consultant, and if approved, there would be a high probability that the applicants - or any developer who subsequently took on the project - would need to return for a 'second bite of the cherry'. That risks increasing the harm to Blackborough House or its setting even further than in the scheme currently proposed.

Whilst we have not tested the repair and conversion costs ourselves, we believe it is quite likely that a conservation deficit may exist at Blackborough House - although clearly a more realistic market value would reduce that deficit. *The evidence presented suggests that a hotel use may be far from the most sustainable use for the building, in either the long or short term, and is certainly not the optimum viable use referred to in paragraph 196 of the NPPF.*

The proposed conversion of the house would result in considerable change to it, and whilst we note that the applicant has tried to minimise loss of historic fabric on the principal floors of accommodation, the impact at basement level is considerable both in terms of the removal of original walls within it, *and the addition to it of a large extension*. The limitation of the applicant's land ownership around Blackborough House means that the 'enabling' development of the hotel pavilion and the seven independent dwellings must all be built in close proximity to it. In our view

the considerable visual impact caused by the proximity of that development to the principle listed building would compromise the house's current primacy within the surrounding landscape, and thereby harm its setting.

Overall, therefore, the development appear to have *harmful consequences for the listed building in physical and visual terms*, but does not provide the required certainty of bringing the house back into long-term beneficial use. This brings the applications into conflict with Historic England's enabling development policy as well as with paragraphs 202 and 196 of the NPPF, unless they deliver other meaningful public benefits which would outweigh that harm and cannot be delivered in a less harmful way. From an enabling development perspective, we do not believe that this application should be supported.

#### Recommendation

Historic England has concerns regarding the applications on heritage grounds and their conformity to the relevant policies of the NPPF. In determining these applications you should bear in mind the statutory duty of sections 16(2) and 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.

Your authority should take these representations into account in determining the applications. 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 ENGLAND - 12th April 2018** - On the basis of the information available to date, we offer the following advice to assist your authority in determining the applications.

#### Historic England Advice

Thank you for consulting us on these applications for the change of use and associated refurbishment of Blackborough House to a hotel and spa, the construction of an additional 36 bedrooms in a pavilion to create a total of 60 letting rooms, and erection of 7 detached dwellings.

Blackborough House is an interesting example of a property built to quite extravagant plans for a wealthy family in the mid nineteenth century in the fashionable Italianate style. However, it seems that shortly after the death of its builder, the house was, for a while at least, occupied as two independent dwellings before going into a progressive decline in the twentieth century.

As a grade II listed building, applications for works either to Blackborough House itself, or affecting its setting, would not normally fall within the planning remit of Historic England. However, we are aware of the unusual circumstances affecting the house which have placed it at serious physical risk. Those circumstances have now led to the submission of these applications for extensive works to the house itself and for development within its grounds. The proposals are being justified on the grounds of enabling development to secure the restoration of the house and the viability of its use in the future.

Since an informed assessment of these applications will require a thorough knowledge of Historic England's enabling development policy and guidance, as well as the specialist skills needed to apply that policy, we are willing to regard this case as a special request for advice.

We are prepared to provide the Council with advice on how it should apply the enabling development tests set out in our published guidance to the particular circumstances of this case. This will include:

Guidance on the Council commissioning and interpreting independent expert advice on the financial justification for the development help in assessing whether the works proposed to repair Blackborough House are appropriate, necessary and correctly costed.

We will not, however, be taking the lead in any negotiations on this case. Nor will Historic England be making its own recommendations regarding the final determination of the applications, beyond the extent to which the works to the house are structurally necessary, and the development meets the financial tests for Historic England's enabling development guidance.

We have discussed the protocols for your Authority commissioning independent advice on the financial and viability aspects of these applications, and are happy to liaise with you as necessary, once that process gets underway.

#### Recommendation

We recommend that your Authority commissions independent expert advice on the financial and viability arguments being put forward to justify this scheme as enabling development for the restoration of Blackborough House. This advice should be a strong material consideration when considering the planning merits of the applications.

#### **HISTORIC ENGLAND - 15th April 2020**

Thank you for your letters regarding further information on the above applications for listed building consent and planning permission. On the basis of this information, we offer the following advice to assist your authority in determining the applications.

Historic England has provided comments on these proposals affecting Blackborough House on two previous occasions, 11 April 2018 and 11 June 2019. Our most recent correspondence expressed concerns about the application on heritage grounds. We considered that the application was in conflict with our Enabling Development and the Conservation of Significant Places guidance (2008) as a result of the physical and visual harm to the listed building and within its setting and the lack of certainty over whether the proposed scheme would result in a long-term beneficial use for the building.

#### Historic England Advice

As we have stated previously, Historic England's advice on this application will focus on the extent to which the proposal meets the tests set out within our Enabling Development Guidance.

We note that the demolition at basement level has been substantially reduced in the revised scheme. Given the Grade II status of Blackborough House, consideration of the detail of the alterations to the listed building will be subject to detailed assessment by your Authority's Conservation Officer and therefore we do not propose to duplicate this advice.

Since our 2019 letter, a number of additional documents have been compiled and have informed our latest advice:

- Response to JLL Enabling Development Review – NBA
- Financial Forecasts and Viability Appraisals (Feb 2020) – NBA
- Letter from Donald Insall Associates in response to previous Historic England advice (ref. OX.BH.01)
- Letter of interest (20 Feb 2020)

Following a detailed review of this information, Historic England is able to confirm that our advice on the previously raised key issues remains unchanged. The new documentation has not addressed our concerns regarding the credibility of the development or that it will secure the long-term beneficial use of the site, despite the enabling development proposed. As previously, our advice has drawn upon the specialist knowledge of our Development Director. For clarity we list these issues below, with a summary of our position in the light of the additional information submitted:

- We remain of the opinion that insufficient marketing has taken place. However, we accept the conclusions of the JLL report that further marketing would be of little additional value at this stage.
- We remain of the opinion that the hotel proposal lacks credibility. We do not consider that a brief 'letter of interest' from a hotel operator is sufficient evidence of the viability of this hotel scheme.
- Despite the additional financial forecasts supplied, we remain concerned that the proposed hotel scheme is very high risk and that consequently, further development would be requested in due course.

#### Planning Policy Context

Taking account of the above advice, in determining any application of this kind, the key issue that your Authority needs to be satisfied about, is whether the proposal will deliver the restoration and sustainable future of the listed building. Any harm to the significance of a listed building, including from development within its setting, requires clear and convincing justification (NPPF 194). Such clear and convincing justification needs to be made in the context of securing the optimum viable use for the listed building (NPPF 196). This would be considered a public benefit in heritage terms. For the harm resulting from the enabling development to be considered acceptable, your Authority must be convinced that it will deliver a secure, long-term future for the listed building in its optimum viable use (NPPF 196 & 202).

You will need to be satisfied that the amount of enabling development is the minimum necessary to secure the future of the place in line with our published guidance.

The current unprecedented health crisis has resulted in an unpredictable economic climate which serves to intensify our concerns about the security of the proposals for this Grade II listed building. Consequently, in the event your Authority is minded to grant consent for this scheme in its current form, your decision must be made on the basis of the credibility of the proposal at this time and the justification provided in the light of the unpredictability of the current economic situation.

If your Authority accepts that the scheme meets the policy tests set out within the NPPF, you should also ensure that you are satisfied that;

- you have received sufficient information to precisely define the impact of the development;
- the achievement of the heritage objective is securely linked to it with appropriate and enforceable safeguards under planning conditions;
- setting an agreed standard for the repairs to the listed building as guided by the specialist advice of your own conservation officer as early as possible in the course of the enabling development, ideally at the outset and certainly before completion or occupation; and
- you are able to closely monitor the implementation of the scheme to ensure that any conditions/obligations are fulfilled.

#### Recommendation

It is now for your Authority to make a determination on this case taking account of the advice above and that Historic England have provided previously and that from your own Conservation Officer. Historic England recommends that in doing so, your Authority will need to consider very carefully whether an economically viable case has been made in relation to this application. Your Authority will be aware, as are Historic England, that given the current economic situation, certainty that the proposed scheme will deliver the benefits for the listed building is particularly critical.

Additionally, in general in determining these applications, you should also bear in mind the statutory duty of sections 16(2) and 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.

#### **HISTORIC ENGLAND – 7th July 2020**

The revised Enabling Development guidance was released last week however we were aware that this was planned and had read the draft content of the revised document whilst responding to the

Blackborough application. I do not therefore consider that Historic England's advice on this case would be in any way altered by the release of the new GPA4.

## **REPRESENTATIONS**

There have been a number of representations submitted to the planning authority. These are summarised fully in the associated planning application but only the comments relevant to listed building considerations are set out below:

Support 8 responses:-

- It's been an eyesore for years and time the site was used for good instead of becoming yet another exhibit of a faded country house preserved in aspic or more usually left to decay.
- The building is listed and thus has been identified as needing to be preserved.

Objection 60 responses:-

- Concern over the scale of the proposal
- The design of the 7 villas is out of keeping with the Area of Outstanding Natural Beauty (AONB) and will adversely impact on the setting of the listed building.
- The scale of the development is far greater than the original footprint of the house, this will affect the wildlife and plants in an AONB.
- a financial plan that lacks the ability to fulfil the obligations regarding the Enabling development (i.e. refurbishment of Blackborough House)
- What happens if there is not enough funding from the sale of the seven houses and/or additional investment to carry out the restoration of Blackborough House made available. Will there then be a requirement for more executive houses or will the project cease leaving the village with houses it didn't want or need and still a decaying ruin.

## **MATERIAL CONSIDERATIONS AND OBSERVATIONS**

Blackborough House is a grade II listed building sitting on the edge of a promontory with an associated walled garden lower in the valley to the south of the main house. The house was first listed in April 1987. It is noted as being a substantial country house built 1838-40 for George Francis Wyndham, Earl of Egremont to designs by James Thomas Knowles. The listing Inspector in September 1985 stated that "The building has undergone considerable alteration, principally the dismantling of the top stage of both of the entrance towers, and the demolition of some of the central rooms. Much of it was in a semi-derelict state at the time of the resurvey visit".

The building remains in a semi derelict condition, and unoccupied. The owner has a camper van on site and uses one or two rooms in the house from time to time. It is on the Mid Devon 'buildings at risk' register. Part of the building (the central area) is missing but this appears to be historic. The rest of the building has a number of small missing areas of slate allowing water penetration through the building which has affected floors and made some rooms unsafe to enter. One high wall in the center which is open to the weather is precarious and may collapse. Whilst other parts of the building are in good condition and are dry and safe to enter, it is reasonable to anticipate collapse of areas of floor and roof structures in the future without intervention.

Using the Historic England definitions to consider the condition of a building it would be considered to be Poor to Very Bad in places. Where Poor is

**Poor** – A building which is clearly deteriorating. There are obvious faults likely to lead to structural failure e.g. an area of missing slates but where the roof structure appear still to be sound, missing

or badly defective gutters and down pipes A building with numerous maintenance failings would fall into this category e.g. decayed window frames and blocked gutters and signs of damp.

And Very Bad is

**Very Bad** – A building where there has been structural failure or where it can be reasonably anticipated. Although relatively few buildings will fall into this category it may appear that a wider range of condition is covered under this heading than under the other three. It will include derelict buildings which have appeared ruinous for some years. It is difficult to predict when such structures will collapse. A building which would be considered liable to collapse in harsh weather should certainly be included. It will also include buildings which are complete but where part of the structure is suspect, for example, an unstable gable wall. If it is known that the internal structure is liable to collapse the building should be in this category

There are two associated applications before the Council. A planning application and a listed building application. This application for listed building consent is to partially restore, alter and extend the listed building.

Some of the alterations will be to replace lost elements which are proposed to be as the original scheme, some are to replace lost elements with new, and there is also alteration and extension.

The planning application includes some common elements such as the external alterations to the listed building, and new build freestanding elements associated with the new use which do not require listed building consent. There is enabling development to fund the conservation deficit for the works to the listed building These freestanding elements do not require listed building consent, and will be considered under the associated planning application, where the principles of enabling development, and the consideration of the case of the enabling development takes place along with the consideration of setting of the listed building amongst other planning matters.

The starting point for the exercise of listed building control is the statutory requirement on 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' (section 16(2)). Case Law requires that this is to be given considerable weight and importance in the decision making balance.

The NPPF 2019 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 be consulted and the building assessed using appropriate expertise where necessary (para 189).

When considering the impact of development, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance (para 193). Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification (para 194). Where the proposal will lead

to less than substantial harm, the harm should be judged against the public benefit, of the proposal including, where appropriate, securing its optimum viable use (para 196)

The NPPF (para 192) also requires that in determining applications, local planning authorities should take account of:

- a) The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b) The positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- c) The desirability of new development making a positive contribution to local character and distinctiveness.

With regard to enabling development the NPPF states: Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies. (para 202)

As indicated above, local plan policies are material to the consideration of the determination of the application, but do not have the same statutory weight they have in a planning application. Policy DM25 of the Local Plan Review 2013-2033 states

Heritage assets and their settings are an irreplaceable resource. Accordingly the Council will:

- a) Apply a presumption in favour of preserving or enhancing all heritage assets and their settings;
- b) Require development proposals likely to affect the significance of heritage assets, including new buildings, alterations, extensions, changes of use and demolitions, to consider their significance, character, setting (including views to or from), appearance, design, layout and local distinctiveness, and the opportunities to enhance them;
- c) Only approve proposals that would lead to substantial harm or total loss of significance of a designated heritage asset where it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or the requirements of the National Planning Policy Framework are met;
- d) Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this, harm should be weighed against the public benefits of the proposal, including securing its optimum viable use; and
- e) Require developers to make a proportionate but systematic assessment of the impact on the setting and thereby the significance of heritage asset(s)

### **A brief history of Blackborough House**

The building is an essay in Italianate architecture (the same style as Osborn House on the Isle of Wight). It was built in c 1838 for Captain George Francis Wyndham, the 4<sup>th</sup> and last Earl of Egremont and his wife Jane to the designs of James Thomas Knowles (Senior).

The original purpose of the building was residential, and the detailed assessment (commissioned by the applicant to accompany this listed building application and the associated planning application) undertaken by Donald Insall Associates suggest that it was built as one house, and later divided into two shortly after the building was constructed. They note minor changes to the layout to accommodate this, and later (mid to late 19<sup>th</sup> C) alterations to the north.

In 1913 the building was put up for sale and it was noted a combined total of 34 bed and dressing rooms, 6 entertaining rooms, 2 bathrooms, entrance and receiving halls, domestic offices, cellars and stabling. It was noted the building whilst in poor condition was largely intact.

It was sold and partial demolition commenced, but halted and put up for sale again in 1923 but did not sell and was partially occupied, with more features being stripped.

In 1930 it became a home for Wayfarers and War Relief Workers, otherwise a training home for men out of work. They are noted to have undertaken repair work to the building including replacing the roof.

In 1940 it was leased to the Society of Friends with the aim of finding an acceptable alternative to military service, and the building became known as Spicelands. Contemporary accounts record further repairs being made to the building.

In 1950 the house was sold to a family who lived in the house. They started a car repair and dismantling business. The house and land was used as a scrapyards until 1999, with car workshops inside, and a lawful use remains today.

### **The Proposal:**

The proposal as it relates to the listed building is to reinstate lost features and to alter and extend the building to change its use to a hotel with function room. This would be part of a larger scheme with new build.

The alterations to the listed building can be broken into a number of elements. The extension to the south which contains the swimming pool and function room with associated internal alterations; alterations to the existing building; and, extensions to the north and within the centre of the U shape of the existing building.

The applicant's heritage report prepared by Donald Insall Associates carefully considers each room in the building and the external elevations of the building and how they have changed over time. They have listed the alterations, which have been amended on a number of occasions from originally submitted. These are below in italics with commentary from your Conservation Officer as necessary.

### **Impact of the Proposals on the Listed Building and its Setting**

*Alterations and Repairs to Blackborough House It is proposed to convert the main house to a hotel and spa, containing 23 bedrooms, reception and public rooms, kitchens, WCs and back-of-house facilities. This would be done by sympathetically re-using the existing layout and spaces where possible, and by making alterations where these are necessary to achieve modern standards or additional space. Following our detailed research and assessment a number of small, but important changes have been made to the proposed layouts and as a result the significance of the building would be conserved. The proposed changes in detail are:*

#### *Basement*

*• Removal of basement stairs – these may not be original as there is evidence for a trap door for a barrel drop, with a corridor over at ground floor level. Their loss is therefore not harmful to the significance of the building and required to make the additional basement area work.*

- *Original vaults to be re-used within the spa area with the ceilings retained, but with openings made through them to access the spa, loss of some, limited fabric in the walls of the vaults, it is required in order to make the additional floor area work in an area that would have the least impact on the listed building overall.*

This element of the proposal was subject to amendment in March 2020. The initial proposal was to dig out a large area under the southern range of the house to the north of the cellars (which are 6 small rooms off a corridor) and provide a new area under the southern range. This would provide access through the existing cellars to the function room and swimming pool, but would result in the loss of one of two historic staircases to the historic cellar and the alteration of a second. The amended proposal now retains both, with less excavation.

Excavation is still proposed to provide a lift access down to the lower floor which is the level of the pool and function room. The lift would be in one of the towers and serve all floors.

The historic stairs would remain and be extended to reach the new floor level. The six individual cellars would be retained with a doorway formed in the rear wall of each to provide access through to the new facilities beyond.

The layout of this area has significance to the history of the building in that it is part of the historic story of the building. The experience of this area would be changed and status altered. There is harm to be building from the intervention into the historic plan form and some loss of fabric. This harm should be considered in the balance of the entire scheme for the restoration and reuse of this building.

The harm is justified by the applicant in the context of the use of the building as proposed as a hotel as part of the wider scheme which includes enabling development. This harm should be considered in the balance of the entire scheme which includes the restoration and reuse of this building.

#### *Ground Floor*

- *The large extension on the north-east corner, which is later nineteenth century but very altered, would be demolished and rebuilt, continuing the loggia around this area. This is an area of low significance and as the element has already undergone alteration, would cause no harm to the significance of the building and as rebuilt would enhance the building's appearance.*
- *The large extension on the north and north-west corner, largely rebuilt by the residents of Spicelands, would be demolished and rebuilt. This is an area of low significance and as the element has already been rebuilt, would cause no harm to the significance of the building and as rebuilt would considerably enhance the building's appearance.*
- *Minor changes are proposed internally including making new openings into walls which related to the primary phase, but which leave the plan form essentially intact. The new openings are required to enable the rooms to work together and connect between one another. This would result in the loss of some minimal historic fabric but not in any loss of significance, and the level of harm has been further reduced through the proposed amendments to the plans.*
- *The angled corridors, which were changes to the house after its original construction, made in order to occupy it as two houses, would be demolished. This is in order to be able to better connect the front and rear of the building. This would result in the loss of some fabric of interest, but not any loss of significance.*

It is difficult to see how fabric can be of interest, but not significant. The angled corridors have some significance in that they are part of the story of the house through time, but they do jar with the architectural form of the building and appear to represent features added post demolition of earlier parts of the building. To that extent if the whole scheme is justified and acceptable, they could be removed.

The internal changes respect the historic plan form, but do introduce modern facilities required for the hotel use such as modern shared toilet facilities and also the subdivision the large two storey kitchen. There would be in the introduction of a new floor and subdivision into rooms on the first floor with the consequent loss of this historic space and experience of it with some harm to significance.

The harm is justified by the applicant in the context of the use of the building as proposed as a hotel as part of the wider scheme which includes enabling development. This harm should be considered in the balance of the entire scheme which includes the restoration and reuse of this building.

*A new lift would be installed in the western tower, retaining the original walls within at ground floor level. This would have a limited impact on the plan form and would not result in any harm to the listed building.*

- A new double-staircase would be installed towards the centre of the plan, in an area which was partially an open courtyard, and this area would be glazed to form an atrium. The original staircase was further south in the plan, in what is proposed to be the new bar. There would be no harm or loss of significance as a result of this new staircase.*
- A new glazed roof would be installed over what was original a sequence of rooms towards the middle of the plan, and a new glazed roof would be installed over an area which was partially open to the elements and partially enclosed (in a strip over the well). The new roof would not cause any harm to the listed building, not least because this area is in a particularly diminished condition.*

#### *First floor*

- Very minor fabric removal is proposed at first floor level, including some new door openings in partitions. This is in order to connect rooms and corridors and whilst it would result in some minimal loss of historic fabric, it would not cause any harm to significance.*
- The main change would be to provide end-suite bathrooms, and this would be done within the confines of the proportions of the existing rooms, using adjacent rooms for bathrooms rather than creating new bathroom pods. This is an appropriate way of providing them, causing no harm to the proportions of the rooms or their significance.*

#### *Second floor*

- This floor has minimal historic fabric remaining due to successive alterations throughout the building's life. Changes are proposed to re-plan to create bathrooms. This causes no harm or loss of significance, and would result in improvements to the layout, not least because this floor would be rebuilt where it currently missing and structurally unstable.*

#### *Roof*

- The roof was completely re-built as part of the Spiceland tenure. It is proposed to renew it again and include new conservation roof lights on the inward facing slopes. As this fabric has already been renewed this would cause no loss of historic fabric. Original details such as the 'porthole' windows would be restored, which would be an improvement.*

#### *General*

*The building would be restored and repaired, using moulds from existing retained fabric including chimneypieces, cornices, skirting boards, architraves, doors etc. Existing original features would be repaired and restored or where they are beyond practical repair, would be copied and renewed. The loggia, including the rendered columns, capitals and cornice, would be repaired and the roof would be re-glazed. Both the individual and cumulative impact of these changes is of no harm to significance. This is because the alterations are actually quite minor in nature, because they respect the significant elements of the plan form.*

*This does not mean that every piece of Victorian fabric would be retained but that is because not every element is required to either understand the history and development of the house or to preserve its overall significance.*

These alterations are individually minor, but there are a number of them and there is some loss of historic fabric. Others are informed interventions into parts of the building which have been lost and there is the replacement of these elements resulting in an enhancement to the building.

The harm is justified by the applicant in the context of the use of the building as proposed as a hotel as part of the wider scheme which includes enabling development. This harm should be considered in the balance of the entire scheme which includes the restoration and reuse of this building.

*In order to find a new use for this building, some change is not only inevitable but is also reasonable, particularly in the light of the specific recent history and use of the building but also in the light of its lawful use as a scrapyard.*

*In order to house the spa facilities and back of house areas, and because the original basement is peculiarly small, additional basement area is required. In terms of assessing the options for where this could be located there are three, in a new building, beneath the remainder of the main house or set away from the main house but linked to it. The latter has been chosen as having less impact on the listed building, and a new terrace above it with steps accessing the landscaped gardens are proposed. This element of the proposals has proved controversial entailing as it would a change to the views, setting and appearance of the building when viewed from the south. However, the alterations should be viewed in the light of the fact that this area of land has been cut away by modern interventions associated with the scrap dealership. The land here, which now falls sharply away from the house, once provided a much more generous plateau to the south as is made clear in the memoir Spicelands which describes how, before the war; there was a sun terrace here. There is a description in the same section of the book of how the land had been cut away after the commencement of the scrap dealership use, to create a trackway sloping down from the north-west to the south-east and cutting in front of the southern elevation. Historically, therefore, there is certainly a precedent for having a terrace here, and the proposed design, looking as it does to other Italianate houses of the same period for inspiration, seems to us to be an appropriate response. The overall impact is relatively low because the alterations are at basement level and because the design response is sympathetic to the original building. In our view what is being proposed is perhaps more elaborate than the original terrace, but is within the same spirit as the original design intent.*

It is clear that the area of land to the south of the house has been cut away in more recent times. The design of the house is such that any extension to it, other than to rebuild within the U of the building (another element of the current proposal) is difficult. The proposal to extend is at a lower

ground level (basement level) on the south side. This provides a terrace and additional space under. Such composition can be seen at Osborne House on the Isle of Wight (also Italianate) where there is a large terrace with rooms under.

Historic England comment that the proposed conversion of the house would result in considerable change to it. Historic England also note that the applicant has tried to minimise loss of historic fabric on the principal floors of accommodation, the impact at basement level is considerable both in terms of the removal of original walls within it, and the addition to it of a large extension.

It is proposed to repair the walled garden to the south of the site. This would be repaired in an appropriate fashion and used as an area of garden for the hotel use with seating and terracing of the sloping garden. This is not harmful to its special interest. The details would need to be conditioned.

The harm is justified by the applicant in the context of the use of the building as proposed as a hotel as part of the wider scheme which includes enabling development. This harm should be considered in the balance of the entire scheme which includes the restoration and reuse of this building.

Overall, therefore, the development would have harmful consequences for the listed building in physical and visual terms, and does not provide the required certainty of bringing the house back into long-term beneficial use. This brings the applications into conflict with Historic England's enabling development policy as well as with paragraphs 202 and 196 of the NPPF; that is the proposal as a whole does not deliver other meaningful public benefits which would outweigh that harm.

### **Other Matters**

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

### **Summary:**

The consideration of any application for listed building consent must take into account the statutory duty on the council 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". This must be given considerable importance and weight.

This is supported by the NPPF which in summary requires that great weight be given to conservation of heritage assets (para 193). There is no greater weight given to any matters and great weight is reserved for a very few matters within the NPPF. Any harm should require clear and convincing justification (para 194), and balanced in the public interests of the proposal including, where appropriate, securing its optimum viable use. (para 196)

The level of harm of the works to the listed building as a whole is less than substantial harm. This should not be interpreted that the harm is not important. In reality, substantial harm engages further tests in the NPPF. It does not infer that the harm is not important if it is less than substantial, and does not remove the statutory requirement or the great weight given in the NPPF to the conservation of the heritage asset.

Local Plan Policy DM 25 is a material consideration. This policy is laid out in full above in Material Considerations and observations.

It is agreed that the building is 'at risk', and in need of a viable scheme which will provide for its long term preservation. The repair of this building is most likely to have a conservation deficit - that is the value of the building, plus repair cost will be more than it is worth when repaired. This is when enabling development can be considered. Any new use should be the optimum use, the one which causes the least harm to the building and/or its setting, not necessarily the most profitable.

This application for listed building consent is to partially A) restore, alter and extend with accompanying internal alterations to the B) south and C) north, and D) alter the internal layout to provide for the hotel use of the listed building.

- A) The restoration is to replace lost elements which are proposed to be as the original building or in relation to changes within a few years of completion as the applicant's specialist have interpreted the building. These elements are informed restoration and there is no objection these specific proposals. This would include the restoration of the loggia, removal/reversal of 20<sup>th</sup> Century alterations and the rebuilding of the two towers.
- B) The extension to extend to the south would include internal alterations to facilitate access. This is a large extension which would be dominant in the views to and from the garden of the house, and access to it would require loss historic fabric and alter the planned functional layout of the house, altering the experience and significance of the building. This element has been amended to require less digging out under the south range, and less intervention into historic fabric and plan form, but has resulted in a slightly longer (2.5m approx.) extension.
- C) The extensions to the rear are within the U of the house as it is now, and an area which has been altered over time through the demolition and sale of elements of the house. This new work is considered to be an appropriate response in design terms to the building it extends and respects its special interests, but is not justified in terms of the hotel use.
- D) Internally there are a number of changes. Some are part of reinstatement, but much is related to the change of use and requires loss of historic fabric. This loss is justified by the applicant in terms of the hotel use.

Many of these changes are new doorways and the subdivision of rooms to provide for en-suites, with larger changes including the insertion of public toilet facilities in an existing hallway, altering the plan form and movement on the ground floor, and the insertion of a floor in the historic two storey kitchen area causing a loss of the strikingly high interior, and the volume and unexpected space that relates to the intended use of that room. This has significance to the buildings experience and understanding and would be lost.

The consideration of the application requires this harm to be considered in the balance with public benefit. The alterations and the nature of them in relation to the building are considered above and Members will note that Historic England have commented in June 2019:

*"that the proposed conversion of the house would result in considerable change to it, and we note that the applicant has tried to minimise loss of historic fabric on the principal floors*

*of accommodation, the impact at basement level is considerable both in terms of the removal of original walls within it, and the addition to it of a large extension.”*

It should be noted that since they commented the application has been amended to reduce the internal works associated with the extension, which has been revised and enlarged externally as well, but the large (30m by 19m approx. as amended) extension remains. The Conservation Officer has no reason to consider that amendments to the amount of demolition in the cellar area and to the design of the extension has resulted in a proposal that is not harmful, but does acknowledge that the impact is lessened.

In the balance, there is also a listed building of special historic and historic interest which is clearly ‘at risk’ of deteriorating further and ultimately being lost. It is highly likely than any restoration to make the building habitable and secure its long term preservation will have a conservation deficit and will require some form of enabling development to fill this deficit. This material consideration would be part of the balance where Local Plan policy and the NPPF would allow minimal harm in order to secure the public benefit of the long term preservation of the listed building.

In their latest advice Historic England comment

*Taking account of the above advice, in determining any application of this kind, the key issue that your Authority needs to be satisfied about, is whether the proposal will deliver the restoration and sustainable future of the listed building. Any harm to the significance of a listed building, including from development within its setting, requires clear and convincing justification (NPPF 194). Such clear and convincing justification needs to be made in the context of securing the optimum viable use for the listed building (NPPF 196). This would be considered a public benefit in heritage terms.*

*For the harm resulting from the enabling development to be considered acceptable, your Authority must be convinced that it will deliver a secure, long-term future for the listed building in its optimum viable use (NPPF 196 & 202).*

*You will need to be satisfied that the amount of enabling development is the minimum necessary to secure the future of the place in line with our published guidance.*

In this context, Historic England commented, in June 2019, again prior to the amendments to the cellars and under the southern range:

*Overall, therefore, the development appears to have harmful consequences for the listed building in physical and visual terms, but does not provide the required certainty of bringing the house back into long-term beneficial use. This brings the applications into conflict with Historic England's enabling development policy as well as with paragraphs 202 and 196 of the NPPF; unless they deliver other meaningful public benefits which would outweigh that harm and cannot be delivered in a less harmful way. From an enabling development perspective, we do not believe that this application should be supported.*

In final summary, 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). Overall it is considered that the submitted scheme does not amount to the optimum viable use for this property and therefore the application should be refused.

The enabling development considerations are laid out within the planning application for the proposal, and that in turn relates to the justification to alter and harm the listed building which is required by the NPPF: any harm or loss should require clear and convincing justification from the

applicant. Where the harm is less than substantial the harm should be judged against the public benefit, including securing the optimum viable use. The planning report demonstrates that submitted scheme is not viable and not the optimum viable use and therefore the application should be refused.

## **REASON FOR REFUSAL**

Refuse Listed building Consent for the following reason:

1. The proposed works to the Grade II listed Blackborough House are part of a wider scheme of change of use and redevelopment of the site, to a hotel and associated facilities and dwellings. The extensive alterations to the listed building would result in the loss of historic fabric, and changes to historic layout and form which would be detrimental to the significance of this listed building, and overall would detract from the special architectural and historic interest of the building. Furthermore the erection of a large extension to the building by virtue of its size, design and location would be harmful to the setting of the listed building, which would consequently be harmful to the significance of this listed building and would detract from its special architectural and historic interest. In addition it is considered that the proposed enabling scheme of seven dwellings, which forms part of the overall development proposal, would not be viable and that it would not secure the long term preservation of Blackborough House which is a poor state of repair. Thus the overall development is not the optimum viable use for this building. The harm to the building is therefore not justified and consequently the proposals are therefore contrary to requirements of section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, policy DM25 of the Local Plan Review 2013 – 2033 and the guidance within National Planning Policy Framework 2019

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.

## ***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.*

<i>Item No.</i>	<i>Weeks</i>	<i>TARGET DATE</i>	<i>REFVAL</i>	<i>PROPOSAL</i>	<i>LOCATION</i>	<i>NAME</i>	<i>Expected Decision Level</i>	
							<i>Delegated</i>	<i>Committee</i>
1	0	26/10/2020	20/01174/MOUT	Outline for the erection of up to 179 dwellings, including the conversion of Tidcombe Hall and outbuildings to 12 dwellings, a shop, a cafe, an open sided shelter, community allotments, community orchards, public open space, associated infrastructure and access with all other matters reserved	Tidcombe Hall Tidcombe Lane Tiverton Devon EX16 4EJ	Miss Helen Govier	DEL	

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## LIST OF APPEAL DECISIONS FROM 3 July 2020 to 30 July 2020

Application No	Description	Location	Officer Recommendation	Committee or Delegated	Decision	Appeal Type	Inspector Decision
19/00118/MOUT	Outline for the erection of up to 105 dwellings, associated landscaping, public open space and allotments together with vehicle and pedestrian access from Siskin Chase and pedestrian access from Colebrooke Lane	Land at NGR 301216 106714 (West of Siskin Chase) Colebrooke Lane Cullompton Devon	Grant subject to conditions	Committee Decision		Written Representations	Allow with Conditions
19/00786/MOUT	Outline for the erection of up to 65 dwellings, public open space, ancillary works and associated infrastructure, including access	Land at NGR 282727 100936 Higher Road Crediton Devon	Refuse permission	Delegated Decision	Refuse permission	Informal Hearing	Appeal Dismissed

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## AGENDA ITEM – Planning Committee – 12 August 2020

Application No. 19/01156/FULL

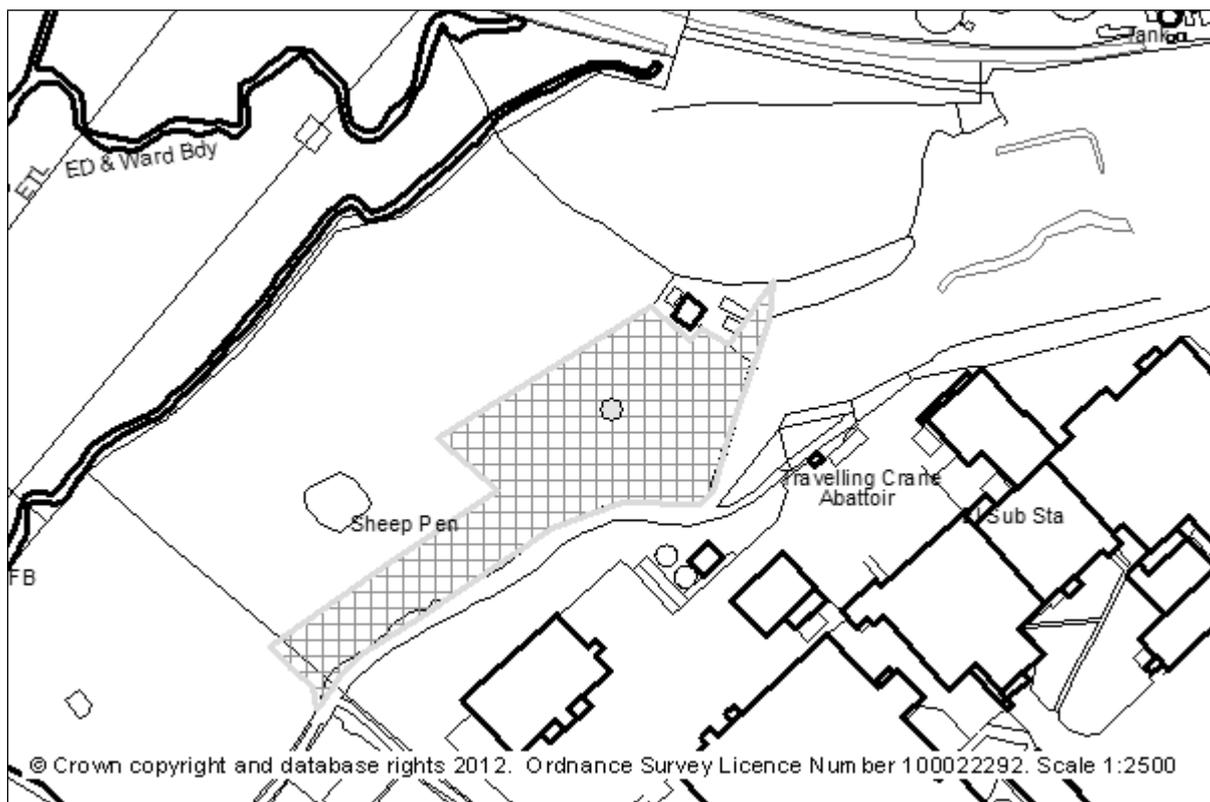
Grid Ref: 302789 : 111147

Applicant: Mr W Green, Amzco Development Ltd

Location: Land at NGR 302839 111143  
Lloyd Maunder Road  
Willand  
Devon

Proposal: Installation of a 24MW Reserve Power Plant with associated infrastructure

Date Valid: 21st August 2019



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

19/01156/FULL – Land at NGR 302839 111143 Lloyd Maunder Road Willand

### **Description of Development:**

Installation of a 24MW Reserve Power Plant with associated infrastructure.

### **REASON FOR REPORT:**

To consider the reasons for refusal proposed by the Planning Committee at the meeting of 12<sup>th</sup> February 2020.

### **RECOMMENDATION**

Grant permission subject to conditions.

### **Relationship to Corporate Plan:**

#### *Environment*

- *Seek new ways to improve our operational efficiency, reducing energy use and lowering our carbon footprint*

### **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 12<sup>th</sup> February, 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. External legal representation may be required if the appeal proceeds to a public inquiry.

### **Risk Assessment:**

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

At the Planning Committee held on 12<sup>th</sup> February, 2020 Members of the 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:

- In the open countryside
- Not producing renewable energy
- Not an energy efficient measure
- Not in accordance with Policies COR5, DM5 or COR 18(f) of the Local Plan
- Cumulative impact with other Devon renewable energy plants in the area.

1. The Committee's reasons for refusal

Set out below are two reasons for refusal which could appear on the planning decision notice, and these combine the above factors, apart from "energy efficiency", which is not a material planning consideration and therefore does not belong on a decision notice:

- A) The proposed development would result in the creation of a power plant in the open countryside, which would not generate renewable energy. As such, the proposal does not meet the criteria for acceptable development outside settlement limits and is contrary to Policy COR18 of the Mid Devon Local Plan.
- B) Taken together with other energy facilities in the locality, the proposal would have an adverse impact on the visual and general amenities of the area, contrary to Policy DM2 of the Mid Devon Local Plan.

**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 NPPF acts as non-statutory guidance, which should be taken as a material.

2.2 On 26<sup>th</sup> 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 on the 29<sup>th</sup> July 2020. This report was written prior to the Full Council meeting and as such a further update would be provided to Members at Planning Committee subject to any approval to adopt the Local Plan Review.

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.

The relevant Development Plan Policies which were included in the previous officer report are updated as shown below to now include the policies within the Local Plan Review:

**Mid Devon Core Strategy (Local Plan 1)**

COR2 – Local Distinctiveness

COR5 – Climate Change

COR9 - Access

COR18 - Countryside

**Mid Devon Local Plan Part 3 (Development Management Policies)**

DM2 – High Quality Design

DM5 – Renewable and Low Carbon Energy

DM7 – Pollution

**Mid Devon Local Plan Review 2013 – 2033**

S8 - Infrastructure

S9 – Environment

S14 – Countryside

DM1 – High Quality Design

DM2 – Renewable and Low Carbon Energy

DM4 - Pollution

**3. Consideration of the proposed reasons for refusal**

3.1 The following section will assess the evidence to support the aforementioned suggested reason for refusal and will reflect the policies of the Mid Local Plan Review 2013 - 2033

**3.2 Reason for Refusal A)**

**The proposed development would result in the creation of a power plant in the open countryside, which would not generate renewable energy. As such, the proposal does not meet the criteria for acceptable development outside settlement limits and is contrary to Policies S9 and S14 of the Mid Devon Local Plan Review 2013 - 2033.**

3.3 The proposed development is not an obvious renewable energy facility in the way that a wind or solar farm is. The proposal would involve the installation of gas-fuelled plant, which generates electricity for the national grid. Whether or not the proposal can be defined as a renewable energy facility will depend on the nature of the gas being used to fuel it. If the fuel is natural gas, then the facility would be fuelled using a fossil fuel and could not reasonably be considered a renewable energy facility. If, however, the gas is from a renewable source, such as biomass, then the facility could reasonably be considered a renewable energy power plant. Whether or not the proposal generates renewable energy is of significance because the site is located in

the countryside, and Policy S14 of the Local Plan Review, whilst generally resisting development outside settlement limits, does allow for exceptions, and these include renewable energy development.

- 3.4 The applicants have stated that the plant would be fed by gas directly from the neighbouring anaerobic digester (AD) facility and from gas derived from the national grid. The gas received from the AD facility is renewable because it is derived from biomass. Gas from the national grid is from a range of sources and includes gas derived from biomass (renewable) and natural gas (non-renewable). All of this gas, derived from many sources, is mixed together once it is within the national gas infrastructure. In order to provide a guarantee that renewable gas would be used to fuel the facility, the applicants have pledged to sign up to the Green Gas Certification Scheme (GGCS) using Renewable Gas Guarantees of Origin (RGGO), and your officers have recommended a planning condition to secure this arrangement.
- 3.5 The GGCS provides a means of tracking the commercial transactions of bio-methane through the supply chain. It tracks the green gas from its injection into the gas distribution network and its sale to a supplier or trader, through to when it is sold on to an end-use consumer. It is important to note that the GGCS tracks the contractual flows of green gas rather than the physical flows of green gas. Since each unit of green gas injected into the network displaces the need for a unit of conventional, or natural gas, the contracts are the only practical means of tracking the green gas from production to end use.
- 3.6 The GGCS system labels each registered kWh of green gas electronically with a unique identifier known as a Renewable Gas Guarantee of Origin (RGGO), rounded to the nearest kWh. This identifier contains, for each kWh of green gas, information in code form about:
- the technology and feedstock from which it was produced (e.g. biogas from AD, landfill gas or syngas from gasification)
  - the month and year in which it was produced (MM/YY)
  - the part of the UK in which it was produced (England, Wales, Scotland, N. Ireland)
  - the registered producer
  - the kWh number, part of a sequence or range relating to that producer's green gas injected into the grid that month.
- 3.7 Once a licensed supplier registers a sale of gas to an end-use consumer, the GGCS system issues an electronic Green Gas Certificate in the consumer's name. The Certificate is the guarantee of the authenticity and origin of the equivalent amount of green gas injected into the network as it cites the relevant range of RGGOs attached to it. The consumer, in making any claims concerning the green gas, whether for regulatory, commercial or other purposes, can back up the claim with the relevant RGGOs listed on the certificate.
- 3.8 In light of the above, Planning Officers are satisfied that a suitable monitoring and audit scheme can be secured through the use of a planning condition to ensure that the gas being used to fuel the proposed facility is from renewable sources. This being the case, if the audit evidence provided on request does not convincingly demonstrate that renewable fuel is being used, then enforcement action could be utilised. This might involve requiring the operator to compensate for the unacceptable use of any non-renewable gas through the retrospective purchase of renewable gas units, with a failure to do so resulting in a requirement that the use of the facility ceases until such time as the required actions have been taken and confirmed in writing to the satisfaction of the Local Planning Authority. The operator can be

required to provide an annual report to the Council detailing the use and source of the facility's fuel, with a failure to do so by the required date, or a failure to demonstrate that the fuel is of acceptable provenance, resulting in sanctions, such as the closure of the facility until such time as acceptable information has been received. The exact form that the monitoring plan would take, would be the subject of discussions and agreement between the Council and the applicants, but it is clear that a robust renewable energy scheme is achievable.

3.9 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 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;*
- *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.*

3.10 Given that officers are satisfied that a robust scheme of monitoring and compliance can secure the use of sustainable gas, and therefore a renewable energy facility, to refuse the proposal on the grounds that it would not produce renewable energy could be deemed unreasonable. There is an absence of evidence to substantiate the claim that the proposal would not be a renewable energy facility. In addition planning permission should be granted where conditions could deal with the issue.

Furthermore the Government in July 2020 announced it will relax planning legislation to make it easier to construct large batteries to store renewable energy from solar and wind farms across the UK. The batteries will allow for the storage of renewable energy from other sources, such as stated in this proposal, which will enable the electricity network to manage demand for electricity when wind and solar power are not directly available. This shows that national policy is seeking to increase the use of renewable energy within the national electricity network.

Taking the above points into consideration it is considered that an award of costs is a distinct possibility should an appeal and corresponding costs application be made.

### 3.11 Reason for refusal B)

**The proposed power plant in conjunction with other renewable energy facilities in the locality, would have an adverse impact on the character, amenity and visual quality of the area, contrary to Policy DM2 of the Mid Devon Local Plan Review 2013 – 2033.**

3.12 Officers have formulated this draft reason based on the minutes from the committee meeting, where it was stated that the proposal would have an unacceptable cumulative effect when considered in conjunction with other renewable facilities in Devon. It is not sufficient to say that a proposal would have an unacceptable effect: it must be stated what the alleged harmful effects would be in relation to, and officers have therefore suggested character, amenity impacts and visual quality as examples.

3.13 Member will be aware that Policy DM2 seeks to maximise renewable and low carbon

energy whilst ensuring that adverse impacts are addressed satisfactorily, including cumulative impacts. It is unclear which other Devon renewable energy facilities the proposal is being considered in relation to as far as the claimed cumulative impact is concerned, and it is unclear precisely how their combined effects are harmful.

In terms of visual quality for instance, it would need to be shown which other renewable energy facilities can be seen alongside the proposal in the wider landscape and the harm that would result. The site is located alongside existing large-scale industrial facilities, including the AD facility and a manufacturing site, and the proposal would be dwarfed in scale by the structures associated with these. It is also possible to secure a scheme of landscaping to help to screen the proposal. There are no sensitive land uses located nearby that could be affected by the proposed development in terms of noise or other forms of nuisance, and the harm to amenity is therefore unclear.

3.15 Members' attention is drawn to the following example of unreasonable behaviour in the Planning Practice Guidance, and liable to result in an award of costs:

- *Vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.*

3.17 Given the shortcomings of the above reason for refusal, an award of costs is considered to be likely should an appeal and corresponding costs application be made. A more robust reason for refusal might relate to the proposal's visual impact in terms of the site itself, where the proposed plant, equipment, and associated features would result in a significant change compared to the existing situation, as the site is currently an open field. However this would need to be considered in terms of the existing landscape including the surrounding buildings and uses.

### **Conclusion:**

Your Officers are of the opinion that the refusal of this current planning application in relation to both reasons is not defensible and should not be pursued. There is a real risk of an award of costs in relation to both reasons, as they currently stand, based on the information available.

### **Contact for any more information**

Eileen Paterson  
01884 234348

### **Background Papers**

Committee report

### **File Reference**

19/01156/FULL

### **Circulation of the Report**

Cllr Barnell  
Members of Planning Committee

[Attach previous Committee report](#)

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Application No. 19/01156/FULL

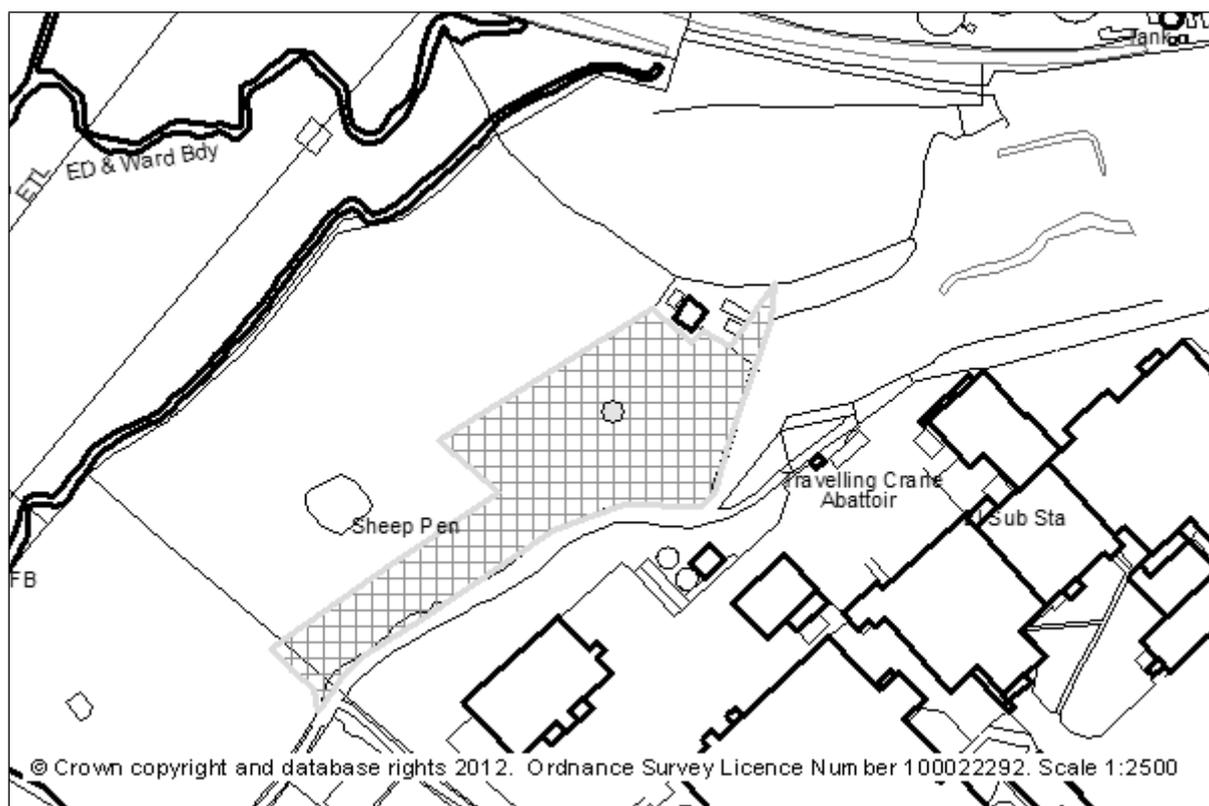
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## **APPLICATION NO: 19/01156/FULL**

### **MEMBER CALL-IN**

The application was called in by Councillor Barry Warren, for the following reasons:

1. The proposed site, although adjacent to the current AD plant, is outside of the Willand Settlement limit and therefore should be treated as open Countryside.
2. There is no evidence produced of need or agreement with Western Power other than the statement of the agent.
3. The capacity of the current planning permission for the AD plant is given as the equivalent of 2MW of electricity, which falls well short of the capacity being sought.
4. Cumulative impact of this and other proposals.

### **RECOMMENDATION**

Grant planning permission, subject to the conditions detailed below.

### **PROPOSED DEVELOPMENT**

This planning application proposes the installation of a 24 megawatt (MW) power plant with associated infrastructure on land off Lloyd Maunder Road in Willand. The site is a 0.5ha area of open agricultural land outside settlement limits, but located in close proximity to existing development, mainly to the east and north of the site, which has an industrial character. The M5 motorway is located around 200m to the east. The nearest residential property is located approximately 160m to the south west.

The site's south-eastern boundary adjoins land occupied by a food manufacturer and characterised by a complex of large industrial buildings. The north-eastern boundary lies adjacent to an anaerobic digestion (AD) facility. The north-western and south-western boundaries mostly adjoin open fields, although there is a small abattoir located immediately to the north of the site. The site would be accessed from a lane running north-west from Lloyd Maunder Road, and would also be connected to the AD facility.

The proposal would result in the creation of a compound containing:

- 24 containerised combined heat and power (CHP) units in two rows of twelve, and each measuring 115sqm in area and 3.4m in height, although each would have a chimney measuring 6m in height.
- Two switchboard buildings in 12.2m long and 2.6m high shipping containers.
- Four transformer and metering position units measuring up to 3.7m in height.
- Subsurface run-off culvert measuring 45m in length.
- 530m of export cabling.
- 110m of gas connection piping.
- Access track.

Whilst not mentioned on the submitted plans, the proposal would presumably involve the construction of an area of hardstanding to support the above elements, along with fencing to secure the compound. The proposal would be a generally passive land use, providing employment for two full-time members of staff.

The submitted information states that the proposed power plant would be fuelled using bio-methane, derived from both the national grid and the neighbouring AD facility. The applicant has stated that the proposed location has been chosen for its proximity to the AD facility; the location of a mains gas connector; and the Western Power compound to the north for an electricity connection. In terms of the need for the development, it is stated that:

*“The purpose of the project is to support a supply of secure, sustainable and affordable electricity. To achieve this the UK needs investment in new generation projects...”*

*The National Grid experiences a large fluctuation of demand throughout the day and throughout different times of the year. During periods of high demand, the National Grid aim to increase supply to maintain a 20% supply margin which is essential in seeking to eliminate, as far as possible, the risk of power shortages and blackouts, when there is an unexpected change in demand, or a sudden loss of supply. Historically, conventional power stations could be operated with some certainty. However, as the UK moves towards a more environmentally sustainable energy supply system, with an increase in renewable energy sources, there is an increased risk of electricity supply fluctuations, depending on prevailing weather conditions, and therefore an increased need for RPPs. Thus, the proposed development will support the increase in renewable energy generation and the transition to a lower carbon energy supply system throughout the UK.”*

It is anticipated that the proposal would be used for around four hours per day, during the mornings and evenings when demand for electricity peaks.

## **APPLICANT’S SUPPORTING INFORMATION**

Application form, plans, supporting information.

## **RELEVANT PLANNING HISTORY**

The previous planning decisions of most relevance to the proposal are as follows, and relate to the neighbouring land to the north-east:

DCC/4153/2019 - County Matter Application relating to variation of Condition 7 of DCC/4074/2018 to alter the current restriction on road delivery tonnage from 55,000 tonnes per annum to 120,000 per annum.

DCC/4074/2018 - Extension to site area of Existing AD plant to accommodate: 1 additional digestate storage tank, 2 separated digestate tanks (relocated from within the existing approved site layout); 2 new batch tanks; 1 new lime storage tank; 3 new propane tanks; 1 new feeder tank and extension to viewing gantry; and Variation of Condition 2 of Permission DCC/4037/2017 Amendment to layout of existing AD plant area to accommodate: 1 Additional Purac “Puregas” gas upgrade unit; 2 new boiler units; 1 additional Siemens gas grid entry point; 1 additional flare, chiller and blower unit; 2 additional buffer tanks and the removal of 2 separated digestate tanks at Willand AD Plant.

DCC/4037/2017 - Variation of Condition 6 of permissions DCC/3725/2014 and DCC/3850/2016 to remove the restriction on the importation of poultry products by road; Willand Anaerobic Digester, Lloyd Maunder Road, Willand.

DCC/3850/2016 - Variation of condition 2 (to enable revised plant design) of planning permission DCC/3725/2014 for Construction of a 2MW anaerobic digestion plant with new access road and

weighbridge on land adjacent to existing abattoir at Lloyd Maunder Road, Willand and construction of two bay silage clamp with hardstanding and turning area at Burn Rew Farm, Willand.

DCC/3725/2014 - Construction of 2MW Anaerobic Digestion Plant with new access road and weighbridge on land adjacent to existing Abattoir at Lloyd Maunder Road, Willand and construction of two bay silage clamp with hardstanding and turning area at Burn Rew Farm, Willand.

## **DEVELOPMENT PLAN POLICIES**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states 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.

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

COR2 – Local Distinctiveness

COR5 – Climate Change

COR9 - Access

COR18 - Countryside

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

DM2 – High Quality Design

DM5 – Renewable and Low Carbon Energy

DM7 - Pollution

The National Planning Policy Framework (“the NPPF”)

## **CONSULTATIONS**

**Willand Parish Council** – Objection raised on the following grounds: the proposal does not appear to be for renewable energy; there is a lack of information about the noise impact; the submitted plans and information lack details about the associated AD plant and connections to the power infrastructure; the impact on highway capacity and safety is unclear; the proposal is contrary to policy; the site is not allocated for development and is located outside development limits.

**Public Health** – No objections.

**DCC Historic Environment Team** – No objections; condition recommended in relation to archaeology.

**Highway Authority** – No objections.

**Western Power** – Notification requested if planning permission is to be given.

**Wales and West Utilities** – Information provided about their gas infrastructure. Notification requested if planning permission is to be given.

**Environment Agency** – No comments received.

**Campaign to Protect Rural England (CPRE) Devon** – Objects to the proposal on the following grounds:

- The proposal would largely be powered by natural gas so would not be a renewable energy facility. The proposal would not be a low carbon facility either.
- No evidence has been provided about the grade of the agricultural land to be developed as part of the proposal.
- The proposed development is contrary to Local Plan policies intended to protect the countryside, promote renewable energy development, and protect the environment, along with the guidance contained in the NPPF.

## REPRESENTATIONS

A letter of support has been received from a member of the general public stating that the proposal is needed to provide backup power as the UK moves more and more towards the use of less consistent forms of energy generation, e.g. solar and wind power, which depend on weather conditions. The proposal would allow for the use of renewable energy generated at the neighbouring AD facility, and could support local industries.

## MATERIAL CONSIDERATIONS AND OBSERVATIONS

**The main issues in the determination of this application are:**

### 1) Principle of Development:

Objections have been received from a Ward Councillor, the Parish Council, and the CPRE stating that the AD facility would not provide sufficient gas to power the proposal and therefore that it would not constitute renewable energy in what is open countryside, and also that the proposal would be contrary to policies intended to protect the countryside and the environment, and encourage renewable energy. It is also stated that the need for the development has not been demonstrated.

Paragraph 148 of the NPPF states that:

*“The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.”*

Paragraph 154 of the NPPF states that:

*When determining planning applications for renewable and low carbon development, local planning authorities should:*

*a) not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions; and*

*b) approve the application if its impacts are (or can be made) acceptable...”*

Policy COR5 of the Local Plan states that the development of renewable energy capacity will be supported in locations with an acceptable local impact.

Policy COR18 states that development in the countryside, outside settlement limits, will be strictly controlled, however, exceptions will be permitted under certain circumstances, and these include renewable energy. Policy DM5 states that proposals for renewable and low carbon energy will be

permitted, subject to given criteria, and that any significant impacts will be balanced against the wider benefits of delivering renewable and low carbon energy.

Proposals for the development of renewable energy or low carbon facilities in the open countryside are therefore considered to be acceptable in principle.

The NPPF defines renewable energy in the following way:

*“Renewable energy covers those energy flows that occur naturally and repeatedly in the environment – from the wind, the fall of water, the movement of the oceans, from the sun and also from biomass and deep geothermal heat. Low carbon technologies are those that can help reduce emissions (compared to conventional use of fossil fuels).”*

Biomass is natural material derived from living or recently dead plants, trees and animals. The neighbouring AD facility uses organic waste to generate methane gas, and the gas generated at that facility is therefore considered to be a renewable form of energy, based on the definition provided in the NPPF. The gas generated is transferred to the national grid.

The proposal is for a 24MW gas-fired power plant comprising twenty-four 1MW CHP units. The submitted information states that the proposal would not run on a permanent basis, but only to serve as a backup when demand requires. This is likely to be for around four hours per day, during periods of peak demand in the mornings and evenings. The gas required to fuel the facility would be derived from the neighbouring AD facility and from mains gas, with the proposal being connected to both.

The original planning permission for the AD facility stated that it would produce enough gas to generate 2MW of electricity, which is equivalent to 48MW hours per day, since the facility operates 24 hours per day. The applicant has stated that the proposed power plant would be restricted to 48MW/hr per day. On this basis, the AD facility could provide the bulk of the gas required based on a 24-hour day. Indeed, it is understood that the amount of gas produced by the AD facility has been higher than 2MW in practice, and planning permission has subsequently been sought, and granted, to increase the facility’s capacity (permission reference DCC/4074/2018). A planning application is also currently under consideration to significantly increase the amount of organic waste that can be imported.

Whilst the gas being produced by the AD facility, over a 24 hour period, would be sufficient to provide for the proposal’s daily fuel needs, as the power plant would only be in use for limited periods each day, the gas needed would have to be drawn from the national grid to ensure there is sufficient availability of fuel during the specific peak hours it is required. In order to ensure that the proposal is fueled using bio-methane rather than natural gas, which is a fossil fuel, the applicant is committed to enrolling in the following:

- a) The Renewable Energy Guarantees of Origin scheme, which is regulated by Ofgem and provides transparency to consumers about the proportion of electricity that suppliers source from renewable generation.
- b) The Green Gas Certification Scheme, which tracks bio-methane (‘green gas’) through the supply chain for those who buy it.

A planning condition is recommended to ensure that only green gas is used to fuel the proposed power plant. This would involve the approval of a scheme that would involve the operators enrolling in the above schemes and providing the Council with documentary evidence, on request, to demonstrate that the power plant’s fuel needs are being met exclusively through the use of

renewably sourced gas. This would allow the operators to use the methane generated at the neighbouring AD plant, and gas from the national grid that is also produced in a sustainable way. A further condition is recommended to require the installation of the gas connection to the AD plant prior to the first use of the power plant. Subject to the use of these conditions, it is considered that the proposal would constitute a form of renewable energy generation and is therefore in accordance with Policy COR18 of the Local Plan.

It is also noted that, by providing backup power on-demand, the proposal would help to support the development of a low carbon, renewable energy supply in general given the challenges that exist, certainly for the time being, in maintaining a consistent supply of power from these, often weather-dependent, sources. In this sense, the proposal would also have indirect environmental benefits. Both National Grid and Western Power have publicly stated their support for such sources of energy to help iron out the fluctuations inherent in renewable energy provision.

## **2) Visual Impact**

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 DM5 states that proposal's for low carbon or renewable energy will be permitted where they do not have significant adverse impacts on the character, amenity, and visual quality of the area, including cumulative impacts of similar developments.

The site is located at the interface between two areas of dramatically contrasting character. Immediately to the north and east, the site area is dominated by large-scale development, including the AD facility and sewage treatment works along with a complex of manufacturing buildings. Immediately to the south and west, the site is mostly bounded by open countryside.

The proposed development would introduce a range of very functional, plant-like structures into what is currently an area of open grassland. The site comprises greenfield, agricultural land, and forms part of the open, rural landscape stretching to the west beyond the aforementioned facilities. To introduce the proposed development, which would have an industrial appearance and be up to 6m in height, would have an effect on the site's character, and represent encroachment into the rural landscape.

In terms of the impact on the wider landscape, the proposal's visual impact could be mitigated through the introduction of additional landscaping. The submitted plans indicate further tree planting to the south-west and north-west of the site to complement existing mature vegetation located to the north-west. This planting can be secured through the use of a planning condition. The site is already well screened to the north and east given the presence of a significant area of existing development, which has an industrial appearance and is of a greater scale than the proposal. It is worth bearing in mind that, when viewed from the south and west, in addition to any existing vegetation already present within the landscape, and the additional planting proposed, that the proposal would be set against the backdrop of this largescale development, which adjoins the site area.

Given the proposal's siting, scale, and design, and the site's context, it is considered that there would not be unacceptable visual harm within the wider landscape, subject to the use of a condition to secure a scheme of tree-planting, and a condition to secure an appropriate, i.e. inconspicuous, colour scheme for the various plant and equipment. Details relating to any

proposed fencing, external lighting, and CCTV apparatus should also be secured through the use of a planning condition.

In terms of the site itself, there would be a significant change of appearance and some visual harm as a result of the proposal, even if this harm is limited by the site's very mixed context and that the site area is of limited scenic value. Policy DM5 is clear that where significant impacts are identified, that these will be balanced against the wider benefits of delivering renewable energy. The proposal's benefits in providing renewable energy and assisting in the wider roll-out of a renewable energy supply, as discussed in the previous section, are considered sufficient to outweigh the identified visual harm in this case.

Subject to the use of the aforementioned conditions, the proposal is considered to be acceptable having regard to Policies DM2 and DM5 of the Local Plan.

### **3) Amenity**

Policy DM2 of the Local Plan states that development proposals should not result in unacceptable impacts on the privacy and amenities of those occupying existing or proposed dwellings. Policy DM5 states that renewable and low carbon energy development will be considered in relation to the environmental amenities of nearby properties. Policy DM7 of the Local Plan states that development will be permitted where the effects of pollution would not have unacceptable impacts in relation to health, the natural environment, and general amenity.

The Parish Council has raised concerns about the proposal's potential noise impacts.

The nearest residential property is located around 160m away from the proposal. The Council's Environmental Protection team have raised no objections to the proposal in terms of its noise, air quality, contamination, or other impacts. Given the proposal's siting, scale, and design it is considered that it would not result in unacceptable harm in terms of neighbouring or local amenity. In this respect, the proposal is in accordance with Policies DM2, DM5 and DM7 of the Local Plan.

### **4) Access Arrangements**

Policy DM2 of the Local Plan states that new development should be safe and accessible. Policy DM8 states that sufficient vehicle parking and bicycle storage must be provided.

The Parish Council has raised concerns about the proposal's impact on highway safety and amenity.

The proposal would be a generally passive use employing two full-time staff. Gas would be received through the mains supply and from a piped connection to the neighbouring AD facility. There appears to be adequate space at the site for the parking of staff and other vehicles that might need to visit the facility. The number of vehicle movements that the proposal is likely to give rise to is not considered to be of such a scale that there would be unacceptable harm to highway safety or amenity, and it is noted that the Highway Authority has not raised any objections to the proposal.

A condition can be imposed to secure the details and provision of a parking and manoeuvring area to accommodate any vehicles that might need to access the site.

Subject to the use of this condition, in terms of its access and parking arrangements, the proposal is considered to be in accordance with Policies DM2 and DM8 of the Local Plan.

## **5) Drainage Arrangements**

The proposal would involve the use of an underground culvert and soakaways for the management of surface water drainage. Subject to the use of a condition to secure these arrangements, the proposal is considered to be acceptable and in accordance with Policy DM2 of the Local Plan.

## **6) Nature Conservation**

Policy DM5 of the Local Plan states that proposals for renewable energy and low carbon development must consider the effects on biodiversity and avoid habitat fragmentation.

The submitted ecological assessment concludes that the proposal would not result in unacceptable harm to protected species or biodiversity in general subject to the use of mitigation and enhancement measures. Subject to the use of conditions to secure these arrangements, the proposal is considered to be acceptable and in accordance with Policy DM5 of the Local Plan.

## **7) Agricultural Land Classification**

Policy DM5 of the Local Plan states that proposals for renewable energy and low carbon development must consider the quality and productivity of the best and most versatile agricultural land.

Paragraph 170 of the NPPF states that:

*"Planning policies and decisions should contribute to and enhance the natural and local environment by....*

*b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land..."*

The CPRE has objected to the proposal stating that the agricultural grade of the land has not been demonstrated.

The submitted information includes information from the Department of the Environment, Food and Rural Affairs, which demonstrates that the site is classified as Grade 4 agricultural land, which means that it is low quality. The proposal would not result in the loss of the most versatile agricultural land.

## **8) Conclusion**

The proposal is considered to be unacceptable, having regard to the Development Plan and all other material considerations, subject to the use of the conditions outlined below.

## **REASON FOR DECISION**

The following conclusions are reached subject to the use of those conditions detailed. The proposal would result in the creation of a power plant which conditions can ensure would be fuelled using renewably sourced gas. As a renewable energy facility, the proposal's location within the countryside is acceptable in principle according to Policy COR18 of the Mid Devon Local Plan. The limited visual harm that the proposal would give rise to would be outweighed by the environmental benefits of allowing it. It is considered that the proposal would not result in unacceptable harm in terms of local and residential amenity; highway safety; surface water drainage arrangements; ecology or in relation to the availability of agricultural land.

## **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. No development shall take place until a scheme to ensure the use of renewable gas has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall detail the measures proposed to ensure that the approved power plant is only fuelled using bio-methane or renewable electricity for battery recharge. Such measures shall include enrolment in the "Renewable Energy Guarantees of Origin" scheme and the "Green Gas Certification Scheme", and a system of rigorous documentary recording, to demonstrate to the Local Planning Authority on request, that all of the gas being used is in accordance with the above schemes. The development shall be operated at all times in accordance with the approved scheme, for the life of the development.
4. Prior to the first use of the development hereby approved, the bio-methane outflow infrastructure connecting the proposal to the neighbouring Anaerobic Digester facility, and depicted on the approved plans, shall be fully installed and thereafter retained for the life of the development.
5. Prior to the first operation of the development hereby approved, a scheme of hard and soft landscaping, including specimens to be retained, shall be submitted to and approved in writing by the Local Planning Authority. All planting, seeding and turfing comprised within the approved scheme shall be carried out in the first planting season following the commencement of development and any trees or plants, including existing specimens to be retained, which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species. The approved hard landscaping shall be provided within four weeks of the development being brought into use, and shall be retained for the life of the development.
6. The installation or construction of all plant, equipment, and buildings shall be undertaken using a colour scheme which has previously been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be retained in accordance with the approved colour scheme.
7. The development hereby approved shall not be brought into use until the surface water drainage arrangements, including the sub-surface storm water attenuation depicted on the

approved plans, have been provided in full. The approved measures shall thereafter be retained for the life of the development.

8. Prior to the first operation of the development hereby approved, sufficient on-site space shall be provided to allow for the parking of vehicles at the site and to allow for manoeuvring so that vehicles can exit the site in a forward gear, in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority. Once provided, these approved elements shall be retained for the life of the development.
9. No development shall take place until a detailed scheme of ecological mitigation and enhancement measures, in accordance with the recommendations of the submitted Ecological Appraisal (Dated September 2018), has been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include proposals for protective measures during the construction process; external lighting; and planting, including a timetable for implementation. The development shall thereafter be undertaken in accordance with the approved details.
10. Boundary fencing, CCTV apparatus, and external lighting at the site shall be installed in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority and shall thereafter be retained as such.

## **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 is for the development of renewable energy, so that it accords with Policy COR18 of the Mid Devon Core Strategy (Local Plan Part 1).
4. To encourage synergies between the proposal and the neighbouring anaerobic digester facility and to encourage the use of renewable gas in the approved facility so that it accords with Policy COR18 of the Mid Devon Core Strategy (Local Plan Part 1).
5. In the interests of local character, and in accordance with Policies DM2 and DM5 of the Mid Devon Local Plan Part 3 (Development Management Policies).
6. In the interests of local character, and in accordance with Policies DM2 and DM5 of the Mid Devon Local Plan Part 3 (Development Management Policies).
7. In the interests of sustainable drainage and in accordance with Policy DM2 of the Mid Devon Local Plan Part 3 (Development Management Policies).
8. In the interests of highway safety and amenity, and in accordance with Policy DM2 of the Mid Devon Local Plan Part 3 (Development Management Policies).

9. In the interests of biodiversity and in accordance with Policy DM5 of the Mid Devon Local Plan Part 3 (Development Management Policies).
10. In the interests of local character, and in accordance with Policies DM2 and DM5 of the Mid Devon Local Plan Part 3 (Development Management Policies).

## **INFORMATIVES**

### Protected Species

All bats are protected by law. 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). Where works are to involve cutting or clearance of shrubs, hedges or other vegetation, which can form nesting sites for birds, such operations should be carried out at a time other than in the bird breeding season (which lasts between 1 March - 15 September inclusive in any year). Further details can be obtained from a suitably qualified and experienced ecological consultant, or please refer to published Natural England guidelines for protected species.

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.

## AGENDA ITEM - Planning Committee - 12 August 2020

Application No. 19/01862/FULL

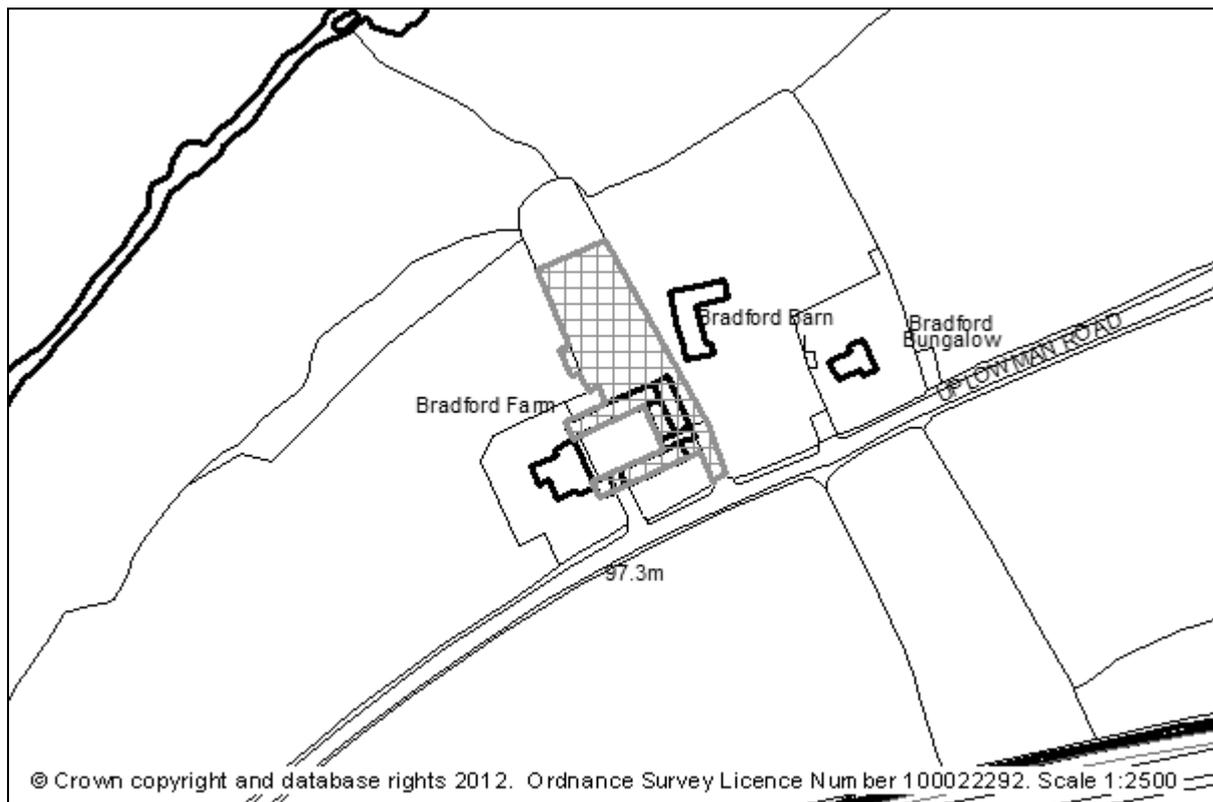
Grid Ref: 299326 : 114323

Applicant: Mr and Mrs A Fields

Location: Land and Buildings at NGR 299326 114323  
Bradford Farm  
Uplowman  
Devon

Proposal: Change of use of farm buildings to mixed B1/B8 use and retention of external works

Date Valid: 12th November 2019



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

### **Reason for Report:**

At the Planning Committee meeting on 17<sup>th</sup> June 2020, Members advised that they were minded to refuse the above application and invited an implications report for further consideration.

Since the consideration at the June committee meeting, the Council have been notified that the applicant has submitted an appeal to the Planning Inspectorate for non-determination. As such, the Local Planning Authority are no longer able to formally determine this application. Members are therefore invited to consider this implications report and come to a resolution as to how they would have determined this application. This will give your Officers clear parameters for defending the appeal, unless of course it is resolved that the permission would have been granted.

### **RECOMMENDATION(S)**

Grant planning permission subject to conditions.

### **Relationship to Corporate Plan:**

Economy

- Consider acquiring or creating new business parks to accelerate economic growth, and creating new opportunities for incubator and start-up space

### **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 17<sup>th</sup> 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. External legal representation may be required if the appeal proceeds to a public inquiry. The applicant has already indicated that they are in the process of preparing an appeal against non-determination.

### **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.

#### **1.0 INTRODUCTION:**

- 1.1 At the meeting on 17<sup>th</sup> June 2020, Members indicated they were minded to refuse the application and therefore wished to defer the application for consideration of an implications report to consider the proposed reasons for refusal, that of:

- A) The application was not in line with Policy DM20 as Members felt that this was not an existing business.
- B) 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.
- C) Construction of the car park was not in accordance with policy and the conversion would not be policy compliant.
- D) 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.
- E) That condition 8 should include both a silent car park surface and the height of the fence.

## 2.0 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 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.
- 2.2 On 26<sup>th</sup> 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.

### 3.0 **CONSIDERATION OF THE PROPOSED REASONS FOR REFUSAL:**

3.1 With regards to the concerns raised by Members at their previous meeting, your officers would advise as follows:

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

3.3 Policy DM20 is relevant in respect to the consideration of applications for *'new-build employment development or the expansion of existing businesses.'* Members are correct in their assertion that this proposal does not relate to the expansion of an existing business. Neither does it relate to new build employment development. The supporting text within policy DM20 does however state clearly that *'policy DM20 refers to new-build developments and expansion of existing businesses. Proposals for conversion of existing buildings to an employment use will be assessed against policy DM11.'* As the proposed development relates to the conversion of an existing building, albeit some of the works are retrospective, it would be incorrect to consider, and refuse, permission against policy DM20. When considering against policy DM11, which is the correct approach, there is no requirement to demonstrate that there are insufficient sites or premises in the immediate area to meet the needs of the proposal.

3.4 With the above in mind, your officers are concerned that raising this matter as a reason for refusal in the defence of the appeal against non-determination, on the basis that the development does not comply with policy DM20 would make use of the wrong policy and would therefore be incorrect procedurally. This could lead to an application for an award of costs should a decision to refuse planning permission on these grounds be appealed.

3.5 In relation to costs applications, the Planning Practice Guidance (Appeals) advises that costs may be awarded where a party has behaved unreasonably; and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour in the context of an application for an award of costs may be either:

- Procedural - relating to the process; or
- Substantive - relating to the issues arising from the merits of the appeal

The above bullet points are considered to be relevant should this application be refused following consideration against policy DM20. An award of costs is therefore considered to be a distinct possibility should an appeal and corresponding costs application be made.

3.6 Following publication of the Inspector's report on the Mid Devon Local Plan Review, and their conclusion that the Local Plan is 'sound' subject to a number of main modifications being made, substantial weight may now be attached to the policies of the Local Plan when making planning decisions. In considering this application, policies DM20 and DM11 would be superseded by Local Plan Review policies DM18 and DM 9 respectively. In this case, the emerging policies are worded in a similar manner to those in the adopted Local Plan with no significant change to the criteria being considered or to the general aims and objectives of these policies. Furthermore it should be noted that an additional line has been added to the supporting text of emerging policy DM9 stating that *'policy DM9 refers to the conversion of existing buildings to a residential, tourism or employment use. Proposals for new-build employment and expansion of existing businesses will be assessed against DM18.'*

*Other policies in the Local Plan will also be applied as appropriate.* This repeats the wording contained within adopted policy DM20 and emerging policy DM18, in respect to the appropriateness of consideration against policy DM20.

- 4.0 B) 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.
- 4.1 It is understood that this area of concern relates specifically to the retention of the shipping container to be used for the storage of bee keeping equipment. Following submission of the application, it was also advised that it was also intended for use for agricultural purposes.
- 4.2 In considering this element of the proposal against policy DM11, it is noted that the building in question comprises a dilapidated shipping container. It is proposed to retain this 'temporary' building on site and clad in timber with a slate roof. This being the case, the building does not strictly comply with policy DM11, which supports the conversion of existing redundant buildings where they are of *'substantial and permanent construction, which positively contributes to the area's rural character.'* It is certainly reasonable to take the view that this building does not comply with that policy criteria. Notwithstanding this, officers do have concerns about the use of this reason for refusal. While the remainder of the site comprises conversion of stone buildings, this relates to a structure that has been brought onto site and is now sought to be retained, with alterations to improve its appearance to be more in keeping than its existing state. It is felt that this should be considered on the basis of provision of a new building rather than the conversion of an existing building. This being the case, it is felt that assessment should be made against policies more relevant to new build development such as policies COR2 and COR 18 of the Core Strategy and DM2 of the Development Management Policies. Amongst other aims, these policies seek to deliver sustainable developments that benefit the local community, sustain the distinctive quality, character and diversity of the District, and support high quality, and well-designed developments. Weight should also be given to the emerging policies within the Local Plan Review, of which policies S1, S9, S14 and DM1 are particularly relevant. These are however similar to those in the adopted Local Plan with no significant change to the criteria being considered or to the general aims and objectives of these policies.
- 4.3 In considering the resulting building following alteration, there are some question marks over its need, however it is relatively small in scale, well related to the existing built development on site, and will be finished with materials appropriate to the rural character of the area. As such, it is not considered that there is a sufficient demonstrable harm associated with this element of the proposal to defend a refusal at appeal.
- 4.4 As advised earlier however, it is your Officer's advice is that policy DM20 is not the correct policy to assess the application against. As such, the requirement to seek alternative sites is not a relevant consideration.
- 4.5 On the basis of the above, Officers are again concerned that there is a possibility that Members may consider a resolution to have refused on the basis of the use of incorrect policies, in which case an award of costs is a distinct possibility should a costs application be made as part of the appeal against non-determination.
- 4.4 Should Members resolve that they would have refused planning permission on the grounds of the building's appearance, and its impact on the design and character of

the area, it is clear that matters such as these are subjective and in assessing the application, Members are perfectly entitled to take a different view to that of the recommending officer. Despite this however, as identified above, and in the Officer's committee report, it is not considered that the proposal would lead to any demonstrable harm that would warrant refusal. With this in mind, your officers do not consider that a reason for refusal in relation to the visual impact of the proposed building, and its failure to respect and relate to the character of the area, would constitute unreasonable behaviour. Notwithstanding this, it is still not considered to be defensible, and as such your officers recommend that a resolution to refuse on these grounds should not be pursued.

5.0 C) Construction of the car park was not in accordance with policy and the conversion would not be policy compliant.

5.1 There appears to be some duplication in this particular reason, with matters of the compliance of the conversion to policy covered in refusal reasons A) and B). Matters relating to the impact on residential amenity as a result of the proposed car park are covered in refusal reason D) below, which leaves concerns in relation to the visual impact of the car park. Relevant policies to assess the proposal against would be COR2, COR18 and DM2, and policies S1, S9, S14 and DM1 of the Local Plan Review.

5.2 As with consideration of the impact of the retained shipping container, in its improved state, it is still the view of your officers that the harm to the rural character of the area is minimal, with no demonstrable harm identified. The parking area is closely linked to the existing building, is contained within a newly landscaped area to the north, and is of similar appearance to the treatment used in the adjacent barn conversion to the east. Again consideration of the visual impact of the parking area is a subjective matter so the risk of costs being awarded is reduced as long as it is demonstrated that this matter has been properly considered by members, and any refusal reason is coherently formed. The Planning Practice Guidance (Appeals) also gives more detailed examples of unreasonable behaviour in unreasonably refusing, or failing to determine planning, or by unreasonably defending appeals, one of which is:

- *Vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.*

5.3 It is not sufficient to say that a proposal would have an unacceptable effect, or simply that it does not comply with policy. It must be clearly and cogently stated what the alleged harmful effects would be in relation to. Putting aside matters of policy discussed earlier, and impact on residential amenity, to be discussed further below, it is not clear what other harm there is sufficient to justify refusal. Officers have suggested visual impact could be a consideration but that this lacks sufficient harm to refuse. Again it is not considered to be defensible, and as such your officers recommend that a resolution to refuse on these grounds should not be pursued.

6.0 D) 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.

6.1 In considering the impact of residential amenity, the neighbouring landowner identified concerns, specifically in respect to noise from the gravel track and parking area, and from headlights of cars using this area, both of which may disturb the occupiers of Bradford Barn.

- 6.2 The Council's Environmental Protection Officer considered the application in respect to these concerns and advised that the level of usage was insufficient to cause disturbance that would represent an unacceptable harm sufficient to represent an unacceptably adverse impact on neighbouring amenity to justify refusing planning permission. At the time of considering the application at Planning Committee, Members were advised that the applicant was willing to replace the gravel with a hard surface or install an acoustic fence. The Environmental Protection Officer had further advised that either of these measures would reduce the impact, however neither was considered to be necessary. In appealing this application against non-determination, the applicant has now withdrawn the offer to provide either of these enhancements and wishes to leave the gravel as it is. On this basis, the advice remains that there will be insufficient harm to reasonably defend an appeal on the grounds of disturbance from noise or light from headlights.
- 6.3 In respect to dust, this does not appear to be an issue that has been raised prior to this point. None of the objections submitted in relation to this application refer to problems resulting from dust, neither is this concern minuted in consideration of the previous application 18/00657/FULL, considered at Planning Committee on 3<sup>rd</sup> October 2018, or the subsequent Enforcement List item considered at Planning Committee of 6<sup>th</sup> March 2019. While the surface of the car park and drive is not properly consolidated, it is still made of up larger pebbles/gravel, rather than a finer surface that may be more prone to generating dust. On this basis, it is not clear what evidence there is to support the assertion that there will be an unacceptable impact from dust. Another example of unreasonable behaviour is given as follows:
- Failure to produce evidence to substantiate each reason for refusal on appeal.
- 6.4 In considering the impact on residential amenity, no concerns have previously been raised in respect to dust, and there is no clear indication that this would be a problem. Furthermore, in respect to the wider issues of disturbance identified above, it is the advice of your Environmental Protection Officer that the development as submitted, including the retention of the existing gravel surface and use of the car park, would not be sufficiently harmful to represent an unacceptable impact on residential amenity.
- 6.5 Moving onto the concerns about the provision of the fence, it should be noted that the applicant benefits from permitted development rights under Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, which allows the erection of a fence of up to 2 metres in height on this boundary. As such refusal of works that could be carried out under permitted development rights is considered to be unreasonable. Notwithstanding this, the applicant has withdrawn the offer to provide either a fence or consolidated surface. As such, no fence would be erected, removing this particular element of the refusal reason.
- 6.6 In view of the professional advice given by your Environmental Protection Officer and lack of quantifiable contrary evidence, your officers would advise that the suggested reason for refusal on residential amenity grounds, especially as a result of dust, would be very difficult to defend given the professional advice received on this application. An award of costs is therefore considered to be a distinct possibility should a decision be made to defend the appeal on these grounds, and corresponding costs application be made.
- 7.0 E) That condition 8 should include both a silent car park surface and the height of the fence.

- 7.1 This refusal reason, as stated, is somewhat redundant as the offer to provide the identified enhancements has now been withdrawn. As such, members should consider the application on the basis of the existing gravel being retained and no fence being erected. Without these measures, Members have clearly expressed concern about the impact on residential amenity as a result of disturbance from noise and car headlights, in addition to the effect of dust identified above. These issues have however been discussed in detail above, with Members aware that the professional advice of the Council's Environmental Protection Officer is that a refusal reason could not be sustained on these grounds. This view has remained consistent on previous applications, albeit those being of a smaller scale. Nonetheless, the increased intensification of the site associated with this proposal has been properly considered in their assessment.
- 7.2 Should Members resolve that they would have still required one, or indeed both, of these enhancements to be provided by condition, it is important to consider that another example of unreasonable behaviour is:
- 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.
- 7.3 In this respect, advice from officers is that such a condition is not necessary as the harm is insufficient to justify refusal. While the applicant was agreeable to providing one of these measures, such a condition could be seen as acceptable, however now that offer has been withdrawn, it is considered appropriate to return to the advice of the Environmental Protection Officer, in that these measures are not considered to be necessary. As such, an Inspector could consider the imposition of a condition requiring one of the enhancements to be unreasonable, as it would be considered unnecessary, particularly noting that the applicant is not agreeable to such a condition. Furthermore, requiring both enhancements, where neither is deemed necessary would increase the risk of such a condition being considered unreasonable.
- 7.4 With this in mind, your Officers are concerned that should Members resolve to defend the appeal on the basis of there being a need to impose a condition requiring both, or now any enhancements, noting the applicant's withdrawal to provide either, an award of costs would be a distinct possibility should a costs application be made.

## 8.0 CONCLUSION

- 8.1 Your Officers are of the opinion that the refusal of this current planning application in relation to all reasons is not defensible and should not be pursued. There is considered to be a real risk of an award of costs in relation to reasons A), B), D) and E), as they currently stand, based on the information available. Similarly, it is considered that there is a real prospect of an award of costs in respect to reason C), unless Members are able to demonstrate that these concerns have been properly debated and cogently articulated in any final resolution to defend the appeal against non-determination.
- 8.2 Should Members resolve that they would have still recommended refusal, and therefore wish to defend the appeal, it is recommended that any refusal is based on more subjective reasons, where it may not be considered unreasonable for Members to come to a different view of the recommending officer and other professional expert advice. As such, it is recommended that any resolution be based solely on the visual impact, and that Members ensure that they can demonstrate that this has been

properly debated and considered. Should Members still have concerns in respect to residential amenity, it is recommended that this is defended on the basis of a clear reason for refusal rather than the need to impose an unreasonable condition.

8.3 Two reasons for refusal are suggested below covering the matters raised, however it is still your Officers advice that neither are considered to be defensible, and there may be a risk of an award of costs, particularly in respect to a refusal against residential amenity, bearing in mind the advice of the Council's Environmental Protection Officer.

1. The proposed retention of the shipping container to be used for the storage of bee-keeping equipment and agricultural use, and the gravelled car park, by reason of their siting, layout, scale and appearance, represent incongruous features on site, which fail to respect or relate to its character and rural context. As such they would have a detrimental impact on the visual amenity of the locality due to its failure to demonstrate a clear understanding of the characteristics of the site, its wider rural context and the surrounding area. The proposal is therefore contrary to policies COR2, COR18 of the Mid Devon Core Strategy (Local Plan Part 1), DM2 of the Local Plan Part 3 (Development Management Policies) policies S1, S9, S14 and DM1 of the Mid Devon Local Plan Review 2013-2033: Pre Adoption Draft and the aims and objectives of the National Planning Policy Framework.
2. The proposed development would result in unacceptable harm to the residential amenities of the occupiers of the neighbouring property, Bradford Farm, by way of noise disturbance, and light pollution from vehicle headlights, due to the use of the gravel car park, and increased use of the adjoining gravel track, in association with the proposed business use of the site. As such, the proposal is contrary to policies DM2 and DM7 of the Local Plan Part 3 (Development Management Policies), policies DM1 and DM4 of the Mid Devon Local Plan Review 2013-2033: Pre Adoption Draft and the aims and objectives of the National Planning Policy Framework.

**Contact for any more information**

John Millar

**Background Papers**

Application file and previous committee reports

**File Reference**

19/01862/FULL

**Circulation of the Report**

Cllr Graeme Barnell

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Plans List No. 1 ( Planning Committee 17 June 2020)

Application No. 19/01862/FULL

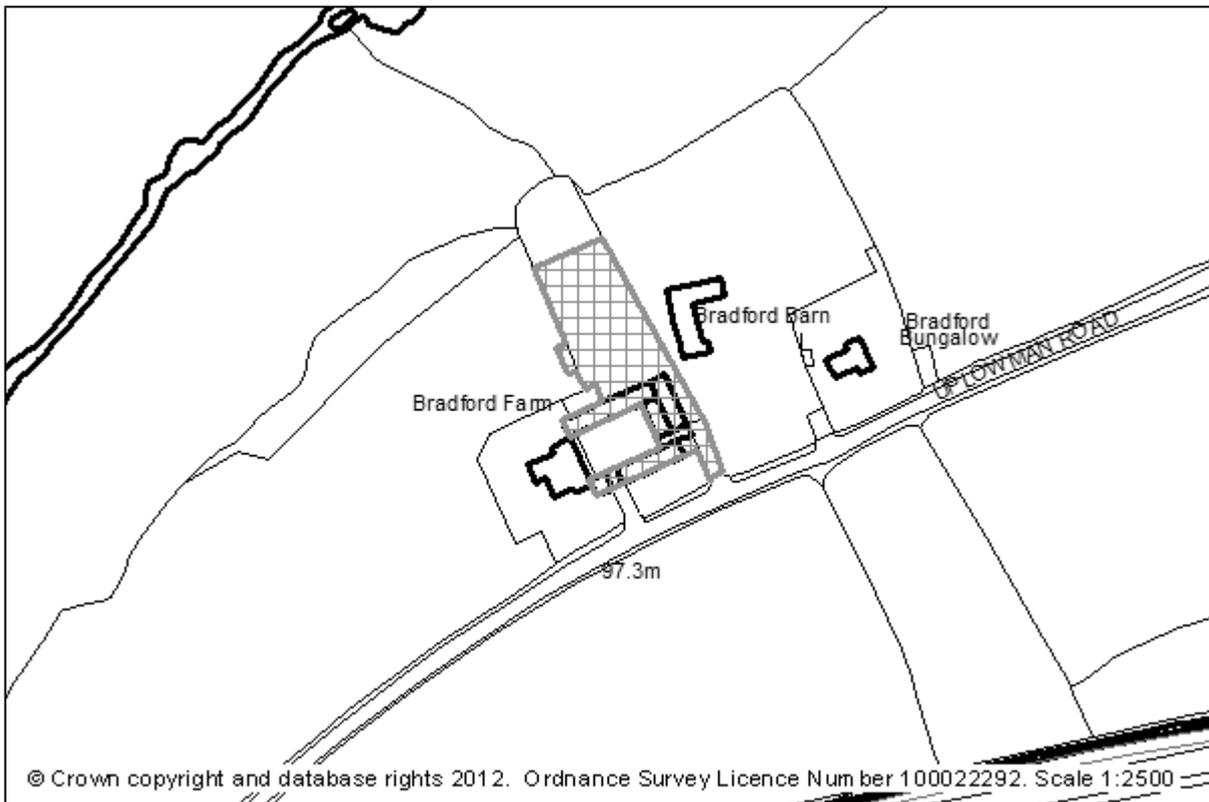
Grid Ref: 299326 : 114323

Applicant: Mr and Mrs A Fields

Location: Land and Buildings at NGR 299326 114323  
Bradford Farm  
Uplowman  
Devon

Proposal: Change of use of farm buildings to mixed B1/B8 use and retention of external works

Date Valid: 12th November 2019



**APPLICATION NO: 19/01862/FULL**

## **Update**

This application was considered on the 11<sup>th</sup> March 2020, where it was resolved that the application be deferred to allow a site visit to take place by the Planning Working Group to consider:

- The location, condition and proposal in relation to the 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 site visit of the Planning Working Group has now taken place with the notes taken as follows:

### **PLANNING WORKING GROUP – 20<sup>TH</sup> MARCH 2020**

#### **APPLICATION – 19/01862/FULL – Change of Use of farm buildings to mixed B1/B8 use and retention of external works – Bradford Farm, Uplowman**

There were 5 members of the planning working group present.

Also present: The Applicant, Agent for the Applicant, the Objector, Agent for the Objector, Case Officer and Committee Clerk

The Planning Working Group had been requested to visit the site to consider:

- The location, condition and proposal in relation to the 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 Chairman welcomed everyone to the site visit and introductions took place.

The Principal Planning Officer outlined the application stating that the application was a change of use of farm buildings to mixed B1/B8 use and retention of external works. The application was to establish an agricultural storage facility in a container and that the container would be cladded and a slate roof added.

The group moved to the east of the rear car park to observe the container in its setting and they were informed that the building was to be used to store bee keeping equipment. The Principal Planning Officer explained that the building would be a permanent structure.

Questions were raised in relation to:

- The existence of services already installed to the building
- Other building work on the main building

The objector's agent explained that the objections centred on the location and condition of the container and that further storage space was not deemed to be required at the property. He stated that it would be better to have a new building rather than to refurbish the existing container.

Mr Fields (applicant) stated that the container would be used by two bee keeping clubs and that there were no alternative buildings on the site which could be utilised for this purpose.

The group then moved back to the car park and the Principal Planning Officer explained that the potential issues were of noise impact if permission was granted but a condition had been set that either the surface was replaced with a resin bound material or that a noise reduction fence was to be installed on the border with the neighbouring property. He explained that the Environment Agency had no concerns with the existing surface. He explained that the fence would be 2 metres high.

Questions were raised in respect of:

- Use of permeable resin
- Adequate drainage
- On what side of the boundary was the fence to be installed

The objector's agent stated that there were expected to be at least 30 vehicle movements a day and that the objector was seeking to have both the surface replaced and a 2 metre high fence installed. He highlighted Policy DM11 and that there were concerns about the number of vehicle movements.

The agent for the applicant stated that the applicant had proposed the installation of the fence to screen out car headlights and that they had agreed with the objector the current surface of the car park before it was installed. He explained that the car park would be used to service the offices in the adjoining courtyard and that traffic movements would be up to 15 twice a day.

The agent for the objector stated that there were concerns that the end user of the car park had not been identified.

The Principal Planning Officer informed members that the Highways Authority had not expressed any concerns with regard to the application.

The group then exited the car park and observed the entrance to the site from the public highway. The Principal Planning Officer explained that an existing wall would be reduced to 1 metre in height to aid visibility. He explained that transport assessments had not been provided but the Highways Officer had visited the site and had expressed no concerns.

The group then proceeded through the courtyard to observe the second entrance and the Principal Planning Officer explained that the high wall to the left of the entrance as you exited was also to be reduced to 1 metre which would increase visibility for both entrances.

The group was then invited to view the site from the objector's property and they observed the difference in height of the car park which was higher than the neighbouring properties patio.

Members questioned why the fence needed to be 2 metres in height and on what side of the boundary it was to be installed.

Members observed the heavy traffic noise from the A361.

Returning to the application site, members discussed the issues that they had been requested to consider. They had observed the current condition of the existing container and had noted that this would be improved with new cladding and a slate roof and that if approved it was to be a permanent structure. They understood that the building was to keep bee keeping equipment for two bee keeping clubs and they observed the existing hives on site. There was a concern with regard to the noise levels of the existing surface of the car park and the effect that this had on the neighbouring property and members felt that any replacement surface would have to be adequately drained and permeable. Members questioned the need to have a 2 metre fence between the two properties and that a shorter fence may be adequate and where it would be installed. Members felt that the entrance into the car park would be adequate if the wall height was reduced as recommended by the Highways Officer.

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

Following the site visit, further objections were received from the neighbouring occupier, advising that the visibility splay to the east of the access, and forward of the neighbouring site, was over land in their ownership and not that of the Highway Authority, and as such they were entitled to block it should they wish. This would result in obstruction of the required visibility splays. Further comments from the Highway Authority are included in the main report below, as is further discussion within the 'parking and access' section of the considerations.

## **MEMBER CALL-IN**

Called in by Cllr Colin Slade, in order to consider the potential impact of the proposed development on the living qualities of the neighbouring occupiers due to intensification of the existing use leading to increased vehicle movements, noise and light pollution.

## **RECOMMENDATION**

Grant permission subject to conditions

## **PROPOSED DEVELOPMENT**

Change of use of farm buildings to mixed B1/B8 use and retention of external works.

The applicant seeks planning permission for the change of use of a range of existing barns to form six units of flexible commercial space falling within use classes B1 and B8, as well as retrospective planning permission for the retention of external works already carried out in association with the proposed change of use, the retention of car park area, and the retention and refurbishment of a porta cabin for the storage of bee keeping equipment.

The buildings that are the subject of these applications are a group of buildings originally in agricultural use. They are located to the west of an existing dwelling house occupied by the applicant, and form a horseshoe type barn complex around a central courtyard. The buildings immediately adjoining the dwelling house are to be retained for domestic purposes in connection with this property, those to the far east of the site are to be retained for agricultural storage purposes, while the remainder would form six units, over two floors, for the proposed use.

## **APPLICANT'S SUPPORTING INFORMATION**

Application form, site location plan, block plan, existing and proposed floor plans and elevational drawings, planning statement, wildlife trigger list, foul drainage assessment, flood map for planning

## **RELEVANT PLANNING HISTORY**

94/00536/FULL - PERMIT date 3rd November 1995

Conversion of redundant farm buildings into four dwellings and formation of new access

94/02187/FULL - PERMIT date 26th January 1995

Erection of two storey extension comprising of sitting room, bedroom and bathroom

00/01037/FULL - PERMIT date 31st January 2001

Conversion of barn to dwelling (amended scheme to that approved for unit 4 under planning permission reference number 4/52/94/536)

18/00657/FULL - WDN date 16th October 2018

Retention of change of use of an existing agricultural building to office with parking

18/02050/PNCOU - PNP date 23rd April 2019

Prior notification for the change of use of an agricultural buildings to 3 dwellings under Class Q

18/02071/FULL - PERMIT date 4th April 2019

Retention of Log store

19/00652/PNCOU - CLOSED date 24th April 2019

Prior Notification for the change of use of agricultural building to Class R (Flexible Business Use)  
(Under 150sqm)

## **DEVELOPMENT PLAN POLICIES**

Mid Devon Core Strategy (Local Plan Part 1): COR1, COR2, COR4, COR9, COR12, COR18

Mid Devon Local Plan Part 3 (Development Management Policies): DM1, DM2, DM7, DM8, DM11, DM20

National Planning Policy Framework

## **CONSULTATIONS**

TIVERTON TOWN COUNCIL - Support

HIGHWAY AUTHORITY - 27th January 2020 - Observations:

I have visited the site and have no objections to the proposal, however the inter visibility between the two accesses is substandard and an improvement to provide visibility 2.4m back along the centre line of both accesses and parallel between the two with no obstruction greater than 1.0m should be imposed. Therefore I would advise the following conditions be imposed:

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. Visibility splays shall be provided, laid out and maintained for that purpose at the site accesses where the visibility splays provide inter visibility between the two accesses at a height of 1.0m metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway shall be 2.40 metres and Parallel between the two.

REASON: To provide adequate visibility from and of emerging vehicles.

29<sup>th</sup> April 2020 - Further to my previous comments and observations I have been able to view the land registry documents and discuss the situation with Mr Blackmore. From a Highway Authority position the land between the public highway and the dwarf wall is unregistered and my previous comments apply. However Mr Blackmore could seek to apply for the land under possessory title and the obstruction, should that be granted, could be a prospect, notwithstanding this he is currently able to erect a fence that would block visibility within his land which would terminate within 800mm of the public highway and would impact on the visibility to the left. The existing access would have a traffic generation but this would be small given its previous use and while the Highway Authority would be unreasonable in refusing a new use which would be equal to or less than the current use it is for the applicant to demonstrate such generations. Given the lack of control of the visibility to the left of the access demonstrated by Mr Blackmore and confirmed through the investigations. The current applied for use, should seek alternative parking arrangements and service access, either utilising the existing central access or improvements to

the field access to the west of the farm. Such improvements would necessitate improved radii, visibility to the west, construction and drainage.

The applicant also has the opportunity to vary the use for that area to a use of equal traffic generation to the current use.

Therefore the Highway Authority has no objection in principle, and the uses off the central access are acceptable, the uses off the eastern access is unacceptable given that the visibility to the east is not in the control of the applicant and there is a real prospect of the splay being obstructed and not suitable, the said obstruction not interfering with Mr Blackmores own visibility. Therefore the Highway Authority would advise that the planning Authority seek alternative access arrangements which can be delivered from a new access to the west or utilise the central access or seek alternative uses of a traffic generation equal to that of the existing uses.. Should the application be separated into two applications with the uses accessed from the central access on one this be acceptable. However as it stands I would recommend a refusal based on the investigations and advice as that lack of information that an access would be suitable.

*Following the above comment, the Highway Officer also confirmed that they would raise no objections to all traffic being directed through the central access of the site i.e. into the courtyard. It was also confirmed that no further visibility improvements would be required to the west of that access, only to the east as already advised. Subject to detail of the visibility splays, there may not be a requirement to lower the wall to gain the required visibility.*

7<sup>th</sup> May 2020 - This site is accessed off a C Classified County Road which is restricted to 60 MPH.

The number of personal injury collisions which have been reported to the police in this area between 01/01/2014 and 31/12/2018 is none.

The Applicant has submitted the number trips the existing use of the farm buildings could create if it was bought to its full potential without further Planning Permission. This number of trips is slightly higher than the trips estimated for this proposed use which is taken from TRICS database which is a nationally accepted database.

There has been discussion regarding the visibility splays and ownership of an area to the left of the existing access, and it has been concluded that this area is unregistered. As the number of trips for this proposal would be lower than existing use, the County Highway Authority considers that this access can achieve the suitable visibility required, and it is not considered that the number of trips this proposal could generate will be severe impact on the highway or that there will be any highway safety concerns with the proposal.

Therefore the County Highway Authority has no objections to this application.

Recommendation:

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

19<sup>th</sup> May 2020 - I note your concerns regarding the applicant's traffic figures and your intention to employ a traffic consultant. I am happy to consider anything you may then wish to submit in making my recommendation to the Local Planning Authority. You will of course be aware that any challenge to submitted information would need to be evidence based.

I have already visited the site so am familiar with the arrangements, therefore another site visit would not be necessary.

*Note: These comments were provided directly to the neighbouring landowner's Planning Consultant, following concerns raised in respect to the traffic figures supplied by the applicant.*

#### PUBLIC HEALTH –

Contaminated Land: No objection to the proposals. (16.01.20).

Air Quality: No objection to the proposal. (22.01.20).

Environmental Permitting: No objection to the proposal. (22.01.20).

Drainage: No objection to the proposals. (16.01.20).

Noise & other nuisances: No objection to the proposals. (16.01.20).

Housing Standards: No comment. (15.01.20).

Licensing: No comments. (13.01.20).

Food Hygiene: No comments. (16.01.20).

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. (13.01.20).

Health and Safety: No comments. (16.01.20).

While raising no objections to the proposal, as submitted, and not requesting any further improvements, the Environmental Protection Officer has agreed that the replacement of the existing drive and car park surface with a solid material such as resin bound surface, or the erection of an acoustic fence (12kg mass), would certainly address concerns relating to noise. In respect to a request to impose an hours of operation condition up to 19:00hours on weekdays, the Environmental Protection Officer also advised that this would raise no concerns in respect to disturbance to neighbouring amenity, however a restriction to 12:00 hours on Saturdays, with no operation on Sundays and Bank Holidays

## REPRESENTATIONS

At the time of writing this report, two letters of objection has been received, the first being from the occupiers of the neighbouring property of Bradford Barn with the objections being summarised as follows:

- The objection is not on the basis that development is taking place, there is an expectation that they will be converted someday. It is however felt that the proposed use is the wrong type of use for this location, particularly on the scale proposed, which is twice as large as the previous application.
- The application does not identify how much use will be for office, storage or distribution. As such, this leads to uncertainty as to what is actually happening with these buildings, as well as raising further questions in respect to the impact of potential traffic movements, and associated impact on living conditions with the close proximity of the track and car park, which is immediately next to the house, its sitting room and bedroom windows, and outside living space.
- It is advised that 15 staff are expected to be employed, which would lead to a minimum of 30 additional vehicle movements passing by the neighbouring property. This does not include deliveries and any visitors. This level of vehicle movements is considered to be excessive in a rural location, impacting adversely on neighbouring living conditions.
- If the buildings were intensively farmed, the traffic movements would likely be limited to a couple of tractors and possibly livestock passing by. This would be much less than the proposed levels of traffic.
- Why can't car parking be located in the existing courtyard? This would not affect neighbouring amenity. It appears that the applicant's want traffic movements affecting their property as far away as possible.
- Policy DM20 states that this type of development should only occur where insufficient alternatives are available. There is no formal business plan indicating why this site is necessary for their business or why other sites are unsuitable. There should be a details assessment of other available sites.
- Hours of work could be conditioned, however it is unlikely that these times will be adhered to, especially at weekends. Such a condition is realistically unenforceable as no enforcement officers work at weekends or on bank holidays.
- There is no mention of external lighting. If uncontrolled, this could adversely impact on neighbouring amenity.
- The works that have taken place are detrimental to the character of the barns with the use of inappropriate materials both on the building and the landscape. This has changed the setting drastically.
- The application should have been supported by a wildlife survey. The council has a duty to discharge its obligation under the Wildlife Act to make sure any development will not impact on protected species. The barns are ideal for bat roosts and a report should have been provided.

The other letter of objection was received from a Planning Consultant (XL Planning) acting on behalf of the objector Mr M Blackmore of Bradford Barn with the objections summarised as follows:

- Our client's objection to the proposal still stands from the previous application (18/00657/FULL), which was withdrawn following a recommendation of refusal by the Council's Planning Committee.

- The new agents explanations with regard to policy justification on the location being suitable for the proposed change of use, is minimal at best and provides no robust information with which to consider against policy DM20.
- The planning statement sets out potential uses of B1, A2 and B8, stating that are no more than 32 anticipated vehicle movements per day, with only 16 parking spaces being required. The statement, however does not address the likely potential, within its traffic calculations, that the buildings could be used solely for B8 (storage and distribution use). The application does not set out the areas of use within the buildings or specify quantities within its plans. The B8 use class is a much more intensive use and has the potential to generate many more trips than B1a (office). The applicant may argue that this is not the intention, however the planning statement sets out that they are looking to offer potential users flexible B1/A2/B8 uses. The calculated figure does not take into consideration potential visitor numbers to the building and also does not facilitate parking provision within its layout for any visitors. There is no specific Transport Assessment, the calculated 32 trips should be considered the minimum daily movements, not the maximum. It is felt that the proposal has failed to adequately demonstrate that the change of use meets with criteria a) of Local Policy DM20.
- The statement refers to there being no building within the locality as justification for the location, however it can be clearly demonstrated (as it was in the previous objection letter) that there are sufficient employment locations within Tiverton which would suit this new enterprise. Tiverton Town centre is less than 2 miles from the application site and Tiverton's settlement limit is now only less than one mile away and this would be considered as immediate in policy terms. Having briefly reviewed the commercial property for sale website [www.rightmove.co.uk](http://www.rightmove.co.uk). It shows six properties within Tiverton available for rent or sale which would be suitable and more appropriate than the proposed location at Bradford Farm.
- The location is considered to be inappropriate for this size and type of development. The rural setting has been significantly eroded by the unauthorised works that have taken place, and still not regularised. It is contended that the development proposed will clearly impact upon the barns themselves and their associated heritage values, both physically and visually. The barns have the potential to be considered important unlisted Heritage Assets.
- It is stated in the planning statement that the proposal is an improvement on the "previously unkempt nature of the former 'yard'." Photos of the site taken prior to works taking place show the form and shape of the immediate surrounding land being very much in keeping with the rural character of the location, with the 'yard' in question being a field, which is now domesticated through unauthorised works.
- Overall, it is considered that the impact of the proposed development is greater than that of previous application in that this application is for the change of use of all of the barns, not part of the site, and this will cause a significant and detrimental level harm to the historic and aesthetic values of the buildings due to changes to the setting and the erosion of integrity is unacceptable. The further domestication of the barns will erode their integrity and authenticity and will be irreversible. The proposal to convert these buildings to offices is not considered to be in line with Local Plan Policy DM11 or DM20 and therefore should be refused.

Further correspondence has been received from the Planning Consultant acting on behalf of the objector Mr M Blackmore requesting that in the event of planning permission being approved, the following conditions be applied:

1. The drive and car park area be tarmac, not loose clipping, in order to reduce noise impacts of vehicles next to the residential property.

2. To protect the light and privacy of neighbouring ground floor windows, a solid shiplap fence be erected some 5 metres back from the beech edge and a series of tree planting in the 5m area to re-establish the previous rural aspect of the original paddock and protect the amenity of the neighbouring property.
3. The removal of the shipping container which is not necessary given the amount of buildings available to be converted through the change of use.

Further correspondence was received from Mr Blackmore and his Planning Consultant following the Planning Working Group site visit, relating to access and visibility. The main points raised are as follows:

- The land to the east of the application site and access, that being forward of Bradford Barn, between the existing dwarf and the carriageway edge is in the ownership of the neighbour and not the Highway Authority. As such, this could be obstructed by new hedge planting, obstructing the required visibility splay and rendering any condition unenforceable.
- The applicant has given traffic movement calculations relating to the existing use, which are ambiguous and unrealistic for the size of the holding. Bradford Farm is a 6 acre farm with no livestock, arable, tractors, bailers or general far machinery. During the last 17 years, the farm track has not been used more than twice a week. It has been suggested that if the permission is not granted, it will be necessary to use the land for more intensive agricultural, with anywhere between 18-24+ vehicle movements per day. This is considered to be an unrealistic prospect. It is felt that the lawful use would generate less traffic movements than the proposed use, which coupled with concerns over the access visibility, should lead to a recommendation of refusal, as indicated by the Highway Officer.

## **MATERIAL CONSIDERATIONS AND OBSERVATIONS**

The main material considerations in respect of this proposal are:

- 1) Principle of development
- 2) Parking and access
- 3) Design and impact on the character and appearance of the surrounding area
- 4) Impact on residential amenity
- 5) Other issues

- 1) Principle of development

The proposed development is for the change of use of existing redundant former agricultural barns to business use comprising six flexible commercial units (Use Classes B1 and B8). The proposal also includes retrospective consent for alterations carried out to the buildings, primarily being small scale external works, and for the creation of a gravelled parking area to the rear of the buildings. The proposals also include the retention of an existing temporary cabin for the storing of bee keeping equipment. This also involves timber cladding the structure and providing a pitched roof with slate covering.

This planning application follows an enforcement investigation relating to unauthorised works with the outcome being the submission of previous planning application 18/00657/FULL, which was for the retention of the change of use of a smaller part of these barns to office with parking at Bradford Farm. That application was ultimately withdrawn following a resolution of the Planning Committee that Members were minded to refuse planning permission and therefore wished to defer the application for consideration of an implications report to consider the following issues:

- Whether the proposal had an unacceptable impact on the neighbouring property (especially the car parking area) and therefore did not comply with policies DM11 and DM20
- The intensification of the use of the premises
- Whether this was an inappropriate location for the proposal
- Was there more appropriate facilities nearby
- The impact of the development on the amenity of the neighbouring property especially with regard to lighting issues

This latest application is submitted to regularise the existing unauthorised works and the status of the building, with consideration given to the concerns raised during the previous application. The applicant contends that they have appropriately addressed these concerns so as to allow the application to be granted planning permission.

In determining this application, 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 NPPF), is noted as one such material consideration.

Of the six units identified on the submitted plans, one of these (Suite 3A) is already in use as flexible commercial use B1/B8, being so permitted by rights exercised under Schedule 2 Part 3 Class R of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO). The business being carried out within this part of the building is the applicant's own business. The other five proposed suites would be newly created with the intention to provide opportunities for businesses carrying out B1 and B8 operations. This may be an office for a designer/architect, financial advisor, or similar 'professional' user, light industrial use, or a low-key storage use such as storage of documents, antiques, household items, seasonal goods, etc. Following further discussions with the applicant, it is agreed that it would be appropriate to limit any B8 use to storage, without associated distribution, to encourage a smaller scale use than may be potentially operated under a full B8 use.

As a starting point, the site is located to the north east of Tiverton, to the north of the A361, and approximately 400m from the most north easterly edge of the Tiverton Eastern Urban Extension allocated site. As this is an open countryside location, Policy COR18 of the Mid Devon Local Plan (Core Strategy) applies. This seeks to restrict development to that which would enhance the character, appearance and biodiversity of the countryside whilst promoting sustainable diversification of the rural economy. Furthermore, COR18 states that detailed development control policies will permit agricultural and other appropriate rural uses, subject to appropriate criteria, which includes: *"appropriately scaled retail, employment, farm diversification and tourism related development (including conversion of existing buildings)."*

Policy DM20 of the Development Management Policies (Part 3 of the Mid Devon Local Plan) supports the principle new-build employment development or expansion of existing businesses, provided that the development is of an appropriate use and scale for its location. It is stated that proposals must demonstrate that:

- 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."*

This particular policy consideration is referred to in the objections received, which raise concerns over the suitability of the site for new employment use, also questioning whether it has been appropriately demonstrated that there are no alternative sites that could provide for the need identified, as required by policy DM20. This matter was also raised in consideration of the previous application, being one of the reasons members were minded to refuse.

Notwithstanding the above concern, the proposed development is not proposing 'new build' commercial development, in this case seeking to make use of existing redundant buildings, which is supported in principle by policy DM11 of the Local Plan Part 3 (Development Management Policies). Policy DM11 is worded as follows:

*"The conversion of redundant or disused rural buildings of substantial and permanent construction which positively contribute to an area's rural character for residential, tourism or employment uses will be permitted where:*

- a) A suitable access to the building is in place or can be created without damaging the surrounding area's rural character and the road network can support the proposed use;*
- b) The building can be converted without significant alteration, extension or rebuilding;*
- c) The design will retain the original character of the building and its surroundings;*
- d) The development will retain any nature conservation interest associated with the site or building, and provide net gains in biodiversity where possible."*

In this case, the buildings are a range of stone built barns in excellent condition, which can be viewed prominently from the public highway to the south. They are of very substantial and permanent construction and do contribute to the area's rural character. As such, they are buildings suitable to be considered in accordance with policy DM11. The above criteria will be considered in the more detailed assessment of the scheme below.

The retention of the existing temporary building is submitted as part of this application, however is not proposed for commercial purposes. It is currently used for the storage of bee keeping equipment by a local bee keeping group. This is used in connection with bee keeping activities taking place on land immediately to the north of this building. On the basis that this is a small scale non-commercial activity, there are no objections in principle subject to assessment of the impacts of this element of the development against relevant local and national planning policy considerations. The contributor has objected on the grounds that this building has been sited without the necessary planning consent, and therefore should be removed, however the purpose of this application is to seek to regularise this unauthorised development, in which case any harm will be assessed.

## 2) Parking and access

The proposed development seeks to make use of an existing former agricultural access, which leads to the car park area. In addition, limited parking will be made available for electric car charging within the existing courtyard, which is accessed via a second access point to the west. Otherwise the courtyard parking will be restricted to use of the applicant's household.

In considering the proposed use, the Highway Authority initially advised that Standing Advice should be applied. Noting the sensitivity of the site, previous and current concerns raised, more detailed comments were requested. As a result, the Highway Officer has visited the site and provided further comment. In this response, no objections were raised from a highway safety point of view, with the access and parking arrangements, including sufficient parking provision, considered to be appropriate subject to improvements to visibility. Specifically it is requested that

there is no obstruction to visibility above 1 metre, set back 2.4m between the two existing access. The applicant has agreed to these improvement, which would be required to be provided proper to any of the new units being occupied, should planning permission be required. Consideration will also need to be given to the visual impact of these works, which will be discussed in more detail below.

Since the site visit by the Planning Working Group, the neighbouring landowner has advised that the existing visibility splay, to the east of the access serving the main parking area, strays into land under their ownership rather than the Highway Authority. As such, they have argued that they could obstruct the visibility splay, which would not allow safe access. The Highway Authority initially did not raise any further concerns as it was felt that the visibility could still not be obstructed as the land was outside of the neighbour's ownership. Having further considered information provided by the neighbouring landowner, further consulted their own records, and having taken their own legal view, the Highway Officer advised that the land between the roadside wall, and the carriageway edge, is in fact unregistered and neither in the ownership of the Highway Authority, or the neighbour. It is acknowledged however that should Mr Blackmore be successful in applying for the land under possessory title, obstruction could be a prospect. Under permitted development rights, no wall, fence, gate or other means of enclosure would be able to exceed 1m in height adjoining the carriageway, however the growing of a hedge, or other obstructing vegetation is not development and could not be controlled. Having checked the planning history, there are also no restrictive conditions preventing obstruction of the access to Bradford Barn.

On the basis of the above, the Highway Officer has advised that there would be some vehicle movements associated with the existing access, so it would be unreasonable to refuse a new use, where that would be equal to or less than the existing use. It is advised that it is for the applicant to provide details of traffic generation. Otherwise it is suggested that alternative provision is sought via the central access to the site, through the barns courtyard, or via a new access to the west of the site, if appropriate. The Highway Officer has confirmed that they would be content with all the vehicle movements associated with the proposed use going through the central access, with no further improvements to visibility beyond those already requested.

In response, the applicant has confirmed that it would not be practical to use the central access, as there is insufficient room to provide all the necessary parking within the courtyard, and there is no onward route available through to the car park at the rear. They are also of the view that the existing agricultural use, if brought back into its full usage, which could be done without requiring any planning permission, would generate movements of anywhere between 18-24+, together with outdoor machinery storage, which would be considerably more than proposed in this application. It is acknowledged that the agricultural use of the site has been limited in recent times, but this extant use could be operated in a much more intensive way. It is advised that if no alternative use for the buildings can be found, as applied for, there would be no option but to use these buildings and associated land more intensively than it has been in the past.

The previous Highway Officer has since retired, and therefore a new Highway Officer has considered this argument, as well as visiting the site. Having considered the extant use and compared potential vehicle movements with trips estimated from the TRICS database for the proposed use, they concluded that the extant use could generate a slightly higher number of trips than the proposed use. On the basis that the proposed number of trips would be less than the existing use, the Highway Authority do not consider that the proposed use would have a severe impact on the highway or that there would be any highway safety concerns with the proposal. As such, they maintain no objection to the proposal.

The neighbouring landowner, and their Planning Consultant have responded, commenting that the submitted vehicle movements associated with the extant use are ambiguous and unrealistic for a

holding the size of Bradford Farm. The Highway Officer has responded that they would be happy to consider any further information submitted by the objector in regard to traffic figures, however that would need to be evidence based. At the time of writing this report, no further correspondence has been received by the Planning Officer from either the objector, or the Highway Authority, in which case the recommendation of no objection stands at this point.

In order to ensure that the parking numbers remain appropriate for the proposed uses, and that there isn't a further increase in usage of the access, it is considered necessary to impose conditions restricting the type of uses that may be carried out. These would be limited to B1 use and B8. In respect to B8, as discussed earlier, this would be limited to storage use only, with distribution from site restricted to encourage small scale storage use rather than a larger distribution-based enterprise. A2 use, which would have visiting members of the public is not included within the use recommended for approval.

Taking the comments of the Highway Authority into account, and noting that appropriate conditions can be imposed to require necessary improvements to visibility, as well as limiting the type of business that can be carried out

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 and policies DM8 and DM11 of the Development Management Policies (Local Plan Part 3).

### 3) Design and impact on the character and appearance of the surrounding area

The commercial element of the development involves the reuse of the existing buildings, with some minor external alteration consisting primarily the replacement of existing windows and provision of roof lights facing into the central courtyard, in addition to the formation of the car parking area to the rear of the site.

The works that have been carried out to the building are considered to be acceptable. No new windows openings have been created with the new frames inserted into already present openings. New roof lights have been added to serve the first floor areas, however these are discreetly located within the enclosed courtyard area where they are not readily visible from public vantage points. The buildings are not listed, or identified as being locally listed heritage assets on the Devon Historic Environment Record. Nonetheless they are of very high quality. Overall the works have been carried out sensitively, respecting the key characteristics of these traditional buildings.

The creation of the gravelled car parking area is one of the primary concerns of the contributor, with objections principally citing its visual impact and the impact on living conditions of the occupiers of the neighbouring house, Bradford Barn, as a result of vehicle movements close to this property. In considering wider visual impact of the proposal, this does represent a change to the adjoining agricultural land, however it is not considered cause demonstrable harm so as to warrant recommending refusal. These works are now complete, with landscaping works carried out on the land immediately to the north, which include grassing and tree planting, with the car park edge defined with rail stock fencing with shrub planting in front. This will create defined boundary between the car park and adjoining countryside. In terms of the spread of development, this is noted but is not readily perceivable from wider public views. Similarly, it is noted that it does not extend as far as the built development comprising the converted barn and wider residential site immediately to the north east (Bradford Barn). 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 drive and access point are existing and despite the change in appearance due to the resurfacing, which in itself would not require planning permission, there is no change proposed that would be harmful to visual character. In discussing highway safety issues above, it is noted that the Highway Authority requested improvements to visibility between the two existing access on to the site by removing any obstruction higher than 1 metre above the adjoining carriageway, at a point 2.4m back from the carriageway edge. At present the existing roadside wall is approximately 1 metre in height, with higher sections of stonework adjoining the accesses. There would be a need to lower the higher sections and possibly a small part of the roadside wall to provide this visibility, however this is not considered to be harmful to the character of the area, or the traditional character of the building and wider site. With the exception of the higher sections, the roadside boundaries of both the application site, and adjoining residential property, are characterised by their low stone walls. The required alterations would have a limited visual impact, respecting the existing character sufficiently. It is considered appropriate to impose a condition requiring details of these works, including details of repointing, coping stones, etc., to be provided and agreed prior to the works being carried out.

In considering the existing temporary building, which is proposed to be retained, this is closely related to the existing buildings and also does not represent a significant expansion of built form into adjoining countryside that would be considered reasonable to recommend refusal. The building at present is clearly in a state of deterioration and does not respect the character of the area. It is however proposed to clad in timber and roof in slate, which would significantly improve its appearance. These materials would match those used in an adjoining wood store building, thereby appropriately mitigating against the current harm caused by this building. In order to ensure a satisfactory outcome and speedy resolution to this current enforcement issue, it is considered appropriate to impose a condition requiring these works to be carried out in a reasonable period of time, say 3 months following any approval.

The use of the bee keeping storage building is a very small-scale use with very limited vehicle movements associated with it. A condition would be sensible to exclude its use for business purposes, thereby limiting its use in connection with a higher intensity use on site. A condition is proposed to limit the use to those uses ancillary to the keeping of bees or for agricultural purposes only.

Overall, the works as carried out and proposed, are considered to be acceptable, complying with policy DM2 (high quality design) and criteria c) of policy DM11 of the Local Plan Part 3 (Development Management Policies).

#### 4) Impact on residential amenity

The site is in a sparsely developed countryside location just beyond the edge of Tiverton, with two neighbouring properties to the east, Bradford Bungalow that is well separated from the site, and Bradford Barn, which immediately adjoins the access track and car parking area. The occupier of Bradford Barn has objected to the development for several reasons, however one of the main reasons for objecting to this particular scheme, is the impact that the use, particularly as a result of vehicle movements close to their property, will have on their living conditions. Concerns include the generation of noise disturbance as a result of vehicles moving close to the property, especially over the loose gravel, and headlights shining into the main sitting room and some bedrooms. There are also concerns about the potential for increased vehicle movements depending on the use of the buildings as there is some ambiguity over the end use with 'flexible use' referred to in the planning statement, which could potentially include B1, A2 and B8.

In respect to the use of the units, this has been clarified, and discussed further in the '*parking and access*' section of this report. With the exception of Suite 3A, which already benefits from a flexible

use, which includes full B1 and B8 use, it is proposed to limit the use of the other five units to a B1 use, which would include office, light industrial, and research and development, and B8 storage, with distribution use excluded. This would allow for 'professional' users such as a designer/architect, financial advisor, etc., or a low-key storage use such as storage of documents, antiques, household items, seasonal goods, etc. Such uses are considered to be acceptable and would be compatible with a residential setting. As such, the actual use of the buildings is not considered to be harmful to residential amenity. It is also noted that the buildings nearest the neighbouring property are not included within the change of use application, allowing a degree of separation between the two sites.

In respect to disturbance from vehicle movements, the Public Health team have raised no objections to the proposal. Further discussion have taken place with the Council's Environmental Protection Officer, specifically in relation to the comments received from the neighbouring occupier. Despite the increase in scale of development from the previous application (18/00657/FULL), the Environmental Protection Officer has advised that he does not consider the level of usage proposed would cause such disturbance that this would be sufficient to represent an unacceptably adverse impact on neighbouring amenity to justify refusing planning permission. No improvements are considered necessary, however it is suggested that the installation of an acoustic fence along the neighbouring boundary would adequately address the concerns in relation to noise from the car park, and light from headlights. The replacement of the gravel with a hard surface such tarmac or resin bound gravel would also reduce noise from vehicles accessing the site and manoeuvring in the car parking area.

While it is noted that improvements are not considered necessary, the applicant has agreed to make improvements in the form of replacement of the gravel or the installation of an acoustic fence, in accordance with the Environmental Protection Officer's suggested specification. A condition to this effect may be imposed on any consent granted. It is also noted that it is the applicant's own desire that any users of the site are limited in the time that they can work on the site. As such, they are agreeable to a condition limiting hours of operations. Following consultation with the Environmental Protection, a condition restricting hours to between 8am to 7pm on weekdays and 8am to 1pm on Saturdays, with no operation on Sundays or Bank Holidays. Such a condition would limit the use of the site in unsociable hours, also restricting how late any business could operate, thereby removing the opportunity for headlights to cause disturbance through shining into the adjoining house at unreasonable times. It is also noted that there is a planted boundary between the two properties that would further reduce this impact.

Taking the above into account, it is not considered that the living conditions of occupiers of Bradford Barn, or other nearby properties, would be unacceptably harmed as a result of the proposed development. The proposal is therefore considered to comply with policy DM2 of the Local Plan Part 3 (Development Management Policies), in respect to not having an unacceptably adverse effect on the privacy or amenity of neighbouring properties.

#### 5) Other issues

In regard to other planning matters, with respect to ecology, there is an objection that the application should have been supported by a wildlife survey as the barns are ideal for bat roosts. Despite these concerns, this is not something that is necessary for this application. The works to the roof space of these buildings has already been carried out. With the exception of the change of use, for which this application seeks permission, internal works are also not classed as development and therefore can be carried out without the need for planning permission. This does not relieve the applicant of their legal obligations in respect to protected species and other wildlife, however this is dealt with outside of the planning process as these works have already taken place. When these works were considered in the previous application, it was noted at the time that

a survey had been carried out prior to works being carried out and no protected species were noted.

On this basis, with no physical works proposed to the building and only the proposed change of use being considered, it is not necessary to require an ecology survey. In carrying out the works however, it is noted that some biodiversity improvements have been implemented, including the provision of a range of nesting boxes for birds.

Questions have been raised about the efficiency of the enforcement process in dealing with existing breaches, however this application is received in response to those investigations, seeking to regularise all of the outstanding matters. Should permission be granted, these will have been appropriately resolved. If refused, a decision will need to be taken about proceeding with the next stages of the enforcement process.

## **CONCLUSION**

Overall, despite the objections received, the proposed change of use of these traditional buildings and the associated works to the site, and the retention and improvement of the temporary building, are considered to be appropriate in this location, will have no adverse impact on local landscape character or highway safety and will cause no unacceptable harm to residential amenity.

## **REASON FOR APPROVAL OF PERMISSION/GRANT OF CONSENT**

The change of use and conversion of this existing range of buildings for business purposes is considered to be acceptable as the works involve an existing building of satisfactorily substantial and permanent construction which positively contributes to the area's rural character, and which has been converted without significant alteration, extension or rebuilding. The associated works, including the retention of the car parking area, and the other part of the scheme comprising the retention of the temporary building for use in connection with bee keeping activities is considered to be acceptable too, appropriately respecting and relating to the character of the site and its surroundings. Notwithstanding the relationship with a neighbouring property, it is not considered that the development would lead to an unacceptably adverse effect on the amenity of the occupiers of this or any other property. Furthermore the site is of sufficient size to accommodate adequate parking and turning facilities, as necessary, and is served by a suitable access. It is considered appropriate to recommend approval with conditions necessary to ensure the success of the development in this location. As such, it is considered that the proposed development satisfactorily accords with policies DM1, DM2, DM7, DM8, DM11 and DM20 of the Mid Devon Local Plan Part 3 (Development Management Policies), COR1, COR2, COR4, COR9 and COR18 of the Mid Devon Core Strategy (Local Plan Part 1) and the aims and objectives of the National Planning Policy Framework.

## CONDITIONS

1. The date of commencement of this development shall be taken as 12<sup>th</sup> November 2019, the date the application was registered by the Local Planning Authority.
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 business use hereby permitted shall not be operated outside of the hours of 08:00 to 19:00 Monday to Friday and 0800 to 13:00 Saturday and shall not be operated on Sundays and Bank Holidays.
4. The areas allocated for parking on the approved plans shall be kept clear of obstruction and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted.
5. No means of external illumination/lighting shall be installed within the application site unless details have first been submitted to and agreed in writing by the Local Planning Authority. Any external lighting installed shall be in accordance with the agreed details.
6. Visibility splays shall be provided, laid out and maintained for that purpose between the two accesses serving Bradford House and the application site, where the visibility splays provide inter visibility between the two accesses at a height of 1.0 metre above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway shall be 2.40 metres and parallel between the two. Such visibility shall be fully provided before any of the business units hereby permitted are first occupied and shall thereafter be maintained at all times. Prior to any works being carried out on in relation to the provision of the visibility splays, details of the works required in relation to the lowering of the existing stone boundary wall shall first be submitted to and approved in writing by the Local Planning Authority. Such details shall include identification of the area of wall requiring removal and details of making good including the specification of mortar mix and capping. The works shall thereafter be constructed in accordance with the approved details.
7. The bee keeping storage building hereby approved, comprising the retained temporary building, shall be clad and roofed in accordance with the details indicated on the approved plans, within five months of the date of this decision.
8. Prior to any of the business units hereby permitted first being occupied, noise reduction and mitigation measures shall be provided in the form of the erection of an acoustic fence (2m high with a mass of at least 12kg) along the eastern boundary of the site, forming the boundary with the neighbouring property (Bradford Barn), or the replacement of the existing gravel track and car park serving the development hereby permitted with a properly consolidated surface (not loose stone or gravel), as agreed in correspondence dated 12<sup>th</sup> February 2020 (email from Ian Firth to John Millar). Prior to their installation, details of the noise reduction and mitigation measures shall be submitted to and agreed in writing by the Local Planning Authority. Such measures shall be carried out in accordance with the agreed details and shall thereafter be maintained at all times.
9. The business unit referred to as 'Suite 3A' on the approved plans shall be used for purposes falling within Use Classes B1 and B8 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).

10. The business units referred to as 'Suites 1, 2A, 2B, 2C and 3B' on the approved plans shall be used for purposes falling within Use Classes B1 and B8 (storage) only and for no other purpose (including for use as a B8 distribution place or 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).
11. The bee keeping storage building hereby approved shall at all times be used for purposes ancillary to the bee keeping or agricultural activities taking place on site and shall not be used for any non-agricultural activity.

### **REASONS FOR CONDITIONS**

1. In order to establish a legal commencement date for the development to enable the development to be monitored by the Local Planning Authority.
2. For the avoidance of doubt in the interests of proper planning.
3. In the interests of residential amenity 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.
4. In the interests of highway safety, in accordance with policies DM2, DM8 and DM11 of the Local Plan Part 3 (Development Management Policies), and the aims and objectives of the National Planning Policy Framework.
5. In the interests of residential amenity 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.
6. In the interests of highway safety, in accordance with policies DM2, DM8 and DM11 of the Local Plan Part 3 (Development Management Policies), and the aims and objectives of the National Planning Policy Framework.
7. To safeguard the visual amenities of the area, in accordance with policies COR2 of the Mid Devon Core Strategy 2007 and DM2 of the Local Plan Part 3 (Development Management Policies) and the aims and objectives of the National Planning Policy Framework.
8. In the interests of residential amenity 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.
9. In the interests of residential amenity and in the interest highway safety and of assuring adequate parking remains available for any alternative use to accord with policies DM2, DM8 and DM11 of the Local Plan Part 3 (Development Management Policies), and the aims and objectives of the National Planning Policy Framework.

10. In the interests of residential amenity and in the interest highway safety and of assuring adequate parking remains available for any alternative use to accord with policies DM2, DM8 and DM11 of the Local Plan Part 3 (Development Management Policies), and the aims and objectives of the National Planning Policy Framework.
11. In the interests of residential amenity and in the interest highway safety and of assuring adequate parking remains available for any alternative use to accord with policies DM2, DM8 and DM11 of the Local Plan Part 3 (Development Management Policies), and the aims and objectives of 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.

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.

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