

# 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 before the meeting starts.

## MID DEVON DISTRICT COUNCIL

### PLANNING COMMITTEE

**A MEETING** of the **PLANNING COMMITTEE** will be held in the Phoenix Chamber, Phoenix House, Tiverton on Wednesday, 16 May 2018 at 2.15 pm

The next ordinary meeting of the Committee will take place on Wednesday, 13 June 2018 at 2.15 pm in the Phoenix Chamber, Phoenix House, Tiverton

#### STEPHEN WALFORD

Chief Executive  
8 May 2018

**Councillors:** Mrs F J Colthorpe, Mrs H Bainbridge, Mrs C Collis, Mrs G Doe, Ungrouped Seat, P J Heal, F W Letch, B A Moore, R F Radford, J D Squire and R L Stanley

## 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 **ELECTION OF CHAIRMAN (Chairman of the Council in the Chair)**  
To elect a Chairman for the municipal year 2018/19.
- 2 **ELECTION OF VICE CHAIRMAN**  
To elect a Vice Chairman for the municipal year 2018/19
- 3 **APOLOGIES AND SUBSTITUTE MEMBERS**  
To receive any apologies for absence and notices of appointment of substitute.
- 4 **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.
- 5 **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.

- 6      **MINUTES OF THE PREVIOUS MEETING** *(Pages 5 - 14)*  
Members to consider whether to approve the minutes as a correct record of the meeting held on 18 April 2018.
- 7      **CHAIRMAN'S ANNOUNCEMENTS**  
To receive any announcements the Chairman may wish to make.
- 8      **ENFORCEMENT LIST** *(Pages 15 - 20)*  
To consider the items contained in the Enforcement List.
- 9      **DEFERRALS FROM THE PLANS LIST**  
To report any items appearing in the Plans List which have been deferred.
- 10     **THE PLANS LIST** *(Pages 21 - 60)*  
To consider the planning applications contained in the list.
- 11     **MAJOR APPLICATIONS WITH NO DECISION** *(Pages 61 - 64)*  
List attached for consideration of major applications and potential site visits.
- 12     **APPEAL DECISIONS** *(Pages 65 - 66)*  
To receive for information a list of recent appeal decisions.
- 13     **APPLICATION 17/01411/FULL - RETENTION OF SLURRY LAGOON - LAND AT NGR 276429 99746 (ADJACENT TO MARDLES GATE) COLEBROOKE** *(Pages 67 - 84)*  
To consider an implications report of the Head of Planning, Economy and Regeneration regarding the above application; Members at the meeting on 18 April 2018, were minded to refuse planning permission, but a final decision was deferred pending consideration of this implications report.

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.

Anyone wishing to film part or all of the proceedings may do so unless the press and public are excluded for that part of the meeting or there is good reason not to do so, as directed by the Chairman. Any filming must be done as unobtrusively as possible from a single fixed position without the use of any additional lighting; focusing only on those actively participating in the meeting and having regard also to the wishes of any member of the public present who may not wish to be filmed. As a matter of courtesy, anyone wishing to film proceedings is asked to advise the Chairman or the Member Services Officer in attendance so that all those present may be made aware that is happening.

Members of the public may also use other forms of social media to report on proceedings at this meeting.

Members of the public are welcome to attend the meeting and listen to discussion. Lift access to the first floor of the building is available from the main ground floor entrance. Toilet facilities, with wheelchair access, are also available. There is time set aside at the beginning of the meeting to allow the public to ask questions.

An induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter. If you require any further information, or

If you would like a copy of the Agenda in another format (for example in large print) please contact Sally Gabriel on:

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## MID DEVON DISTRICT COUNCIL

**MINUTES** of a **MEETING** of the **PLANNING COMMITTEE** held on 18 April 2018 at 2.15 pm

### **Present**

#### **Councillors**

Mrs F J Colthorpe (Chairman)  
Mrs H Bainbridge, Mrs C Collis, Mrs G Doe,  
R J Dolley, P J Heal, F W Letch, B A Moore,  
R F Radford, J D Squire and R L Stanley

### **Present**

#### **Officers:**

David Green (Group Manager for Development), Simon Trafford (Area Team Leader), Lucy Hodgson (Area Team Leader), Alison Fish (Area Team Leader) and Sally Gabriel (Member Services Manager)

## 141 **APOLOGIES AND SUBSTITUTE MEMBERS**

There were no apologies.

## 142 **PUBLIC QUESTION TIME (00-03-08)**

Miss Coffin referring to Item 2 on the Plans List (Mardles, Colebrooke) stated:

I question the effectiveness of the conditions put forward to ensure no statutory nuisance will occur if this lagoon is approved for the following reasons:-

- No standard of cover specified by your officer these vary in quality and can easily be damaged.
- Inlet and outlet points to lagoon cannot rely on gravity feed as slurry has solid content and requires mixing/diluting prior to pumping - what method is to be used? If tractor PTO's rather than inbuilt structured system, your Council already has issues with noise problems this causes at another site, where dwellings are 80 to 120 metres distance.
- Will installation of the underground pipeline be a condition prior to the pit being used and will you be able to enforce it?
- No mention of fly control. If to be used as a slurry store for winter months then the lagoon will be emptied during the warmer weather when people like to be outside - disturbance and odour from the pit will be worse and will create fly infestations to nearby houses.
- Are Councillors aware that if approved you are also permitting the use of this pit for storing, mixing, spreading digestate waste from biogas anaerobic digesters. The applicant would not require a permit from EA (which recommends a 200 metre distance from dwellings) nor change of use for planning consent.

- The applicant does not have an AD so this will mean importing digestate as an additional transport movement, has this been assessed by your officer?
- Given the fact that the disposal of digestate from the larger industrial agriculturally fed AD's is a relatively new problem for farming in the UK and bearing in mind the ensuing problems being experienced by other residents living up to 500 metres away from a slurry/digestate pit; how would Councillors justify approving this application?
- Finally, bearing in mind the constant threat of possible litigation costs from appeals, may I respectfully remind Councillors that last year when faced with a similar situation regarding a farmer flouting the planning system and digging a large lagoon for storing digestate/slurry close to nearby residents at Pennymoor, they took action which ensured that the pit was filled in and the land fully re-instated with no ensuing costs to the Council incurred.

The Chairman indicated that questions would be answered when the item was debated.

#### **143 DECLARATION OF INTERESTS UNDER THE CODE OF CONDUCT**

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

#### **144 MINUTES OF THE PREVIOUS MEETING (00-06-29)**

The minutes of the meeting held on 21 March 2018 were approved as a correct record and signed by the Chairman.

#### **145 CHAIRMAN'S ANNOUNCEMENTS (00-07-07)**

The Chairman stated that as this was the last meeting of the municipal year, she would like to thank Members and Officers for their efforts during the year.

#### **146 DEFERRALS FROM THE PLANS LIST (00-07-41)**

The Chairman informed the meeting that Item 1 on the Plans List (School Lane, Thorverton) had been deferred for further consideration.

#### **147 THE PLANS LIST (00-10-00)**

The Committee considered the applications in the plans list \*.

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

(a) Applications dealt with without debate.

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

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

(i) No 4 on the Plans *List No 4 on the Plans List (18/00302/FULL – Change of use for car park to storage (Class B8) and installation of weighbridge and control room at Carlu Close and change of use of land to car park on land adjacent to Lucas Yard – Unit 3 Carlu Close, Hitchcocks, Business park, Willand)* be approved subject to conditions as recommended by the Head of Planning, Economy and Regeneration.

(Proposed by the Chairman)

(b) No 1 on the Plans *List (17/01716/FULL – Reinstate access and farm track to agricultural land – Land at NGR 292482 101905 School Lane, Thorverton)*.

This item had been deferred as outlined in Minute 146.

(c) No 2 on the Plans *List (17/01411/FULL – Retention of slurry lagoon, - land at NGR 276429 99746 (adjacent to Mardles Gate), Colebrooke)*.

The Area Team Leader outlined the contents of the report explaining that the development had been implemented and that the application not only sought approval for the development but also sought to mitigate the impact of the development on local residents. He highlighted the location of the development, the proximity of neighbouring properties, the pipe plan, the sections which outlined the depth and surface of the area of the lagoon and photographs from various aspects of the site.

Answering questions posed in public question time, he stated that most of the issues raised had been covered in the Operational Management Plan, the proposals for the cover had been considered by the Environmental Health Officer who had deemed it to be fit for purpose. The lagoon would accept dirty water from the dairy unit and the applicant had confirmed that the dirty water would be pumped in and out of the lagoon. The underground pipe had been conditioned. With regard to fly control, the lagoon would be filled and emptied with the cover on, the scope of mitigation had been checked with the Environmental Health Officer, if there was a nuisance with fly control, the Council had environmental health powers to take action. With regard to using the lagoon for anything other than dirty water, if the application were approved then an additional condition could be added.

Consideration was given to:

- The distance of 250 metres from the dairy unit to the slurry lagoon
- The reasons for refusal of the previous application
- The impact of the lagoon on the neighbouring property
- Odour and noise issues and the mitigation outlined within the report
- Access and traffic movements
- Safety issues (in that the gates had been left open overnight) and any fencing requirements
- Overflowing issues following bad weather
- The views of the objector who lived in the neighbouring property
- The views of the Parish Council
- The impact of the retaining bank (bund) which loomed over the bungalow
- The huge impact of the development on local people

**RESOLVED** that

- a) Members were minded to refuse the application and therefore wished to defer the application for consideration of an implications report to consider the reasons for refusal to include: The slurry lagoon and earth bank surrounding, by reason of its size, scale and siting in close proximity to the neighbouring properties at Mardles Gate and Manor Croft is considered to adversely affect the residential amenity and the living conditions of these neighbouring occupants. Furthermore, and given the close proximity to the aforementioned residential properties, the members of the Planning Committee remain unconvinced that the scope of the mitigation measures as proposed as part of the planning application proposal were sufficient to address the odour nuisance and air quality impact in a robust and satisfactory manner and would therefore continue to contribute to the scope of the un-neighbourly impacts that would arise from the scheme as it is proposed. Therefore the application scheme was considered to be contrary to Policies DM2, DM7 and DM22 of Mid Devon Local Plan Part 3 (Development Management Policies) and guidance in the National Planning Policy Framework.
- b) Any necessary enforcement proceedings be set in motion.

(Proposed by Cllr P J Heal and seconded by Cllr J D Squire)

Notes:

- i) Cllr F W Letch declared a personal interest as he knew the objector;
  - ii) Cllr J D Squire made a declaration in accordance with the Protocol of Good Practice for Councillors dealing in Planning Matters as he was the Ward Member and had had discussions at Parish Council level and knew local residents;
  - iii) Cllr Mrs H Bainbridge and P J Heal made declarations in accordance with the Protocol of Good Practice for Councillors dealing in Planning Matters they had received correspondence;
  - iv) Mrs Turner (Objector) spoke;
  - v) Cllr Graham Shepherd (Colebrooke Parish Council) spoke;
  - vi) Cllr J D Squire spoke as Ward Member;
  - vii) Mr Winter (Environmental Health Officer) was present.
- (d) No 3 on the Plans *List (18/00088/FULL – Conversion of a public toilet to a food outlet/kiosk, including retention of one toilet cubicle for use by the public – public conveniences, St Lawrence Green, Crediton).*

The Area Team Leader outlined the contents of the report by way of presentation highlighting the history of the building, the location of the site, the dedicated hard surface through the green that was already in place, an aerial overview of the area, a



detailed site plan and floor plan. He explained that the Highway Authority had some concerns regarding the position of the serving hatch and that this had been addressed by the applicant. Members viewed the proposed elevations and photographs from various aspects of the site.

Consideration was given to:

- The good use of an unsightly building
- The need for a public convenience at that end of the town
- Possible litter issues in the area
- Delivery issues

**RESOLVED** that planning permission be granted subject to conditions as recommended by the Head of Planning, Economy and Regeneration with an amendment to Condition 5 to include that the whole of St Laurence Green be highlighted within the Little Management and Collection Method and that additional signage be included.

(Proposed by Cllr P H Heal and seconded by Cllr F W Letch)

Notes:

- i) Cllr R L Stanley declared a personal interest as Cabinet Member for Housing and did not partake in any of the discussions or vote on the matter;
- ii) Cllr P J Heal declared a personal interest as he knew the applicants;
- iii) Cllr B A Moore requested that his abstention from voting be recorded;
- iv) The following late information was reported: Page 35:

### **Reorientation of the serving hatch**

Reorientation of the serving hatch has been considered by the applicant in order to ensure that customers waiting at the serving hatch do not obstruct the highway. The Highway Authority have suggested that the south elevation may be the most appropriate from a pedestrian safety point of view. This location has been considered by the applicant however it is not suitable due to difference in land levels between the building floor and the external ground level. The applicant considered that the east elevation is the most appropriate from a highway safety perspective as this location is remote from the junction of St Martins Lane, St Lawrence Green, Western Road, and the High Street and there is an existing footpath within the park which will provide a safe location for customers to wait clear from the highway.

Whilst the Highway Authority remain concerned about the proposal with the serving hatch located within the eastern elevation, on balance and for the reasons as set out above the officer conclusion is that the risk to highway safety associated with the development is not considered to be

sufficiently adverse so as to warrant refusal of the planning application on these grounds alone.

### **Updated Policy Appraisal**

In addition to the policies listed in the report policy DM7 is also a relevant policy against which to assess the application, supplementary to criterion (e) of policy DM2. Policy DM7 specifically relates to pollution and states that development will be permitted where the direct, indirect and cumulative effects of pollution will not have an unacceptable negative impact on health, the natural environment and general amenity.

### **Updated Summary**

In summary the development proposed is on balance considered acceptable and supportable in policy terms. It is not considered that the development would adversely affect the vitality and viability of Cridton Town Centre, result in harm to the character or appearance of the Cridton Conservation Area or highway safety. Sufficient controls can be put in place to limit the risk of antisocial behaviour associated with the use and other concerns such as noise and litter and as such impacts on residential amenity are not considered to be significantly adverse. Furthermore the proposal would result in a public benefit in that one toilet cubicle will be made available for public use during the Kiosk opening hours and a currently unused building would be brought back into use. The proposal is therefore considered to be in accordance with Mid Devon Core Strategy (Local Plan 1) policies COR1, COR6, COR15 and Mid Devon Local Plan Part 3 (Development Management Policies) DM1, DM2, DM7, DM17, DM25, DM27

(e) No 5 on the Plans List ***(17/01323/MOUT – Outline application for the relocation and expansion of Tiverton High School and the integrated development of Tiverton Community Arts Theatre – Tiverton High School and land east of Bolham Road, Bolham Road, Tiverton.***

The Area Team Leader outlined the contents of the report explaining the proposals for the relocation and expansion of Tiverton High School and the integrated development of Tiverton Community Arts Theatre. She highlighted by way of presentation the location of the present school within the Flood Zone 3 Area and the phased relocation proposal. Members viewed the location plan with main vehicular access, a site plan and proposed phasing of the scheme, an indicative junction location for pedestrian, cycle and vehicular access, the additional raised causeway, the potential for cycle parking proposed in two locations, the new sports hall and proposed parking areas. They also considered 3D illustrative model sketches, an indicative plan of the phases of the project and photographs from various aspects of the site.

She further explained that any recommendation from the Committee would need to be made to the National Planning Casework Unit for a decision as to whether the Secretary of State would wish to call in the application, as the application was subject to an outstanding objection from Sport England in relation to some of the sports

pitches being located in Flood Zone 3. Officers considered that the benefits of relocating the school buildings out of the flood zone greatly outweighed the harm identified by Sport England in relation to sports provision within the flood zone. She added that the relocation of the school out of Flood Zone 3 also provided an opportunity for the Environment Agency to consider additional flood prevention measures in the area that could reduce flood risk to the hospital site and Mountbatten Way.

Consideration was given to:

- Traffic issues in the area, particularly at the start and end of the school day
- Possible pedestrian access to the rear of the site
- The Lea Road entrance
- The views of the Highway Authority
- The need for a detailed and comprehensive presentation on highway issues at the reserved matters stage
- How the Tiverton Community Arts Theatre had worked alongside the school with regard to the proposals

**RECOMMENDED** to the National Planning Casework Unit that planning permission be granted subject to conditions as recommended by the Head of Planning, Economy and Regeneration.

(Proposed by Cllr Mrs H Bainbridge and seconded by Cllr R J Dolley)

Notes:

- i) Cllr Mrs F J Colthorpe declared a personal interest as a Trustee of the Tiverton Community Arts Theatre and chose to leave the meeting during the discussions thereon (the Vice Chairman took the Chair);
- ii) Cllr R J Dolley declared a personal interest as a Member of Tiverton Rugby Club;
- iii) Mr Morgan Chairman of the Tiverton Community Arts Theatre spoke in support of the application.

#### 148 **MAJOR APPLICATIONS WITH NO DECISION (2-08-31)**

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

It was **AGREED** that:

Application 18/00504/MOUT – erection of 10 dwellings north of Town Farm, Burlescombe be determined by the Committee and that a site visit take place.

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

#### 149 **APPEAL DECISIONS (2-11-15)**

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; copy attached to signed Minutes.

#### 150 **DECISIONS CONTRARY OF OFFICER RECOMMENDATION (2-12-38)**

The Committee had before it and **NOTED** \* report of the Head of Planning, Economy and Regeneration, providing information where the Planning Committee had made decisions not in agreement with officer recommendation.

The Group Manager for Development outlined the contents of the report stating that 6 applications were granted planning permission with conditions and 2 were refused permission contrary to officer recommendation. Of the 2 refusals, 1 had been allowed at appeal (17/00300/MOU 30 dwellings Uffculme Road, Uffculme) and 1 was expected to be the subject of an appeal (17/00652/MOUT 30 dwellings land NE Rydon House, Willand).

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

#### 151 **ANNUAL APPEAL REPORT (2-14-40)**

The Committee had before it and **NOTED** \* report of the Head of Planning, Economy and Regeneration, providing information on the outcome of planning appeals for the financial year 2017/18.

The Group Manager for Development outlined the contents of the report stating that appeal statistics provided a useful check on decision making by comparing appeal outcomes with those nationally, the number of appeals and outcomes with previous years and whether any costs have been awarded against the Council on the basis of unreasonable behaviour.

Majors: Applications determined over a 2 year period, no more than 10% of decisions to be overturned at appeal. The Mid Devon figure over the 2 year period ending March 2018 was 5%.

Non-majors: Applications determined over a 2 year period, no more than 10% of decisions to be overturned at appeal. The Mid Devon figure over the 2 year period ending March 2018 was less than 1%.

A summary of appeals was attached at appendix 1 to the report, 28 appeals were determined within that period.

1	(3%)	Withdrawn
8	(29%)	Allowed
19	(68%)	Dismissed

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

## 152 PERFORMANCE FOR QUARTER 4 - 2017/18 (2-16-00)

The Committee had before it and **NOTED** \* report of the Head of Planning, Economy and Regeneration, providing information on the performance of aspects of the planning function of the Council for Quarter 4 – 2017/18

The Group Manager for Development outlined the contents of the report stating that the Government set a range of additional performance targets for planning authorities in order to drive performance. Those for planning application decision making were used by the Government as indicators of performance in terms of both speed and quality of decision making. These were as follows:

### Speed:

- Majors: More than 60% of major applications determined within 13 weeks (over 2 year period). Mid Devon performance on this for the 2 year period to the end of March 2018 was 84%.
- Non majors: More than 70% of non-major applications determined within 8 weeks (over 2 year period). Mid Devon performance on this for the 2 year period to the end of March 2018 was 81%.

### Quality:

- Majors: Previous assessment round - Applications determined over a 2 year period, no more than 20% of decisions to be overturned at appeal. Current assessment period for the 2 years prior to the end of June 2017: no more than 10% of decisions to be overturned at appeal. The Mid Devon figure over the 2 year period ending March 2018 was 5%.
- Non majors: This indicator of quality of decision making is measured over a 2 year assessment period to the end of June 2017: no more than 10% of decisions to be overturned at appeal. The Mid Devon figure over the 2 year period ending March 2018 was less than 1%.

He outlined the performance figures for south west authorities made available on the Government's website; it showed that Mid Devon was performing well.

With regard to Planning Enforcement 91 new cases had been recorded and 35 cases closed.

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

(The meeting ended at 4.48 pm)

**CHAIRMAN**

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## PLANNING COMMITTEE AGENDA – DATE 16 May 2018

### Enforcement List

<u>Item No.</u>	Description
1.	17/00072/RURAL – Land at Grid Reference 317450 110777 (Tickle Penny) Clayhidon Devon

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**Case No.** ENF/17/00072/RURAL

**Grid Ref:** 317450 110777

**Address:**

Land at NGR 317450 110777 (Tickle Penny) Clayhidon

**Alleged Breach:**

Unauthorised building operations concerning the construction of a mixed used building comprising a farm workshop, storage, smoker, cold store, food processing area, farm office, welfare facilities, kennels and stables

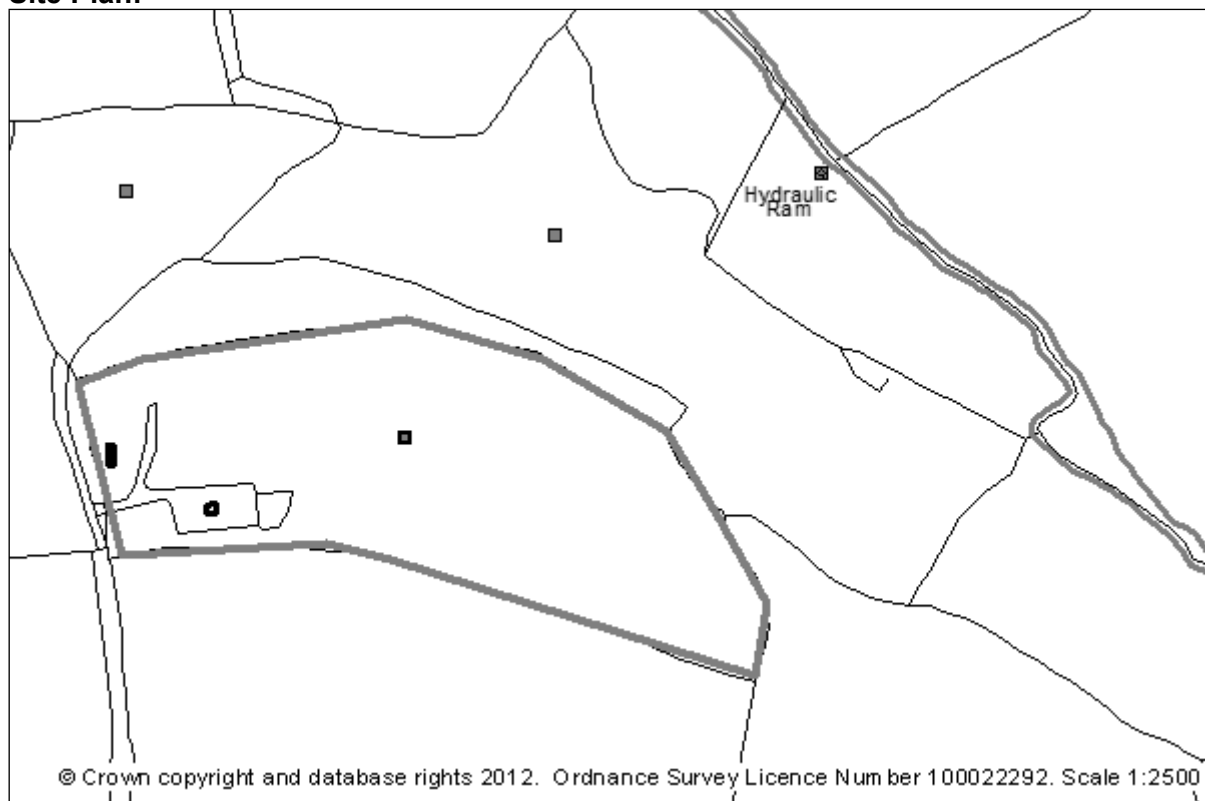
**Recommendation:**

That Members, having regard to the provisions of the Mid Devon Development Plan and all other material planning considerations in accordance with Section 172, Town and Country Planning Act 1990, ("the Act") should grant authority to the Legal Services Manager to take all such steps and action necessary to secure the demolition and removal of the unauthorised operational development, including the issue of an enforcement notice and prosecution and/or Direct Action in the event of non-compliance with the notice.

**Site Description:**

The site occupies an area of land that extends to approximately 1.54ha and sits within the parish of Clayhidon. The land falls within the boundary of the Blackdown Hills Area of Outstanding Natural Beauty and comprises predominantly agricultural land and woodland. The site subject to this enforcement report forms part of a larger plot of land under the same ownership, which extends to the north, east and west of the area highlighted which comprises some 7.61ha in total. The topography of the land is such that it falls away to the north and east of the site and as a result, the unauthorised works sit in an elevated position at the top of the Bolham Valley.

**Site Plan:**



**Site History:**

None

**Development Plan Policies:**

National Planning Policy Framework

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

COR 18 - Countryside

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

Policy DM2 – High quality design

Policy DM22 – Agricultural development

Policy DM29 – Protected landscapes

Policy DM31 – Planning enforcement

**Reasons/Material Considerations:**

In March 2017, a complaint was received by the enforcement team regarding unauthorised building operations being carried out on the land at Tickle Penny (NGR: 317450 110777), Clayhidon.

As initial site visit established that a large concrete base had been laid towards the south-west corner of the site, upon which eight breezeblock pillars and one breezeblock tower structure were under construction. In addition to the operational development taking place on the site, sundry other items were being stored on the land including plastic water tanks, wooden pallets, metal poles, tarpaulins, insulating boards, a vehicle, trailer and sit-on lawnmower. On land to the north-west of the unauthorised development, a shepherds hut and washroom had been sited along with various items of domestic paraphernalia.

In June 2017, a Planning Contravention Notice (PCN) was served on the registered owners of the land requesting specific information be provided in relation to the development under construction. The PCN was returned to the Council by the father of the landowners (the developer) who stated that the intended use of the development was as a general purpose barn, with workshop, animal rearing and food storage areas and a water tower. The respondent confirmed that the operational development had commenced on site during 2015/2016 and that the shepherds hut had been sited on the land at the same time.

Within the context of the PCN, the respondent stated that he had previously been advised by a member of the planning department that planning permission would not be required for the construction of an agricultural building on land exceeding 5ha. While it is acknowledged that under Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, a developer can erect an agricultural building under the permitted development regulations, it is subject to a condition that requires the developer to have first, applied to the LPA for a determination as to whether prior approval is required for the siting, design and external appearance of the building.

In this instance, the developer failed to apply for prior approval before commencing on site, meaning that the building could not longer be considered permitted development. In addition, the developer submitted a sketch of the proposed building with the PCN which indicated that the proposal would include a second floor and include elements which could not be considered compatible with that of an agricultural building. For the reasons outlined above, the developer was advised that a retrospective planning consent would need to be sought in order to regularise the development.

The enforcement officer met with the developer on several occasions over the following months and in December 2017 a retrospective application (reference 17/01979/FULL) was submitted to the Council seeking to regularise the development under construction. The application was validated on 08.01.2018 with planning permission being sought as follows:

Retention of mixed use building comprising farm workshop, storage, water reservoir, smokery, cold store and food processing area, farm office, welfare facilities, kennels and stables. The application was refused on 24<sup>th</sup> April 2018 for the following reasons:

1. The applicant has not demonstrated that the proposed new building in this isolated location is justified by reason of need. The site is outside settlement limits in an isolated, elevated and unsustainable location. The Proposal is therefore, contrary to COR1 and COR18 of the Mid Devon Core Strategy, DM22 and DM20 of the Local Plan Part 3, and the NPPF.
2. The proposed design, height and scale of the building in this isolated and elevated location are considered to be inappropriate as they do not respect the local vernacular of the Blackdown Hills Area of Outstanding Natural Beauty (AONB). The proposal is therefore in conflict with COR2 and COR18 of the Mid Devon Core Strategy, DM29, DM22 and DM20 of the local plan part 3, Paragraphs 28 and 56 of the NPPF, and policy PD1/B of the AONB Management Plan.

It is your officer's view that the unauthorised operational development represents a breach of planning control which could, if no action is taken, become immune from enforcement action through the passage of time. In addition, the design, scale and elevated position of the unauthorised development is considered inappropriate and fails to respect the local vernacular of the Blackdown Hills ANOB.

Your officers do not consider that the breach of planning control will be resolved voluntarily, therefore, it is proposed that an Enforcement Notice (Operational Development) should be served to secure the demolition of the unauthorised development and an Enforcement Notice (Change of Use) to secure the removal of the shepherds hut, washroom, motorhome and the items of domestic and building paraphernalia.

#### **Human Rights and Equality Issues:**

The expediency of Enforcement action has been assessed with reference to the National Planning Policy Framework (NPPF). Expediency has also been assessed with regard to the statutory Development Plan, comprising the Core Strategy 2026 (July 2007), the Allocations and Infrastructure Development Plan Policies (January 2011) the Local Plan Part 3 Development Management Policies (October 2013) the Proposed Local Plan Review Policies 2013 - 2033.

When making their decision, Members must have regard to all relevant planning legislation, regulations, guidance, circulars and Council policies.

In addition, Members should note that the Human Rights Act 1998 (HRA 1998) makes it unlawful for the Council to act incompatibly with Convention rights. Decisions by the Committee must take account of the HRA 1998. Therefore, Members need to be aware of the fact that the HRA 1998 makes the European Convention on Human Rights (the Convention) directly applicable to the actions of public bodies in England and Wales. The specific parts of the Convention relevant to planning matters are Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

Article 6 deals with procedural fairness. If normal committee procedures are followed, it is unlikely that this article will be breached.

Article 1 of the First Protocol and Article 8 are not absolute rights and infringements of these rights protected under these are allowed in certain defined circumstances, for example where required by law. However any infringement must be proportionate, which means it must achieve a fair balance between the public interest and the private interest infringed and must not go beyond what is needed to achieve its objective.

Article 14 states that the rights under the Convention shall be secured without discrimination on grounds of 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.

The power to issue an Enforcement Notice is discretionary and should only be used where the Local Planning Authority are satisfied that there has been a breach or breaches of planning control. It must also be satisfied that it is expedient to issue the Notice having regard to the provisions of the Development Plan and to any other material considerations. Consequently the Council must decide based on the particular circumstances of each individual case the question of expediency. The decision to take enforcement action must be reasonable and not based on irrational factors or taken without proper consideration of the relevant facts and planning issues or based on non-planning grounds.

### **Reasons for issuing the Notice**

It appears to the Council that this breach of planning control has occurred within the last four years. This breach concerns unauthorised operational development in relation to the construction of a large concrete base, breezeblock pillars and a breezeblock tower without the benefit of planning consent. In addition, the breach concerns the unauthorised use of the land for the storage of materials associated with the construction work and for the siting of a shepherds hut, motorhome and associated domestic paraphernalia

The operational development, by virtue of its design, scale and elevated position within the Blackdown Hills ANOB represents an incongruous feature on the site that fails to retain the special character of the surrounding area. In addition, the developer has failed to satisfy the Council that a building of this scale is reasonably necessary for the purposes of agriculture. The development is, therefore, considered to be contrary to policy COR18 of the Mid Devon Core Strategy and policies DM2, DM22, DM29 and DM31 of the Mid Devon Local Plan Part 3.

The unauthorised use of the land for the siting of a shepherds hut, motorhome and the storage of domestic paraphernalia and building materials, fails to preserve or enhance the distinctive quality and character of the open countryside by introducing a scattered domestic appearance to the land. The unauthorised change of use of the land results in a visually unattractive site which fails to protect the characteristics of the surrounding area and protected landscape. The change of use of the land is, therefore, considered to be contrary to policies DM2, DM29 and DM31 of the Mid Devon Local Plan Part 3 and policy COR18 of the Mid Devon Core Strategy.

## PLANNING COMMITTEE AGENDA - 16th May 2018

### Applications of a non-delegated nature

<u>Item No.</u>	Description
01.	<p>18/00214/MFUL - Erection of 14 dwellings with associated roads, garages and parking to include improvements to the existing footpath network at Land at NGR 310280 114261, Hunters Hill, Culmstock.</p> <p><b>RECOMMENDATION</b> Grant permission subject to conditions and the signing of a S106 agreement</p>
02.	<p>18/00283/OUT - Outline for the erection of a dwelling and alterations to vehicular access at Jaspers Green, Uplowman, Tiverton.</p> <p><b>RECOMMENDATION</b> Refuse permission.</p>
03.	<p>18/00002/TPO – 2 Quarry View Burlescombe Tiverton Tree Preservation Order for 1 Willow tree</p>

Application No. 18/00214/MFUL

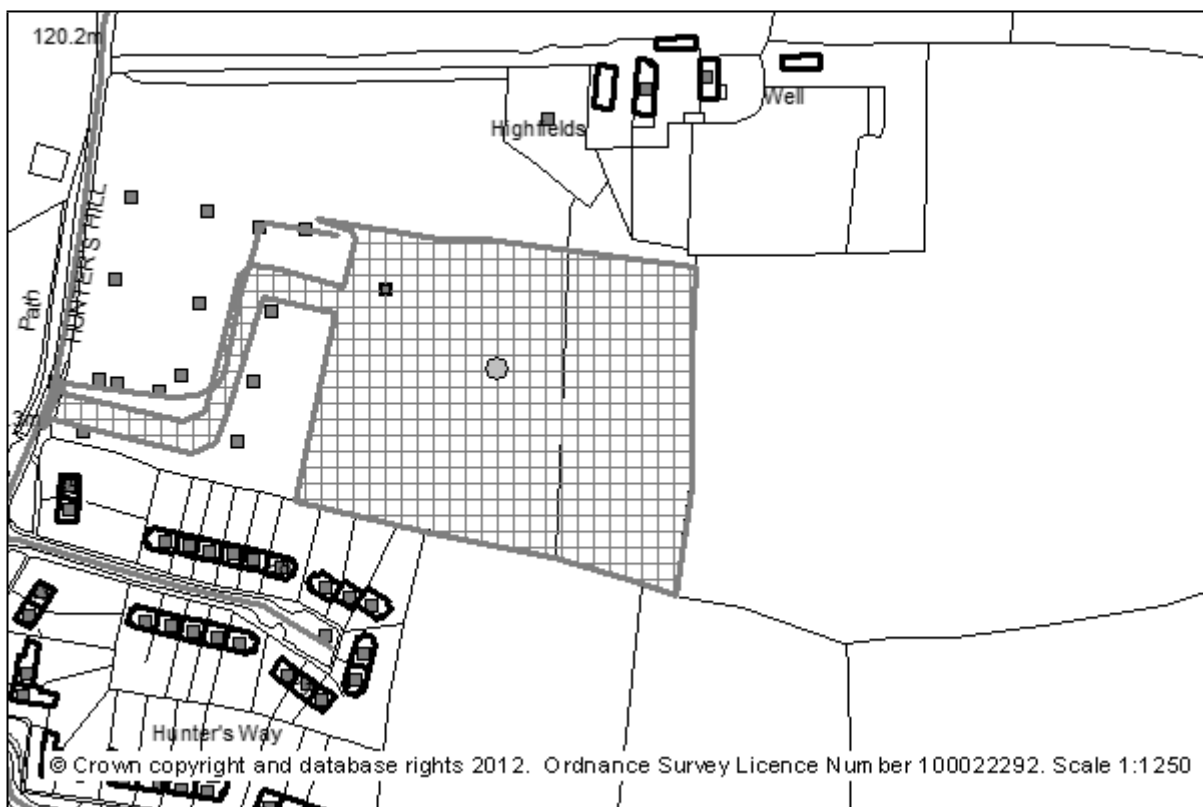
Grid Ref: 310280 : 114261

Applicant: Mr A Lehner

Location: Land at NGR 310280 114261  
Hunters Hill  
Culmstock  
Devon

Proposal: Erection of 14 dwellings with associated roads, garages and parking

Date Valid: 20th February 2018



## **APPLICATION NO: 18/00214/MFUL**

### **MEMBER CALL-IN**

**The planning committee requested at the 21<sup>st</sup> of March 2018 meeting that this major application be determined by the committee.**

### **RECOMMENDATION**

Grant permission subject to conditions and the signing of a S106 agreement in respect of:

1. Provision of 4 affordable dwellings (2 x 2 bed and 2 x 3 bed, to include 2 affordable rented properties and two discounted open market dwellings);
2. A financial contribution of £18,484 towards access to public open space at Colliers Meadow, Culmstock; and
3. A financial contribution of £106,778 towards primary, secondary and early years education and school transport costs.
4. The provision of footpath improvements between the site and the primary school.

### **PROPOSED DEVELOPMENT**

This application seeks full planning permission for the erection of 14 dwellings (10 market, 4 affordable) on 1.33 hectares of agricultural land to the north east of Hunter's Way and to the East of the Phase 1 development which adjoins Hunter's Hill. The site is located on the northern edge of Culmstock. The site is broadly rectangular and is an open grassland field, classified as grade 3 agricultural land. The site has hedge boundaries to the southern and eastern sides of the site, and is bounded by the 'phase 1' development on the western boundary. There is no formal boundary to the north.

The proposal is to provide 4 x 3 bed market dwellings, 5 x 4 bed market dwellings, 1 x 5 bed market dwelling, 2 x 2 bed affordable dwellings, 2 x 3 bed affordable dwellings. Each property will be served by a garage, private garden and parking. The site will be accessed from an estate road joining the existing 'phase 1' development, and will be served by the existing junction onto Hunter's Hill.

It is intended that foul sewage will be disposed of using the existing mains system, via a new connection. The site will be served by a Sustainable Urban Drainage System to manage surface water in the form of permeable paving under parking areas and an attenuation basin.

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

Arboricultural Report  
Design and Access Statement  
Heads of Terms  
Flood Risk Assessment

Landscape and Visual Impact Assessment  
Preliminary Ecological Appraisal  
Wildlife Trigger List  
Junction Capacity Statement  
PICARDY results  
Plans

## **RELEVANT PLANNING HISTORY**

**02/00898/OUT** - REFUSE date 5th July 2002

Outline for residential development and associated works including new access to the site

**16/00693/MOUT** - PERCON date 28th October 2016

Outline for the erection of 13 dwellings

**16/01734/MARM** - PERCON date 7th February 2017

Reserved Matters for the erection of 13 dwellings following Outline approval 16/00693/MOUT

## **INFORMATIVES**

None

## **DEVELOPMENT PLAN POLICIES**

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

COR1 – Sustainable Communities  
COR2 – Local Distinctiveness  
COR3 – Meeting Housing Needs  
COR8 – Infrastructure Provision  
COR9 – Access  
COR11 – Flooding  
COR17 – Villages  
COR18 - Countryside

### **Mid Devon Allocations And Infrastructure Development Plan (Local Plan 2)**

AL/DE/2 – Overall Affordable Housing Provision  
AL/DE/3 – Affordable Housing Site Target  
AL/DE/4 – Occupation of Affordable Housing  
AL/DE/5 – Inclusive Design and Layout  
AL/IN/3 – Public Open Space  
AL/IN/5 – Education Provision

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

DM1 – Presumption in Favour of Sustainable Development  
DM2 – High Quality Design  
DM3 – Sustainable Design  
DM4 – Waste Management  
DM8 – Parking  
DM14 – Design of Housing  
DM15 – Dwelling Sizes  
DM27 – Development Affecting Heritage Assets  
DM29 – Protected Landscapes



## CONSULTATIONS

### **Culmstock Parish Council - 17th April 2018**

At the Culmstock Parish Council on Wednesday 11th April 2018, the Councillors unanimously agreed to object to the above planning application (fully endorsed by members of the public present) on the following grounds:-

#### 1. In Summary:

1.1 Culmstock Parish Council objects in the strongest possible terms that this Application is not included in the MDDC Local Plan (2013 - 2023), nor was it mentioned in The MDDC Local Plan Review (2015). It was not even mentioned as a possible "contingency site" in the Five-year Housing Land Supply analysis by the MDDC Scrutiny Committee report as recently as Oct 9th 2017.

1.2 DCC Highways should have considered and commented on this proposal. The Council strongly objects that there is no evidence about the impact of extra traffic on safety, the environment and parking.

#### 2. Relevance:

Most of the following points are reinforced by the specific constraints mentioned by Head of Planning & Regeneration on page 3 of her memo dated February 23rd 2018. She lists the constraints affecting the Site as "Hamlet/Open Countryside", "Class III Road", "Defined Settlement Culmstock", "SSSI Impact Zone". The Council requests that these constraints should be considered in full.

#### 3. Local Government Planning Policy: Policy COR17, S13 & CL2

3.1 The Council wishes to know how this "major scale housing application" concurs with any sections of Mid Devon District Council's Local Plan (Policy COR 17), adopted October 2013 which states that "Development will be limited to proposals within their defined settlement limits".

3.2 This policy was repeated in the proposed submission of the Local Plan Review (Feb 2015) where "development in villages (including Culmstock) will be limited to proposals within their defined settlement limits". As far as the Parish Council is aware, there has been no further publication to contradict this Policy.

3.3 Neither the Housing Land Availability Summary 2017, nor the subsequent report by Head of Planning, Economy & Regeneration to the Scrutiny Committee on October 9th 2017, included any mention of this Phase 2 development on Hunters Hill. The Council objects that the proposed site has never been considered for allocation.

3.4 The current proposal does not accommodate these aspects of the published Local Plan, or of its 2015 Review. Both Phase 1 and the proposed Phase 2 development are outside the designated settlement area. The Parish Council objects that the newly proposed area for development is not part of the adopted Local Plan (nor the 2015 Local Plan Review) and is an unnecessary intrusion into virgin countryside.

3.5 The creation of Phase 1 of Hunters Hill did not conform to MDDC Policy S13. The Council cannot accept that the planning terms from the 2013 Local Plan can legally again be dismissed with the sudden application for Hunters Hill phase 2, which was never considered (or even remarked on) at any earlier planning stage including phase 1. The Council objects to development outside the clearly defined Culmstock Settlement limit.

3.6 The Local Plan Review dated Feb 2015 shows development options for Culmstock with 6 dwellings on 0.23 Ha at Linhay Close (CL1) and just 10 dwellings on 0.4 Ha on Hunters Hill (CL2). Phase 1 already exceeds that area (0.76ha). Measurement suggests that the site area of the new application for the proposed Phase 2 development is an additional 1.2 Ha to the 0.76 Ha already in development. Instead of the limited 10 homes provided in the Local Plan on Hunters Hill, it is now proposed to build 27 homes without any evident change of policy. The Council objects to the area of development exceeding fivefold that shown in the Local Plan.

### 3.7 Policy Guidance: Policy S13

As stated in the recent Central Government advisory notes (March 2018), the changing planning information passed down to local parishes has been inadequate. Indeed, the Council objects that insufficient information has been given to Parish Councils by MDDC about continuously changing local planning policies. As a result of MDDC's inability to decide on an active Local Plan, the Parish Council seeks reassurance that developers are not being offered "free for all" for development of "unplanned" sites such as Hunters Hill (Phase 2). The Parish Council objects that MDDC has lost control of its protection of Rural Village Sites.

3.8 Proposal: Instead of offering four affordable homes within the proposed "phase 2" Hunters Hill development, we consider that there is uncontested designated development land in the Local Plan for six more dwellings at Linhay Close (Policy CL/1). This is targeted in the 2015 Local Plan Review for development in 2017/2018. While also outside the legal Settlement Limit, this site was clearly shown in the Local Plan and has the advantage of much more acceptable access as well as a greatly preferred visual and environmental aspect. The Parish Council believes Linhay Close would make a much more sensible contribution to the community of Culmstock than the current proposal for Hunters Hill.

## 4. Highway safety & traffic levels: Policy S1(e), S8, DM3, & 2013 COR9

4.1 The Spatial Strategy section of the Local Plan Review (dated February 2015) emphasises that the distribution of housing in the smaller settlements (such as Culmstock) risks significant increases in unsustainable travel and that significant levels of traffic must be supported by a robust transport evidence base.

4.2 There is no Report from Highways in support of this Application, so the Parish Council require a properly made robust analysis of extra traffic flows, environmental implications, safety hazards and Pedestrian access to/from the development. We specifically ask what safety improvements are intended at School Corner, the safety of pedestrians, wheel-chairs and school children and from any increased traffic flow arising from the Application is of paramount importance.

4.3 The Council objects to the Design Statement which dismisses any traffic implications of 28 extra vehicles as to have "minimal impact on the local network". The incremental effect of so many cars using the narrow class 3 road must not be lightly dismissed since we calculate that Hunters Hill will have to absorb 80 extra vehicle journeys per day in each direction because of the proposed development. Already traffic flow at peak school drop-off time (around 8.30 am) reaches a vehicle every 20 seconds past the narrow school frontage. The extra householders up Hunters Hill will further exacerbate the dangers to pedestrians (especially schoolchildren) approaching this already dangerous junction.

4.4 The development itself is situated on a Class 3 road with access past the primary school down to School Corner where there is already insufficient space for parking and drop off/pick-ups. The Council requests that a clear traffic plan be included for the hazardous junction at School Corner, where there have been several incidents with damage to school traffic.

4.5 Local residents down Hunters Hill already have inadequate parking facilities and there is no pavement between the school and the proposed development, forcing parents with buggies (and wheel-chair users) to pass around parked cars into the road. The additional extra cars commuting from "phase 2" passing the school and using an already dangerous junction at peak times are of particular concern. Agricultural and business traffic (tractors, milk lorries etc) are already finding it hard to negotiate the road which is already running at capacity at peak times, especially during the Harvest season. The Council objects that no consideration has been given to the Highways aspects of the Application.

## 5. Flood Risk: Policy DM1(f), & 2013 COR11

5.1 Surface water: The Council agrees with the concerns about flood water expressed by the DCC Lead Local Flood Authority response dated March 13th. We share their concern that the surface water run-off will be increased by the current proposals. The proposed development would increase the impermeable surface of the field by another 3,500 m<sup>2</sup> which can hardly be expected to be resolved by the run-off rate of just 2 l/sec in a heavy storm. The council agrees with DCC that the surface water should be managed at source in the first instance and that the other SuDS water management should be implemented.

5.2 The attenuation basin is clearly in an uphill location from the path of most of the run-off, so the Parish Council sees this as a cosmetic feature, while agreeing with DCC that it is inappropriate to manage all the surface water at one concentrated point which inevitably would overflow under storm conditions. Further the Council does not believe that the existing ditch can carry the extra floodwater overflow from the site and the attenuation basin in extreme situations such as experienced in 2012 when the ditch was already recorded as flooding into Hunters Way prior to any development of the site.

5.3 The Council foresees significant flood-water problems arising from the proposed development which have not so far been addressed by the Application and therefore object to the Flood Risk aspects of the Application.

## 6. Sewers: Policy DM1(f), & 2013 COR11

6.1 The DCC Response insists that the condition, capacity and ownership of the piped water course down Hunters Hill should be clarified. Even more importantly the Council emphasise the need to check the capacity and integrity of the sewer down Hunters Hill which should be checked without delay.

6.2 The diagram of sewer records attached to the Application is clearly incomplete since it does not show any record of the sewer work undertaken for the recent Phase 1 development on Hunters Hill. Further the Council objects that the proposal does not show the planned route for the sewage effluent from the new 14 dwellings, a matter which should be clearly shown in a Full Planning Application.

6.3 The Council requires confirmation from South West Water that there is "sufficient capacity available in the existing sewer network in Culmstock to accommodate the additional water flow from the proposed 14 dwellings" (Foul Water Strategy item 7 p.11) in addition to extra flows arising from the 13 dwellings in Hunters Hill phase 1. The Council has long been aware of the inadequacy of the sewer capacity provided to the north of the river. The Council objects that the Application simply states a presumption that "the village is served by a public foul sewerage system which will be extended into the development site".

6.4 Evidence (already reported to SWW in 2018) has shown that the sewage processing facilities are unable to cope even with existing demand during times of high rainfall/snow melt. Raw sewage was observed with outflow into the river after the recent March snow. Drain covers near to the river were recently seen to be backing up even after the minimal recent snow, with evidence of raw sewage matter visible around drain covers. The Council is concerned that the proposed housing should not exacerbate the problems of 2012 when several low-lying dwellings including the pub were affected by sewer backup. The full sewage impact of the first 13 Phase 1 houses has not yet been realised as only 5 of the 13 houses are currently occupied. The Council therefore objects to the inadequate investigation of the sewerage consideration of the Application.

## 7. Impact on the appearance of the area: Policy S1(k) S14, DM29, & CL2

7.1 Policy DM29 - Protected Landscapes states that "developments should not in any way undermine the special qualities that led to the designation of the nearby landscape as an AONB". Culmstock is the Gateway to the Blackdown Hills AONB (who have not yet apparently provided a report about this application). They will surely have an opinion about the detrimental effect of the further development at Hunters Hill even though their boundary is a little to the north of the proposed development. The extension of the site increases its visibility from the adjoining SSSI site of Blackdown Common to the north as well as being prominent from Hackpen Hill to the South.

7.2 The Council refers to the long-distance photographs which were included in the phase 1 Application which suggested that the impact of the phase 1 development was "minimal". The photographs now included in the phase 2 Application show that this previous claim was incorrect as it clearly shows how prominent the phase 1 housing already is from Beacon Hill despite previous claims of invisibility.

7.3 We already have complaints from residents and visitors that the Phase 1 houses stand out within the aspects of Culmstock village when viewed from the Blackdown Common SSSI to the north as well as from the south below Hackpen Hill. The Council denies that the new additional housing will enhance the character of the village given the evidence from phase 1 and so object to the proposed location.

## 8. Design, appearance, layout and materials: Policy S1(h) & S13

While finding the design of the development might be acceptable in a suburban setting, the Council cannot accept the premise that the proposal includes traditional design "reflecting the character of the village and the local area". Culmstock is a charming village comprising mediaeval buildings, a stock of ancient housing as well as substantial brick buildings from the mill and railway era; it is impossible to see that the proposed designs of the proposed buildings with uniform rectilinear suburban character will fulfil the Local Plan Review Guidelines under Section DM1, which states that designs make a positive contribution to local character well integrated with surrounding buildings, streets and landscapes. The Council objects to the general suburban design of the proposed houses, especially the inclusion of a mixture of clay roman tiles while the housing stock of the village is substantially black slate or thatched.

## 9. Conservation of buildings, trees and open land: Policy S1(m), S9, S14 & DM1(c)

The Council enquires how the old single oak tree (T01) possibly in the path of the proposed service road is to be preserved (especially if it is covered by a TPO). The Environmental report shows that this tree is an important habitat for Bat roosting, but the Council insists that this iconic tree is to be retained as part of the local landscape.

## 10. Need to conserve the countryside or protected species of plant and animal: Policy S1(m) & S9

The archaeological analysis of this proposal is obviously inadequate by the developer's presumption from results from phase 1. The Local Plan correctly states that "the site lies in an area of archaeological potential with regards to known prehistoric activity as well as evidence of the iron industry that operated in the Roman and later periods". Any planning application for development here will need to be supported by the results of an appropriate level of archaeological investigation on site. The Council requires clarification to allow the significance of any below-ground heritage asset to be understood.

## 11. Social Issues: Policy S14(e)

11.1 The Primary school is already exceeding its capacity of pupil numbers and more funds suggested by DCC would not create enough space to expand, even with the inclusion of the small existing library as a classroom. Which can only be of detriment to the learning environment. As shown by the DCC Education response the school is already over-allocated, with inadequate classroom facilities, before adding the intake from the Hunters Hill developments. The pupil numbers have risen by 40% since the turn of the 21st Century and the seven year groups are currently managed within four classrooms. The Parish Council considers that it would be sensible to consider replacing the temporary Portacabins with a purpose built 2-storey L-shaped classroom block without reducing the playground area.

11.2 As with the application for phase 1, the council believes that the allocation of one primary school child per four dwellings is a serious underestimate of the likely demand for school places from the proposed development. As described under Highways section 3 above, parking is also a major concern at school times. The Council objects to the additional pressure likely to be placed on the stretched resources of the Primary School to accommodate the extra pupils from the proposed development.

11.3 It must be noted that GP surgeries and dentists in the area are also at capacity both in Hemyock and Wellington.

## 12. Affordable Housing: Policy S3, CL2

12.1 Of the originally allocated four affordable homes in phase 1, it is understood from the developer that two have been sold as Discount Market Housing with the occupant being assessed via Devon Council and the other two are being purchased by MDDC Housing association and are to be let as Council Houses. From the Design Statement for phase 2 (as well as the Heads of Terms - Planning Obligations) it appears that the developer is providing "Discounted Open Market Housing" rather than as closely defined "affordable housing" as per the NPPF Framework (annex 2).

12.2 One of the aspects of the Review of the NPPF currently being undertaken in the House of Commons is to ensure that the benefits of Discounted Market Housing exist in perpetuity for the benefit of local qualified applicants with a direct Culmstock connection. The Council requests assurance that the four affordable homes in phase 2 would be available in perpetuity for local parishioners under the normal rules for allocation of Affordable Housing.  
In the event that the Application is accepted, the Parish Council would require:

13. The Application makes no reference to pedestrian safety. If the current development is approved, the Parish Council insists that it will be necessary to create a permanent pavement (without steps) of a legal 2 metre width down Hunters Hill to accommodate a safe way for families with pushchairs, as well as for inhabitants with wheel-chairs, to access the village.

14. There would be other S106 requirements for the development of Open Spaces to accommodate the needs of the extra 40 to 50 residents.

15. Routine maintenance:

The recently laid roadside hedge and ditch alongside the phase 1 development is already becoming over-grown, requiring the MDDC Verge maintenance team to include this stretch up to Highfields entrance in their routine verge maintenance. The current Application should also include a plan for routine clearance of the ditch and hedge on the lower side of the developments parallel to Hunters Way.

16. Noise, disturbance and smells resulting from the proposed development:

The contractors on Phase 1 have been observed to be burning wood and plastic waste on site, which is disallowed and so should be prevented within the proposed site.

Further development:

In the event that Phase 2 development of Hunters Hill should proceed, the Parish Council demands reassurance that no further development will be considered in either Great Meadow or the adjoining field called "South East Field". The Council further examined the ground plan offered for Phase 2, finding that the eastern end of the service road could be inferred to have some future junction with a possible further phase 3 development. The Council therefore asks what species of permanent protected trees are planned to be planted between plot 10 & 11 and what safeguards ensure that further development will not be considered (SHLAA 2013 p.87).

18. Conclusion:

The Parish Council objects to the proposed Phase 2 development on Hunters Hill for all the material reasons above.

#### **Highway Authority - 24th April 2018**

Additional information has been submitted on request in relation to the capacity of the junction of Hunters hill and B3391. The result of which indicates that there is sufficient spare capacity to accommodate the proposed residential proposal. The Highway Authority have no objections subject to conditions. The Highway Authority welcome improvements to the existing footways, including the provision of new ramped footways, details of which should be submitted for approval prior to commencement on site and their provision through section 278 of the Highways Act.

#### **Housing and Enabling Manager – 28<sup>th</sup> February 2018**

Confirms there is a housing need in Culmstock for 2 and 3 bedroom properties.

#### **Devon County Council Education – 13<sup>th</sup> March 2018**

An education contribution is requested to mitigate the impact of the proposal, particularly as there is currently no capacity at the nearest primary school and secondary school for the number of pupils likely to be generated by the development. The proposed 14 family-type dwellings will generate an additional 3.5 primary pupils and 2.1 secondary pupils.

The contribution sought towards primary is £47,782 (based on the DfE extension rate of £13,652 per pupil) and the contribution sought for secondary is £46,034 (based on the 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 secondary school transport costs due to the development being further than 2.25 miles from Uffculme School. The costs required are as follows: -

3 secondary pupils

£3.32 per day x 3 pupils x 190 academic days x 5 years = £9,462.00

In addition, a contribution towards Early Years provision is needed to ensure delivery of provision for 2, 3 and 4 year olds. This would cost approximately £3500 (based on £250 per dwelling). This will be used to provide early years provision for pupils likely to be generated by the proposed development.

**Historic Environment Team - 12th March 2018**

Assessment of the Historic Environment Record (HER) and the details submitted by the applicant do not suggest that the scale and situation of this development will have any impact upon any known heritage assets.

**Devon, Cornwall and Dorset Police – 28<sup>th</sup> February 2018**

Approves of many facets of the design and the overall aim to provide a safe and secure development. Advises that doors and windows are manufactured by approved Secured By Design member-companies. The general layout will provide overlooking and active frontages to the new internal streets and public open space.

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

**Environmental Health - 8th March 2018**

No objections or comments other than in relation to noise and other nuisances, a condition requiring a Construction Environmental Management Plan (CEMP) is recommended.

**Devon County Council Lead Local Flood Authority – 2<sup>nd</sup> May 2018**

Following the submission of additional information the LLFA has no in-principle objections, subject to pre-commencement conditions requiring the submission of a final scheme following on site testing, along with details of the surface water management during the construction phase.

**Natural England – 7<sup>th</sup> March 2018**

No objections. Advise consultations with the AONB Partnership. A landscape character assessment would be helpful to describe the landscape's sensitivity to this type of development.

**Blackdown Hills AONB Partnership – 26<sup>th</sup> April 2018**

The elevated location in close proximity to the AONB means that landscape matters and effect on the AONB are pertinent. Although recognising that any Landscape and Visual Impact Assessment should be proportionate to the scale of development, it would have been helpful for the photographs to be based on good practice, with images presented being of a scale and resolution to provide an accurate representation to allow proper assessment of impact (Landscape Institute Advice Note 01/11).

The 'phase 1' development serves to demonstrate that this is a sensitive location in terms of village character and landscape/visual impact, and that materials are crucial. Historically, Culmstock has developed in the valley bottom, along the river, and continued development up Hunters Hill will affect the inherent settlement character of this gateway to the AONB. The new

development becomes all the more evident due to the use of red clay roof tiles, which is both more obviously evident in the landscape and not typical of the rest of the village. If the planning authority is minded to approve this application, the detail of the dwelling design will be a key factor in whether the development befits its rural location in the setting of the AONB, including consideration of materials, colour and lighting.

#### **South West Water - 23rd April 2018**

South West Water assessed the capacity of the public sewer network and sewage treatment works to accommodate the initial and subsequent phase of development subject of the above application which determined that capacity is available.

### **REPRESENTATIONS**

Eleven letters of objection have been received in conjunction with this application, they are summarised as follows:

1. Proposal is not detailed in the local plan. The site is outside the defined settlement boundary and is therefore in the open countryside. The site is not allocated like the adjoining site for 13 houses.
2. The principle of development is unacceptable and the proposal is contrary to the development plan, there are no significant or demonstrable benefits to outweigh this policy conflict.
3. The highway network is not capable of accommodating an increase in traffic. Increase in traffic on Hunters Hill, particularly at peak times, impacting on the lower Hunters Way junction and the junction by the Primary School.
4. Hunters Hill is in effect a single track lane due to on road parking by residents and school teaching/support staff and parents during pick up/drop off times. Congestion can be significant; along with large agricultural vehicles the road can become quite dangerous.
5. Request to reduce the speed limit to 20mph and parking restrictions for teaching staff to encourage parking at the village hall, along with possible road widening/layby creation.
6. There is a significant road safety issue due to the proximity of the school to road junctions. Turning in to Hunters Hill is on a blind bend, near misses are common place.
7. The full effect of the adjacent 12 houses is yet to be seen or assessed as this application has been submitted before the adjacent site is completed.
8. There is no pavement without steps between the school and the new houses, so that wheelchair users of people with a pushchair have to use the road currently. This is especially hazardous at busy times due to parked cars and agricultural machinery using the road. Parking bays and a pavement could help alleviate this.
9. Concerns over sewer capacity and storm water drainage after recent instances of flooding.
10. New development would be better positioned on the other side of the village away from this pinch point of traffic and parking issues.
11. Further information is required in terms of surface water drainage.
12. Do not accept the calculation for the number of school children generated by the housing as they are family sized homes.
13. Concerns the proposal will have a detrimental impact on local wildlife.
14. Concern about the visual impact of the proposal due to the sloping nature of the land.
15. Culmstock primary school is over subscribed already with very little room for expansion; it will not be able to support any further housing in the area.
16. The development will not provide the mix of housing needed in this rural area, there is insufficient affordable housing for younger people wanting to stay in the locality.



17. There is little employment in the village so people would be required to travel on the busy narrow lanes.
18. Blackdown Practice (medical centre) is struggling to cope with existing numbers; further building will put more pressure on the doctor's surgery.

## **MATERIAL CONSIDERATIONS AND OBSERVATIONS**

The main issues in the determination of this application are:

- 1. Principle of development, including 5 year land supply**
- 2. Impact on the character and appearance of the countryside, including the Blackdown Hills Area of Outstanding Natural Beauty**
- 3. Access and highway safety**
- 4. Ecology impacts**
- 5. Surface Water Drainage and Foul Sewage**
- 6. S106 and other financial considerations**
- 7. Planning balance**

### **1. Principle of development, including 5 year land supply**

Policy COR17 provides a definition of villages with defined settlement limits and sets out the type and scale of development that is acceptable within defined settlement limits and permitted on allocations outside settlement limits. Policy COR18 seeks to control development outside defined settlement limits to appropriate rural uses, excluding new market housing.

The development is on agricultural land outside of the Culmstock defined settlement boundary. The site is not allocated and is not being proposed for 100% affordable housing. The proposal is therefore considered to be contrary to policies COR17 and COR18 of Mid Devon's adopted development plan.

Policy COR1 of the Mid Devon Core Strategy (LP1) seeks to manage growth in a sustainable way to support the diverse needs of communities, including the provision of affordable housing and making the most efficient use of land. Policy COR3 seeks to meet the diverse housing needs of the community, including a target provision of approximately 100 affordable dwellings per year across the District.

However, Members will also be aware that Mid Devon has been found not to be able to demonstrate a 5 year housing land supply. The NPPF advises that where a five year land supply of deliverable housing sites cannot be demonstrated, policies on housing supply should not be considered up to date. This includes settlement limits identifying areas which are open countryside and those which are within defined settlements.

Paragraph 14 of the NPPF states that where development plan policies are considered to be out of date, planning permission should be granted unless adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the NPPF as a whole or specific policies in the NPPF indicate development should be restricted. Housing applications need therefore to be considered in the context of sustainable development, unless specific policies indicate development should be restricted.

Policies COR17 and COR18 are directly relevant to the supply of housing in the District and are now considered to be out of date. This does not mean that Mid Devon's policies must be cast aside, but the weight given to them is proportionate to their consistency with the National Planning Policy Framework (NPPF).

The NPPF contains a presumption in favour of sustainable development. It requires local authorities to “boost significantly the supply of housing” and to consider housing applications in the context of the presumption in favour of sustainable development. To promote development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. This is reflected in policy DM1 of the Local Plan 3 Development Management Policies which takes a positive approach to sustainable development, allowing development to be approved wherever possible.

Culmstock has good level of local services and facilities, including: a pre-school and primary school, village shop, pub, village hall, Methodist Church, All Saints Church, and Culmstock garage. There is a regular 6 day a week bus service between Honiton and Taunton, along with a weekly service to Tiverton. Culmstock is considered to be a village that is in a relatively sustainable location for the development of additional housing. This is further recognised in the proposed and emerging local plan, whereby a small number of houses have been allocated on sites in Culmstock.

In a recent appeal relating to 60 dwellings in Uffculme, the Inspector found that in order to be a sustainable location for housing, it would be unrealistic to expect a village to achieve self-containment. Furthermore, the Inspector in the same appeal found the ability to use sustainable modes to access additional, leisure and shopping opportunities as well as to commute for employment purposes to be satisfactory. There are some very limited employment opportunities within the village centre, but as it has been described above, there is a bus service providing sustainable transport links to nearby areas with services and further employment opportunities.

As mentioned above, paragraph 14 of the NPPF requires that where development plan policies are considered to be out of date, planning permission should be granted unless adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The paragraphs below assess the potential harm, along with the benefits of the proposed development.

## **2. Impact on the character and appearance of the countryside, including the Blackdown Hills Area of Outstanding Natural Beauty**

The Blackdown Hills AONB lies approximately 170 metres to the north of the site. Whilst the site itself is not within the AONB, development in this location has the potential to adversely affect its setting. A landscape and visual impact assessment has been submitted as part of the application and has since been updated to show the impact of the existing development. The level of detail provided in this assessment is in accordance with what was previously provided for the ‘phase 1’ development, the applicant has not submitted a full landscape and visual impact assessment but has provided a series of photographs of the site from various points within the landscape.

Policy COR2 of the Mid Devon Core Strategy (LP1) requires development to preserve and enhance the distinctive qualities of Mid Devon’s landscape and to protect the setting of the Blackdown Hills AONB. Policy DM2 of the Local Plan Part 3 Development Management Policies requires development to demonstrate a clear understanding of the characteristics of the site, its wider context and surrounding area and make a positive contribution to local character. Policy DM29 of the Local Plan Part 3 Development Management Policies requires development proposal affecting the AONB or its setting to conserve the special landscape qualities of the AONB and biodiversity in the area. It states that major developments adjoining the AONB will only be permitted in exceptional cases.

The site slopes from north east to south west at an average gradient of 1 in 13 and a levels difference across the site of 9 metres (120m - 129m AOD) as demonstrated by a topographical survey. The lowest point in the site is in the south west corner. The site layout has been designed to limit any visual impact, by providing 4 bungalows along the northern site boundary and across

the highest part of the site. In addition, existing hedgerows and tree features are to be retained, this will help to integrate the development within its rural surroundings. Further landscaping details will be required by condition.

The site lies within the landscape character area: LCT3A "Upper farmed and wooded valley slopes character area". The upper farmed and wooded valley slopes character area is characterised by convex hills and rounded ridges with fertile smooth slopes running into small-scale views. Extensive tracts of medium-scale permanent pasture are grazed with some slopes and flatter hilltops cultivated for arable crops. Well-managed dense hedgerows bound regular medium to large pasture fields. Isolated farms, rural cottages and farm buildings tend to be visually prominent in the landscape with long views from one hilltop to another. The site is within this character area but there are few long views in or out of the site.

The submitted document identifies remote viewpoints on higher land in the wider area from which it is possible to locate the site area but the extent of the site is only apparent with visual aids and the site cannot be clearly identified in photographs without the use of a telephoto lens. What is clear from the photographs is that the site will be viewed within the context of the existing built form of the village and this to an extent reduces the sites visual impact within its wider surroundings. With the use of the telephoto lens, it is clear that 'phase 1' is visible from Culmstock Beacon. However, this zoomed in photograph also demonstrates that the application site will be screened to a greater extent than 'phase 1' due to the presence of offsite mature tree and hedge screening, including evergreen conifers. In addition, following comments from the Blackdown Hills AONB partnership, the roofing materials have been altered, removing all red clay roof tiles, to ensure that the materials are appropriate and to integrate the development within the landscape. As such, your officers consider that the proposed development will have a lesser impact than the already approved 'phase 1' development and that there will be limited opportunities to view the site from Culmstock Beacon, due to the existing screening, the landscape buffer proposed on site between the two developments, along with the distance of the site from the Beacon.

Your officers therefore consider the additional visual effects on the landscape of the 'phase 2' development of 14 dwellings over and above those of the 'phase 1' development, are considered to be minimal and acceptable in policy terms. It is recognised that 'phase 1' is visible from Culmstock Beacon, as demonstrated to an greater extent when using the telephoto lens, however, the natural weathering of the build materials overtime will integrate the development with the village to a greater extent.

Your officers consider that the development is capable of being introduced into the landscape without undue harm to the character of the landscape and the setting of the AONB, bearing in mind the low visibility of the site within the landscape and the benefits of the provision of market and affordable dwellings. The development is considered to comply with policies COR2 of the Mid Devon Core Strategy (LP1) and DM2 and DM29 of the Local Plan 3 Development Management Policies in this respect.

### **3. Access, parking and highway safety**

Policy COR9 of the Mid Devon Core Strategy (LP1) seeks development in accessible locations to reduce the need to travel by car and which has an acceptable impact on road safety through management of car parking and traffic. Policy DM2 of the Local Plan 3 Development Management Policies seeks the creation of safe and accessible places that encourage sustainable modes of travel such as walking and cycling. Furthermore, Policy DM8 requires the provision of 1.7 parking spaces per dwelling.

The application site will utilise the existing road junction with Hunter's Hill, with a new estate road leading to the application site from the existing development with turning heads and shared

surface driveways. The access road up to and including the turning head will be adopted and therefore the road and footways will be surfaced with tarmac. The two shared surface private driveways leading from the main estate road and the parking areas will be surfaced with a different material, which is to be agreed by condition.

All dwellings, save for two bungalows are proposed to have two parking spaces, two bungalows will have 1 parking space each. The overall level of parking provided is 1.85 spaces per dwelling; this exceeds the level of parking required by DM8 and is therefore acceptable.

The Highway Authority do not object to this application subject to the recommended conditions and are satisfied that there is adequate capacity at the road junction between Hunter's Hill and the B3391 to accommodate the proposed residential development.

The parish and a number of objectors have raised concerns about the inadequacy of the pedestrian links between the site and the village centre, in particular, the school. Whilst there is an existing footpath, in its current form it has a number of steps and is very narrow in places, which means it cannot be used by wheelchair users or persons with a pushchair. As a result of these concerns, the applicant has engaged with the Local Planning Authority and DCC Highways and offered footpath improvements as part of the development proposal. It is proposed to provide new ramped footways, with details to be agreed through S278 of the Highways Act and through appropriate conditions on any planning approval and in the S106 agreement.

Objectors have also raised concerns about the inadequacy of the current parking arrangements in the village, whilst improvements to parking have been discussed, due to the scale of the development it is not considered viable to make improvements to the footpath as well as the parking arrangements. The footpath alterations have been prioritised and offered as part of the development, as this work will improve the safe and sustainable links to the village and encourage future occupants of the site to walk their children to school.

Subject to the recommended conditions, the vehicular and pedestrian access to serve the proposed development is considered to be acceptable and in accordance with policies COR9, DM2 and DM8. The pedestrian footway improvements to make the existing path wheelchair and pushchair friendly are considered to be a significant benefit of the scheme. The proposal will create a footpath suitable for all users that future occupants of the proposed site, along with existing residents, will be able to use to access the village centre and school safely.

#### **4. Design**

The site layout provides for a low density development (10.5 dwellings per hectare), the site is particularly low density due to the large landscape buffer area between the proposed development and 'phase 1', which will provide a visual break in the built form of the development and will have added benefits of providing an informal public open space area and attenuation basin to manage the surface water associated with the development.

There is a good separation distance between the proposed dwellings and neighbouring properties and there will be no side windows on plot 4. As such, the proposal is not considered to cause any increased overlooking to existing dwellings within 'phase 1' or Hunters Way.

The design of the dwellings is very similar to those in 'phase 1'. There will be a combination of detached and semi-detached properties, to include bungalows and two storey dwellings from two bedroom properties to five bedroom properties. The proposed materials comprise of the following: natural slate and brown double roman roof tiles; the walls will comprise of face brick work and

natural stone; the properties will have window heads and cills, details of windows and doors have not been provided and will be conditioned. The affordable dwellings will be constructed of materials to match the market dwellings and are also provided with garages; in this respect it is considered that they have been designed to be indistinguishable. The grouping of the four affordable dwellings is considered to be reasonable due to the small numbers and they are provided with a pleasant outlook over the landscape buffer. In this respect the proposal meets with AL/DE/5.

All of the properties meet or exceed the National Space Standards in terms of their overall size and floor space provided. Although there are a number of larger 4 and 5 bed properties, overall the mix of properties and their sizes is considered acceptable for this edge of village location. Each property has a reasonably sized private garden. Boundary treatments are to be a mix of brick walls and close boarded fences. Bin storage can be accommodated within each private garden in accordance with policy DM14 and the SPD on refuse storage.

Overall, the proposed housing is considered to comply with policy DM2 in respect of demonstrating high quality design that provides visually attractive places and makes a positive contribution to local character, policy DM14 which sets out criteria for the design of new housing and policy DM15 which sets dwelling sizes (dwelling sizes in DM15 now replaced by National Space Standards).

## **5. Ecology impacts**

A preliminary ecological appraisal has been undertaken in conjunction with this application. The ecological appraisal found that the single mature oak tree and the species rich hedgerow (including a further mature oak) on the eastern and southern boundaries provided the greatest ecological value, with the two mature oaks having a moderate to high potential to support roosting bats. The development proposals include the retention of these features.

The assessment identified that the hedge bank habitat is suitable for dormice, foraging bats and hedgehogs, nesting birds and commuting and dispersing reptiles. In addition, the ditch habitat has the potential to be used by otters and the site is likely to be used by foraging badgers, although there was no evidence of this species. Due to the retention of the key tree and hedge bank features, no further survey work is considered necessary. However, a number of mitigation measure and ecological enhancement features are recommended, including a bat sensitive lighting plan, badger sett survey, additional native planting and bird/bat boxes, these measures will be required by condition.

Subject to the recommended mitigation measures and ecological enhancements, the proposed development is considered to be acceptable, without having a detrimental impact on the ecological interests of the site, with further opportunities identified to enhance ecology, in accordance with DM2.

## **6. Surface Water Drainage and Foul Sewage**

Policy COR11 of the Mid Devon Core Strategy (LP1) seeks to direct development to areas with the least potential to flood. The site is located within Flood Zone 1 and is suitably located for residential development from this perspective. Policy DM2 of the Local Plan 3 Development Management Policies seeks the use of a sustainable urban drainage system (SUDS), if appropriate, to deal with surface water drainage.

Objections have been made in relation to surface water drainage and flood risk for nearby properties, along with concerns about the capacity of the sewage network. South West Water have confirmed that there is adequate capacity within the sewage network for the proposed residential development and raise no concerns in this respect.

Surface water on site will be managed using sustainable techniques. The drainage system proposed incorporates permeable paving for all parking areas and private driveways. In addition, it is proposed to have an on site infiltration basin in the south west corner of the site. The basin is proposed to have a high level outflow to an existing ditch that runs along the southern site boundary, to protect nearby properties in the unlikely event of a basin failure. The outflow would be restricted to 2l/s which would result in a significant reduction on the existing greenfield runoff rate.

In principle, subject to the conditions imposed to include infiltration testing and the submission of a final drainage design as recommended by the Lead Local Flood Authority, the drainage proposals are considered to be in accordance with policies COR11 of the Mid Devon Core Strategy (LP1) and DM2 of the Local Plan 3 Development Management Policies in respect of flood risk and sustainable drainage principles.

## **7. Heritage**

Archaeological investigations including trial trenching took place on the 'phase 1' site. The Historic Environment Team are satisfied that the scale and location of the development will not impact on any known heritage assets and therefore there are no objections to the development in this respect.

The site is located to the north of the Culmstock Conservation Area. There is little inter-visibility between the site and the Conservation Area and views of the site from the conservation area would be seen in the context of the existing housing development at Hunter's Close. Your officers do not consider that the development would have a negative impact on the Conservation Area. In addition, the development is not considered to harm the settings of any listed buildings in the area.

The development is considered to accord with the provisions of policy DM27 of the Local Plan 3 Development Management Policies in respect of impacts on heritage assets.

## **8. S106 and other financial consideration**

Policy AL/DE/3 sets a target of 35% affordable housing to be provided on sites of market housing, it is proposed to provide 4 affordable houses as part of this scheme, this is in accordance with the policy which permits rounding down to the nearest whole number.

Policy AL/IN/3 requires 60 square metres of equipped and landscaped public open space per dwelling or a financial contribution towards off site provision of play areas and open space facilities where no on site provision is made. The size and scale of development is such that it would not be expected that the development would provide formal open space, although the landscape buffer proposed will provide some informal green space, this isn't sufficient to provide for the demand for public open space facilities that the development will bring about. Accordingly, the applicant will enter into a S106 agreement to pay a financial contribution of £18,484 towards access to public open space at Colliers Meadow, Culmstock.

The capacity of existing facilities, in particular the school has been raised as a concern in a number of objections. Policy AL/IN/5 provides for new development to cover the cost of additional education provision required to meet the needs of the development. In order to mitigate the impacts of the proposal on the existing school facilities, an education contribution will be sought

totalling £106,778. The breakdown of this is £47,782 towards the primary school, £46,034 towards the secondary school, £9,462 towards secondary school transport and £350 towards early years education.

The applicant has agreed to make these financial contributions through a Section 106 Agreement.

## **9. Planning balance**

The NPPF contains a presumption in favour of sustainable development and requires local authorities to boost significantly the supply of housing. The development would provide ten open market dwellings and four affordable dwellings which would provide economic and social benefits for Culmstock.

The NPPF requires that where Local Plan policies are considered to be out of date (see above), planning permission should be granted unless adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the NPPF as a whole or specific policies in the NPPF indicate development should be restricted.

The potential harm of the development has been considered in this report, in particular, the impact of the proposal on the special qualities of the AONB and it is considered that, subject to conditions and the provisions of the Section 106 Agreement, any harm could be mitigated to an acceptable degree.

Weighing in favour of the development is the provision of ten market dwellings and four affordable dwellings, which the NPPF states should carry significant weight. In addition, the provision of improvements to the existing footpath network is considered to be a significant benefit to the local community. Creating a footpath that is accessible to all users, linking the site and this part of the village with the primary school, also weighs in favour of the proposal.

Taking all the above into account, your Officers consider that it cannot be demonstrated that the adverse impacts of approving the development would significantly and demonstrably outweigh the benefits, when assessed against the NPPF as a whole, and therefore approval is recommended in accordance with paragraph 14 of the NPPF.

## **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 part of the development hereby permitted shall be commenced until a programme of percolation tests has been carried out in accordance with BRE Digest 365 Soakaway Design (2016), and the results approved in writing by the Local Planning Authority, in consultation with Devon County Council as the Lead Local Flood Authority. A representative number of tests should be conducted to provide adequate coverage of the site, with particular focus placed on the locations and depths of the proposed infiltration devices.
4. No part of the development hereby permitted shall be commenced until the detailed design of the proposed permanent surface water drainage management system has been

submitted to, and approved in writing by, the Local Planning Authority, in consultation with Devon County Council as the Lead Local Flood Authority. The design of this permanent surface water drainage management system will be informed by the programme of approved BRE Digest 365 Soakaway Design (2016) percolation tests and in accordance with the principles set out in the approved Flood Risk Assessment and Drainage Strategy (April 2018) Rev A. Provision shall be made within the site for the disposal of surface water so that none drains on to any County Highway. Once agreed, the development shall proceed in accordance with the approved scheme, which shall be fully operational before any of the proposed dwellings are first occupied, and shall be permanently retained and maintained in accordance with the approved details.

5. No part of the development hereby permitted shall be commenced until the detailed design of the proposed surface water drainage management system which will serve the development site for the full period of its construction has been submitted to, and approved in writing by, the Local Planning Authority, in consultation with Devon County Council as the Lead Local Flood Authority. This temporary surface water drainage management system must satisfactorily address both the rates and volumes, and quality, of the surface water runoff from the construction site.
6. The proposed estate road, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, road maintenance/vehicle overhang margins, embankments, visibility splays, accesses, car parking and street furniture shall be constructed and laid out in accordance with details to be approved by the Local Planning Authority in writing before their construction begins. For this purpose, plans and sections indicating, as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.
7. The occupation of any dwelling shall not take place until the following works have been carried out in accordance with the details approved under condition 4:
  - A) The spine road and cul-de-sac carriageway including the vehicle turning head within that phase shall have been laid out, kerbed, drained and constructed up to and including base course level, the ironwork set to base course level and the sewers, manholes and service crossings completed;
  - B) The spine road and cul-de-sac footways and footpaths which provide that dwelling with direct pedestrian routes to an existing highway maintainable at public expense have been constructed up to and including base course level;
  - C) The cul-de-sac visibility splays have been laid out to their final level;
  - D) The street lighting for the spine road and cul-de-sac and footpaths has been erected and is operational;
  - E) The car parking and any other vehicular access facility required for the dwelling by this permission has/have been completed;
  - F) The verge and service margin and vehicle crossing on the road frontage of the dwelling have been completed with the highway boundary properly defined;
  - G) The street nameplates for the spine road and cul-de-sac have been provided and erected
8. Before the commencement of development, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall identify the steps and procedures that will be implemented to minimise the creation and impact of noise, vibration, dust and waste disposal resulting from the site preparation, groundwork and construction phases of the development and manage Heavy/Large Goods Vehicle access to the site. It shall include details of the hours of



operation and measures to be employed to prevent the egress of mud, water and other detritus onto the public and any non-adopted highways. Once approved the CEMP shall be adhered to at all times, unless otherwise first agreed in writing with the Local Planning Authority.

9. Prior to commencing works on the footpath improvements, full details shall be submitted to and approved in writing by the Local Planning Authority, in consultation with the Highway Authority.
10. The development shall take place only in accordance with the recommendations in the Preliminary Ecological Appraisal by Blackdown Environmental dated December 2017, submitted to the Local Planning Authority on the 21<sup>st</sup> of March 2018.
11. The development shall take place only in accordance with the Arboricultural Method Statement by Blackdown Environmental dated 11<sup>th</sup> January 2018, the tree protection fencing shall be erected prior to the commencement of any works and shall be retained for the entire duration of the development construction, in accordance with the Tree protection fencing details contained on page 22 of the report and Tree Protection Plan 17.97.28 submitted to the Local Planning Authority on the 25<sup>th</sup> of April 2018, detailing the locations of the tree protection fencing. The trees identified shall be retained.
12. Any external lighting installed on site shall be in accordance with a sensitive lighting plan that shall have been submitted to and approved in writing by the Local Planning Authority before any external lighting is installed.
13. Prior to their first use on the buildings details and a sample of the proposed materials to be used on the walls and roofs of the proposed dwellinghouses shall be submitted to and approved in writing by the Local Planning Authority. The approved materials shall be so used and retained.
14. Before their installation, details of the external windows and doors (including garage doors) to be used in the development, shall be submitted to and approved in writing by the Local Planning Authority. Only such approved windows and doors shall be used.
15. The external windows and doors shall be recessed into the walls in accordance with details that shall have been submitted to and approved in writing by the Local Planning Authority before the windows and doors are installed.
16. Within 9 months of the commencement of development, a landscaping scheme shall be submitted to, and approved in writing by the Local Planning Authority, a landscaping scheme shall include details of hard and soft landscaping proposed, including any changes proposed in existing ground levels and a sample of the paving proposed for the shared surface driveways and the parking areas. All planting, seeding, turfing, earth reprofiling and hard landscaping comprised in the approved details of landscaping shall be carried out within 9 months of the substantial completion of the development, (or phase thereof), and any trees or plants which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
17. Notwithstanding the boundary treatment details provided on the Site Layout House Types drawing 17.97.01D, within 12 months of the commencement of development details of the

boundary treatments, including materials, heights and any boundary treatment and safety features around the attenuation basin, shall be submitted to and approved in writing by the Local Planning Authority. The attenuation basin safety features shall be provided in full prior to the first occupation of any dwelling houses on the site and shall be retained and maintained thereafter.

18. CRR1 PD Rights removed (certain classes) - Notwithstanding the provisions of Article 3 of The Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no development of the types referred to in Classes A, B, C, D, E or F of Part 1 of Schedule 2 or Class A of Part 2 of Schedule 2 relating to the enlargement, improvement or other alteration of the house (including the installation of new windows or doors or the replacement of existing windows and doors), alterations to the roof of the dwellinghouse, the erection or construction of a porch outside any external door, provision of hard surfaces, or the erection construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure on the dwelling or within the dwelling curtilage without the Local Planning Authority first granting planning permission.

## **REASONS FOR CONDITIONS**

1. RD1 in accordance with provisions of Section 51 of the Planning and Compulsory Purchase Act 2004
2. RD7A for the avoidance of doubt in the interests of proper planning.
3. To ensure that surface water from the development is managed appropriately on site taking account of the existing ground conditions and to ensure surface water from the development is discharged as high up the drainage hierarchy as feasible, in accordance with policy DM2.
4. To ensure that surface water runoff from the development is discharged as high up the drainage hierarchy as is feasible, and is managed in accordance with the principles of sustainable drainage systems, in accordance with policies COR11 and DM2.
5. To ensure that surface water runoff from the construction site is appropriately managed so as to not increase the flood risk, or pose water quality issues, to the surrounding area, in accordance with COR11.

To ensure that adequate information is available for the proper consideration of the detailed access proposals, in accordance with COR9.

6. To ensure that adequate access and associated facilities are available for the traffic attracted to the site in accordance with COR9 and DM8.
7. To ensure that the construction process is appropriately managed without having an unacceptable impact on the occupants of neighbouring properties, in accordance with policy DM2.
8. To ensure adequate details are provided to ensure there is a safe and suitable pedestrian access to the village, in accordance with policies DM2 and COR9.

9. To ensure the proposal does not detrimentally impact on the ecological interests of the site in accordance with policy DM2.
10. To ensure the development makes a positive contribution to the landscape character and visual amenity of the area in accordance with policies COR2, DM2 and DM29.
11. To ensure the proposal does not detrimentally impact on the ecological interests of the site in accordance with policy DM2.
12. To ensure the materials used are appropriate and that the development makes a positive contribution to the character and amenity of the area in accordance with policies DM2, DM29 and COR18.
13. To ensure the materials used are appropriate and that the development makes a positive contribution to the character and amenity of the area in accordance with policies DM2, DM29 and COR18.
14. To ensure the development makes a positive contribution to the character and amenity of the area in accordance with policies DM2, DM29 and COR18.
15. To ensure the development makes a positive contribution to the character and amenity of the area in accordance with policies DM2, DM29 and COR18.
16. To ensure materials are appropriate to safeguard the safety, privacy and amenity of the occupiers and the character and appearance of the area, in accordance with COR2, DM2 and DM29.
17. To safeguard the visual amenities and the character and appearance of the area, the amenities of the occupiers of the dwellings proposed and neighbouring properties, and to safeguard against the overdevelopment of the site, in accordance with Policy COR2, DM2 and DM29.

## **INFORMATIVES**

None

## **REASON FOR/ APPROVAL OF PERMISSION/GRANT OF CONSENT/ REFUSAL**

The proposal is, on balance, considered to be acceptable in that the development would provide ten market dwellings and four affordable dwellings in a sustainable location. In addition, the proposal will provide financial contributions towards public open space and education infrastructure, along with footpath improvements to improve the site accessibility and pedestrian access to and from the village for all users. The site layout is clearly defined and takes account of the physical context and local character. The houses are of a high quality design and suitable size to take account the changing needs of the occupiers; each dwelling benefits from external amenity space and private parking. The site has a safe and suitable access and adequate parking provision. It has been demonstrated that the ecological interests of the site can be mitigated and enhanced and that surface water can be appropriately managed. It is considered that the development is capable of being introduced within the landscape without undue harm to the character of the landscape and the setting of the AONB, bearing in mind the low visibility of the site within the landscape and the benefits of the provision of market and affordable dwellings.

Overall, the proposal is considered to be in accordance with policies DM1, DM2, DM3, DM4, DM8, DM14, DM15, DM27 and DM29 of the Local Plan Part 3 [Development Management Policies]; COR1, COR2, COR3, COR8, COR9, COR11, COR17 and COR18 of the Mid Devon Core Strategy; policies AL/DE/2, AL/DE/3, AL/DE/4, AL/DE/5, AL/IN3 and AL/IN/5 of the Allocations and Infrastructure Development Plan Document; Meeting Housing Needs SPD [2012], Parking provision in new development SPD [2013], Refuse Storage for New Residential Properties SPD [2017], and; the National Planning Policy Framework.

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

Application No. 18/00283/OUT

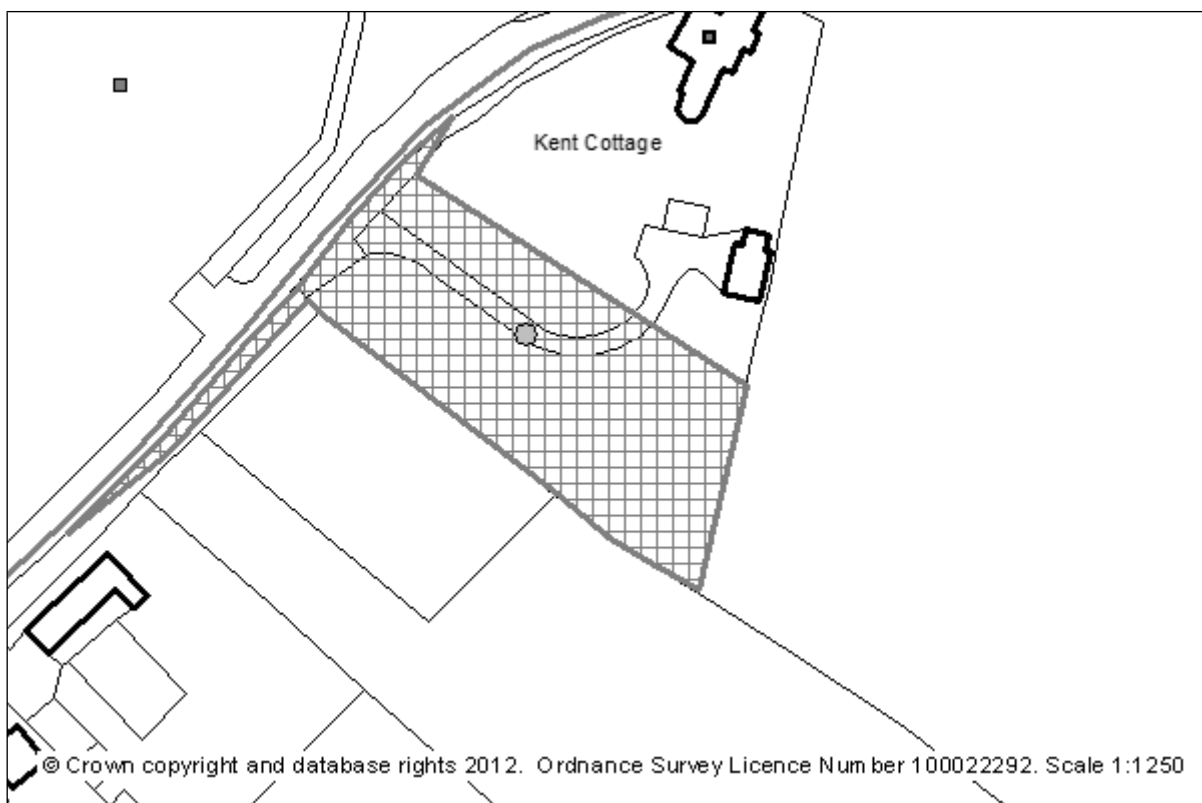
Grid Ref: 301810 : 115319

Applicant: Mr & Mrs Floyd

Location: Jaspers Green  
Updown  
Tiverton  
Devon

Proposal: Outline for the erection of a dwelling and alterations to vehicular access

Date Valid: 13th February 2018



**APPLICATION NO: 18/00283/OUT**

**MEMBER CALL-IN**

**Cllr R Radford called in for the following reason:**

**As is the case with an adjacent site for which permission was recently granted, the provision of a single dwelling at this location is considered to have no unacceptable impact on the visual amenity, according to the provisions of Paragraph 14 of the National Planning policy Framework.**

**RECOMMENDATION**

Refuse permission

**PROPOSED DEVELOPMENT**

Outline for the erection of a dwelling and alterations to vehicular access

The proposal is an outline application for the erection of 1 dwelling on land on the eastern edge of the village of Updown, with an altered vehicular access from the Class C road to the north of the site. The proposed access would be to the western side of the site with visibility splays which will entail the removal of a section of the boundary hedge.

Only the principle of the erection of the dwelling and the access are to be determined under this outline application with layout, scale and appearance of the dwelling and landscaping of the site reserved for later consideration under a reserved matters application.

The site comprises approximately 0.24 hectares of agricultural/garden/pasture land. There is one dwelling to the north which is approximately 50 metres away (Jaspers Green) to the other side is a recent approval for a new dwelling approved by Planning Committee 17/01108/OUT.

**APPLICANT'S SUPPORTING INFORMATION**

Planning statement

Access statement

Phase 1 habitat survey report

Reptile survey report

Foul drainage assessment form

**RELEVANT PLANNING HISTORY**

**00/01845/FULL** - PERMIT date 18th January 2001

Erection of extensions to provide increased accommodation at ground and first floor levels

**86/00397/FULL** - PERMIT date 8th May 1986

Removal of condition (b) 4.54.75.1112.BR re. no direct retailing or produce from the greenhouse to the general public construction of new access and car park

**86/00675/FULL** - PERMIT date 27th May 1986

Erection of double garage, utility, shower room extension

**94/02178/FULL** - PERMIT date 8th February 1995

Conversion of existing garage into living accommodation, erection of a new conservatory, minor alterations, and alterations to vehicular and pedestrian accesses

**16/00318/HOUSE** - REFUSE date 29th April 2016

Erection of extension and conversion of existing garage to annexe

## **DEVELOPMENT PLAN POLICIES**

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

COR1, COR2, COR3, COR9, COR11, COR12, COR18

### **AIDPD (LP2)**

AL/IN/3

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

DM1, DM2, DM8

National Planning Policy Guidance

SPD open space

## **CONSULTATIONS**

**Highway Authority** - 28th February 2018 - Standing advice applies please see Devon County Council document <http://www.devon.gov.uk/highways-standingadvice.pdf>

**PUBLIC HEALTH** - 8th March 2018 - Contaminated Land - No objection

Air Quality - No objection

Environmental Permitting - No objection

Drainage - No objection

Noise & other nuisances - No objection

Housing Standard - No comment

Licensing - No comments

Food Hygiene - N/A

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 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 I would have no comment.

Health and Safety - No objection

**UPLOWMAN PARISH COUNCIL** - This application was discussed at some length at Updownman PC's meeting on 15 March. Updownman Parish Councilors voted not to oppose the application. Although the village remains unsustainable in planning terms, in that it does not have a shop or daily bus service, this particular proposal will improve safety at the exit of the school path onto the adjacent highway.

As is the case with an adjacent site for which permission was recently granted, the provision of a single dwelling at this location is considered to have no unacceptable impact on the visual amenity, according to the provisions of Paragraph 14 of the National Planning Policy Framework.

## REPRESENTATIONS

There have been 13 representations all of which are supportive of the proposal.

## MATERIAL CONSIDERATIONS AND OBSERVATIONS

The main issues in the determination of this application are:

1. **Principle of development including 5 year housing land supply and sustainability**
2. **Access**
3. **Indicative layout, including parking and potential effects on neighbouring residents**
4. **Landscape, visual amenity, ecology, archaeology**
5. **Drainage**
6. **Public open space contribution and other financial considerations**
7. **Planning balance**

1. **Principle of development including 5 year housing land supply and sustainability**

Policy COR1 of the Mid Devon Core Strategy (LP1) seeks sustainable growth which enhances the self-sufficiency of communities and provides access to education, jobs and sustainable transport. It seeks to provide accessible forms of development that reduce the need to travel by car and are integrated with public transport and other sustainable modes of travel and allow for ease of movement.

Policy COR12 focuses development on the towns and states that other defined settlements should have only limited development to meet local needs and promote rural regeneration.

Policy COR17 provides a definition of villages with defined settlement limits and sets out the type and scale of development that is acceptable within defined settlement limits and permitted on allocations outside settlement limits. These villages are characterised by having some local facilities and employment and access to public transport. Outside defined settlements, policy COR18 seeks to control development to appropriate rural uses including affordable housing to meet local needs (which can be cross-subsidised by market housing where necessary in accordance with policy DM9 of the Local Plan 3 Development Management Policies).

The development is proposed on agricultural/Garden/pasture land in the countryside. The site is not allocated and is not being proposed for affordable housing. The proposal is therefore considered to be contrary to policies COR17 and COR18 of the Mid Devon Core Strategy.

However, Members will be aware that Mid Devon has been found not to be able to demonstrate a 5 year housing land supply. The NPPF advises that where a five year land supply of deliverable housing sites cannot be demonstrated, policies on housing supply should not be considered up to date. This includes settlement limits identifying areas which are open countryside and those which are within defined settlements.

Paragraph 14 of the NPPF states that where development plan policies are considered to be out of date, planning permission should be granted unless adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the NPPF as a whole or specific policies in the NPPF indicate development should be restricted. Housing applications need therefore to be considered in the context of sustainable development, unless specific policies indicate development should be restricted.

Policies COR17 and COR18 are directly relevant to the supply of housing in the District and are now considered to be out of date. This does not mean that Mid Devon's policies must be cast



aside, but the weight given to them is proportionate to their consistency with the National Planning Policy Framework (NPPF).

The NPPF contains a presumption in favour of sustainable development. It requires local authorities to “boost significantly the supply of housing” and to consider housing applications in the context of the presumption in favour of sustainable development. To promote development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. This is reflected in policy DM1 of the Local Plan 3 Development Management Policies which takes a positive approach to sustainable development, allowing development to be approved wherever possible.

The NPPF states that to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The planning system should play an active role in guiding development to sustainable solutions. Planning should actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations that are or can be made sustainable.

At paragraph 55, the NPPF states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances.

At paragraph 54, the NPPF states that in rural areas, local planning authorities should be responsive to local circumstances and plan housing development to reflect local needs, particularly for affordable housing, including through rural exception sites where appropriate.

Uplowman is not one of the defined villages listed in COR17 as it is not considered to have the facilities, employment and public transport required for day to day living. Uplowman has a primary school, pub and village hall. In addition it has a Post Office counter open Monday, Tuesday and Thursday mornings only and a bus once a week. Whilst development at Uplowman could potentially help support facilities in neighbouring villages, it is more likely that if residents have to drive to facilities anyway, they would drive to Tiverton which has a much wider range of services and facilities (5 km) rather than Sampford Peverell (1.8 km).

The status of Uplowman was reviewed for the emerging Local Plan Review (now submitted for examination) and it was concluded that Uplowman did not have the facilities to include it in the defined villages list and make it suitable for limited housing growth. Whilst Uplowman does have a primary school that would welcome new children, it does not have a shop or public transport service. These are the 3 essential services that the emerging Local Plan Review considers appropriate for a limited level of development.

The application does not propose affordable housing to meet local needs and does not evidence a need locally for additional housing, for example in the form of a housing needs survey. Whilst new housing may provide some additional support to the remaining services within Uplowman, it is not considered that one additional dwelling would support the re-opening of a shop or the running of a more regular bus service. Uplowman Parish Council has stated that their long-standing policy is that there should be no new development in the village. The village has limited infrastructure, no significant public transport links and no local demand for housing has been identified, although the Parish are not opposing this proposal.

An appeal for a single dwelling on nearby land was dismissed on 11th February 2016 (15/00979/OUT). The appeal Inspector stated that policies COR1 to COR12 of the Mid Devon Core Strategy embodied the principles of sustainable development set out in paragraphs 17, 30 and 37 of the NPPF that seek to manage patterns of growth so as to minimise journey lengths and

make the fullest possible use of public transport, walking and cycling. The Inspector noted that the range of services within Uplowman is very limited, there being no shop and an infrequent bus service. He stated that accessibility to a wide range of services was poor and there would be a high dependency on the usage of the private car. The Inspector concluded that the proposal would not amount to sustainable development due to the extent it conflicts with other NPPF objectives. Although at the time, Mid Devon had not then been challenged on its 5 year housing land supply, the Inspector's comments with regard to the sustainability of Uplowman and the development's conflict with the objectives of the NPPF are still relevant.

In addition, planning committee recently refused an application for 8 dwellings within Uplowman under reference 17/00033/OUT on the grounds that Uplowman is not considered to be a sustainable settlement for additional residential development.

Your officers do not consider that the proposed development would represent sustainable development, contrary to policies in the Mid Devon Core Strategy and in the NPPF.

## **2. Access**

Access to the site is to be determined under this outline application.

An enhanced access is proposed in the existing location and visibility splays would be provided. The Highway Authority has referred to standing advice, for this site there is poor visibility to the east although the intention is to relocate part of the hedge to provide appropriate visibility in this direction.

The proposal is considered to be in accordance with policy DM2 of the LP3 DMP in respect of a safe access being provided. However, the proposal would be contrary to policy COR9 of the Mid Devon Core Strategy which seeks to co-ordinate development and transport planning to improve accessibility and reduce the need to travel by car.

## **3. Indicative layout, including parking and potential effects on neighbouring residents**

No indicative layout plan has been submitted with the application. However, the plot is large enough to accommodate one dwelling, adequate parking and turning facilities, amenity space and bin storage.

Subject to design, a dwelling could be accommodated on the site without leading to any unacceptable loss of privacy or amenity for neighbouring residents.

The development is capable of comply with policies DM2 of the LP3 DMP with regard to high quality design, DM8 with regard to parking standards and DM14 with regard to design of new housing, including adequate amenity space and bin storage.

## **4. Landscape, visual amenity, ecology, archaeology**

Although landscaping is a reserved matter, the application refers to new hedges being provided to the front boundary.

There is a hedgerow along the front boundary which the ecology report identifies. The hedge is considered to contribute to the rural character of the area. The character of the road out of the village on the side of the road on which the site lies, is considered to be residential up to Twin Oaks to the south east, and then the character changes to rural as the lane is lined on both sides

by hedgebanks with agricultural land beyond. To the north east of the site, there is a single dwelling with a hedge frontage.

The application documentation states the extent of hedgerow removal required to accommodate the access and visibility splays across the frontage of the site is to be approximately 25m. A reason for refusal is recommended on lack of information on hedgerow removal and the potential negative impact on the rural character and visual amenities of the area.

The submitted ecological assessment confirms that the land is of low ecological value, the only feature of interest being the hedgerow alongside the road and the fruit trees.

The hedgerow is therefore considered to be of value both for its ecological value and also for its landscape value. Without information on the precise alterations proposed, the development is considered to be contrary to policies COR2 and COR18 of the Mid Devon Core Strategy (LP1) and DM2 of the LP3 DMP.

## **5. Drainage**

Policy DM2 of the Local Plan 3 Development Management Policies requires appropriate drainage including SUDS, and connection of foul drainage to a mains sewer where available.

The application form refers to the surface water and foul drainage being “unknown”.

It is understood that there is mains drainage in Updown for foul drainage but no explanation has been provided as to why it is not possible to connect into this system.

No explanation has been provided as to why a SUDS system cannot be provided on site.

It is recommended that the application is refused on lack of information on foul and surface water drainage proposals. The development is considered to be contrary to policy DM2 in this respect.

## **6. Section 106 including affordable housing, education and public open space and other financial considerations**

No public open space is intended to be provided on site. Policy AL/IN/3 of the AIDPD and Mid Devon's SPD on open space seeks financial contributions towards play areas and open space facilities where no on site provision is made. The applicant has not as yet made a financial contribution of £1,205 towards the improvement of sporting facilities at Crossways Playing Field, Updown.

The proposed dwelling would be eligible for counting towards the New Homes Bonus. If the New Homes Bonus is distributed across Council Tax Bands in the same way as in 2015, the award for each house would be £1,028 per year. Assuming completion in 2017/18 the award would be paid over a period 5 years, amounting to £5,140. If completion takes place in 2018/19, the period would be reduced to 4 years, amounting to £4,112.

## **7. Planning balance**

Mid Devon has been found not to be able to demonstrate a 5 year housing land supply and Mid Devon's policies on housing supply should therefore not be considered up to date. Paragraph 14 of the NPPF states that where development plan policies are considered to be out of date, planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the NPPF as a whole or specific

policies in the NPPF indicate development should be restricted. The proposal would make a small contribution towards increasing housing supply in Mid Devon and weight must be given to this.

The proposal is acceptable in highway safety terms and the site has the potential to accommodate a dwelling with adequate parking, turning and amenity space, and without having an unacceptable impact on the privacy and amenity of neighbouring residents. The financial contribution towards play area provision mitigates the increased use of facilities likely through the development.

However, Uplowman is not considered to be a sustainable settlement in that it lacks the day to day facilities that make it suitable for even limited housing growth, having only one of the three essential services that the existing Development Plan and emerging Local Plan Review consider appropriate for a limited level of development. Whilst Uplowman does have an education facility, it does not have a shop or public transport service (one bus a week). Accessibility to a wide range of services is poor and there would be a high dependency on the usage of the private car. In your officers' opinion, the proposal would not amount to sustainable development and therefore conflicts with the sustainability objectives of the NPPF. In addition, the lack of information on hedgerow removal and the likely impacts this may have on the character of the lane and the visual amenities of the area weigh against the proposal. The lack of a suitable SUDS scheme and justification for non-mains drainage also weigh against the proposal.

The harm caused by the conflict with the NPPF and the lack of information on the likely effects of the development on the character and amenity of the area and the environment are considered to significantly and demonstrably outweigh the benefits.

The proposal is considered to be contrary to policies: COR1, COR2, COR9, COR12 and COR18 of the Mid Devon Core Strategy (LP1), DM2 of the LP3 DMP, and the sustainability objectives of the National Planning Policy Framework. Refusal is therefore recommended.

## **REASONS FOR REFUSAL**

1. The Local Planning Authority does not consider Uplowman to be a sustainable settlement in that it lacks the day to day facilities that make it suitable for housing growth. Uplowman has only one of the three essential services that the Local Planning Authority considers necessary for even a limited level of new housing development. Whilst Uplowman does have an education facility, it does not have a shop or public transport service (one bus a week). Accessibility to a wide range of services is poor and there would be a high dependency on the usage of the private car. In the opinion of the Local Planning Authority, the proposal would not amount to sustainable development and therefore conflicts with the sustainability objectives of the NPPF. The harm caused by this conflict is considered to significantly and demonstrably outweigh the benefits of the development in providing new housing in the District.

The proposal is considered to be contrary to policies: COR1, COR9, COR12 and COR18 of the Mid Devon Core Strategy (LP1) and the sustainability objectives of the National Planning Policy Framework.

2. There is a hedgerow along the boundary of the site with the road. The application is silent on whether all or part of the hedgerow would need to be removed to facilitate the new access and visibility splays. The hedgerow is considered to contribute towards the rural character of the lane and the visual amenities of the area and its removal would be detrimental to the rural quality of the area. The proposal is therefore considered to be contrary to policies COR2 of the Mid Devon Core Strategy (LP1), DM2 of the Local Plan 3 Development Management Policies and the objectives of the National Planning Policy Framework.

3. The application provides no details of the foul drainage proposals for the dwelling. Policy DM2 of the Local Plan 3 Development Management Policies requires appropriate drainage to be provided including SUDS, and connection of foul drainage to a mains sewer where available. No justification has been provided that the dwelling could not be provided with a connection to the main sewer for foul drainage or that a SUDS scheme or soakaway could not be provided on site, contrary to policy DM2 of the LP3 DMP.
4. Policy AL/IN/3 requires that new residential proposals will contribute to the provision of public open space of at least 60sqm of equipped and landscaped public open space per market dwelling, within the local area. In this case there is a requirement for the provision of £1205 be provided towards Improvements, including lighting and re-surfacing of tennis courts at Longmead Sports Pavillion, Hemyock. Along with a monitoring fee of £110.80. To date, no arrangements have been made by the applicant to secure the provision of this contribution. The proposed is therefore contrary to policy AL/IN/3 of the adopted Allocations and Infrastructure Development Plan Document.

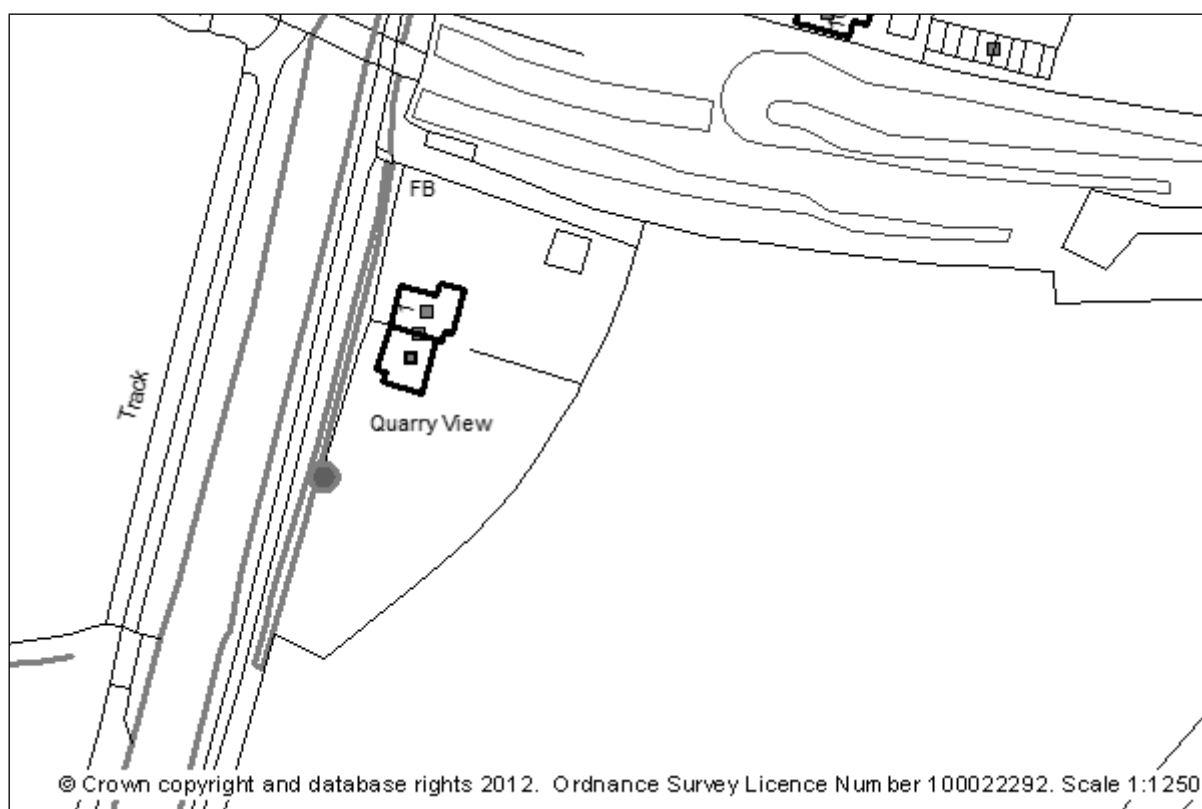
The Human Rights Act 1998 came into force on 2nd October 2000. It requires all public authorities to act in a way which is compatible with the European Convention on Human Rights. This report has been prepared in light of the Council's obligations under the Act with regard to decisions to be informed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

**Tree Preservation Order: 18/00002/TPO**

Grid Ref: 306935 : 116863

Location: 2 Quarry View  
Burlescombe  
Tiverton  
Devon

Proposal: Tree Preservation Order for 1 Willow tree



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

### **Reason for Report:**

To consider whether the Tree Preservation Order should be confirmed in light of the objections that have been received.

### **RECOMMENDATION**

That the Tree Preservation Order 18/00002/TPO is confirmed.

### **Relationship to Corporate Plan:**

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

### **Financial Implications:**

None

### **Legal Implications:**

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

### **Risk Assessment:**

None

### **Consultation carried out with:**

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

### **PROPOSAL:**

Tree Preservation Order for 1 Willow tree

### **RELEVANT SITE HISTORY/DESCRIPTION:**

**92/02137/FULL** - PERMIT date 29th January 1993

Change of use of agricultural land to form extension to domestic curtilage

**05/02137/CAT** - PERMIT date 24th October 2005

Notification of intention to fell 1 no. Spruce tree within the Conservation Area

**17/01696/CAT** - NOBJ date 29th November 2017

Notification of intention to fell 2 Pine trees within the Conservation Area

**18/00157/CAT** - CLOSED date 7th March 2018

Notification of intention to fell 1 Weeping Willow tree within a Conservation Area

### **AMENITY EVALUATION:**

Using the Poole System amenity evaluation form, the tree scored 17. A score >15 merits consideration for protection by Tree Preservation Order.

### **REPRESENTATIONS:**

An objection has been received on the following grounds:

The roots have grown into a watercourse and block the flow of water when levels are low so have to be cleared away.

Branches die back naturally and then become a hazard from falling, possibly onto the nearby canal tow path.

Being a weeping willow branches often break off or get damaged (tear) in the winds and again could be dangerous if not dealt with

The branches over the garden are now obstructing the pathway.

### **MAIN ISSUES:**

The Tree Preservation Order was made following a Conservation Area notification to fell the tree (18/00157/CAT). An amenity evaluation determined that the tree was worthy of protection by Tree Preservation Order.

The tree has high amenity value due to the canal side location and is in keeping with the area. Other neighbouring trees are due to be removed from the garden and this should enable the willow to become more of a specimen tree whilst at the same time increasing light and useable garden area (17/01696/CAT).

With regards to the objections raised:

The roots growing into the water course can still be dealt with as necessary, MDDC Tree Officer could discuss this matter with the tree owners as and when it became necessary to do so.

Branches die back naturally and then become a hazard from falling: This is typical for all trees and certainly not a reason for removing trees. If deadwood becomes a significant hazard it can be removed and there is no requirement to submit a Tree Works Application, dead and dangerous branches may be removed. It should be noted that where it is safe to do so it is advisable to retain deadwood due to the habitat value.

Any broken or storm damaged branches can also be managed under the dead and dangerous exception if and when they occur.

The branches over the garden obstructing the path: A Tree Works Application is required to determine any necessary pruning. In this scenario, due to the nature of weeping willows it may be possible to regard trimming the lower ends of branches over the footpath as '*de minimus*' works which may not require an application. This should be discussed with MDDC Tree Officer when required.



None of the objections to the Tree Preservation Order are justification for removing the tree. The tree is within a Conservation Area so was previously protected. The Tree Preservation Order will ensure that good management is practiced as the tree matures.

**SUMMARY:**

Due to the amenity value of the tree in the canal side location to preserve the character of the area the Tree Preservation Order should be confirmed.

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

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## Major Applications with no Decision

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 20th February 2013 that any ground mounted solar PV schemes recommended for approval will be brought to Planning Committee for determination.

Item No.	Weeks	TARGET DATE	REFVAL	PROPOSAL	LOCATION	NAME	Expected Decision Level	
							Delegated	Committee
1	3	12/07/2018	17/02061/MFUL	Remodelling and modernisation of existing garden centre following demolition of existing structures, to include erection of retail areas, cafe, and warehouse, formation of new vehicular access, provision of parking areas, and landscaping	Crediton Garden Centre Barnstaple Cross Crediton Devon EX17 2ER	Mr Simon Trafford	DEL	
2	3	12/07/2018	18/00518/MFUL	Erection of 40 dwellings, conversion of barns to 7 dwellings, formation of new accesses and car parking areas, with associated works including access and landscaping	Halberton Court Farm High Street Halberton Tiverton Devon EX16 7AW	Mr Daniel Rance	DEL	
	5	27/06/2018	18/00504/MOUT	Outline for the erection of 10 dwellings	Land at NGR 307538 116626 (North of Town Farm) Burlescombe Devon	Mr Adrian Devereaux	DEL	COMM
	5	27/06/2018	18/00414/MFUL	Erection of extension to brewery to include alterations to provide additional restaurant/bar floorspace, amended entrance arrangements and outdoor dining area, and erection of 11 holiday lodges	Yellow Hammer Brewing Limited Hanlons Brewery Hill Farm Newton St Cyres Devon	Miss Helen Govier	DEL	
5	7	12/06/2018	18/00380/MARM	Reserved Matters (Phase 2) in respect of the appearance, landscaping, layout and scale of three industrial buildings (B1, B2, and B8 use), following Outline approval 09/01573/MOUT (and varied by 16/01948/FULL and 17/00558/FULL)	Land and Buildings at NGR 303161 108402 (Venn Farm) Culloompton Devon	Ms Tina Maryan	DEL	DEL
6	9	28/05/2018	18/00299/MOUT	Outline for the erection of mixed use business units (Classes B1, B2 & B8), cafe (Class A3) and managers office (1.9ha) with associated highway and drainage works	Quad World Bradninch Exeter EX5 4LB	Mr David Green	DEL	DEL
7	10	23/05/2018	18/00091/MFUL	Conversion of former redundant care home to provide 22 residential units, and external landscaping	St Lawrence Home Churchill Drive Crediton Devon EX17 2EF	Mr Simon Trafford	COMM	COMM
8	10	22/05/2018	18/00214/MFUL	Erection of 14 dwellings with associated roads, garages and parking to include improvements to the existing footpath network	Land at NGR 310280 114261 Hunters Hill Culmstock Devon	Miss Hannah Cameron	COMM	COMM

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<i>Item</i>									<i>Expected Decision Level</i>	
<i>No.</i>	<i>Weeks</i>	<i>TARGET DATE</i>	<i>REFVAL</i>	<i>PROPOSAL</i>	<i>LOCATION</i>	<i>NAME</i>	<i>Delegated</i>	<i>Committee</i>		
9	13	02/05/2018	18/00133/MARM	Reserved Matters application, pursuant to Outline application 13/01616/MOUT, for the construction of 248 dwellings, 3 Gypsy and Traveller pitches, public open space, landscape planting, pedestrian, cycle and vehicular links; and associated infrastructure	Land at NGR 298617 113487 Uplowman Road Tiverton Devon	Mrs Christie McCombe	COMM	COMM		
10	13	27/04/2018	18/00175/MOUT	Outline for the erection of upto 125 dwellings with public open space and associated infrastructure	Land at NGR 303288 110467 Adj Meadow Park Silver Street Willand Devon	Mrs Alison Fish	COMM	COMM		
11	14	24/04/2018	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	Blackborough House Blackborough Cullompton Devon EX15 2HJ	Mr Daniel Rance	COMM	COMM		
12	17	03/04/2018	17/02020/MFUL	Erection of building comprising 44 retirement apartments with associated communal lounge, manager's office, guest suite, rechargeable electric buggy store, car parking, sub-station, and landscaping	Astra Printing and Crown Works Site Willand Road Cullompton Devon EX15 1AP	Mrs Alison Fish	COMM	COMM		
13	28	17/01/2018	17/01660/MOUT	Outline for the erection of 10 dwellings	Land at NGR 287219 106314 Barnhill Close Cheriton Fitzpaine Devon	Mr Simon Trafford	COMM	COMM		
14	32	21/12/2017	17/01361/MFUL	Erection of garden sales area, warehouse building, alterations to existing garden centre, creation of new access on to B3181, change of use of land for the creation of public parking area and new commercial vehicle access and turning area	The Old Well Uffculme Cullompton Devon EX15 3ES	Mrs Alison Fish	DEL	DEL		
15	34	04/12/2017	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 Devon	Mr Daniel Rance	COMM	COMM		
16	36	17/11/2017	17/01323/MOUT	Outline for the relocation and expansion of Tiverton High School and the integrated development of Tiverton Community Arts Theatre	Tiverton High School & Land East of Bolham Road Bolham Road Tiverton Devon EX16 6SQ	Ms Tina Maryan	COMM	COMM		



<i>Item</i>							<i>Expected Decision Level</i>	
<i>No.</i>	<i>Weeks</i>	<i>TARGET DATE</i>	<i>REFVAL</i>	<i>PROPOSAL</i>	<i>LOCATION</i>	<i>NAME</i>	<i>Delegated</i>	<i>Committee</i>
17	37	05/12/2017	17/01346/MOUT	Outline hybrid planning application for the erection of 200 dwellings together with associated infrastructure and public open space and Full permission for portion of Link Road (land comprising southern portion of Phase 1 of North West Cullompton Urban Extension)	Land at NGR 301536 107900 North of Tiverton Road Cullompton Devon	Ms Tina Maryan	COMM	COMM
18	39	22/11/2017	17/01178/MFUL	Erection of 200 dwellings, formation of new access, provision of phase of link road, primary school site, open space, landscaping and associated works	Land at NGR 302103 108277 (West Of Willand Road) Cullompton Devon	Ms Tina Maryan	COMM	COMM
19	41	03/11/2017	17/01170/MOUT	Outline application for the erection of up to 200 dwellings, together with associated infrastructure and other works, including vehicular access, on land comprising northern portion of Phase 1 of the North West Cullompton Urban Extension	Land at NGR 302186 108607 North of Rull Lane and to The West of Willand Road Cullompton Devon	Ms Tina Maryan	COMM	COMM
20	43	04/10/2017	17/01090/MOUT	Outline for the erection of up to 40 dwellings with associated access, parking, open space, landscaping and supporting infrastructure	Land and Buildings at NGR 281938 100425 (Adjacent Brookdale, Threshers) Hollacombe Devon	Miss Helen Govier	COMM	COMM
21	45	15/09/2017	17/00942/MOUT	Outline for the erection of upto 50 dwellings with associated access	Land at NGR 296202 112164 Exeter Hill Tiverton Devon	Miss Lucy Hodgson	DEL	DEL
22	48	29/08/2017	17/00878/MOUT	Outline for the erection of up to 16 dwellings with associated access, landscaping and other ancillary development	Land at NGR 292294 101802 (South of Broadlands) Thorverton Devon	Miss Lucy Hodgson	COMM	COMM
23	60	05/06/2017	17/00348/MOUT	Residential development of up to 257 dwellings and upto 5 Gypsy and Traveller pitches; 8.6 hectares of land made available to facilitate the relocation of Crediton Rugby Club; up to 1.1 hectares of land safeguarded for the delivery of a primary school; access arrangements from A3072 (Exhibition Way); pedestrian and cycle access on to Pounds Hill/Stonewall Cross junction, Old Tiverton Road and Pedlerspool Lane; landscaping and area of public open space; and other associated infrastructure and engineering operations	Land at NGR 284185 101165 (Creedy Bridge) Crediton Devon	Mr Simon Trafford	COMM	COMM
24	76	15/02/2017	16/01772/MOUT	Outline for the erection of upto 40 dwellings (including affordable housing), public open space and associated infrastructure	Land at NGR 313382 113489 Culmstock Road Hemyock Devon	Ms Tina Maryan	COMM	COMM

<i>Item</i>							<i>Expected Decision Level</i>	
<i>No.</i>	<i>Weeks</i>	<i>TARGET DATE</i>	<i>REFVAL</i>	<i>PROPOSAL</i>	<i>LOCATION</i>	<i>NAME</i>	<i>Delegated</i>	<i>Committee</i>
25	78	01/02/2017	16/01707/MOUT	Outline for the erection of 41 dwellings and formation of vehicular access	Land at NGR 295527 113644 (South Of Lea Road) Tiverton Devon	Ms Tina Maryan	COMM	COMM



## LIST OF APPEAL DECISIONS FROM 7<sup>th</sup> APRIL 2018 – 3<sup>RD</sup> MAY 2018

Application No	Description	Location	Officer Recommendation	Committee or Delegated	Decision	Appeal Type	Inspector Decision
17/00444/FULL	Change of use of and conversion of ancillary storage building to residential dwelling	Building at NGR 277983 95085 (Medland Manor Cottage) Cheriton Bishop Devon	Refuse permission	Delegated Decision	Refuse permission	Written Representations	Appeal Allowed
17/01279/FULL	Removal of condition 2 of planning permission 09/01028/FULL pertaining to removal of agricultural building within 3 years of cessation of use	Land at NGR 306745 119854 (North of Wardmoor) Holcombe Rogus Devon	Grant permission subject to conditions.	Delegated Decision	Refuse permission	Written Representations	Appeal Allowed

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**PLANNING COMMITTEE**  
**16th May 2018**

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

### **17/01411/FULL: RETENTION OF SLURRY LAGOON, LAND AT NGR 276429 99746 (ADJACENT TO MARDLES GATE) COLEBROOKE**

#### **BACKGROUND:**

This report concerns a retrospective application for the retention of a Slurry Lagoon (5,250 cubic square metre capacity) with an earth bank around it up to approximately 1.5 metres to store dirty water arising from the dairy unit at Brocks Farm. There are two residential properties not connected to the farming enterprise in close proximity to the lagoon, the closest being Mardles Gate, the garden of which is less than 40.0 metres from the boundary of the site. The other property is Manor Croft. The garden areas to these properties have a clear relationship to the lagoon.

The planning committee have considered application proposals in relation to the development on two separate occasions.

17/01411/FULL: Consideration of this current application on 18<sup>th</sup> April 2018. Members were minded to refuse planning permission, but a final decision deferred pending consideration of this implications report.

17/00034/FULL: Consideration of LPA case ref: 17/00034/FULL on 23 August 2017. Refused planning permission.

Copies of both committee reports as presented are included in this report pack.

Although the landowner has been operating the facility without any controls, the current application has set out an odour management plans to seek to redress the harmful impacts that have arisen as a result of the unauthorised development. The key elements as proposed by the applicant and as set out in the Plan are summarised below:

**DELIVERY OF MATERIAL.** Material will be delivered into the lagoon via a 4" underground pipe which is to be installed if retrospective planning consent is granted. Material collected in a holding tank close to the dairy unit will be pumped via the pipe into the lagoon and discharged below the level of the floating cover. A plan showing the route of the pipe run has also been submitted

**EXTRACTION OF MATERIAL.** Extraction of the material will take place via a separate outlet pipe that will operate by gravity and be connected to an umbilical cord that will be towed behind a tractor when spreading takes place across the farmland.

**FITTING OF THE COVER.** A condition can be applied to the grant of planning consent requiring that the cover to the lagoon should be fitted within six calendar months of the grant of planning consent.

Since the meeting on the 18<sup>th</sup> April the applicant's agent has confirmed the landowner's intentions to apply for planning permission for an alternative siting on the farm some 300m to the south of the present siting and relatively close to some farm buildings that he owns at Mardles Farm. The agent has suggested the application is likely to be submitted in mid- May following the completion of a topographical survey of the site. Further updates will be provided in writing to members or verbally at the meeting on 16<sup>th</sup> May with regards to this matter. Consideration as to how this (the potential planning application) should affect members considerations of the issues covered in this report, are included in the main body of the report.

**REASON FOR REPORT:** To consider the reasons for refusal proposed by the Planning Committee at the meeting of 18th April 2018 in light of further advice from Officers, and to consider the scope of enforcement action required.

### **RECOMMENDATION(S)**

The officer recommendation as presented is set out in the Committee Report which was considered by the Planning Committee members at their meeting on the 18<sup>th</sup> April.

#### **Relationship to Corporate Plan:**

Homes

- Protection of existing living environments

Environment

- Protect the natural environment

**Financial Implications:** Depending on the scope of any enforcement action taken to redress the existing unauthorised use/development (Enforcement Notice/ Stop Notice) following the refusal of the existing application. For instance if a Stop notice were served, the Local Planning Authority could be liable to pay compensation in certain circumstances.

In terms of refusal of the application, Members must be able to clearly justify each and every reason for refusal in line with the Development Plan, National Planning Policy Framework and other material considerations.

**Legal Implications:** The report identifies the risks in proceeding with a decision based on the reasons given by the Committee on 18 April 2018. In terms of defending any decision to refuse planning permission on a subsequent appeal and/or an appeal against an enforcement notice, there may be insufficient capacity to deal with this in-house. The Council may need therefore to appoint external legal representation if the appeal proceeds to a public inquiry.

**Risk Assessment:** as above.

### **Introduction**

1.1 At the Planning Committee held on 18th April 2018, the Planning Committee resolved that Members were minded to refuse the application and therefore wished to defer the decision to allow for a report to be received setting out the implications for refusing the application considering the following issues as listed below:

- Proximity, odour impacts and effectiveness of mitigation
- Access / Highway safety
- Safety and Security

## **2.0 The implications of refusing the application**

### **2.1 Proximity, odour impacts and effectiveness of mitigation**

2.2 During the debate at the meeting, members were quite clear in their views that they did not consider that the planning balance should tip in favour of approval as officers had presented, because although the applicant has proposed potential solutions to seek to redress the odour and pollution issues, there was no redress to the issue of the close proximity to the neighbouring properties - and the resulting detriment to the amenities currently enjoyed by the occupiers.

2.3 Debate then ensued as to whether the scope of mitigation would be achievable in the time frame presented in the officer recommendation, which is much shorter than the applicant's own suggestion, and whether or not it was in fact deliverable. In particular, concern was expressed as to whether;

- it would be possible to deliver the dirty waters via a piping methodology given the distance and differences in topography between the unauthorised development and the dairy unit, and/or
- if it would be possible to export material from the unauthorised development whilst mitigating against the odour impacts and/or without requiring mechanical assistance with would be likely to result in noise concerns.

2.3 The reason as drafted below is considered to be robust and sets out a logical reasoning which would be capable of defending at appeal in the event that an appeal is lodged.

### **2.4 Reason for Refusal 1.**

**1. The slurry lagoon and earth bank surrounding it, by reason of its size, scale and siting in close proximity to the neighbouring properties at Mardles Gate and Manor Croft, is considered to adversely affect the residential amenity and the living conditions of these neighbouring occupants. Furthermore, and given the close proximity to the aforementioned residential properties, the members of the planning committee remain unconvinced that the scope of the mitigation measures as proposed as part of the planning application proposal are sufficient to address the odour nuisance and air quality impact in a robust and satisfactory manner and would therefore continue contribute to the scope of the un-neighbourly impacts that would arise from the scheme as it is proposed. On this the application scheme is considered to be contrary to Policies DM2, DM7 and DM22 of Mid Devon Local Plan Part 3 (Development Management Policies) and guidance in the National Planning Policy Framework**

### **2.5 Access / Highway safety**

2.6 Paragraph 32 of the NPPF states that decision takers should take account of whether 'safe and suitable access to the site can be achieved for all people' and therefore it is entirely correct that members consider highway safety in their decision making.

2.5 However, the same paragraph of the NPPF states that, 'Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

2.6 Therefore, the balance which members need to consider is whether the impact of permitting the development would have such a severe impact on highway safety in terms of additional trips on the highway that it justifies a refusal. In completing their deliberations on this matter members should be aware that whilst vehicular access is still likely to be required on an occasional basis, given the scope of the management and operation plan as proposed the predicted traffic arriving and departing from the site would much lower than the pattern arising from its current unauthorised use. Notwithstanding the comment above any traffic arriving and departing at the site could be argued to be considered unneighbourly as covered by reason 1 as set out above but this is considered to be in relation to the proximity of the site to the neighbouring dwellings as opposed as opposed to trip generation.

2.7 In addition it is noted that there have no objections raised by the Highway Authority. Therefore if members were to refuse the application, the Highway Authority would not be able to provide advice or support in relation to any appeal. In situations such as this, officers would strongly advise members not to proceed with such a reason for refusal unless and until they have evidence to back it up. This could require an independent highway consultant's report which would then be put before members before they make their decision.

2.8 However, if Members still feel that the development is unacceptable in terms of the means of access proposed and volumes of traffic that would be generated from a highway safety and capacity point of view officers have drafted a reason for refusal as follows:

#### **2.9 Reason for refusal 2:**

**The application site is proposed to be accessed from a position on the public highway where visibility is relatively limited. The LPA are concerned that the additional traffic volumes generated from the unauthorised development would result in unacceptable conditions on the local highway network and therefore the application scheme is considered an unacceptable development resulting in severe impacts in terms of highway safety, contrary to the NPPF.**

#### **2.10 Safety and Security**

2.11 At the meeting members raised the issue that there was not a fence around the perimeter of the top of the earth bank, and objections have been raised local stakeholders on the basis that the gate is often left open. Both the issues have lead members to question whether the application scheme would present a hazard in the locality given that the arrangements as existing could not guarantee safety for local stakeholders.

2.12 In completing their deliberations on this matter members should be aware that any persons who choose to access the site without permission would be doing so at their own risk, and therefore officers would not recommend any further consideration of refusing the application on this basis. Those accessing the site with the permission of the landowner would be subject to and potentially protected by the law relating to occupier's liability.

#### **Summary in terms of LPA case 17/01411/FULL:**

2.13 Members have indicated that they are minded to refuse the application. The report as set out above considers the options that members could pursue in determining to refuse the application. As stated reason for refusal no.1 presents a reasoning which is logical and capable of being defended in the event of an appeal. Officers remain concerned that reason for refusal no.2 cannot be evidenced and would not recommend proceeding on this basis. Concerns over safety and security should be set aside.

### **3.0 Enforcement Considerations**

3.1 Given the existing development is unauthorised and members are minded to refuse the application that has been submitted to seek regularise the development, which is the second attempt made by the landowner, it is therefore recommended that an enforcement notice is served to redress the unauthorised development which is a clear breach of planning controls. The scope of the notice should require the slurry lagoon to be emptied and the land reinstated to its former condition and levels. In serving the notice a timeframe will need to be imposed establishing a timeframe for compliance. As members will be aware it is up to the local planning authority to determine what an appropriate time frame should be, and generally the timeframe should be proportionate to the scope of the impact that the unauthorised development is causing.

3.2 As stated above the applicant has indicated that he is currently investigating a revised location to site the lagoon. Whilst an update will be provided at or prior to the meeting regards this matter it is not possible to confirm if this revised location would be acceptable although it is noted that the separation distance to the nearest neighbour is approximately 230 metres, and/or how long it would take until this potential replacement storage lagoon would be available for use in the event that it was deemed acceptable.

3.3 If it is considered, given that the harm arising from the unauthorised development is sufficiently detrimental to the occupiers of the neighbouring properties, that the unauthorised activity should cease before the expiry of the period for compliance specified in an enforcement notice, the LPA may elect to serve a stop notice with the enforcement notice. There is no right of appeal against the stop notice and it is an offence to contravene a stop notice once it comes into effect. However, Members need to be aware that compensation can be payable in certain circumstances.

3.4 Where a decision is to be taken to serve a stop notice, the Local Planning Authority would need to ensure that an assessment of the foreseeable cost and benefits is first carried out and made available to the committee or approving officer who will authorise service of it.

3.5 In this instance, your officers' recommend that an enforcement notice is served. The notice should require the slurry lagoon is to be emptied and the land reinstated to its former condition and levels.

3.6 At this stage officers are minded to advise that further evaluation of the situation at the site should be undertaken to clarify the precise magnitude and scope of the harm arising from the unauthorised use and to reflect on the deliverability of the alternative location as discussed at 3.2 above before a decision is taken on whether to serve a Stop Notice. This is important as it will be necessary to ensure that the requirements of the stop notice only prohibit what is essential to safeguard amenity or prevent serious harm to the environment in the surrounding area. Notwithstanding this view with the recommendation as set out below would enable officers to authorise the serving of the Stop Notice to require the cessation of use of the Slurry Lagoon if after further investigation such a course of action is deemed necessary.

### **Human Rights and Equality Issues:**

The expediency of Enforcement action has been assessed with reference to the National Planning Policy Framework (NPPF). Expediency has also been assessed with regard to the statutory

Development Plan, comprising the Core Strategy 2026 (July 2007), the Allocations and Infrastructure Development Plan Policies (January 2011) the Local Plan Part 3 Development Management Policies (October 2013) the Proposed Local Plan Review Policies 2013 - 2033.

When making their decision, Members must have regard to all relevant planning legislation, regulations, guidance, circulars and Council policies.

In addition, Members should note that the Human Rights Act 1998 (HRA 1998) makes it unlawful for the Council to act incompatibly with Convention rights. Decisions by the Committee must take account of the HRA 1998. Therefore, Members need to be aware of the fact that the HRA 1998 makes the European Convention on Human Rights (the Convention) directly applicable to the actions of public bodies in England and Wales. The specific parts of the Convention relevant to planning matters are Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

Article 6 deals with procedural fairness. If normal committee procedures are followed, it is unlikely that this article will be breached.

Article 1 of the First Protocol and Article 8 are not absolute rights and infringements of these rights protected under these are allowed in certain defined circumstances, for example where required by law. However any infringement must be proportionate, which means it must achieve a fair balance between the public interest and the private interest infringed and must not go beyond what is needed to achieve its objective.

Article 14 states that the rights under the Convention shall be secured without discrimination on grounds of 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.

The power to issue any form of Notice to redress the issue is discretionary and should only be used where the Local Planning Authority (LPA) are satisfied that there is a reason to do so. The LPA must also be satisfied that it is expedient to issue the Notice. Consequently the Council must decide based on the particular circumstances of each individual case the question of expediency. The decision to take action must be reasonable and not based on irrational factors or taken without proper consideration of the relevant facts and planning issues or based on non-planning grounds.

### **Reason for issuing the Notice**

It appears to the Council that this breach of planning control has occurred within the last four years. This breach is in relation to the formation of a slurry lagoon and earth bank surrounding it, without the benefit of planning consent. The retention of the slurry lagoon, by reason of its scale and close proximity to the neighbouring properties at Mardles Gate and Manor Croft, is considered to adversely affect the residential amenities and living conditions of these neighbouring occupants, particularly with regard to odour nuisance and air quality impact. The proposal is, therefore, considered contrary to policies DM2, DM7 and DM22 of the Mid Devon Local Plan part 3 (Development Management Policies) and the guidance contained within the National Planning Policy Framework.



**Recommendations:**

1. Members resolve to refuse the application submitted under LPA case ref: 17/01411/FULL for the following reason:

The slurry lagoon and earth bank surrounding it, by reason of its size, scale and siting in close proximity to the neighbouring properties at Mardles Gate and Manor Croft, is considered to adversely affect the residential amenity and the living conditions of these neighbouring occupants. Furthermore, and given the close proximity to the aforementioned residential properties, the members of the planning committee remain unconvinced that the scope of the mitigation measures as proposed as part of the planning application proposal are sufficient to address the odour nuisance and air quality impact in a robust and satisfactory manner and would therefore continue contribute to the scope of the un-neighbourly impacts that would arise from the scheme as it is proposed. On this the application scheme is considered to be contrary to Policies DM2, DM7 and DM22 of Mid Devon Local Plan Part 3 (Development Management Policies) and guidance in the National Planning Policy Framework

2. That Members, having regard to the provisions of the Mid Devon Development Plan and all other material planning considerations in accordance with Sections 172 and 183, Town and Country Planning Act 1990, ("the Act") should grant authority to the Group Manager for Legal Services to take all such steps and action necessary to secure the restoration of the land to its former condition which would at the same time redress the unauthorised use of it to store Slurry. This may include the issue of an enforcement notice and prosecution and/or direct action in the event of non-compliance with the notice. The reason as recommended for serving the notice is set out above.
3. That Members delegate to the Group Manager for Legal Services, in consultation with the Group Manager for Development Management, the decision on whether a stop notice should be issued to require the cessation of the use of the slurry lagoon in anticipation of full compliance with the requirements of the enforcement notice, subject to the Group Manager for Legal Services being satisfied that it is expedient to issue a stop notice, having regard to an assessment of the costs and benefits of such action and whether there is an essential need to safeguard amenity or prevent serious harm to the environment.

**Contact for any more information**

Mr Simon Trafford, Area Team Leader  
01884 234369

**File Reference**

17/01411/FULL

**Circulation of the Report**

Cllrs Richard Chesterton  
Members of Planning Committee

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Application No. 17/01411/FULL

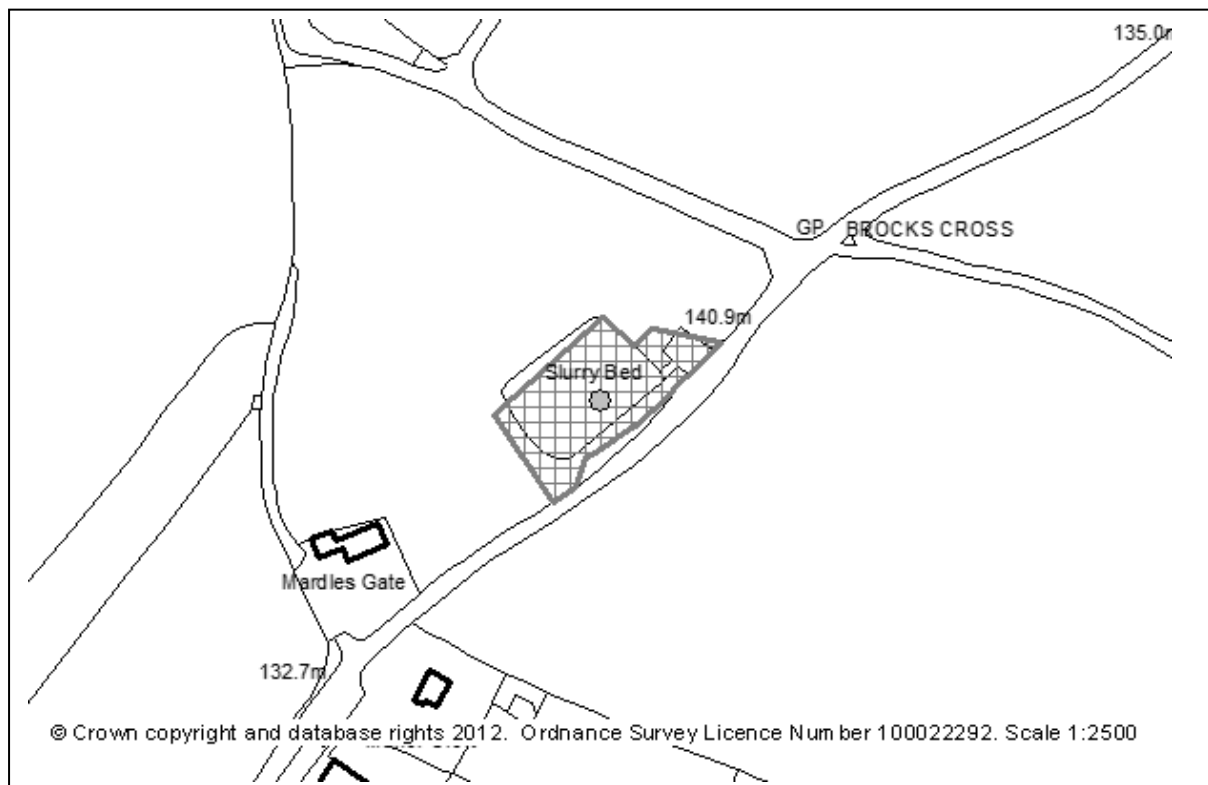
Grid Ref: 276387 : 99761

Applicant: Mr G Pitts

Location: Land at NGR 276429 99746 (Adjacent to Mardles Gate)  
Colebrooke  
Devon

Proposal: Retention of slurry lagoon

Date Valid: 23rd August 2017



**APPLICATION NO: 17/01411/FULL**

## **RECOMMENDATION**

Grant permission subject to conditions

## **PROPOSED DEVELOPMENT & RELEVANT HISTORY**

The application is a retrospective submission for the retention of a Slurry Lagoon (5,250 cubic square metre capacity) with an earth bank around it up to approximately 1.5 metres to store dirty water arising from the dairy unit at Brocks Farm. In addition a formal access (previously standard 5bar low level farm gate) has been provided. The development was carried out in Summer 2016. The site was first visited by an enforcement officer on the 14th June 2016.

This application was validated on 23rd August, following consideration of LPA ref: 17/00034/FULL at the planning committee meeting on the 12th July (committee report attached as appendix A) which was refused for the following reason.

1. The slurry lagoon and earth bank surrounding, by reason of its scale and siting in close proximity to the neighbouring properties at Mardles Gate and Manor Croft is considered to adversely affect the residential amenity and the living conditions of these neighbouring occupants by way of odour nuisance, air quality impact and the creation of an un-neighbourly impact, contrary to Policies DM2, DM7 and DM22 of Mid Devon Local Plan Part 3 (Development Management Policies) and guidance in the National Planning Policy Framework.

This current application submission has sought to address the reason by way of an odour management plan confirming that the lagoon will be fitted with a floating slurry tank cover and setting out a specific process for the filling of the lagoon of it by pipeline only and emptying via an outlet pipe utilising an umbilical cord methodology.

## **APPLICANT'S SUPPORTING INFORMATION**

In addition to submitting the Odour Management Plan the applicant has also submitted an odour impact assessment, incorporating revisions received on 29/01/2018, and an Operational Management Plan. For the avoidance of doubt the applicant through the documentation is proposing as follows.

**DELIVERY OF MATERIAL.** Material will be delivered into the lagoon via a 4" underground pipe which is to be installed if retrospective planning consent is granted. Material collected in a holding tank close to the dairy unit will be pumped via the pipe into the lagoon and discharged below the level of the floating cover.

In addition the applicant has submitted a plan showing the route of the pipe run.

**EXTRACTION OF MATERIAL.** Extraction of the material will take place via a separate outlet pipe that will operate by gravity and be connected to an umbilical cord that will be towed behind a tractor when spreading takes place across the farmland.

**FITTING OF THE COVER.** A condition can be applied to the grant of planning consent requiring that the cover to the lagoon should be fitted within six calendar months of the grant of planning consent.

## **DEVELOPMENT PLAN POLICIES**

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

COR2 - Local Distinctiveness

COR18 - Countryside

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

DM1 – Presumption in favour of sustainable development

DM22 - Agricultural development

DM30 - Other protected sites

DM7 - Pollution

DM2 - High quality design

## **CONSULTATIONS**

### **COLEBROOKE PARISH COUNCIL - 27th November 2017**

Colebrooke Parish Council met on the 21st November and resolved that the Council was neutral in respect of the application but confirmed that the Council wanted all the conditions that they had set down in relation to the first application to be met. In addition the Council asked for two additional conditions: 1. There should be a through bund supply pipe to prevent the crust being broken 2. There should be a permanent discharge suction pipe that does not break the crust. They further requested that all this action should be taken within 2 months

**COLEBROOKE PARISH COUNCIL - 5th March 2018** - Colebrooke Parish Council met on the 27th February and resolved to object to this application on the grounds of 1. Odour 2. Impact on the Community 3 Concern about capacity

The Council wish to send representatives to the Planning Committee when this application is considered when they would ask for the opportunity to explain their concerns in full

**NATURAL ENGLAND - 13th September 2017** - The advice provided in our previous response applies equally to this resubmission although we made no objection to the original proposal. No objections raised

**ENVIRONMENTAL HEALTH – 14th September 2017** (See also comments further comments set out below).

Contaminated land - No objection

Air quality - No objection

Environmental permitting - N/a

Drainage - No objection

Noise and other nuisances - I am not satisfied that the proposed mitigation measures will be sufficient to mitigate against possible odour emissions from the lagoon due to the close proximity of residential dwellings. Therefore, further information is required on the odour emissions from the site need to be assessed for potential impact on these dwellings by a competent person.

An Odour Impact Assessment is required in order to identify the following:

All potential sources of odour and their estimated rates of emission from the lagoon;

The potential for fugitive emissions of odour together with the means to control these emissions;  
The location of sensitive receptors;  
A wind rose for the site;  
Potential pathways to sensitive receptors;  
A description of the potential impacts including evidence provided by dispersion models;  
Details of any necessary odour abatement systems or other mitigation measures with justifications for the measures being proposed;

And

Details of an Odour Management Plan (OMP) with contingency arrangements for responding to any unforeseen or unusual odour emission episodes.

Without this information I would recommend that this application is refused.

**Further comments on 31st October 2017** - The assessment would seem to be a robust assessment and taking the report into consideration I would change my recommendation to:

I recommend approve with conditions:

The applicant must install and maintain in good order a full plastic sealed floating cover (or similar) in order to reduce the likelihood of any odour emissions from the lagoon.

**Further comments received on the 26th February 2018** following a review of the Odour Impact Assessment (Revised Details)

In general terms odour levels of  $>5\text{ouE/m}^3$  may constitute an annoyance or nuisance whereas odour levels  $<3\text{ouE/m}^3$  are less likely to constitute a nuisance or to be detrimental to the local amenity (Guidance on the Assessment of Odour for Planning 2014) however, this does not mean that the impact of odour emissions from an approved site cannot lead to nuisance complaints.

The H4 Odour Management guidance document (used by the Environment Agency to deal with odour from permitted sites) set odour benchmarks based on the 98th percentile of hourly mean concentrations of odour modelled over a year at the site/installation boundary. The benchmarks are as follows:

- $1.5\text{ouE/m}^3$  for most offensive odours.
- $3.0\text{ouE/m}^3$  for moderately offensive odours.
- $6.0\text{ouE/m}^3$  for less offensive odours.

Odours from agricultural activities are placed in the moderately offensive category. Therefore, taking the above into consideration the benchmark for moderately offensive odours would be under a 98th percentile hourly mean of  $3.0\text{ouE/m}^3$  over a one year period.

The Brocks Cross Lagoon Odour Impact Assessement (Jan 2018) indicates that with the lagoon fully covered the odour impact on nearby residential dwellings will be under the C98,1-hour  $3\text{ouE/m}^3$  limit and therefore, the odour impact on any nearby residential dwellings will not be significant.

Having reviewed the Odour Impact Assessment the assessment appears to be a robust assessment and taking this into consideration I recommend the approval of the application subject to the following condition:

A full Odour Management Plan (OMP) is required in order to demonstrate that odour emissions will be adequately controlled to prevent a significant loss of amenity to neighbouring sensitive land users. Use of the proposed site shall not commence until the OMP has been agreed in writing with the Local Planning Authority. The installation and maintenance requirements of the cover (in accordance with the manufactures recommendations) will form part of the OMP along with rainwater removal from the cover.

Reason: To ensure that the proposed development does not prejudice the amenities of the locality by reason of odour nuisance.

**Further Comments received on the 23rd March 2018** following a review of the Odour Management Plan.

I am happy with the new OMP but I would recommend that the cover is installed within 3 months in order to protect the amenity areas of local residential dwellings.

Highway Authority - 11th September 2017 – No specific comments were made on this application but the section below set out the comments from the Highway Authority on the earlier application (17/00034/FULL).

Comment Date: Fri 26 May 2017 - I have visited the site and the Highway Authority has no objections in principle, however the current access to the field is substandard in terms of construction, visibility and drainage.

Therefore the application should be conditional on the provision of visibility splays measuring 2.4 m back along the centre line of the access and extending to a point 25m either side of the access with no obstruction greater than 600mm. The access should be constructed in a bound material (tarmac or concrete) for the first 6.00m back from the edge of the carriageway, and should be drained so as to prevent surface water slurry and detritus entering the public highway. In addition to which the gates should be hung to open inwards. Therefore the following conditions should 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 access where the visibility splays provide intervisibility 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 25.00 metres in both directions.

REASON: To provide adequate visibility from and of emerging vehicles.

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

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

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

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

## REPRESENTATIONS

4 objections from local stakeholders have been received whilst the application has been assessed.

1. The current occupation of the neighbouring residential property Mardles Gate is confirmed as lawful.
2. The Lagoon is considered to be too close to the neighbouring residential dwellings causing an intolerable odour problem for residents.
3. The accuracy of the Odour Impact Assessment as submitted is questionable and not considered fit for purpose. Detailed comments as below:

I am concerned that the depiction of this feature in the supporting documentation, the aerial photography and site location plan, does not appear to be an accurate representation of the object that exists on the ground. The existing feature appears to be situated further to the southwest than shown, possibly by as much as 20m, and, consequently, closer to the nearby properties. Much of its supporting documentation, particularly the Odour Impact Assessment, relates to a seemingly erroneous location and would therefore be unfit for purpose.

I fail to see how, given the sensitivity of this case, an application could be made and considered without a true and metrically accurate depiction of this feature in relation to its immediate environs and in particular the built environment.

## **MATERIAL CONSIDERATIONS AND OBSERVATIONS**

The officer report for planning application reference 17/00034/FULL is attached this report at appendix A. The application was refused and as stated in the conclusion section of the report, it was recommended that further investigations be undertaken with the applicant to identify an alternative site to locate the Slurry Pitt. However, prior to commencing an evaluation of alternative sites across the holding the applicant submitted this current application for consideration which is now required to be determined.

This next section of this report provides an assessment of the extent to which this application satisfactorily addresses the reason for refusal of the earlier application.

### **The implications of the development on living condition of the neighbours properties.**

There are two residential properties not connected to the farming enterprise in close proximity to the lagoon, the closest being Mardles Gate, the garden of which is less than 40.0 metres from the boundary of the site. The other property is Manor Croft. The garden areas to these properties have a clear relationship to the lagoon.

The lagoon with its banks forms a dominant element in views from these properties, although the distance is sufficient not to create an oppressive outlook within the nearby houses or their gardens and there are no significant harmful effects on outlook from the properties.

It is accepted that the unauthorised slurry lagoon results in detriment to the amenities of the area by virtue of odour impacts in particular arising from when it is being filled and emptied. Although when the earlier application was being considered the applicant offered to seek to redress the odour issues by arranging to fit an airtight membrane to the Lagoon no details of the installation or any other odour reduction methods were submitted for consideration. Furthermore given that there was no evidence that a cover, and/or other odour reduction methods, would be adequate to offset the inherent issue of closeness to residential occupiers in terms of odours arising, the application was refused.

With this current application the applicant has submitted an odour impact assessment to



provide an evidence base to support the principles set out in the odour management plan as set out above.

The scope of the impact assessment has used a dispersion modelling process to allow comparison between impacts associated with the operation of the facility under different emission scenarios (covered and uncovered). Emissions data used in the scenarios is derived from published library data for cattle slurry.

Although the robustness of the evidence base has been challenged, the applicant's consultant has provided clarification points to satisfy the Local Authorities Environmental Health officer with regards to the conclusions of the assessment. A summary of the assessment as now agreed is set out below.

1. The result of this quantitative assessment is that it can be concluded that the operation of an uncovered lagoon is likely to lead to unacceptable odour impacts at residences. The results also indicate that the model is over predicting the impact as a result of the high emission rates applied and the assumption that the lagoon is full of this odorous material for the entire year.
2. The operation of a (fully) covered lagoon is likely to be acceptable based on the results of the dispersion modelling requested by the Council.

Therefore subject to controlling the future use of the Slurry Pitt lagoon in terms of filling it and emptying it, the provision of a fitted cover is considered to redress the odour impacts that have been an ongoing concern since the Lagoon was formed, and was the basis for refusing the earlier application. Whilst the applicant has requested up to 6 months to install the necessary infrastructure, a shorter time period of 3 months is considered more appropriate to ensure the impact on the neighbouring occupiers is redressed in a reasonable timescale. This also reflects the time period for which the matter has been going through the assessment and resolution stages.

### **Access / Movement Issues**

As stated above the applicant has formed a new access in the position of a former 5 bar gate access. Clarification is being sought as to the nature of the spreading methodology, and if vehicular access to the lagoon site is still required to facilitate spreading the conditions as recommended by the Highway Authority when consulted on application LPA ref: 17/00034/FULL and as set out above in this report will be recommended to control the ongoing use of the facility. An update will be provided to members on this matter before the meeting on the 18th April.

### **Planning Balance, Conclusion and the Way Forward**

It is recognised that the lagoon could improve the efficiency of the farm business and foster its development, although it is noted the applicant has not chosen to provide any evidence to clarify why the application site was identified across the holding, and whether any other sites had been considered. Notwithstanding the absence of this information (and therefore the Council cannot be satisfied that the application scheme is the only location to accommodate the lagoon) a decision is required to be made on this current application.

The Council have assessed the impact of the development as it has been constructed and have concluded that it adversely affects the living conditions of neighbouring occupiers in it's

current state and form. When the earlier application was being considered there was not a robust evidence base to clarify that the odour impacts could be satisfactorily addressed and the scope of measures required to achieve an acceptable resolution. This evidence base, as originally submitted has been subject to a critical review and the LPA's Environmental Health officer has confirmed that the odour impacts could be satisfactorily mitigated by the measures outlined in the odour management plan (OMP) as summarised above. Conditions are drafted to control the ongoing use of the currently unauthorised development and requiring the terms of OMP to be operational within a three month time frame.

With these controls in place if the land owner were to breach the terms of conditions in relation to manner in which the lagoon is filled and/or emptied the Local Planning Authority would be in a position to enforce the terms of the development by serving a breach condition notice and a stop notice to cease its operational use in an unlawful manner.

On this basis, and subject to the conditions as recommended, it is considered that the application scheme is on balance compliant with the following development plan policies: COR2 and COR18 of the Mid Devon Core Strategy (Local Plan Part 1), DM1 and DM22 and Government advice in the National Planning Policy Framework

## **CONDITIONS**

1. The date of the grant of planning permission is considered to be 23rd August 2017 which is the date that the application was registered.
2. The approved plans are listed in the schedule on the decision notice. Notwithstanding the approved plans, within 3 months of the date of this decision notice the lagoon cover as set out in the Operational Management Plan hereby submitted and approved shall be installed at the site and retained for the lifetime of the use of the lagoon and managed as such thereafter in accordance with the terms as set out in the agreed Operational Management Plan.
3. Once the lagoon cover has been installed as required by condition 2 material shall only be delivered to the site in accordance with the terms as set out in the agreed Operational Management Plan.
4. Once the lagoon cover has been installed as required by condition 2 material shall only be removed from the site in accordance with the terms as set out in the agreed Operational Management Plan

## **REASONS FOR CONDITIONS**

1. To reflect the retrospective nature of the application submission and in accordance with the provisions of the Town and Country Planning Acts.
2. For the avoidance of doubt, in the interests of proper planning and to limit the adverse impacts of the ongoing use of the lagoon on the living conditions of local residents in accordance with Policy DM22 of the Local Plan Part 3 (Development Management Policies).
3. To limit the adverse impacts of the ongoing use of the lagoon on the living conditions of local residents in accordance with Policy DM22 of the Local Plan Part 3 (Development Management Policies)

4. To limit the adverse impacts of the ongoing use of the lagoon on the living conditions of local residents in accordance with Policy DM22 of the Local Plan Part 3 (Development Management Policies).

## **REASON FOR/ APPROVAL OF PERMISSION/GRANT OF CONSENT**

It is recognised that the Lagoon could improve the efficiency of the farm business and foster its development, however the critical influencing factor in the decision making process of this retrospective application is the close proximity of it to neighbouring properties. This application is a resubmission of an earlier application (LPA case ref: 17/00034/FULL). This current application has been submitted with a robust evidence base to clarify that the odour impacts could be satisfactorily addressed and the scope of measures required to achieve an acceptable resolution. The Council have assessed the impact of the ongoing use of the lagoon which was constructed without the benefit of planning approval, and subject to a number of conditions to ensure the ongoing compliance with the agreed Operational Management Plan, this current application is considered on balance to be acceptable. On this basis, and subject to the conditions as recommended, it is considered that the application scheme is on balance compliant with the following development plan Policies: COR2 and COR18 of the Mid Devon Core Strategy (Local Plan Part 1), DM1 and DM22 of the Local Plan Part 3 (Development Management Policies) and Government advice in 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.

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