

PLANNING COMMITTEE AGENDA - 12th August 2020

Applications of a non-delegated nature

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

Application No. 19/01188/FULL

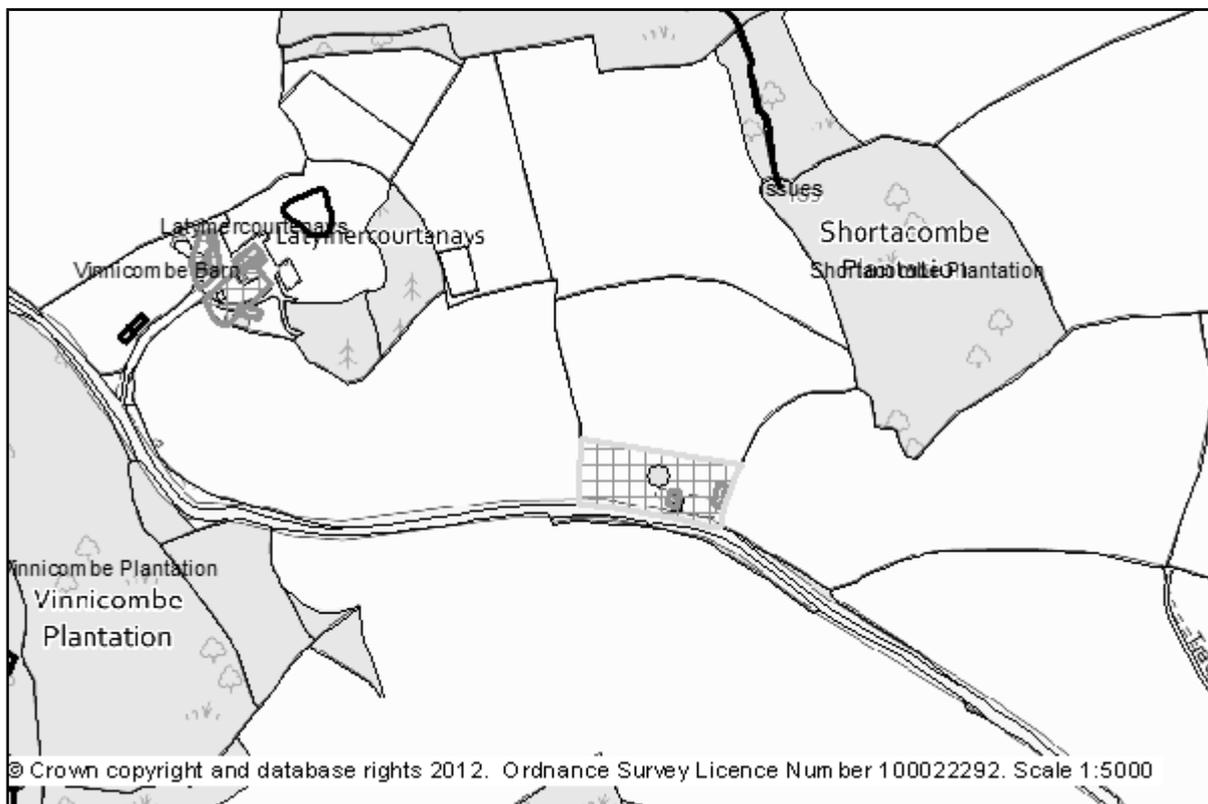
Grid Ref: 276612 : 96646

Applicant: Ms A Tyrer

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

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

Date Valid: 6th August 2019



APPLICATION NO: 19/01188/FULL

MEMBER CALL-IN

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

I would wish to call the application in to enable the planning committee to consider the detail of the application and its compliance with National and Local Planning Policy, both adopted and within the emerging Local Plan Review.

Specifically:

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

RECOMMENDATION

Grant planning permission, subject to the conditions detailed below.

PROPOSED DEVELOPMENT

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

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

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

APPLICANT'S SUPPORTING INFORMATION

Application form, plans, supporting information.

RELEVANT PLANNING HISTORY

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

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

OTHER HISTORY

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

DEVELOPMENT PLAN POLICIES

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. The National Planning Policy Framework is noted as one such material consideration.

Mid Devon Core Strategy (Local Plan Part 1)

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

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

AL/DE/7 – Gypsy and Traveller Pitches

Mid Devon Development Management Policies (Local Plan Part 3)

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

Mid Devon Local Plan Review 2013-2033 Pre adoption draft

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

The National Planning Policy Framework (“the NPPF”)

CONSULTATIONS

Cheriton Bishop Parish Council – 17th June 2020

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

Cheriton Bishop Parish Council – 16th October 2019

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

Crediton Hamlets Parish Council – 7th July 2020

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

Crediton Hamlets Parish Council – 8th October 2019

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

Hittisleigh Parish Council – 20th September 2019

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

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

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

Gypsy and Traveller Liaison Officer - 3rd September 2019

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

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

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

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

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

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

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

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

Natural England – 17th September 2019

Natural England has no comments to make on this application.

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

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

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

Public Health – 23rd July 2020

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

Public Health – 23rd August 2019

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

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

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

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

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

Housing Standards: No comment. (14.8.19).

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

Food Hygiene: Not applicable. (14.8.19).

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

IF MAINS WATER IS TO BE USED, WOULD HAVE NO COMMENT. (14.08.19).

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

Local Highway Authority – 20th January 2020

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

Local Highway Authority - 30th September 2019

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

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

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

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

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

Recommendation:

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

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

Local Highway Authority – 2nd September 2019 - Standing advice applies please see Devon County Council document

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

Environment Agency – 3rd March 2020

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

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

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

REPRESENTATIONS

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

The objectors raise the following concerns:

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

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

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

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

MATERIAL CONSIDERATIONS AND OBSERVATIONS

The main issues in the determination of this application are:

1) Principle of Development:

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

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

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

With respect to the relevant policies within the Local Plan and the emerging Local Plan Review, at the time of writing this report, the current status is that on 26th June 2020, Mid Devon District Council published the Inspector's Report on the Mid Devon Local Plan Review. The Inspector has concluded that the Local Plan is 'sound' subject to a number of main modifications being made. The Mid Devon Local Plan Review, taking account of the Inspector's conclusions, will be recommended for adoption at a meeting of full Council on the 29th July 2020.

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

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

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

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

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

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

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

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

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

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

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

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

b) Proximity to Public Transport and Services

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

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

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

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

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

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

c) Provenance of the Applicant

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

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

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

1. Planning applications for Pitches and Plots

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

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

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

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

2) Visual Impact

Policy DM2 of the Local Plan states that the design of new development must be of high quality and demonstrate a number of principles, including efficient and effective use of the site, an understanding of the local context, and appropriate siting, layout, scale, and other design characteristics to ensure visually attractive and well integrated development. Policy DM1 of the Local Plan Review contains similar wording.

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

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

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

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

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

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

3) Amenity

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

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

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

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

4) Access Arrangements

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

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

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

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

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

5) Drainage Arrangements

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

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

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

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

6) Nature Conservation

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

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

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

7) Other Considerations

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

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

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

8) Conclusion

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

REASON FOR DECISION

The change of use of agricultural land to allow 1 pitch for the siting of 1 static caravan, 2 touring caravans and associated works for the use of gypsy and traveller family, is considered to be acceptable in this instance, being supportable in policy terms. It is not considered that the proposed development would result in significant harm to the character and appearance of the rural area subject to the imposition of planning conditions or detrimentally impact amenity to any neighbouring property. The proposed development is not likely to result in any significant adverse highway impacts. On this basis the proposal is supported in accordance with policies COR2 and COR18 of the Mid Devon Core Strategy (LP1), DM2 and DM8 of the Local Plan part 3 (Development Management Policies) and AL/DE/7 of the Mid Devon Local Plan, Local Plan Review 2013 – 2033 Policies S9, S14, DM1, DM5, DM7 and the National Planning Policy Framework.

CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule on the decision notice.

3. The development hereby permitted allows for the provision of 1 pitch only involving the siting of 1 static caravan, 2 touring caravans and associated works for the use of a gypsy and traveller family. Occupiers of this site will need to comply with the definition of a gypsy or traveller, being persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
4. No more than 3 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, as amended (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time. Any caravans positioned on the site shall be capable of being lawfully moved on the public highway, without division into separate parts.
5. On the family traveller pitch becoming redundant for such purposes, within a period of 3 months, all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored to its condition before the development took place.
6. Prior to the first use of the static caravan hereby approved, notwithstanding the information submitted, a scheme of hard and soft landscaping, including specimens to be retained, shall be submitted to and approved in writing by the Local Planning Authority. The proposed planting scheme shall follow the recommendations of the submitted ecology appraisal (Andrew McCarthy Ecology, dated January 2020).

All planting, seeding and turfing comprised within the approved scheme, including the proposed new bank depicted on the approved plans, shall be carried out in the first planting season following the commencement of development and any trees or plants, including existing specimens to be retained, which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species. The approved hard landscaping shall be provided within four weeks of the development being brought into use, and shall be retained for the life of the development.

7. The development hereby approved shall not be brought into use until the surface water drainage arrangements, including the package treatment plant shown on the approved plans, have been provided in full. The approved measures shall thereafter be retained for the life of the development.
8. Prior to the first use of the static caravan hereby approved, the on-site parking and manoeuvring area shall be provided in full and thereafter retained for the life of the development.
9. The development shall be undertaken in full accordance with the recommendations contained in the submitted ecological appraisal (Andrew McCarthy Ecology, dated January 2020).
10. Prior to the first occupation of the static caravan hereby approved, dormouse nest boxes shall be installed in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority, and shall thereafter be retained for the life of the development.

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

REASONS FOR CONDITIONS

1. In accordance with the provisions of Section 51 of the Planning and Compulsory Purchase Act 2004.
2. For the avoidance of doubt and in the interests of proper planning.
3. For the avoidance of doubt and to outline the special circumstances for this development within a countryside location in line with Policy COR18 of the Local Plan and Policy S14 of the Local Plan Review.
4. In order to protect the character, appearance and general amenity of the area of countryside in accordance with Policy COR18 of the Mid Devon Core Strategy (Local Plan Part 1) and Policy S14 of Local Plan Review 2013 – 2033.
5. In order to protect the character, appearance and general amenity of the area of countryside in accordance with Policy COR18 of the Mid Devon Core Strategy (Local Plan Part 1) and Policy S14 of Local Plan Review 2013 – 2033.
6. To ensure that the development makes a positive contribution to the character and amenity

of the area in accordance with policy DM2 of Local Plan Part 3: Development Management Policies and Policy DM1 of the Local Plan Review 2013 – 2033.

7. In the interests of sustainable drainage and to prevent water pollution and in accordance with Policy DM2 of the Mid Devon Local Plan and Policy DM1 of the Local Plan Review 2013 – 2033.
8. In the interests of highway safety and amenity and in accordance with Policies DM2 and DM8 of the Mid Devon Local Plan and Policies DM1 and DM5 of the Local Plan Review 2013 – 2033.
9. In the interests of nature conservation and in accordance with the guidance contained in the National Planning Policy Framework.
10. In the interests of nature conservation and in accordance with the guidance contained in the National Planning Policy Framework.
11. In the interests of nature conservation and to prevent unacceptable levels of light pollution, in accordance with Policy DM7 of the Mid Devon Local Plan and Policy DM4 of the Local Plan Review 2013 – 2033.
12. In order to protect the character, appearance and general amenity of the area of countryside in accordance with Policy COR18 of the Mid Devon Core Strategy (Local Plan Part 1) and Policy S14 of Local Plan Review 2013 – 2033.
13. To safeguard the visual amenities of the area in accordance with policy DM2 of the Local Plan part 3 (Development Management Policies) and Policy DM1 of the Local Plan Review 2013 – 2033.
14. In the interest of highway safety and in order to provide adequate visibility from and of emerging vehicles.
15. To ensure adequate facilities are provided for bin and recycling storage and to protect the character and appearance of the area in accordance with policy DM2 of the Local Plan part 3 (Development Management Policies) and policy DM1 of the Mid Devon Local Plan Review 2013-2033.

INFORMATIVE

1. Protected Species

All bats are protected by law. If bats are found, works must immediately cease and further advice be obtained from Natural England and / or a licensed bat consultant. Works must not resume until their advice has been followed. Nesting birds are also protected by law. During site clearance and construction works, suitable safeguards must be put in place to prevent threat of harm to legally protected species, including nesting birds and reptiles all of which are protected under the Wildlife & Countryside Act 1981 (as amended). Where works are to involve cutting or clearance of shrubs, hedges or other vegetation, which can form nesting sites for birds, such operations should be carried out at a time other than in the bird breeding season (which lasts between 1 March - 15 September inclusive in any year). Further details can be obtained from a suitably qualified and experienced ecological consultant, or please refer to published Natural England guidelines for protected species.

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

Application No. 17/01904/MFUL

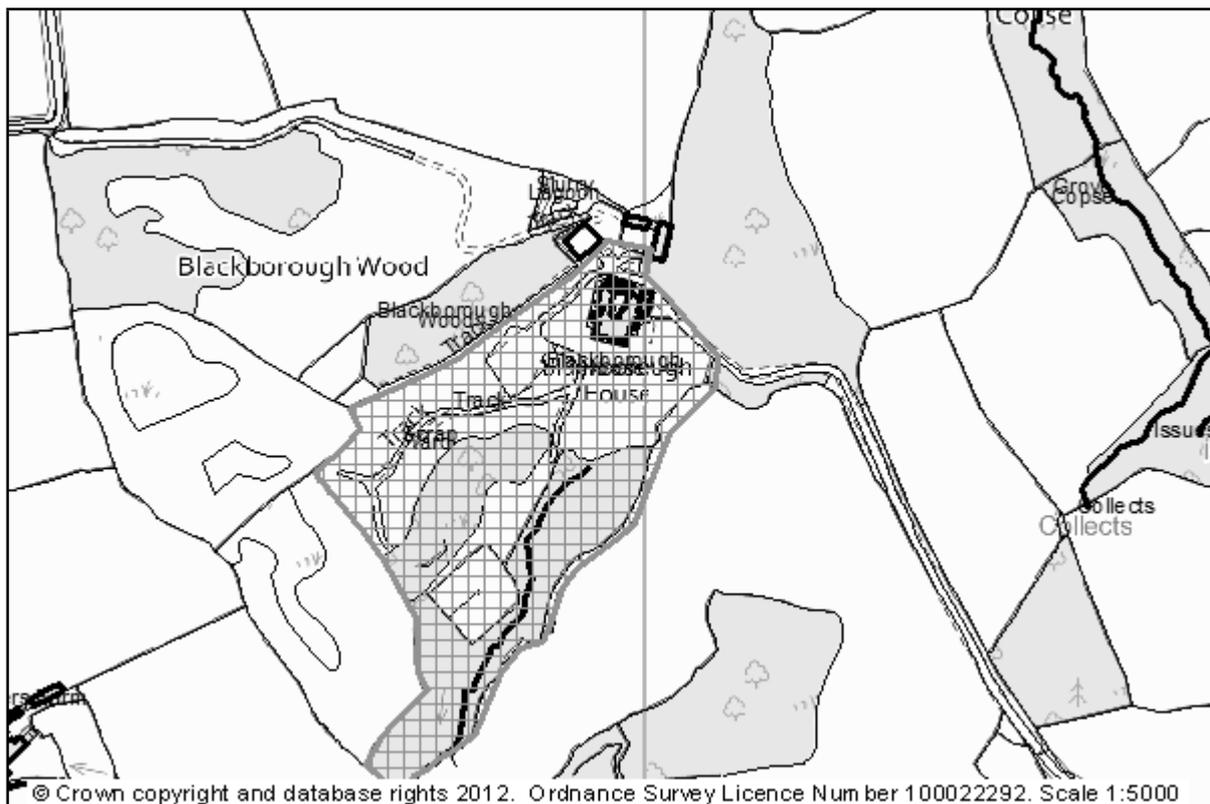
Grid Ref: 308980 : 109676

Applicant: Mr M Crane

Location: Blackborough House
Blackborough
Cullompton
Devon

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

Date Valid: 23rd January 2018



APPLICATION NO: 17/01904/MFUL

RECOMMENDATION

Refuse permission

DESCRIPTION OF SITE AND PROPOSED DEVELOPMENT

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

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

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

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

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

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

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

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

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

APPLICANT'S SUPPORTING INFORMATION

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

RELEVANT PLANNING HISTORY

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

DEVELOPMENT PLAN POLICIES

Local Plan Review 2013-2033

S1 Sustainable development priorities
S8 Infrastructure
S9 Environment
S14 Countryside

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

Planning (Listed Buildings and Conservation Areas) Act 1990

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

National Planning Policy Framework 2019

Additional material consideration

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

CONSULTATIONS

KENTISBEARE PARISH COUNCIL - 21st March 2018

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

KENTISBEARE PARISH COUNCIL – 19th March 2020

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

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

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

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

Historic England Advice

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

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

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

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

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

This will include:

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

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

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

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

Recommendation

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

HISTORIC ENGLAND - 13 June 2019

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

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

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

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

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

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

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

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

Recommendation

Historic England has concerns regarding the applications on heritage grounds and their conformity to the relevant policies of the NPPF. In determining these applications you should bear in mind the statutory duty of sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess.

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

HISTORIC ENGLAND - 15th April 2020

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

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

Historic England Advice

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

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

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

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

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

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

Planning Policy Context

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

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

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

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

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

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

Recommendation

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

Additionally, in general in determining these applications, you should also bear in mind the statutory duty of sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess.

HISTORIC ENGLAND – 7th July 2020

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

BLACKDOWN HILLS AONB PARTNERSHIP - 26th June 2018

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The LVIA has been carried out by a suitably qualified landscape professional. It accords with best practice guidance¹ in some respects but lacks robustness in others, including identifying sensitive landscape receptors, assessing significance of effects, presentation of viewpoints used in the assessment and communication of likely change. Information in the LVIA allows a general understanding of the landscape and visual context, the nature and scale of the proposals, and mitigation measures. However, the scope and level of detail is insufficient in proportion to the high sensitivity of the AONB context, the scale and nature of the development, and the potential for significant effects on the AONB's special qualities as highlighted in the Blackdown Hills AONB Partnership's consultation response letter to MDDC dated 26 June 2018, including rural tranquillity, locally distinctive buildings, the quality of views, and dark skies. (In this respect, I agree with the AONB Partnership that the proposals should be considered a 'major development', with reference to the National Planning Policy Framework 2018² and the policy tests that should apply.)

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

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

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

2 See NPPF 2018 paragraph 172 and associated footnote 55.

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

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

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

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

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

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

BLACKDOWN HILLS AONB PARTNERSHIP 3rd April 2020

Change of use and refurbishment, etc. at Blackborough House

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DCC Highways 21st March 2019

Observations:

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

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

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

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

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

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

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

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

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

Therefore the Highway Authority would raise no objection to the proposal subject to the following condition. The Highway Authority would also seek the securing of a travel plan and traffic management plan through a legal agreement under the Town and country planning act
Recommendation:

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

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

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

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

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

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

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

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

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

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

Therefore the following applies:

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

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

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

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

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

PUBLIC HEALTH – 10th September 2018

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

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

The appropriate form can be found in this link.

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

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

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

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

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

Health and Safety No objection to this proposal

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

FLOOD and COASTAL RISK MANAGEMENT TEAM - 26th February 2018

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

Observations:

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

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

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

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

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

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

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

NATURAL ENGLAND - 13th February 2018

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

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

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

Landscape - further information advised

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

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

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

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

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

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

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

DEVON COUNTY EDUCATION - 30th January 2018

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

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

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

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

2.00 primary pupils

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

1.00 secondary pupil

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

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

ENVIRONMENT AGENCY - 14th March 2018 and 2nd March 2020

Environment Agency position

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

Condition - Contamination Investigation and Remediation

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

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

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

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

Condition - Unsuspected Contamination

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

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

Condition - Surface Water Infiltration

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

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

Advice - Groundwater and contaminated land

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

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

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

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

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

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

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

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

Advice - Environment Permitting (Waste)

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

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

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

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

Advice - Environment Permitting (Foul Drainage)

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

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

DEVON, CORNWALL & DORSET POLICE - 5th February 2018

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

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

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

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

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

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

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

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

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

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

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

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

CCTV & Intruder alarm:-

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

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

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

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

REPRESENTATIONS

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

Support 8 responses:-

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

Objection 60 responses:-

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

MATERIAL CONSIDERATIONS AND OBSERVATIONS

1.0 Background information

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

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

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

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

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

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

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

2.0 The Proposal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.0 Environmental Impact Assessment (EIA)

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

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

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

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

4.0 Principle of development

Policy S14 of the Local Plan Review 2013-2033 states that Development outside the settlements defined by Policies S10-S13 will preserve and where possible enhance the character, appearance and biodiversity of the countryside while promoting sustainable diversification of the rural economy. Detailed development management policies will permit agricultural and other appropriate rural uses.

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

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

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

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

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

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

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

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

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

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

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

The guidance establishes various criteria to be satisfied:

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

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

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

The Policy is then expanded into further guidance:

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

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

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

5.0 Heritage and enabling

The starting point for the considering of applications which affects a listed building or its setting is the statutory requirement on local planning authorities to 'have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses' (section 66 Planning (Listed Buildings and Conservation Areas) Act 1990).

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

Applications for listed building consent that affects a heritage asset must be able to justify their proposals. The NPPF 2019 says that the LPA should require an applicant to describe the significance of any heritage asset affected including any contribution made to their setting. This should be sufficient to understand the potential impact of the proposal on its significance. As a minimum the Heritage Environment Record should have been consulted and the building assessed using appropriate expertise where necessary. When considering the impact of development, great weight should be given to the asset's conservation. Any harm or loss should require clear and convincing justification from the applicant. Any harm should be judged against the public benefit, including securing the optimum viable use. (The optimum use is the one that causes the least harm to the significance of the asset).

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

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

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

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

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

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

5.1 Enabling

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

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

5.2 JLL and Randall Simmins

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

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

5.3 The conclusions are as follows:

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

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

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

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

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

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

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

5.4 Historic England response

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

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

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

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

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

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

6.0 Highways

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

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

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

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

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

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

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

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

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

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

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

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

The NPPF 2019 states:

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

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

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

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

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

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

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

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

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

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

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

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

Their comments are:-

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

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

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

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

8.0 Design and impact of new dwellings and other new build

8.1 7 Proposed New Dwellings

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

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

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

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

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

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

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

8.2 34 room pavilion and parking

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

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

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

8.3 Walled Garden

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

9.0 Ecology

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

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

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

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

10.0 Lighting/noise/contamination/drainage

10.1 Lighting

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

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

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

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

10.2 Noise

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

Construction

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

Operation

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

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

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

10.3 Contamination

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

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

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

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

10.4 Drainage

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

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

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

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

11.0 Amenity of neighbours

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

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

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

12.0 Tourism and Employment

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

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

13.0 Discussion around 106 agreement

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

14.0 Other matters

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

15.0 Balance/summary

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

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

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

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

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

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

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

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

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

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

Historic England has concerns regarding the planning and listed building consent applications on heritage grounds and their conformity to the relevant policies of the NPPF 2019. In determining these applications the Committee should bear in mind the statutory duty of sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess.

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

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

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

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

Reasons for Refusal

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

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

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

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

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

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

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

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

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

Appendix 1

Review of Blackborough House Environmental Statement by Temple Group

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

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

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

Chapter 1 Introduction to the review

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

Chapter 2 Review of scheme and site information

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

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

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

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

Summary of Clarifications Required

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

Summary of Potential Regulation 25 Information Requests

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

Chapter 3 Review of ES format, presentation and scope

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

Summary of Clarifications Required

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

Summary of Potential Regulation 25 Information Requests

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

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

Chapter 4 Landscape and Visual

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

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

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

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

Summary of Clarifications Required

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

Summary of Potential Regulation 25 Information Requests

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

Chapter 5 Heritage

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

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

Summary of Clarifications Required

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

Summary of Potential Regulation 25 Information Requests

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

Chapter 6 Traffic and Transport

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

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

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

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

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

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

Summary of Clarifications Required

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

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

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

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

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

Summary of Potential Regulation 25 Information Requests

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

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

Chapter 7 Ecology

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

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

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

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

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

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

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

Summary of Clarifications Required

None.

Summary of Potential Regulation 25 Information Requests

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

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

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

Chapter 8 Drainage and flood risk

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

Summary of Clarifications Required

None.

Summary of Potential Regulation 25 Information Requests

None.

Chapter 9 Ground Conditions

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

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

Summary of Clarifications Required

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

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

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

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

Summary of Potential Regulation 25 Information Requests

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

Chapter 10 Summary of Mitigation Measures

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

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

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

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

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

CEMP – secured via a planning condition.

Appendix 2

Blackborough House, Cullompton, Devon, EX15

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

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

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

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

We address each of their key comments in turn below.

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

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

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

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

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

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

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

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

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

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

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

The letter also states:

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

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

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

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

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'HE' followed by a stylized flourish.

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

Helen.Ensor@insall-architects.co.uk

Application No. 17/01905/LBC

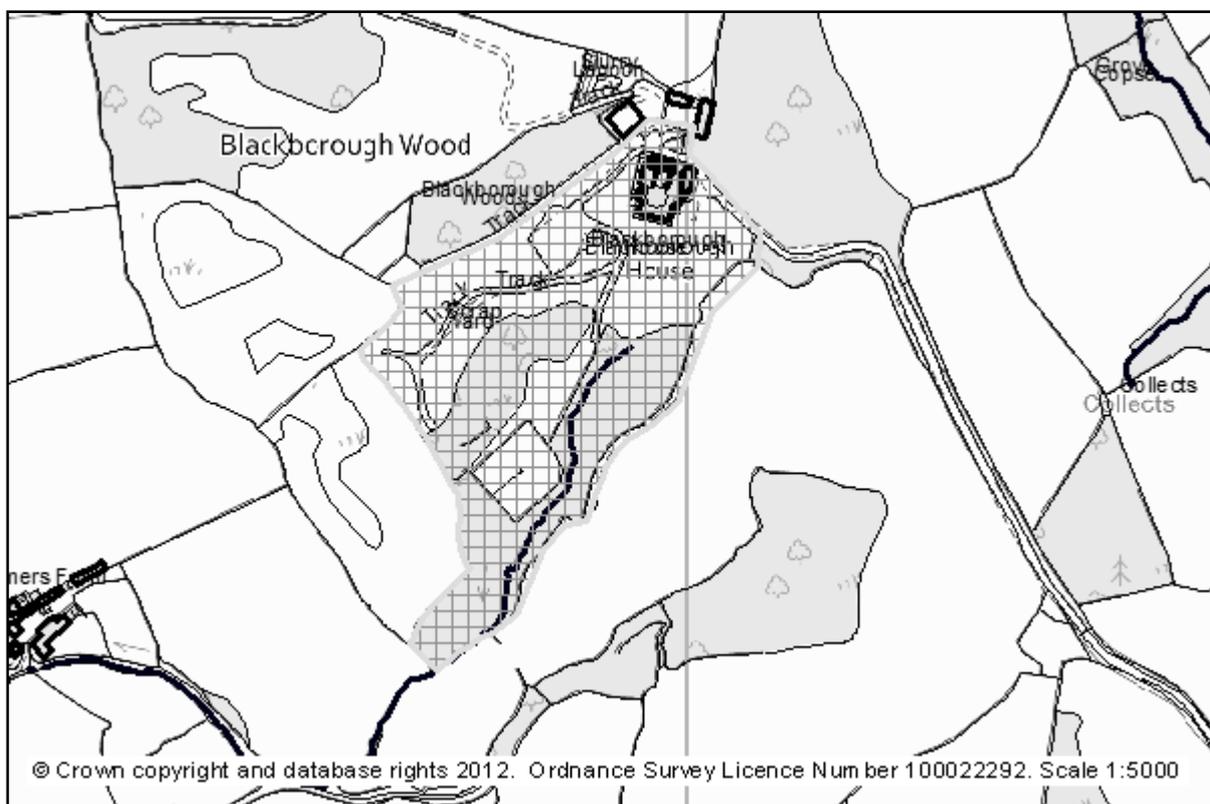
Grid Ref: 308980 : 109676

Applicant: Mr M Crane

Location: Blackborough House
Blackborough
Cullompton
Devon

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

Date Valid: 23rd January 2018



APPLICATION NO: 17/01905/LBC

RECOMMENDATION

Refuse Listed Building Consent

PROPOSAL

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

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

APPLICANT'S SUPPORTING INFORMATION

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

RELEVANT PLANNING HISTORY

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

DEVELOPMENT PLAN POLICIES

Local Plan Policy:

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

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

Mid Devon Local Plan 2013-2033 Review

- S9 Environment
- DM1 High quality design
- DM25 Development affecting heritage assets
- DM27 Protected landscapes

Legislation and Policy Context:

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

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

Section 16(2) of the Act states “In considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses”.

National Policies of relevance include

The National Planning Policy Framework [NPPF]:

Chapters 12 – Achieving well designed places - and 16 - Conserving and enhancing the historic environment - of are particular relevance, where the creation of high quality buildings and places is fundamental to what the planning and development process should achieve and that and great weight given to the conservation of heritage assets.

Planning Practice Guidance. (March 2014)

National Planning guidance advises on planning decisions with regard to the NPPF. This advises that the conservation of heritage assets in a manner appropriate to their significance is a core planning principle.

Historic England Guidance and Advice:

Conservation Principles, Policies and Guidance – 2008

Enabling Development and the Conservation of Significant Places – 2008

The Historic Environment Good Practice Advice in Planning: 2 - ‘Managing Significance in Decision-Taking in the Historic Environment’ - July 2015

The Historic Environment Good Practice Advice in Planning: 3 – The setting of Heritage Assets - March 2015 (GPA3)

Historic Environment Good Practice Advice in Planning: 4 - Enabling Development and Heritage Assets – June 2020

CONSULTATIONS

Note these consultations responses are often a response to the Listed Building Application the subject of this report and the following associated planning application. As such some comments may not be material to the determination of the listed building application. The date that consultee comments been received are set out below but the full details are included on the related planning application report to save duplication. The responses from Historic England are set out in full as they relate to listed building considerations.

KENTISBEARE PARISH COUNCIL - 21st March 2018 & 19th March 2020

NATURAL ENGLAND - 13th February 2018 & 26th February 2020

BLACKDOWN HILLS AONB PARTNERSHIP - 26th June 2018, 15th March 2019, 11th October 2018 & 3rd April 2020

HISTORIC ENGLAND - 13 June 2019

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

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

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

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

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

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

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

the considerable visual impact caused by the proximity of that development to the principle listed building would compromise the house's current primacy within the surrounding landscape, and thereby harm its setting.

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

Recommendation

Historic England has concerns regarding the applications on heritage grounds and their conformity to the relevant policies of the NPPF. In determining these applications you should bear in mind the statutory duty of sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess.

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

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

Historic England Advice

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

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

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

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

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

Guidance on the Council commissioning and interpreting independent expert advice on the financial justification for the development help in assessing whether the works proposed to repair Blackborough House are appropriate, necessary and correctly costed.

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

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

Recommendation

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

HISTORIC ENGLAND - 15th April 2020

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

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

Historic England Advice

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

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

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

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

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

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

Planning Policy Context

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

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

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

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

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

Recommendation

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

Additionally, in general in determining these applications, you should also bear in mind the statutory duty of sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess.

HISTORIC ENGLAND – 7th July 2020

The revised Enabling Development guidance was released last week however we were aware that this was planned and had read the draft content of the revised document whilst responding to the

Blackborough application. I do not therefore consider that Historic England's advice on this case would be in any way altered by the release of the new GPA4.

REPRESENTATIONS

There have been a number of representations submitted to the planning authority. These are summarised fully in the associated planning application but only the comments relevant to listed building considerations are set out below:

Support 8 responses:-

- It's been an eyesore for years and time the site was used for good instead of becoming yet another exhibit of a faded country house preserved in aspic or more usually left to decay.
- The building is listed and thus has been identified as needing to be preserved.

Objection 60 responses:-

- Concern over the scale of the proposal
- The design of the 7 villas is out of keeping with the Area of Outstanding Natural Beauty (AONB) and will adversely impact on the setting of the listed building.
- The scale of the development is far greater than the original footprint of the house, this will affect the wildlife and plants in an AONB.
- a financial plan that lacks the ability to fulfil the obligations regarding the Enabling development (i.e. refurbishment of Blackborough House)
- What happens if there is not enough funding from the sale of the seven houses and/or additional investment to carry out the restoration of Blackborough House made available. Will there then be a requirement for more executive houses or will the project cease leaving the village with houses it didn't want or need and still a decaying ruin.

MATERIAL CONSIDERATIONS AND OBSERVATIONS

Blackborough House is a grade II listed building sitting on the edge of a promontory with an associated walled garden lower in the valley to the south of the main house. The house was first listed in April 1987. It is noted as being a substantial country house built 1838-40 for George Francis Wyndham, Earl of Egremont to designs by James Thomas Knowles. The listing Inspector in September 1985 stated that "The building has undergone considerable alteration, principally the dismantling of the top stage of both of the entrance towers, and the demolition of some of the central rooms. Much of it was in a semi-derelict state at the time of the resurvey visit".

The building remains in a semi-derelict condition, and unoccupied. The owner has a camper van on site and uses one or two rooms in the house from time to time. It is on the Mid Devon 'buildings at risk' register. Part of the building (the central area) is missing but this appears to be historic. The rest of the building has a number of small missing areas of slate allowing water penetration through the building which has affected floors and made some rooms unsafe to enter. One high wall in the center which is open to the weather is precarious and may collapse. Whilst other parts of the building are in good condition and are dry and safe to enter, it is reasonable to anticipate collapse of areas of floor and roof structures in the future without intervention.

Using the Historic England definitions to consider the condition of a building it would be considered to be Poor to Very Bad in places. Where Poor is

Poor – A building which is clearly deteriorating. There are obvious faults likely to lead to structural failure e.g. an area of missing slates but where the roof structure appear still to be sound, missing

or badly defective gutters and down pipes A building with numerous maintenance failings would fall into this category e.g. decayed window frames and blocked gutters and signs of damp.

And Very Bad is

Very Bad – A building where there has been structural failure or where it can be reasonably anticipated. Although relatively few buildings will fall into this category it may appear that a wider range of condition is covered under this heading than under the other three. It will include derelict buildings which have appeared ruinous for some years. It is difficult to predict when such structures will collapse. A building which would be considered liable to collapse in harsh weather should certainly be included. It will also include buildings which are complete but where part of the structure is suspect, for example, an unstable gable wall. If it is known that the internal structure is liable to collapse the building should be in this category

There are two associated applications before the Council. A planning application and a listed building application. This application for listed building consent is to partially restore, alter and extend the listed building.

Some of the alterations will be to replace lost elements which are proposed to be as the original scheme, some are to replace lost elements with new, and there is also alteration and extension.

The planning application includes some common elements such as the external alterations to the listed building, and new build freestanding elements associated with the new use which do not require listed building consent. There is enabling development to fund the conservation deficit for the works to the listed building These freestanding elements do not require listed building consent, and will be considered under the associated planning application, where the principles of enabling development, and the consideration of the case of the enabling development takes place along with the consideration of setting of the listed building amongst other planning matters.

The starting point for the exercise of listed building control is the statutory requirement on local planning authorities to 'have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses' (section 16(2)). Case Law requires that this is to be given considerable weight and importance in the decision making balance.

The NPPF 2019 says that the LPA should require an applicant to describe the significance of any heritage asset affected including any contribution made to their setting. This should be sufficient to understand the potential impact of the proposal on its significance. As a minimum the Heritage Environment Record should be consulted and the building assessed using appropriate expertise where necessary (para 189).

When considering the impact of development, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance (para 193). Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification (para 194). Where the proposal will lead

to less than substantial harm, the harm should be judged against the public benefit, of the proposal including, where appropriate, securing its optimum viable use (para 196)

The NPPF (para 192) also requires that in determining applications, local planning authorities should take account of:

- a) The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b) The positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- c) The desirability of new development making a positive contribution to local character and distinctiveness.

With regard to enabling development the NPPF states: Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies. (para 202)

As indicated above, local plan policies are material to the consideration of the determination of the application, but do not have the same statutory weight they have in a planning application. Policy DM25 of the Local Plan Review 2013-2033 states

Heritage assets and their settings are an irreplaceable resource. Accordingly the Council will:

- a) Apply a presumption in favour of preserving or enhancing all heritage assets and their settings;
- b) Require development proposals likely to affect the significance of heritage assets, including new buildings, alterations, extensions, changes of use and demolitions, to consider their significance, character, setting (including views to or from), appearance, design, layout and local distinctiveness, and the opportunities to enhance them;
- c) Only approve proposals that would lead to substantial harm or total loss of significance of a designated heritage asset where it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or the requirements of the National Planning Policy Framework are met;
- d) Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this, harm should be weighed against the public benefits of the proposal, including securing its optimum viable use; and
- e) Require developers to make a proportionate but systematic assessment of the impact on the setting and thereby the significance of heritage asset(s)

A brief history of Blackborough House

The building is an essay in Italianate architecture (the same style as Osborn House on the Isle of Wight). It was built in c 1838 for Captain George Francis Wyndham, the 4th and last Earl of Egremont and his wife Jane to the designs of James Thomas Knowles (Senior).

The original purpose of the building was residential, and the detailed assessment (commissioned by the applicant to accompany this listed building application and the associated planning application) undertaken by Donald Insall Associates suggest that it was built as one house, and later divided into two shortly after the building was constructed. They note minor changes to the layout to accommodate this, and later (mid to late 19th C) alterations to the north.

In 1913 the building was put up for sale and it was noted a combined total of 34 bed and dressing rooms, 6 entertaining rooms, 2 bathrooms, entrance and receiving halls, domestic offices, cellars and stabling. It was noted the building whilst in poor condition was largely intact.

It was sold and partial demolition commenced, but halted and put up for sale again in 1923 but did not sell and was partially occupied, with more features being stripped.

In 1930 it became a home for Wayfarers and War Relief Workers, otherwise a training home for men out of work. They are noted to have undertaken repair work to the building including replacing the roof.

In 1940 it was leased to the Society of Friends with the aim of finding an acceptable alternative to military service, and the building became known as Spicelands. Contemporary accounts record further repairs being made to the building.

In 1950 the house was sold to a family who lived in the house. They started a car repair and dismantling business. The house and land was used as a scrapyards until 1999, with car workshops inside, and a lawful use remains today.

The Proposal:

The proposal as it relates to the listed building is to reinstate lost features and to alter and extend the building to change its use to a hotel with function room. This would be part of a larger scheme with new build.

The alterations to the listed building can be broken into a number of elements. The extension to the south which contains the swimming pool and function room with associated internal alterations; alterations to the existing building; and, extensions to the north and within the centre of the U shape of the existing building.

The applicant's heritage report prepared by Donald Insall Associates carefully considers each room in the building and the external elevations of the building and how they have changed over time. They have listed the alterations, which have been amended on a number of occasions from originally submitted. These are below in italics with commentary from your Conservation Officer as necessary.

Impact of the Proposals on the Listed Building and its Setting

Alterations and Repairs to Blackborough House It is proposed to convert the main house to a hotel and spa, containing 23 bedrooms, reception and public rooms, kitchens, WCs and back-of-house facilities. This would be done by sympathetically re-using the existing layout and spaces where possible, and by making alterations where these are necessary to achieve modern standards or additional space. Following our detailed research and assessment a number of small, but important changes have been made to the proposed layouts and as a result the significance of the building would be conserved. The proposed changes in detail are:

Basement

• Removal of basement stairs – these may not be original as there is evidence for a trap door for a barrel drop, with a corridor over at ground floor level. Their loss is therefore not harmful to the significance of the building and required to make the additional basement area work.

- *Original vaults to be re-used within the spa area with the ceilings retained, but with openings made through them to access the spa, loss of some, limited fabric in the walls of the vaults, it is required in order to make the additional floor area work in an area that would have the least impact on the listed building overall.*

This element of the proposal was subject to amendment in March 2020. The initial proposal was to dig out a large area under the southern range of the house to the north of the cellars (which are 6 small rooms off a corridor) and provide a new area under the southern range. This would provide access through the existing cellars to the function room and swimming pool, but would result in the loss of one of two historic staircases to the historic cellar and the alteration of a second. The amended proposal now retains both, with less excavation.

Excavation is still proposed to provide a lift access down to the lower floor which is the level of the pool and function room. The lift would be in one of the towers and serve all floors.

The historic stairs would remain and be extended to reach the new floor level. The six individual cellars would be retained with a doorway formed in the rear wall of each to provide access through to the new facilities beyond.

The layout of this area has significance to the history of the building in that it is part of the historic story of the building. The experience of this area would be changed and status altered. There is harm to be building from the intervention into the historic plan form and some loss of fabric. This harm should be considered in the balance of the entire scheme for the restoration and reuse of this building.

The harm is justified by the applicant in the context of the use of the building as proposed as a hotel as part of the wider scheme which includes enabling development. This harm should be considered in the balance of the entire scheme which includes the restoration and reuse of this building.

Ground Floor

- *The large extension on the north-east corner, which is later nineteenth century but very altered, would be demolished and rebuilt, continuing the loggia around this area. This is an area of low significance and as the element has already undergone alteration, would cause no harm to the significance of the building and as rebuilt would enhance the building's appearance.*
- *The large extension on the north and north-west corner, largely rebuilt by the residents of Spicelands, would be demolished and rebuilt. This is an area of low significance and as the element has already been rebuilt, would cause no harm to the significance of the building and as rebuilt would considerably enhance the building's appearance.*
- *Minor changes are proposed internally including making new openings into walls which related to the primary phase, but which leave the plan form essentially intact. The new openings are required to enable the rooms to work together and connect between one another. This would result in the loss of some minimal historic fabric but not in any loss of significance, and the level of harm has been further reduced through the proposed amendments to the plans.*
- *The angled corridors, which were changes to the house after its original construction, made in order to occupy it as two houses, would be demolished. This is in order to be able to better connect the front and rear of the building. This would result in the loss of some fabric of interest, but not any loss of significance.*

It is difficult to see how fabric can be of interest, but not significant. The angled corridors have some significance in that they are part of the story of the house through time, but they do jar with the architectural form of the building and appear to represent features added post demolition of earlier parts of the building. To that extent if the whole scheme is justified and acceptable, they could be removed.

The internal changes respect the historic plan form, but do introduce modern facilities required for the hotel use such as modern shared toilet facilities and also the subdivision the large two storey kitchen. There would be in the introduction of a new floor and subdivision into rooms on the first floor with the consequent loss of this historic space and experience of it with some harm to significance.

The harm is justified by the applicant in the context of the use of the building as proposed as a hotel as part of the wider scheme which includes enabling development. This harm should be considered in the balance of the entire scheme which includes the restoration and reuse of this building.

A new lift would be installed in the western tower, retaining the original walls within at ground floor level. This would have a limited impact on the plan form and would not result in any harm to the listed building.

- A new double-staircase would be installed towards the centre of the plan, in an area which was partially an open courtyard, and this area would be glazed to form an atrium. The original staircase was further south in the plan, in what is proposed to be the new bar. There would be no harm or loss of significance as a result of this new staircase.*
- A new glazed roof would be installed over what was original a sequence of rooms towards the middle of the plan, and a new glazed roof would be installed over an area which was partially open to the elements and partially enclosed (in a strip over the well). The new roof would not cause any harm to the listed building, not least because this area is in a particularly diminished condition.*

First floor

- Very minor fabric removal is proposed at first floor level, including some new door openings in partitions. This is in order to connect rooms and corridors and whilst it would result in some minimal loss of historic fabric, it would not cause any harm to significance.*
- The main change would be to provide end-suite bathrooms, and this would be done within the confines of the proportions of the existing rooms, using adjacent rooms for bathrooms rather than creating new bathroom pods. This is an appropriate way of providing them, causing no harm to the proportions of the rooms or their significance.*

Second floor

- This floor has minimal historic fabric remaining due to successive alterations throughout the building's life. Changes are proposed to re-plan to create bathrooms. This causes no harm or loss of significance, and would result in improvements to the layout, not least because this floor would be rebuilt where it currently missing and structurally unstable.*

Roof

- The roof was completely re-built as part of the Spiceland tenure. It is proposed to renew it again and include new conservation roof lights on the inward facing slopes. As this fabric has already been renewed this would cause no loss of historic fabric. Original details such as the 'porthole' windows would be restored, which would be an improvement.*

General

The building would be restored and repaired, using moulds from existing retained fabric including chimneypieces, cornices, skirting boards, architraves, doors etc. Existing original features would be repaired and restored or where they are beyond practical repair, would be copied and renewed. The loggia, including the rendered columns, capitals and cornice, would be repaired and the roof would be re-glazed. Both the individual and cumulative impact of these changes is of no harm to significance. This is because the alterations are actually quite minor in nature, because they respect the significant elements of the plan form.

This does not mean that every piece of Victorian fabric would be retained but that is because not every element is required to either understand the history and development of the house or to preserve its overall significance.

These alterations are individually minor, but there are a number of them and there is some loss of historic fabric. Others are informed interventions into parts of the building which have been lost and there is the replacement of these elements resulting in an enhancement to the building.

The harm is justified by the applicant in the context of the use of the building as proposed as a hotel as part of the wider scheme which includes enabling development. This harm should be considered in the balance of the entire scheme which includes the restoration and reuse of this building.

In order to find a new use for this building, some change is not only inevitable but is also reasonable, particularly in the light of the specific recent history and use of the building but also in the light of its lawful use as a scrapyard.

In order to house the spa facilities and back of house areas, and because the original basement is peculiarly small, additional basement area is required. In terms of assessing the options for where this could be located there are three, in a new building, beneath the remainder of the main house or set away from the main house but linked to it. The latter has been chosen as having less impact on the listed building, and a new terrace above it with steps accessing the landscaped gardens are proposed. This element of the proposals has proved controversial entailing as it would a change to the views, setting and appearance of the building when viewed from the south. However, the alterations should be viewed in the light of the fact that this area of land has been cut away by modern interventions associated with the scrap dealership. The land here, which now falls sharply away from the house, once provided a much more generous plateau to the south as is made clear in the memoir Spicelands which describes how, before the war; there was a sun terrace here. There is a description in the same section of the book of how the land had been cut away after the commencement of the scrap dealership use, to create a trackway sloping down from the north-west to the south-east and cutting in front of the southern elevation. Historically, therefore, there is certainly a precedent for having a terrace here, and the proposed design, looking as it does to other Italianate houses of the same period for inspiration, seems to us to be an appropriate response. The overall impact is relatively low because the alterations are at basement level and because the design response is sympathetic to the original building. In our view what is being proposed is perhaps more elaborate than the original terrace, but is within the same spirit as the original design intent.

It is clear that the area of land to the south of the house has been cut away in more recent times. The design of the house is such that any extension to it, other than to rebuild within the U of the building (another element of the current proposal) is difficult. The proposal to extend is at a lower

ground level (basement level) on the south side. This provides a terrace and additional space under. Such composition can be seen at Osborne House on the Isle of Wight (also Italianate) where there is a large terrace with rooms under.

Historic England comment that the proposed conversion of the house would result in considerable change to it. Historic England also note that the applicant has tried to minimise loss of historic fabric on the principal floors of accommodation, the impact at basement level is considerable both in terms of the removal of original walls within it, and the addition to it of a large extension.

It is proposed to repair the walled garden to the south of the site. This would be repaired in an appropriate fashion and used as an area of garden for the hotel use with seating and terracing of the sloping garden. This is not harmful to its special interest. The details would need to be conditioned.

The harm is justified by the applicant in the context of the use of the building as proposed as a hotel as part of the wider scheme which includes enabling development. This harm should be considered in the balance of the entire scheme which includes the restoration and reuse of this building.

Overall, therefore, the development would have harmful consequences for the listed building in physical and visual terms, and does not provide the required certainty of bringing the house back into long-term beneficial use. This brings the applications into conflict with Historic England's enabling development policy as well as with paragraphs 202 and 196 of the NPPF; that is the proposal as a whole does not deliver other meaningful public benefits which would outweigh that harm.

Other Matters

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

Summary:

The consideration of any application for listed building consent must take into account the statutory duty on the council to have "special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses". This must be given considerable importance and weight.

This is supported by the NPPF which in summary requires that great weight be given to conservation of heritage assets (para 193). There is no greater weight given to any matters and great weight is reserved for a very few matters within the NPPF. Any harm should require clear and convincing justification (para 194), and balanced in the public interests of the proposal including, where appropriate, securing its optimum viable use. (para 196)

The level of harm of the works to the listed building as a whole is less than substantial harm. This should not be interpreted that the harm is not important. In reality, substantial harm engages further tests in the NPPF. It does not infer that the harm is not important if it is less than substantial, and does not remove the statutory requirement or the great weight given in the NPPF to the conservation of the heritage asset.

Local Plan Policy DM 25 is a material consideration. This policy is laid out in full above in Material Considerations and observations.

It is agreed that the building is 'at risk', and in need of a viable scheme which will provide for its long term preservation. The repair of this building is most likely to have a conservation deficit - that is the value of the building, plus repair cost will be more than it is worth when repaired. This is when enabling development can be considered. Any new use should be the optimum use, the one which causes the least harm to the building and/or its setting, not necessarily the most profitable.

This application for listed building consent is to partially A) restore, alter and extend with accompanying internal alterations to the B) south and C) north, and D) alter the internal layout to provide for the hotel use of the listed building.

- A) The restoration is to replace lost elements which are proposed to be as the original building or in relation to changes within a few years of completion as the applicant's specialist have interpreted the building. These elements are informed restoration and there is no objection these specific proposals. This would include the restoration of the loggia, removal/reversal of 20th Century alterations and the rebuilding of the two towers.
- B) The extension to extend to the south would include internal alterations to facilitate access. This is a large extension which would be dominant in the views to and from the garden of the house, and access to it would require loss historic fabric and alter the planned functional layout of the house, altering the experience and significance of the building. This element has been amended to require less digging out under the south range, and less intervention into historic fabric and plan form, but has resulted in a slightly longer (2.5m approx.) extension.
- C) The extensions to the rear are within the U of the house as it is now, and an area which has been altered over time through the demolition and sale of elements of the house. This new work is considered to be an appropriate response in design terms to the building it extends and respects its special interests, but is not justified in terms of the hotel use.
- D) Internally there are a number of changes. Some are part of reinstatement, but much is related to the change of use and requires loss of historic fabric. This loss is justified by the applicant in terms of the hotel use.

Many of these changes are new doorways and the subdivision of rooms to provide for en-suites, with larger changes including the insertion of public toilet facilities in an existing hallway, altering the plan form and movement on the ground floor, and the insertion of a floor in the historic two storey kitchen area causing a loss of the strikingly high interior, and the volume and unexpected space that relates to the intended use of that room. This has significance to the buildings experience and understanding and would be lost.

The consideration of the application requires this harm to be considered in the balance with public benefit. The alterations and the nature of them in relation to the building are considered above and Members will note that Historic England have commented in June 2019:

"that the proposed conversion of the house would result in considerable change to it, and we note that the applicant has tried to minimise loss of historic fabric on the principal floors

of accommodation, the impact at basement level is considerable both in terms of the removal of original walls within it, and the addition to it of a large extension.”

It should be noted that since they commented the application has been amended to reduce the internal works associated with the extension, which has been revised and enlarged externally as well, but the large (30m by 19m approx. as amended) extension remains. The Conservation Officer has no reason to consider that amendments to the amount of demolition in the cellar area and to the design of the extension has resulted in a proposal that is not harmful, but does acknowledge that the impact is lessened.

In the balance, there is also a listed building of special historic and historic interest which is clearly ‘at risk’ of deteriorating further and ultimately being lost. It is highly likely than any restoration to make the building habitable and secure its long term preservation will have a conservation deficit and will require some form of enabling development to fill this deficit. This material consideration would be part of the balance where Local Plan policy and the NPPF would allow minimal harm in order to secure the public benefit of the long term preservation of the listed building.

In their latest advice Historic England comment

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

For the harm resulting from the enabling development to be considered acceptable, your Authority must be convinced that it will deliver a secure, long-term future for the listed building in its optimum viable use (NPPF 196 & 202).

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

In this context, Historic England commented, in June 2019, again prior to the amendments to the cellars and under the southern range:

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

In final summary, any harm or loss should require clear and convincing justification from the applicant. Any harm should be judged against the public benefit, including securing the optimum viable use. (The optimum use is the one that causes the least harm to the significance of the asset). Overall it is considered that the submitted scheme does not amount to the optimum viable use for this property and therefore the application should be refused.

The enabling development considerations are laid out within the planning application for the proposal, and that in turn relates to the justification to alter and harm the listed building which is required by the NPPF: any harm or loss should require clear and convincing justification from the

applicant. Where the harm is less than substantial the harm should be judged against the public benefit, including securing the optimum viable use. The planning report demonstrates that submitted scheme is not viable and not the optimum viable use and therefore the application should be refused.

REASON FOR REFUSAL

Refuse Listed building Consent for the following reason:

1. The proposed works to the Grade II listed Blackborough House are part of a wider scheme of change of use and redevelopment of the site, to a hotel and associated facilities and dwellings. The extensive alterations to the listed building would result in the loss of historic fabric, and changes to historic layout and form which would be detrimental to the significance of this listed building, and overall would detract from the special architectural and historic interest of the building. Furthermore the erection of a large extension to the building by virtue of its size, design and location would be harmful to the setting of the listed building, which would consequently be harmful to the significance of this listed building and would detract from its special architectural and historic interest. In addition it is considered that the proposed enabling scheme of seven dwellings, which forms part of the overall development proposal, would not be viable and that it would not secure the long term preservation of Blackborough House which is a poor state of repair. Thus the overall development is not the optimum viable use for this building. The harm to the building is therefore not justified and consequently the proposals are therefore contrary to requirements of section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, policy DM25 of the Local Plan Review 2013 – 2033 and the guidance within National Planning Policy Framework 2019

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