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North Devon Council
Brynsworthy Environment Centre
Barnstaple
North Devon EX31 3NP

K. Miles
Chief Executive.

PLANNING COMMITTEE

A meeting of the Planning Committee will be held as a Virtual – Online meeting on **WEDNESDAY, 14TH OCTOBER, 2020 at 10.00 am.**

Members of the Planning Committee Councillor Ley (Chair)

Councillors Chesters, Crabb, Davies, Fowler, Gubb, Knight, Leaver, Mackie, Prowse, D. Spear, L. Spear, Tucker and Yabsley

AGENDA

1. Virtual meetings procedure - briefing and etiquette
Chair to report.
2. Apologies for absence
3. To approve as a correct record the minutes of the meeting held on 9th September 2020 (Pages 5 - 10)
4. Items brought forward which in the opinion of the Chair should be considered by the meeting as a matter of urgency
5. Declaration of Interests
(Please complete the form provided at the meeting or telephone the Corporate and Community Services Team to prepare a form for your signature before the meeting. Items must be re-declared when the item is called, and Councillors must leave the room if necessary)

PART A

6. **65528: Outline application for demolition of prospect house and erection of 17 dwellings and access (all other matters reserved), Land off Denes Road, Landkey, Devon** (Pages 11 - 54)
Report by Head of Place (attached).
7. **Appeals Report** (Pages 55 - 72)
Report by Head of Place (attached).

PART B (CONFIDENTIAL RESTRICTED INFORMATION)

Nil.

If you have any enquiries about this agenda, please contact Corporate and Community Services, telephone 01271 388253

NOTE: Pursuant to Part 3, Annexe 1, paragraph 3 of the Constitution, Members should note that:

"If a Member:

- (a) Arrives at a meeting during the consideration of an item; or*
- (b) Leaves a meeting at any time during the consideration of an item;*

They shall not:

- (i) propose or second any motion or amendment; or*
- (ii) cast a vote*

6.10.20



North Devon Council protocol on recording/filming at Council meetings

The Council is committed to openness and transparency in its decision-making. Recording is permitted at Council meetings that are open to the public. The Council understands that some members of the public attending its meetings may not wish to be recorded. The Chairman of the meeting will make sure any request not to be recorded is respected.

The rules that the Council will apply are:

1. The recording must be overt (clearly visible to anyone at the meeting) and must not disrupt proceedings. The Council will put signs up at any meeting where we know recording is taking place and a reminder will be issued at the commencement of virtual meetings.
2. The Chairman of the meeting has absolute discretion to stop or suspend recording if, in their opinion, continuing to do so would prejudice proceedings at the meeting or if the person recording is in breach of these rules.
3. We will ask for recording to stop if the meeting goes into 'part B' where the public is excluded for confidentiality reasons. In such a case, the person filming should leave the room ensuring all recording equipment is switched off. In a virtual meeting the public will be excluded from the meeting while in Part B.
4. Any member of the public has the right not to be recorded. We ensure that agendas for, and signage at, Council meetings make it clear that recording can take place – anyone not wishing to be recorded must advise the Chairman at the earliest opportunity. Public contributions to virtual meetings will be recorded, unless, at the Chair's discretion, recording is deemed inappropriate in accordance with point 2 above.
5. The recording should not be edited in a way that could lead to misinterpretation or misrepresentation of the proceedings or in a way that ridicules or shows a lack of respect for those in the recording. The Council would expect any recording in breach of these rules to be removed from public view.

Notes for guidance:

Please contact either our Corporate and Community Services team or our Communications team in advance of the meeting you wish to record at so we can make all the necessary arrangements for you on the day.

For more information contact the Corporate and Community Services team on **01271 388253** or email **memberservices@northdevon.gov.uk** or the Communications Team on **01271 388278**, email **communications@northdevon.gov.uk**.

Meeting Etiquette Reminder for Members

Members are reminded to:

- Join the meeting at least 10-15 minutes prior to the commencement to ensure that the meeting starts on time.
- Behave as you would in a formal committee setting.
- Address Councillors and officers by their full names.
- Do not have Members of your household in the same room.
- Be aware of what is in screen shot.
- Mute your microphone when you are not talking.
- Switch off video if you are not speaking.
- Only speak when invited to do so by the Chair.
- Speak clearly (if you are not using video then please state your name)
- If you're referring to a specific page, mention the page number.
- Switch off your video and microphone after you have spoken.
- The only person on video will be the Chair and the one other person speaking.
- Only use the Chat function to register that you wish to speak or to move or second a motion.

Virtual attendance by members of the public

If members of the public wish to attend virtually, please contact Corporate and Community services on 01271 388253 or memberservices@northdevon.gov.uk by 12pm on the Monday preceding the meeting.

NORTH DEVON COUNCIL

Minutes of a meeting of Planning Committee held at Virtual - Online meeting on Wednesday, 9th September, 2020 at 10.00 am

PRESENT: Members:

Councillor Ley (Chair)

Councillors Chesters, Davies, Gubb, Knight, Leaver, Mackie, Prowse, D. Spear, L. Spear, Tucker and Yabsley

Officers:

Head of Place, Solicitor, Lead Planning Officer (North) (BP), Lead Planning Officer (South) (JW), Lead Officer - Planning Policy (AA), Planning Officer (DB), Conservation Officer, Contracts Delivery Manager, Senior Planning Officer (JM), Sustainability Officer and Parks, Leisure and Culture Officer

Also Present:

Councillors Davis, Mack, Henderson and Worden

93. VIRTUAL MEETINGS PROCEDURE - BRIEFING AND ETIQUETTE

The Chair outlined the virtual meeting procedure and etiquette to the Committee and attendees.

The Senior Corporate and Community Services Officer confirmed the names of those Councillors and officers present and advised that members of the public were also in attendance to address the Committee and to listen to proceedings.

94. APOLOGIES FOR ABSENCE

There were no apologies for absence received.

95. TO APPROVE AS A CORRECT RECORD THE MINUTES OF THE MEETING HELD ON 12TH AUGUST 2020

RESOLVED that the minutes of the meeting held on 12 August 2020 (circulated previously) be approved as a correct record and signed by the Chair.

96. DECLARATION OF INTERESTS

The following declarations of interest were announced:

Councillor Chesters Planning application 64000: Personal interest as the Applicant was her neighbour.

Councillor Yabsley Planning application 70467: Personal interest as the owner lived in Witheridge.

97. 64000: OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT FOR UP TO 94 DWELLINGS (ALL MATTERS RESERVED)(ADDITIONAL ECOLOGICAL INFORMATION)(AMENDED INFORMATION), LAND AT CHIVENOR CROSS, CHIVENOR, DEVON

Councillor Chesters re-declared her personal interest in the above application and chose to leave the meeting during the consideration of this planning application.

The Committee considered a report by the Head of Place (circulated previously).

Councillor S. Crowther (Vice-Chair of Heanton Punchardon Parish Council), Graham Townsend (agent) and Stuart Maskell (applicant) addressed the Committee.

Councillor Davis (Ward Member) addressed the Committee.

In response to questions, the Head of Place advised that the Joint Local Plan was adopted in October 2018. The Senior Planning Officer (JM) referred to an appeal decision in Torrington whereby the Inspector had come to the conclusion that North Devon and Torridge District Councils were unable to demonstrate a five year supply of deliverable housing land sufficient to meet their housing requirements as the Councils had insufficient evidence for the current deliverability of the housing land supply. The lack of a five year housing land supply had a material impact on the determination of future applications. However, should the application be approved it would have a positive impact on the five year housing land supply.

The Lead Officer Planning Policy advised that since the adoption of the Joint Local Plan, the National Planning Policy Framework had changed the way in which Authority's could include sites which could contribute to the five year housing land supply. The Inspector determined as part of the appeal decision in Torrington that emails from developers could not be included as clear evidence of future delivery. Due to Covid 19 a high level of build out was not anticipated until market confidence was re-established. The five year housing land supply was determined at a point of time, therefore both Councils needed to maintain a five year supply. Build out rates will increase and decrease. Both Councils needed to re-establish the five year housing land supply and ensure that there were sufficient deliverable sites.

In response to a question, the Senior Planning Officer (JM) advised that it had been proposed by the applicant to provide 50% affordable dwellings but at that time the

site would have been classed as a rural exceptions site and so the starting point was 100%. Affordable housing reduced only by cross subsidised market housing demonstrated through viability. However, following the Inspector's appeal decision in Torrington the site was outside of the development boundary and policies ST17 and ST18 applied. These policies required the provision of affordable housing to be 30% for this development. There was now no planning policy basis to require the provision of 100% or 50%. If the Committee was minded to approve the application it could attach additional conditions provided that they met the six tests of reasonableness. As the applicant had agreed to policy compliant contributions an independent viability assessment would not be sought. If the applicant could not deliver the amount of affordable housing required, then the applicant would be required to submit an application to vary the Section 106 agreement.

In response to questions, the Highways Officer (PY), Devon County Council addressed the Committee. He advised that pre-application discussions had taken place during 2017/18, however there had been little engagement with DCC since that time and the applicant had not fully addressed the highways issues that had been raised. No proposals had been advanced since the initial discussion with the Highways Authority in January 2018. A transport assessment had been carried out to assess whether the junctions had capacity and rigorously assessed whether the impact of the development would warrant refusal of the application. It had been concluded that although there would be an increase in traffic, it would not materially have an impact on the junctions. Within the last two weeks, the applicant had indicated that the highways improvements would be undertaken and included within a section 106 agreement, however the applicant had not provided any detail of the improvements to be made and so he was concerned that the applicant did not appreciate the level of works that were required. The existing crossing near to the Bovis homes housing development was fit for purpose. A new Toucan crossing would be provided approximately 50-60 metres away from Chivenor and would replace the informal crossing. The proposed footway to be provided had not been fully identified. He also expressed concern regarding the potential loss of highway improvements as in other applications these had been removed due to viability. He advised that DCC had assessed whether any improvements could be made to the junction in the centre of Braunton, however very little improvement could be made and any improvements made would not fully address the traffic congestion.

In response to comments made by the Highways Officer, the Senior Planning Officer (JM) advised that the chronology of consultation that had been undertaken with DCC Highways was detailed on page 16 of the report. Work had been proactively undertaken with the applicant over the past nine months to actively address the concerns that had been raised. There had been two responses from the Highways Officer and no request had been made, within those responses, for detailed designs for off-site highway improvements. Therefore, the applicant had not been requested to provide a detailed design. A section 106 agreement and detailed designs for off-site highway improvements could be drawn up. The most recent consultation response had been received in April 2020. The Senior Planning Officer (JM) advised any departure from these requirements would result in the scheme coming back to committee.

In response to suggestions by the Committee to include additional conditions regarding carbon neutrality, all dwellings were required to be built to modern standards and in accordance with the Building for Life 12 standards and would be considered as part of the reserved matters application. In relation to a proposed condition to secure a cycleway/footpath at the western end of the development onto the highway, this would also be considered as part of the reserved matters application. In response to further questions from the Committee, she advised that if the application was deferred for a period of two months it would only result in the receipt of technical drawings for off-site highway improvements from the applicant. The applicant had already agreed to provide the highways works required by the Highways Officer. If these improvements could not be provided, then the matter would be brought back to the Committee for consideration.

In response to a question, the Head of Place advised that if the application was refused and the applicant appealed, that it was likely that the applicant would be successful on the basis of the five year housing land supply.

The Lead Officer Planning Policy advised that the success of any appeal was based on the robustness of any reasons for refusal.

The Solicitor advised that North Devon Council and Devon County Council would be required to draft heads of terms and therefore the terms needed to be clear. Any additional conditions imposed would be required to meet the six tests for imposing planning conditions.

In response to the suggestions of the inclusion of additional conditions, the Senior Planning Officer (JM) outlined the six tests for imposing conditions. In relation to carbon neutrality of dwellings and the inclusion of electric vehicle charging, these would both be considered as part of the reserved matters application. A condition linking footpaths to the highway would be considered as part of the layout as part of the reserved matters application.

RESOLVED (6 for, 5 against, 0 abstained) that the application be APPROVED as recommended by the Head of Place subject to that if there were substantive highways issues that could not be resolved between the Highways Authority and the applicant within the next two months that the application be brought back to the Committee for consideration.

98. ADJOURNMENT OF MEETING

RESOLVED that it being 12.05 p.m. the meeting be adjourned for a five minute comfort break and reconvene at 12.10 p.m.

99. 70467: OUTLINE APPLICATION FOR THE ERECTION OF 26 DWELLINGS AND ASSOCIATED CAR PARKING AND SOME MATTERS RESERVED (APPEARANCE AND LANDSCAPING), LAND OF SOUTHLEY ROAD, SOUTH MOLTON, EX36 4BL

Councillor Chesters returned to the meeting.

The Committee considered a report by the Head of Place (circulated previously).

Councillor Marc Cornelius (South Molton Town Council) addressed the Committee.

Councillors Henderson and Worden (Ward Members) addressed the Committee.

In response to a question, the Planning Officer (DB) confirmed that the application was for the erection of 26 dwellings.

In response to questions, the Lead Planning Officer (JW) advised that the land at Mill Street and Pannier Market end of the site were under separate ownership. The section 106 would require the pavement to be built to an adoptable standard and that the long term aim would be for adoption once the pavement connected to the public highway by Devon County Council.

RESOLVED (9 for, 2 against, 1 abstained) that the application be APPROVED as recommended by the Head of Place.

100. 71912: APPLICATION FOR A NON MATERIAL AMENDMENT TO PLANNING PERMISSION 71405 TO CHANGE APPROVED TIMBER CLADDING TO A COMPOSITE MATERIAL FOR THE ELEVATIONS, TARKA TENNIS CENTRE, SEVEN BRETHREN BANK, BARNSTAPLE, DEVON, EX31 2AS

The Committee considered a report by the Head of Place (circulated previously).

Molly Leonard (agent) addressed the Committee.

RESOLVED that it being 1.00 p.m. that the meeting continue in order for the remaining business to be transacted.

Councillor Knight (in his capacity as Ward Member) addressed the Committee.

In response to questions, the Lead Planning Officer (JW) advised that the change of the approved timber cladding to a composite compressed fibre cladding material for the elevations was considered to be more appropriate for a modern design building. The composite material would visually look like timber and would have a softening impact. Concerns had been raised regarding the timber claddings ability to stand up to weather erosion.

RESOLVED (10 for, 1 abstained, 1 against) that the application be APPROVED as recommended by the Head of Place.

101. APPEALS REPORT

The Committee considered and noted a report by the Head of Place (circulated previously) regarding planning and enforcement appeal decisions received since those reported at the last meeting of the Committee.

Chair

The meeting ended at 1.13 pm

NOTE: These minutes will be confirmed as a correct record at the next meeting of the Committee.

Application Report

Strategic Development & Planning
Place Services
North Devon Council
Lynton House, Commercial Road,
Barnstaple, EX31 1DG



Application No:	65528	Application Expiry:	11 December 2018
Application Type:	Outline application	Ext Of Time Expiry:	
		Publicity Expiry:	18 October 2018
Parish/Ward:	Landkey/Landkey		
Location:	Land off Denes Road Landkey Devon		
Proposal:	Outline application for demolition of prospect house & erection of 17 dwellings & access (all other matters reserved)		
Agent:	NPAS Devon Limited		
Applicant:	Mr G Lane		
Planning Case Officer:	Miss S. May		
Departure:	Y		
EIA Development:	N	EIA Conclusion:	Development is outside the scope of the Regulations.
Decision Level/Reason for Report to Committee:		Applicant is a Councillor	

Site Description

The application site is well related to the existing settlement of Landkey along the northern edge of the village in an area of land bounded by Birch Road to the north and Blakes Hill Road to the west. The site slopes gently towards existing housing along the southern boundary. The area of land amounts to approximately 0.61 hectares (currently used for the grazing of horses and sheep) as well as 0.068 hectares of land where Prospect House is currently situated. There is an existing agricultural field gate access onto Dene's Road. Residential properties lies to the East (Gratton) and West of the site (the other side of Dene's Road). To the north of the site is a field whilst to the west of the site is Blakes Hill Road. The site is currently enclose by Devon hedge banks and mature screening.

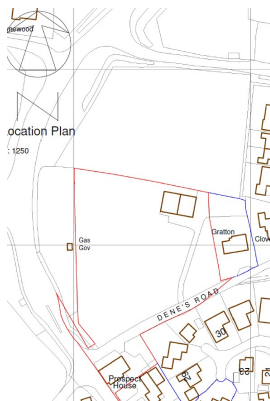
Recommendation:

Approved

Legal Agreement Required:- Yes

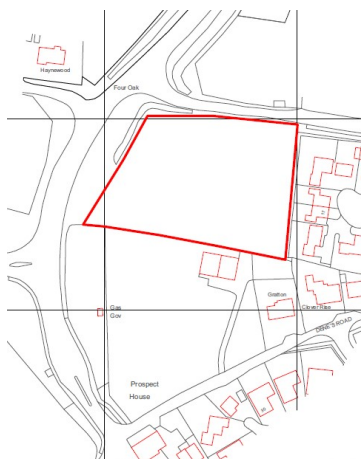
Planning History

The site is outlined in red below:



41135	Agricultural PP Required	24 October 2005
Address: Land adj to Gratton, Denes Road, Landkey, Barnstaple, Devon, EX32 0JY		
Proposal: Agricultural Building Works Prior Notification in respect of extension to existing store for feed & winter cattle housing		
41151	Full Planning Approval	12 December 2005
Address: Land adjacent to Gratton, Denes Road, Landkey, Barnstaple, EX32 0JY		
Proposal: Extension to agricultural building used to accommodate livestock		

Land to the North is the subject of a separate application which has yet to be determined.



64079	Outline Application	Consideration period
Address: Land at Birch Road / Blakeshill Road, Landkey, Devon,		
Proposal : Outline application for erection of 18 dwellings (all matters reserved) (amended plans) (amended description)		

Constraints/Planning Policy

Constraint / Local Plan Policy

Area of Special Advert Control	Distance (Metres) Within constraint
Burrington Radar Safeguard Area	Within constraint
Chivenor Safeguard Zone	Within constraint
Landscape Character is: 1D Estate Wooded Ridges & Hilltops	Within constraint
Road Class:R Ownership: Highway Authority	Within constraint
Within: Landkey Development Boundary ST07	Within constraint
Within Adopted Housing Allocation: LAN01 Land south of Birch Road	Within constraint
Within Adopted Unesco Biosphere Transition (ST14)	Within constraint
SSSI Impact Risk Consultation Area	Within constraint

DM01 - Amenity Considerations
 DM02 - Environmental Protection
 DM03 - Construction and Environmental Management
 DM04 - Design Principles
 DM05 - Highways
 DM06 - Parking Provision
 DM08 - Biodiversity and Geodiversity
 DM08A - Landscape and Seascape Character
 DM10 - Green Infrastructure Provision
 ST01 - Principles of Sustainable Development
 ST02 - Mitigating Climate Change
 ST03 - Adapting to Climate Change and Strengthening Resilience
 ST04 - Improving the Quality of Development
 ST07 - Spatial Development Strategy for Northern Devon's Rural Area
 ST10 - Transport Strategy
 ST14 - Enhancing Environmental Assets
 ST17 - A Balanced Local Housing Market
 ST18 - Affordable Housing on Development Sites
 ST21 - Managing the Delivery of Housing
 ST23 - Infrastructure

Consultees

Name	Comment
Building Control Manager	No response received.
DCC - Childrens Services	Regarding the above planning application, Devon County Council has identified that the proposed 17 family type dwellings will generate an additional 4.25 primary pupils and 2.55 secondary pupils which would have a direct impact on Landkey Primary school and The Park School.
Reply Received 15 January 2019	In order to make the development acceptable in planning terms, an

	<p>education contribution to mitigate its impact will be requested. This is set out below:</p> <p>We have forecasted that the nearest primary and secondary school have currently not got capacity for the number of pupils likely to be generated by the proposed development. Therefore, Devon County Council will seek a contribution directly towards additional education infrastructure at the local primary and secondary school that serves the address of the proposed development. The contribution sought towards primary is £58,021 (based on the DfE extension rate of £13,652 per pupil) and the contribution sought for secondary is £55,898 (based on the DfE extension rate of £21,921 per pupil). This will relate directly to providing education facilities for those living in the development. All contributions will be subject to indexation using BCIS, it should be noted that education infrastructure contributions are based on March 2015 rates and any indexation applied to contributions requested should be applied from this date. The amount requested is based on established educational formulae (which related to the number of primary and secondary age children that are likely to be living in this type of accommodation). It is considered that this is an appropriate methodology to ensure that the contribution is fairly and reasonably related in scale to the development proposed which complies with CIL Regulation 122.</p>
<p>DCC - Development Management Highways</p> <p>Reply Received 16 October 2018</p>	<p>Recommendation: That conditions shall be incorporated in any grant of permission (see recommendation)</p>
<p>DCC - Lead Local Flood Authority</p> <p>Reply Received 15 October 2018</p>	<p>At this stage, we object to this planning application because we believe it does not satisfactorily conform to saved Policy DVS6, relating to flooding and water quality, and saved Policy DVS7, relating to sustainable drainage systems, of North Devon Council's Local Plan (1995-2011). 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.</p>
<p>DCC - Lead Local Flood Authority</p> <p>Reply Received 30 October 2019</p>	<p>Recommendation: Our objection is withdrawn and we have no in-principle objections to the above planning application at this stage, assuming that the pre-commencement planning conditions are imposed on any approved permission (see recommendation)</p> <p>Observations: Following my previous consultation response</p>

	<p>FRM/ND/65528/2018, dated 7th June 2019, the applicant has provided additional information in relation to the surface water drainage aspects of the above planning application, in an e-mail dated 06/09/2019, for which I am grateful.</p> <ul style="list-style-type: none"> - Proposed Foul & Surface Water Drainage Strategy 18032 - OO1 Rev B - HR Wallingford Calculation Output dated 9th August 2019 - Long Term Storage Calculation <p>The applicant is proposing to attenuate flows in a tanked system in line with South West Water's current adoption requirements. The design of the proposed surface water drainage system includes the incorporation of long term storage in line with best practice and also includes a maintenance schedule.</p>
<p>Designing Out Crime Officer</p> <p>Reply Received 24 September 2018</p>	<p>It is appreciated that at this time it is for outline only, as such I am unable to comment in depth as the available drawings do not reveal many of the details that would be of concern to the police. I note and welcome the inclusion of the Crime & Disorder Statement and the reference to the principles of Secure By Design.</p> <p>However, having reviewed the available site plan, which I accept may change, please note the following information, initial advice and recommendations from a designing out crime, fear of crime, antisocial behaviour (ASB) and conflict perspective:-</p> <p>Off plot car parking areas should be well illuminated to provide the potential for natural surveillance during hours of darkness. If existing hedgerow is likely to comprise new rear garden boundaries as appears will be the case then it must be fit for purpose. They should be of sufficient height and depth to provide both a consistent and effective defensive boundary as soon as residents move in. If additional planting will be required to achieve this then temporary fencing may be required until such planting has matured. Any hedge must be of a type which does not undergo radical seasonal change which would affect its security function. I would also advise that for all plots that private front gardens are suitably defined. Open frontage, particularly but not exclusively, on corner plots, can for many reasons frequently lead to community conflict, for example, desire lines for pedestrians and cyclists are created, dog fouling, ball games and anti-social behaviour.</p>
Environment Agency	No response received.
<p>Environmental Health Manager</p> <p>Reply Received 5 October 2018</p>	<p>I have reviewed this application in relation to Environmental Protection matters and comment as follows:</p> <p>1 Land Contamination</p> <p>I recommend conditions be included (see recommendation)</p>

	<p>2 Asbestos The existing buildings on the site are of an age where materials containing asbestos may have been used in their construction or subsequent modification. The buildings should be surveyed for such materials prior to demolition by a suitably qualified person. Where found, materials containing asbestos should be removed and disposed of in accordance with current legislation and guidance. The results of this survey and any associated recommendations should be referred to within the Construction Management Plan (see below).</p> <p>3 Construction Phase Impacts In order to ensure that nearby residents are not unreasonably affected by dust, noise or other impacts during the demolition / construction phase of the development I recommend a Construction Environmental Management Plan Condition and a Construction Hours Condition (see recommendation)</p>
<p>Housing Enabling Officer</p> <p>Reply Received 10 October 2018</p>	<p>Due to being in between local plans at present, we need to consider both plans in isolation.</p> <p>If the application is determined in accordance with the current Local Plan, as the land is outside the development boundary it would be classed as an exception site with regard to affordable housing. The main driver should be affordable housing, and any open market housing should be the minimum necessary to cross-subsidise the affordable element.</p> <p>If the application is determined in accordance with the emerging Local Plan, then, as an allocated site, the affordable housing provision should be 30%. 30% of 17 is 5.1. There should therefore be 5 affordable dwellings and an off-site financial contribution equivalent to a tenth of a dwelling. The formula we use to establish an off-site financial contribution figure is (Open Market Value – Registered Provider price) x % of affordable housing required. The applicant states in 2.4 of their Affordable Housing Statement "The viability appraisal submitted as part of this application determines that the site can deliver 11.8% affordable housing. This consists of 1 x two-bedroom house (social rent) and 1 x two-bedroom house (discounted sale)". This would obviously need independent verification from Plymouth City Council, to which Housing Enabling would be a part of. This would be at the applicant's cost.</p> <p>Council policy is that at least 75% of the affordable homes should be for social rent, then the balance intermediate housing for sale or rent (intermediate rent at 80% of Local Housing Allowance or shared ownership or discounted sale if preferred). For five affordable dwellings the Council's requirement would be three x 2</p>

bedroom 4 person houses and two x three bedroom 5 or 6 person houses. The Council's requirement would be 4 for social rent and 1 intermediate. The requirement would be that the 4 social rent dwellings comprise of three x 2 bedroom houses and 1 x 3 bedroom house. The intermediate would need to be a three bedroom house. In the case of six affordable dwellings the requirement would be for five social rent (three x 2 bedroom houses and two x 3 bedroom houses) and one intermediate (a three bedroom house). This therefore shows that in the case of 6 affordable dwellings the sixth dwelling would need to be a three bedroom house for social rent. The off-site financial contribution formula would therefore be:-

Open market value of a three bedroom semi-detached house in Landkey minus a registered provider price for a three bedroom semi-detached house for social rent in Landkey multiplied by the % of affordable housing (10%) required. On Section 106 schemes we would expect this to be delivered grant free so hence no affordable rent can be charged. Plus, we have strong evidence in North Devon that three quarters of those in housing need can only afford social rent so we need to ensure that we deliver the right type of housing. The affordable homes should be designed and of the same material and construction as the open market – including car parking.

Local connection on all affordable housing, whether rented or for sale. First cascade to the parish of Landkey, second cascade to the adjoining parishes and third cascade to the whole of North Devon Council's area. The table below shows the policy requirement for dwelling mix, occupancy levels and the range of absolute minimum size values accepted locally depending on the Registered Provider chosen. If they are within this minimum range the applicant should ensure they find a Registered Provider sooner rather than later to

- (1) ensure that the Registered Provider will want the homes and
- (2) work with the chosen Housing Association to make most efficient use of the space.

The best solution is to ensure the homes are built above the highest minimum size indicated in the range.

Bed size & dwelling type	Occupancy	NDC policy requirement to meet need	The minimum range of RPs who work in North Devon (m ²) (inc. storage, internal walls; exc. party and external walls, chimney breast & any floor area where ceiling height is
4 bedroom house (2-storey)	7 person	6%	115
4 bedroom house (2-storey)	6 person		95-104
3 bedroom house (2-storey)	6 person	24%	86-92
3 bedroom house (2-storey)	5 person		82-88
2 bedroom house (2-storey)	4 person	At least 60%	70-76
1 bedroom house/bungalow/flat	2 person	10%	45-56

	<p>Devon Home Choice shows there are 30 households living in the parish of Landkey registered in housing need as of April 2018. Only 1 in 7 households tend to register themselves on the housing register as they don't think that they will have the opportunity to be housed so this figure is often significantly higher.</p>
<p>Housing Enabling Officer</p> <p>Reply Received 13 November 2019</p>	<p>I'm unsure of the school situation in Landkey at present. I know the new LP now allows for education and POS to be collected on affordable homes but I know in case of viability we can look into redirecting the money to boost affordable housing. Bearing in mind this site was supposed to deliver 5 – would you be prepared to redirect the £100k education contribution for the provision of an additional unit (shared ownership or discounted sale).</p>
<p>Housing Enabling Officer</p> <p>Reply Received 11 May 2020</p>	<p>The original agreement was for 5 affordable homes. The viability assessment then agreed just 3 social rent. Any further change of tenure would need to go back to Joe McCarthy at Plymouth City Council. If he agrees with the additional costs then I will support but it may need to be a discounted sale home @ £120k rather than shared ownership.</p>
<p>Housing Enabling Officer</p> <p>Reply Received 12 June 2020</p>	<p>This is a difficult one because although the viability effect of the 2 tenure mixes is marginal – the social effect is huge. At present, social rent is under pressure even more due to Covid-19 and pressure to house the homeless and deal with the fall out once evictions are once again allowed and mortgage holidays are ceased.</p> <p>However, that being said, the first viability assessment from PWH was carried out on Oct 2019 we are now 8 months on so in order to move this forward we will accept 2 social rent and either shared ownership (via RP) or discounted sale (direct with advertising and allocation requirements in the s106). We would need a valuation to set the % of OMV in the s106. I would advise them to discuss the scheme with some RPs to see if they would take on a shared ownership or not at the present time.</p> <p>Regarding bed size we would be expecting the DS or S/O as a 2-bed 4-person and the social rent as 1 x 2-bed 4-person and 1 x 3-bed 5 or 6-person.</p> <p>13 August 2020</p> <p>No, we will need an up-to-date valuation of 2-beds – the VA was too long ago.</p> <p>We will also not accept their DS % of OMV nor the dwelling mix.</p> <p>1. The agent wrote that the DS would be based on a price of 20% less than the open market value. I'm not sure where that has come from. As per attached email and below – you and I have said all along that DS must be at £120k (max of 4 x AAWHI as Landkey</p>

	<p>is more expensive than Barnstaple – that would be 3 x AAWHI). Initial sale would be £120k, subsequent sale at % of OMV (based on a current valuation).</p> <p>2. Joe McCarthy said in his e mail dated 13/11/2019 "We have been working off the outline site plan which has assumed the affordable dwellings would be the 2 bed semis. I think securing 4 bed or detached units as social rent might be a stretch but Charles' original request of 2x2b and 1x3b Social Rent may be achievable. Would you like me to see about nailing down that mix in the 106?". We said yes. And we have been quite clear all along.</p> <p>3. We need to emphasise the fact that the number of AH came down from 4AH in PCC's original VA conclusion to just 3 AH. In addition, even though 3 social rent were proven to be viable we have since compromised on 2 SR and 1 DS or S/O – and we were clear again on dwelling mix including a 3b (Email to yourself Sarah dated 12/06/2020:- "Regarding bed size we would be expecting the DS or S/O as a 2-bed 4-person and the social rents as 1 x 2-bed 4-person and 1 x 3-bed 5 or 6-person") Therefore, I think we have compromised enough. Larger 3b accommodation is also needed.</p> <p>18 August 2020</p> <p>Housing Enabling will not support an affordable home at a discounted price of £159,960 (their proposed 80% of an old 2019 valuation of £199,950). 80% of open market does not work in North Devon; it is unaffordable to those in housing need. Even the First Homes product that is being gradually further detailed by government allows Local Authorities the discretion to require a higher minimum discount (around 40-50% discount) to ensure the homes are affordable in their local area as they realise a 20% discount across the board won't work.</p> <p>We have made it clear from the outset – as soon as we compromised and allowed for a discounted sale instead of the required 3rd unit of social rent - for the initial sale to be at £120k and subsequent sales at a % of OMV to be set in the s106 (£120k/valuation). In this case it equates to 60% of OMV as £120k/£199,950 (a 40% discount).</p> <p>Furthermore, since the above request we have since had research carried out for North Devon District Council and although I honoured our standard practice that equated to just a 40% discount; the research clearly shows that for a 2-bed in Landkey (Zone 2) the discount should be 48% = 52% of OMV = £103,974 initial sale. This is the evidence I would present.</p> <p>Despite house prices increasing at present (and hence the discount would be higher than 40% if valued today) in order to move the application forward I will accept the 2019 valuation of £199,950 valuation but only on our original terms:</p>
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	<ul style="list-style-type: none"> - Initial sale at £120k - Subsequent sales at 60% of OMV <p>North Devon Council has compromised on the 3rd social rent unit becoming a Discounted Sale, but we will need the 2nd social rent unit as a 3-bed. As I said in my previous email I think we have compromised quite enough on this scheme to enable the applicant to build out a viable scheme and we also need to meet the housing need for larger accommodation that exists on the ground too. The applicant/agent is stating that the original VA was based all on 2-bed but we need to also point out that the original VA and conclusion was also not based on a Discounted Sale that would add in a good £50k of income for the applicant – so I'm sure that if we compromised on allowing this more expensive tenure to make the scheme stack up "more" – the applicant can easily ensure that one of the 2 social rents can be provided as a 3-bed.</p>
<p>Housing Enabling Officer</p> <p>Reply Received 14 September 2020</p>	<p>Yes as long as all social rented – move forward with 3 x 2b SR.</p> <p>We really need to ensure though in future that the viability work includes the type of AH that we need. Housing enabling did input this into the process at the consultation stage and at the VA stage but it doesn't seem to have been carried through. It's not enough to test a scheme on what the applicant puts in – it also needs to be tested against the policy requirement (ie 3 x 2b SR). We get many VAs based on completely different numbers, tenures and types – ie what the developer wants to be provide rather than what policy and need says we need to provide. Viability must be considered but the outcome – ie what can be afforded must also be actually needed – ie we may be able to deliver less but it can be tweaked to be that which will be actually used on the ground.</p>
Landscaping & Countryside Officer	No response received.
<p>Natural England</p> <p>Reply Received 4 October 2018</p>	Natural England has no comments to make on this application.
<p>Open Space Officer</p> <p>Reply Received 23 October 2018</p>	<p>The emerging local plan identifies green infrastructure requirements through policy DM10, stating development will provide new accessible green infrastructure, including public open space and built facilities. As the development isn't providing any on-site provision, I attach the open space requirement for this development. Providing a new community hall is a priority for Landkey and I anticipate the contribution would support this scheme along with potential green infrastructure enhancement in keeping with the policy.</p>

<p>Parish / Town Council</p> <p>Reply Received 23 October 2018</p>	<p>It was RESOLVED, that the following concerns/comments be raised:</p> <ul style="list-style-type: none"> i) A vehicular/pedestrian link should be provided to the adjoining proposed development land. ii) That the development at the entrance to the site be of an enhanced quality and retain the character of the existing buildings in this area as it is a prominent entry point to the village of Landkey. iii) That the Devon hedge bank along the boundary to Blakeshill Road be retained. iv) The number of affordable houses to be provided was queried as not in accordance with NDC Policy.
<p>Planning Policy Unit</p> <p>Reply Received 23 October 2018</p>	<p>As stated at the pre-application stage, there was a fundamental policy concern that the pre-application scheme was only proposing 23.5% affordable housing. However, I note with this current application that the applicant is now only seeking to deliver 11.8% affordable housing which equates to a shortfall of 154% than the policy requirement. As set out in policy ST18(1a) of the emerging Local Plan, housing developments over the threshold will be required to provide onsite delivery of affordable housing equal to 30% of the total number of dwellings (gross). In this instance there should be an on-site requirement of at least 5 affordable dwellings with the .1 of a dwelling being collected through a financial contribution of broadly equivalent value to that which would have been required on site (ST18, criterion 3). I also note the applicant has attempted to show through a viability assessment that in their opinion, there are clear viability reasons as to why this greenfield site could not deliver a policy compliant scheme in terms of on-site affordable housing. As currently drafted, I would maintain a policy objection to the current proposal unless the viability assessment is robustly verified and independently assessed in order to justify a reduction against policy requirements. Without going in to details with regard the VA, I would make the following comments from a policy perspective.</p> <p>Firstly, I would question the purchase cost of Prospect House in order to achieve an access which is not a policy requirement within the allocation LAN01 and I also note the existing dwelling is being replaced by two 4 bed units at an estimated sales value of). As I pointed out previously, there is no policy objection in principle to access off Denes Road to serve this part of the allocation subject to highway considerations as it is recognised that such an approach to site release should also increase housing delivery across the allocation but it should not be at the cost of delivering affordable housing. Secondly, I would also question the land purchase cost of up to when it would appear to be already in the ownership of the applicant. However, I am sure these are issues that are currently being examined.</p>

	<p>Criterion 1 seeks to deliver a mix of house types, tenures and sizes to reflect local need. It would appear from the proposed site layout (506 20) that the developer is seeking to deliver the following:</p> <ul style="list-style-type: none"> • 2 bed – 4 units (23.5% of total) • 3 bed – 4 units (23.5% of total) • 4 bed – 9 units (53% of total) <p>Clearly there is a potential imbalance here with an obvious emphasis on delivering 4 bed units on this site. Clause (1) of policy ST17 provides a mechanism to influence the mix of housing on proposals. The HEDNA can be used for evidence of need - including house sizes. More localised evidence, such as housing needs surveys, can be used if they are available and up-to-date. The policy is intended to influence both market and affordable tenures. On smaller schemes, the mix should generally be taking account of local character and context, on larger schemes however, a more 'proportionate mix' should generally be the starting point. Page 180 of the HEDNA (CE21) provides guidance on the mix of bed sizes by tenure that would be appropriate to help meet identified needs. For information, Part (1) of the policy could be used to seek particular forms of housing, such as bungalows, where there is evidence of need. I have provided an extract from the HEDNA (Table 114: Recommended Housing Mix – page 214) which identifies the recommended housing mix across the Plan area.</p> <p>1 – bed 2 – bed 3 - bed 4 - bed Market 5-10% 30-35% 40-45% 15-20% Affordable 30-35% 35-40% 20-25% 5-10% All Dwellings 15% 35% 35% 15%</p> <p>The evidence is clear, the latent demand for 4 bed units is relatively small (15% of all dwellings) although it is accepted that this figure could increase or decrease accordingly based on the specific settlement need. As you can see the highest demand is for 2 and 3 bed units (35% of all dwellings) although the proposed mix would appear to fall well below the identified need. Therefore, you must be assured that this proposed housing mix will meet the numbers, type, size and tenure to meet the identified local housing needs.</p> <p>As the application is currently presented, I would maintain a fundamental policy objection to the development in terms of delivery of affordable housing at less than 12% without a robust examination of the submitted viability assessment in order to establish that a policy compliant scheme of 30% cannot be delivered.</p> <p>Should you be minded to support the application, I would</p>
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	<p>appreciate details from the developer in terms of housing delivery rates so the information can inform the Council's housing trajectory and 5 YHLS over the Plan period.</p>
Recycling & Commercial Services	<p>No response received.</p>
South West Water	<p>I refer to the above application and would advise that South West Water has no objection.</p>
Reply Received 27 September 2018	<p>For information South West Water have already been approached regarding the development and suitable point of connection to the public foul drainage system identified.</p>
<p>Sustainability Officer</p> <p>Reply Received 3 October 2018</p>	<p>The submitted Wildlife Habitat Survey (WHS) suggests that the site is of relatively low ecological value in terms of protected species and habitats which would be potentially affected by the current proposal. No further survey work has been deemed necessary at this stage. However, the WHS and Prospect House bat surveys are more than 12 months out of date and require updating.</p> <p>The WHS fails to adequately assess the value and extent of habitat losses accruing from the development of the grassland and loss of hedgerow to access the site. The NPPF and emerging Local Plan require all development to demonstrate a net gain in biodiversity and the Defra biodiversity metric should be employed to illustrate an appropriate provision of mitigation and enhancement. All subsequent mitigation and enhancement measures should be accommodated onsite where possible and implemented, managed and monitored in accordance with a Landscape Ecological Management Plan (LEMP) submitted in support of any future Reserved Matters application.</p> <p>Once the WHS and bat surveys have been updated and an appropriate estimate of net biodiversity gain has been provided I would support a LEMP being secured through a suitably worded condition.</p> <p>The WHS also recommends that a sensitive lighting scheme is implemented and in particular should aim to ensure that artificial light spillage is kept to an absolute minimum particularly around the boundary hedgerows. Given the nature of the site, the scale of the proposal and the preliminary recommendations of the WHS a detailed lighting contour plan should inform any reserved matters scheme to demonstrate that the proposed external lighting, property orientation, window placement and boundary treatments are appropriate to ensure illumination levels stay within thresholds which are acceptable for the majority of bats accessing the site. The lighting scheme should inform any future layout revisions and be illustrated within the reserved matters LEMP.</p>

Sustainability Officer	The site was resurveyed as requested in October 2018 and findings and recommendations appear largely unchanged.
Reply Received 26 November 2019	Unfortunately this update does not seek to resolve any of the issues identified in my consultation dated 3rd October 2018 related to net gain provision, development of an appropriately detailed LEMP and a sensitive lighting scheme.

Neighbours

Comments	No Objection	Object	Petition	No. Signatures
<u>0.00</u>	<u>0.00</u>	<u>4</u>	<u>0.00</u>	<u>0.00</u>

The issues raised include:

- Over intensive development – discussed in design section
- Highway safety – discuss in Highway safety section
- Overlooking – discussed in amenity section
- Loss of light – discussed in amenity section
- Unethical behaviour of applicant to tenants – this is not a material planning consideration

Considerations

Proposal Description

This application seeks outline planning permission for the demolition of Prospect House with the erection of up to 17 dwellings.

The proposed site access is not a reserved matter. The demolition of Prospect House would enable a 2 metre footway on the northern side. The development would be accessed off Denes Road which would be widened to 5 metres.

An illustrative site plan shows indicatively how the site could be laid out to accommodate the 17 dwellings. Details of layout, appearance, scale and landscaping will be the subject of future reserved matters applications but the indicative layout does demonstrate that the numbers of dwellings proposed would be achievable.

Planning Considerations Summary

- Principle of development
- Character and appearance
- Flood risk and drainage
- Highway safety
- Residential amenity
- Ecology and biodiversity
- Infrastructure requirements
- Other matters including crime and disorder, contamination, letters of objection, parish comments and heads of terms

Planning Considerations

In the determination of a planning application Section 38 of the Planning & Compulsory Purchase Act 2004 is relevant. It states that for the purpose of any determination to be made under the planning Acts, the determination is to be made in accordance with the development plan unless material considerations indicate otherwise. The development plan for this area includes the Devon Waste Plan and North Devon and Torridge Local Plan. The relevant Policies are detailed above.

The National Planning Policy Framework (NPPF) is a material consideration.

Principle of development

The starting point for the consideration of the application is whether the proposal is in accordance with the Development Plan.

The application site is situated within the defined development boundary for Landkey where the principle of housing is acceptable under Policy ST07(2): Development in Villages, defined in Schedule B, will be enabled in accordance with the local spatial strategy to meet local needs and growth aspirations.

Policy LAN: Landkey Spatial Strategy states:

The vision of the local community for the future development of the village is that it retains a green buffer between the village and the settlement of Swimbridge and Barnstaple to recognise its position as a village with its framing heritage whilst embracing the challenges and opportunities to support its growth close to Barnstaple.

The village will grow at a sustainable rate that will maintain the already outstanding village school, protects its local services and maintain the special character and qualities of its conservation and heritage. The spatial strategy will be delivered through:

(a) The provision of a minimum of 87 new dwellings to meet a range of housing needs in the local community. The supply of housing will be delivered through extant planning permissions and one site allocation totalling approximately 50 new dwellings on land to the south of Birch Road.

In terms of housing the spatial extent of the proposals is shown on policies map 51 and is subject to a site-specific policy that sets out the range and nature of development to be delivered along with identified development principles.

Policy LAN01: Land South of Birch Road states:

(1) Land south of Birch Road, as shown on Policies Map 51, is proposed for approximately 50 dwellings, including affordable housing, with an emphasis on providing a mix of housing types, tenures and sizes to reflect local needs.

(2) The site will be developed in accordance with the following specific development principles:

(a) Vehicular access on to Birch Road;

- (b) Retention and enhancement of existing boundary hedges including replacement of any road frontage hedge lost to secure an acceptable access;*
- (c) Protection of the amenities of adjoining dwellings; and*
- (d) Design, layout and landscaping that respects the location of the site and enhances the character of the village.*

Housing Mix

Criterion 1 seeks to deliver a mix of house types, tenures and sizes to reflect local need. It would appear from the proposed site layout (506 20) that the developer is seeking to deliver the following:

- 2 bed – 4 units (23.5% of total)
- 3 bed – 4 units (23.5% of total)
- 4 bed – 9 units (53% of total)

The Policy team have stated that there is a potential imbalance here with an obvious emphasis on delivering 4 bed units on this site. Clause (1) of policy ST17 provides a mechanism to influence the mix of housing on proposals. The HEDNA can be used for evidence of need - including house sizes. More localised evidence, such as housing needs surveys, can be used if they are available and up-to-date. The policy is intended to influence both market and affordable tenures. On smaller schemes, the mix should generally be taking account of local character and context, on larger schemes however, a more 'proportionate mix' should generally be the starting point. Page 180 of the HEDNA (CE21) provides guidance on the mix of bed sizes by tenure that would be appropriate to help meet identified needs.

Policy have provided an extract from the HEDNA (Table 114: Recommended Housing Mix – page 214) which identifies the recommended housing mix across the Plan area.

	1 bed	2 bed	3 bed	4 bed
Market	5-10%	20-35%	40-45%	15-20%
Affordable	30-35%	35-40%	20-25%	5-10%
All dwellings	15%	35%	35%	15%

The latent demand for 4 bed units is relatively small (15% of all dwellings) although it is accepted that this figure could increase or decrease accordingly based on the specific settlement need. The highest demand is for 2 and 3 bed units (35% of all dwellings) although the proposed mix would appear to fall below the identified need. The Policy team have commented that the proposed housing mix would need to meet the numbers, type, size and tenure to meet the identified local housing needs.

Housing Tenure

When the application was originally submitted the Policy team commented that the applicant was only seeking to deliver 11.8% affordable housing. As set out in policy ST18(1a) of the emerging Local Plan, housing developments over the threshold will be required to provide onsite delivery of affordable housing equal to 30% of the total number of dwellings (gross). In this instance there should be an on-site requirement of at least 5 affordable dwellings with the 0.1 of a dwelling being collected through a financial contribution of broadly equivalent value to that which would have been required on site (ST18, criterion 3).

The Policy team commented that they would maintain a policy objection to the current proposal unless the viability assessment is robustly verified and independently assessed in order to justify a reduction against policy requirements.

Housing were consulted on the application and similarly stated that as an allocated site, the affordable housing provision should be 30% indicating that there should be 5 affordable dwellings and an off-site contribution equivalent to a tenth of a dwelling. They have commented that the applicant states in section 2.4 of their Affordable Housing Statement “The viability appraisal submitted as part of this application determines that the site can deliver 11.8% affordable housing. This consists of 1 x two-bedroom house (social rent) and 1 x two-bedroom house (discounted sale)”.

Housing have stated that council policy is that at least 75% of the affordable homes should be for social rent, then the balance intermediate housing for sale or rent (intermediate rent at 80% of Local Housing Allowance or shared ownership or discounted sale if preferred).

There have been on-going discussions in respect of the affordable housing requirement on site. The LPA has gone through extensive discussions with an independent verification (using Plymouth City Council) as the viability issues all stem from the requirement to purchase and knock down Prospect House in order to provide the visibility splays. Without the visibility splays the development would not be acceptable in highway safety terms.

The on-going discussions have resulted in a viability report being drawn up by the independent valuer. The conclusions allude to the scheme being unable to achieve policy compliance due to the requirement to purchase and demolish Prospect House. If the development was simply for the 15 dwellings on the paddock it would likely be more viable. It should also be noted that there has been a lengthy passage of time taken to address the affordable housing issues as different tenure proposals have been presented by the applicant after the viability report was drawn up. This has resulted in the LPA re-consulting the Housing Officer on numerous occasions throughout the determination of the application (this is set out in the consultation section of the report).

Five Year Housing Land Supply

Following the Burwood appeal decision in Torridge, the Councils recognise that they are currently unable to demonstrate a five year supply of deliverable housing land sufficient to meet their housing requirements; with the appeal determining there to be a 4.23 year supply as of 1st April 2019, based on the application of a 20% buffer and the use of the ‘Liverpool’ method to distribute any backlog of under-delivery since the beginning of the plan period in 2011, over the remainder of the plan period up to 2031.

Therefore, National planning policy (Footnote 7, National Planning Policy Framework (NPPF)) establishes that when a local planning authority is unable to demonstrate a five year supply of deliverable housing sites, for the purposes of triggering the presumption in favour of sustainable development, it should consider the policies which are most important for determining the application to be out-of-date. Accordingly, the presumption in favour of sustainable development (paragraph 11(d), NPPF as a material consideration), should be applied for decision-taking involving applications for housing.

If there is no clear reason to refuse an application based on a protected area or asset, the decision taker needs to consider as a material consideration the NPPF's requirement to grant permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits – the so-called *tilted balance* (Paragraph 11(d)(i), NPPF). From a policy perspective, the lack of a 5 YHLS is a material planning consideration.

The Councils currently accept that clause (2) of Policy ST21 (Managing the Delivery of Housing) is triggered on the basis that, at this point in time, it is not possible to demonstrate that completions are above 90% of that which was required for the previous monitoring year and that there would be an appropriate recovery demonstrated for the next two years.

Conclusion

If a site represents sustainable development then the NPPF indicates that it should be approved without delay. The site has been allocated for future development as part of the NDTLP and has been through the SHLAA process which concluded that it was both available and deliverable. The site is considered well related to the existing built form and provides connectivity of a range of transport modes. There are no in principle objections to this site coming forward.

The latest offer from the applicant in terms of 3 social rented 2 bed properties as per the viability has now been accepted by the Housing officer. Whilst the housing mix for the open market properties currently shows what may be considered a potential imbalance the LPA acknowledge that the scheme would contribute to the 5YHLS. In addition, experience following COVID-19 has evidenced that people are seeking larger properties to incorporate home offices. In addition the viability has been based on the housing mix as set out and any changes to this would further impact on the viability.

The principle of development is therefore considered acceptable on balance subject to other material planning considerations.

Character and appearance

Design

In terms of general design and layout issues, the application is made in outline with matters of scale, appearance, landscaping and layout saved for consideration at reserved matters stage. The design and layout of new housing should retain and enhance the character and appearance of the village, in accordance with the Landkey/Swimbridge Newland village design statement. The character of Landkey at this end of the village is that of bungalows and two storey properties.

The site area for the proposed development is approx. 0.61 hectares (currently agricultural and used for grazing) as well as 0.068 hectares of land where Prospect House is currently situated.

The illustrative plans indicate that two detached properties would replace Prospect House. The plans also indicate that the cul-de-sac would serve 13 of the properties

with 2 being accessed over the new footpath. Of these, nine of the units are shown as being 4 bedroom dwellings, four as 3 bedroom dwelling and four as semi-detached 2 bedroom dwellings.

On the reserved matters application the dwellings in the vicinity of the access routes should be oriented to provide a positive frontage and easily identifiable route through the site creating a natural hierarchy. The affordable homes should be designed and of the same material and construction as the open market – including the car parking.

The application has attracted comments from the Designing out Crime Officer which based upon the indicative plans and crime statement provides guidance for the detailed design stage, which the applicant will be required to observe when devising a detailed design and layout for the site and support the rational in the Design and Access Statement and additional Crime Statement at reserved matters stage.

The indicative site plan and contextual street elevations in terms of heights and density has been considered and in the event approval is recommended, this plan would form a basis of guiding the above reserved matters.

Policy DM04 (2) of the NDTLP states: *'All major residential proposals will be expected to be supported by a Building for Life 12 (BfL12)(117)(or successor) assessment. High quality design should be demonstrated through the minimisation of "amber" and the avoidance of "red" scores.'*

A BfL12 assessment has currently not been supplied as part of the application and it is acknowledged it can be difficult to assess a scheme purely based upon an outline scheme and indicative layout. It will be key for this assessment to be submitted at the reserved matters stage in order to ensure that the highest number of green scores can be achieved to comply with the above policy and provide the highest quality development.

Again the design would be agreed at the reserved matters stage but there are no issues 'in principle' concern raised by the indicative site plan and contextual street elevations.

Landscape

The site is not identified as being within any landscape designations. It is situated within Landscape Character Area (LCT): Estate Wooded Ridges & Hilltops 1D which is defined in the Joint Landscape Character Assessment for North Devon and Torridge. This LCT occupies a small part of North Devon District, encompassing a prominent series of chert hills running parallel to the A361 from the eastern fringes of Barnstaple to the edges of the Castle Hill Estate.

The site slopes gently towards existing housing along the southern boundary. The village is not prominent from the A361 (North Devon Link Road) although the land is more prominent as your approach the village from higher land north of the A361. Policy LAN01 states that the potential visual impact should be reduced with enhanced structural landscaping along the northern and western boundaries of the site.

The reserved matters application must show how the development would be integrated into its landscape setting and provide a transitional boundary between the development

and the adjoining countryside. The retention/translocation of natural hedgerows along the boundary with the Denes Road as well as to the west of the site would be important to retain the rural transitional character of village and countryside.

A detailed planting scheme, lighting scheme and an ecological management plan would need to be conditioned (see recommendation) so that the details at reserved matters stage can adhere to Policies DM04, DM08 and DM08A.

Highway safety

Policies ST10, DM05 and DM06 of the NDTLP requires development to provide safe and suitable access for all road uses, providing sufficient access to alternative modes of travel to reduce the use of the private car, to safeguard strategic routes and provide appropriate transport infrastructure across the area to ensure the above is achieved. This is further enshrined in chapter 9 of the NPPF.

At the pre-application stage DCC Highways advised that the proposal would only be acceptable if Prospect House was demolished as this would enable a footway to be created on Blake's Hill Road where the wall/house is currently situated. The proposal would see Denes Road widened to 5 metres with a 2 metre footway on the northern side. This would then improve the visibility onto Denes Road from the site.

DCC Highways have commented that the proposal to demolish the house adjacent to Denes Road/Blakes Hill Road provides a significant increase in visibility from and of emerging vehicles at this junction. Widening of Denes Road from Blakes Hill Road to the site entrance shall cater for the traffic attracted to the site and mitigate the additional conflicts created on the currently single track road. This widening will also improve safety at the junction onto Blakes Hill Road by removing excessive manoeuvring at the junction due to the narrow width and limited visibility. Without the removal of this dwelling, creation of the visibility splays and road widening, the proposal would not be acceptable.

One letter of objection has been received in terms of plots 1 and 2 in respect of the accesses over the footway. DCC Highways have commented that this is acceptable and will be a standard dropped kerb type entrance with appropriate visibility splays.

In light of the above discussion it is considered that all of the criteria of Policies DM05 and DM06 of the NDTLP and paragraph 108 of the NPPF has been satisfied by the information presented as part of the application and subsequent comments from the Highway Authority and hence there is no adverse harm to the highway network.

Amenity

NDTLP Policy DM01 requires that development should secure or maintain amenity appropriate to the locality with special regard to the likely impact on neighbours, the operation of neighbouring uses, future occupiers, visitors on the site and any local services. Furthermore Policy DM02 requires development to safeguard against hazards, and pollution.

The application is in outline and hence the layout plan is indicative only and demonstrates potentially how the site could be laid out. In terms of neighbouring residential amenity, such as the ability for dwellings to be delivered on site whilst preventing any overlooking, overbearing or loss of light to the nearest neighbours to the east and south of the site.

It should be noted that the occupier of 31 Cherry Tree Close has objected to the application in terms of overlooking, loss of light and overshadowing. As this is an indicative layout the future reserved matters application would need to take these matters into account. Given the indicative layout shown and separation distances involved, it is considered that dwellings can be delivered on this site whilst maintaining appropriate amenity to existing dwellings in the area, therefore in compliance with Policy DM01 and DM04 of the NDTLP.

Ecology and biodiversity

Local Planning Authorities have a statutory duty to ensure that the impact of development on wildlife is fully considered during the determination of a planning application under the Wildlife and Countryside Act 1981 (as amended), Natural Environment and Rural Communities Act 2006, The Conservation of Habitats and Species Regulations 2017 (Habitats Regulations 2017).

In respect of ecology, Policy ST14 (Enhancing Environmental Assets) of the NDTLP, requires quality of northern Devon's natural environment will be protected and enhanced by ensuring that development contributes to:

- '(a) providing a net gain in northern Devon's biodiversity where possible, through positive management of an enhanced and expanded network of designated sites and green infrastructure, including retention and enhancement of critical environmental capital;*
- (b) protecting the hierarchy of designated sites in accordance with their status;*
- (c) conserving European protected species and the habitats on which they depend; (d) conserving northern Devon's geodiversity and its best and most versatile agricultural land;...*
- (i) conserving and enhancing the robustness of northern Devon's ecosystems and the range of ecosystem services they provide;'*

This is further enshrined in development management Policy DM08 (biodiversity and geodiversity) whereby this policy provides detailed criteria on the above consideration in relation to the assessment of planning applications. Paragraph 170 and 171 of the NPPF also seek the same set of objectives in respect of the above and reiterates the statutory duties.

The submitted Wildlife Habitat Survey (WHS) suggests that the site is of relatively low ecological value in terms of protected species and habitats which would be potentially affected by the proposed development. In light of the Sustainability Officer original comments the WHS and Prospect House Bat Surveys were updated. The findings and recommendations appear largely unchanged.

The Sustainability Officer has commented that the WHS still fails to adequately assess the value and extent of habitat losses accruing from the development of the grassland and loss of hedgerow to access the site. The NPPF and emerging Local Plan require all development to demonstrate a net gain in biodiversity and the Defra biodiversity metric should be employed to illustrate an appropriate provision of mitigation and enhancement. All subsequent mitigation and enhancement measures should be accommodated onsite where possible and implemented, managed and monitored in accordance with a Landscape Ecological Management Plan (LEMP) submitted in support of any future Reserved Matters application.

The applicant is in the process of providing an estimate of net biodiversity gain which is currently outstanding. Once in receipt of this the Sustainability Officer has commented that he would support a LEMP being secured through a suitably worded condition. This condition will be imposed on the grant of approval. In addition a condition would also be imposed recommending that a sensitive lighting scheme is implemented aiming to ensure that artificial light spillage is kept to an absolute minimum, particularly around the boundary hedgerows.

The outstanding information relating to net biodiversity gain can be dealt with whilst dealing with the Section 106 agreement. Delegated authority is sought to apply appropriate conditions.

A detailed planting scheme, lighting scheme and an ecological management plan would need to be conditioned so that the details at reserved matters stage can adhere to Policy DM08 of the NDTLP.

Infrastructure

- *Water supply*

No issues have been raised by SWW.

- *Flood risk and drainage*

NDTLP Policy ST03 requires that development takes account of climate change to minimise flood risk. Policy DM04 requires development to 'provide effective water management including Sustainable Drainage Systems, water efficiency measures and the reuse of rain water'.

The County Council's Flood Risk Management Officer has been consulted on the application and raised an initial objection concerns because the applicant has not submitted sufficient information in order to demonstrate that all aspects of the surface water drainage management plan have been considered.

The plans as now submitted detail that the applicant is proposing to attenuate flows in a tanked system in line with South West Water's current adoption requirements. The design of the proposed surface water drainage system includes the incorporation of long term storage in line with best practice and also includes a maintenance schedule.

Subject to a number of pre-commencement conditions the development is now considered acceptable and the County Council's Flood Risk Management Officer has withdrawn her objection to the scheme.

- *Education Contributions*

Appropriate infrastructure in accordance with Policy ST23 of the NDTLP is required which includes contributions towards education facilities and capacity. Devon County Council have confirmed that the contribution sought for primary education is £58,021 and the contribution sought for secondary education is £55,898. This would relate directly to providing education facilities for those living in the development.

- *Open Space*

In order to comply with Policy DM04 and DM10 of the NDTLP, open space provision on and off-site is normally secured at outline stage via a section 106 agreement. As the development is not providing any on-site provision the Open Space Officer has commented that the off-site contribution would be £51,214.80.

- *Affordable Housing*

As detailed in the principle section above and Heads of Terms below the independent valuer has advised that 2 social rented properties equating to 17.6% affordable housing would result in a deliverable scheme.

Other Matters

- *Crime and disorder*

The layout is based on the principle of 'active streets'. All streets, parking areas and footpaths would be overlooked by building frontages. The lack of through traffic means that, generally speaking, only those living in, or visiting those living in, the development will be driving through.

At the reserved matters stage consideration should be given to rear garden access to all dwellings so that garden equipment and bins do not have to be taken through the house. All rear gardens should be capable of being accessed either via a side gate from the private driveway.

- *Contamination*

No issues have been identified that cannot be dealt with by conditions.

- *Parish comments*

A vehicular/pedestrian link should be provided to the adjoining proposed development land – currently no detailed plans have been forthcoming for the adjacent land to the north of the site (outline application 64079). As discussed in the design section above layout is for reserved matters. Connectivity to the adjoining land in terms of any pedestrian route should be shown at the reserved matters stage.

That the development at the entrance to the site be of an enhanced quality and retain the character of the existing buildings in this area as it is a prominent entry point to the village of Landkey – discussed in design section.

That the Devon hedge bank along the boundary to Blakeshill Road be retained – discussed in landscape section.

That the number of affordable houses to be provided was queried as not in accordance with NDC Policy – discussed in the principle of development section.

Heads of Terms

The application has been tested in respect of scheme viability. Following the appointment of an independent assessor the following has been agreed:

	Policy compliant	Applicant's original offer	Viability assessment
Affordable Housing	30% i.e. 5 affordable	1 x 2 bedroom house - social rent 1 x 2 bedroom house - discounted sale equating to 11.8% on site	3 social rented equating to 17.6%
Education contribution	Primary - £58,021 Secondary £55,898		£100,000
Public Open Space contribution	£51,214.80		Nil

The scheme is therefore in deficit in the delivery of affordable housing and open space contributions as detailed above. Whilst it is disappointing that the full affordable housing requirement cannot be provided, nor the offsite open space contribution, the LPA acknowledge that the scheme does now offers 17.6% affordable housing rather than the original 11.8% presented initially and most of the education contribution. The Authority's appointed valuer is of the opinion that the package set out above will result in a deliverable scheme.

Conclusion

In summary, the Council lacks a 5 year housing land supply. Footnote 7 of the NPPF establishes that when a local planning authority is unable to demonstrate a five year supply of deliverable housing sites, for the purposes of triggering the presumption in favour of sustainable development, it should consider the policies which are most important for determining the application to be out-of-date. Accordingly, the presumption in favour of sustainable development should be applied for decision-taking involving applications for housing. The lack of housing supply is a significant matter in favour of the proposal and carries substantial weight

In terms of the environment, a well-designed and landscaped development could be delivered with positive ecological enhancements. It is considered with appropriate landscaping secured at reserved matters stage the impacts would be localised. The ecological impacts from development could be mitigated through appropriate

construction management and monitoring. The outstanding information relating to net biodiversity gain can be dealt with whilst the Section 106 agreement is being completed.

Socially, new housing, including affordable housing would be provided. Given the significant annual shortfall in affordable housing that exists, and the fact that levels of housing provision in recent years have been below annual targets, significant weight should be attached to this benefit of the proposal.

Economically, the boost to employment and the local economy would be beneficial through the construction phase and thereafter from the public spend in village facilities from additional residents.

The social and economic benefits, together with the environmental benefits described are significant and of sufficient weight to clearly outweigh the identified harm that would be caused. As a result, the proposal would represent sustainable development as defined in the Framework and subject to the completion of a s106 agreement to secure the benefits identified in the Heads of Terms the application is recommended for approval.

HUMAN RIGHTS ACT 1998

The provisions of the Human Rights Act and principles contained in the Convention on Human Rights have been taken into account in reaching the recommendation contained in this report. The articles/protocols identified below were considered of particular relevance:

Article 8 – Right to Respect for Private and Family Life
THE FIRST PROTOCOL – Article 1: Protection of Property

Recommendation

Approved

Legal Agreement Required:- Yes

With delegated authority being sought to agree the final wording of the conditions and to add conditions relating to biodiversity gain as set out in the report.

Conditions

1. a) In the case of any reserved matter application for approval must be made not later than the expiration of three years beginning with the date on which this permission is granted; and

b) The development to which the permission relates must be begun not later than whichever is the later of the following dates:

(I) the expiration of three years from the date on which this permission is granted; or

(II) the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such

matter to be approved.

Reason:

The time limit condition is imposed in order to comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

2. This permission relates to the provision of a maximum of 17 new residential units and for the purposes of this permission the details shown on drawing number 506 20 Rev J (site plan) are considered to be for indicative purposes only, except for the position of the proposed access points, visibility splays and footpath. The development hereby permitted shall be carried out in accordance with the principles and indicative details contained within the plans listed in condition 3 below (unless varied during the S38/S278 process or in response to the discharge of the following conditions or to address other issues that arise during the course of construction).

Reason:

To clarify the terms of this outline permission and to inform the terms of the reserved matters application. The Local Planning Authority is satisfied on balance that the principles on the indicative drawings propose a form of development that delivers economic benefits and meets the housing needs of the district and which addresses design, amenity, landscape, highway and infrastructure issues in a manner which is visually appropriate and sustainable and will adequately inform a reserved matters submission

3. The development hereby permitted shall be carried out in accordance with the following approved plans/details:
506 01 Location plan received on the 21/09/18,
001B Proposed foul and surface water drainage strategy received on the 06/09/19,
506 20J Proposed site plan received on the 21/09/18,
506 21 Contextual Street elevation received on the 21/09/18,
001B Proposed foul and surface water drainage received on the 26/03/19,
Update of Phase 1 Habitat Survey and Protected Species Report received on the 13/11/18,
Update of Protected Species Survey received on the 02/11/18,
(‘the approved plans’).

Reason:

To ensure the development is carried out in accordance with the approved plans in the interests of proper planning.

4. Approval of the details of the:
 - layout
 - scale
 - appearance and
 - landscaping of the site (hereinafter called the ‘reserved matters’)

shall be obtained from the Local Planning Authority in writing before any development is commenced and shall be carried out as approved.

Reason:

To ensure adequate information is available for the proper consideration of the detailed proposals.

5. The reserved matters shall indicate the siting, design and external appearance, including materials of construction of all walls, fences and other means of enclosure to be used in the development and shall be erected prior to occupation of each dwelling and shall remain in position for the lifetime of the development.

Reason:

To ensure that each dwelling is provided with an area of private amenity space, that the design addresses defensible space issues and that that the design and appearance of all publicly visible boundaries are compatible to their surroundings in accordance with policies DM01, DM04 and DM08A of the North Devon and Torridge Local Plan.

6. As part of the reserved matters application, scaled drawing(s) showing existing levels on the site and proposed finished floor levels of the proposed dwellings along with details showing their finished relationship to existing properties to the east and south in the form of cross sections (detailing the finished floor level, wall to wall separation distances and ridge heights) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with such drawings.

Reason:

To ensure that the amenities of the area are not adversely affected by reason of the size and scale of the proposed development and the proposed relationship to existing properties in accordance with Policies DM01 and DM04 of the North Devon and Torridge Local Plan.

7. Provision, implementation and maintenance of detailed landscape proposals

i) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.); retained historic landscape features and proposals for restoration, where relevant.

ii) Soft landscape works shall include planting plans; written specifications

(including cultivation and other operations associated with plant and grass establishment); schedules of plants (noting species, plant sizes and proposed numbers/densities); implementation and management programme.

Reason:

This is a pre-commencement condition that has been imposed to ensure that the development can be assimilated into the landscape and to safeguard the appearance and character of the area in accordance with Policies ST04, ST14, DM04 and DM08A of the North Devon and Torridge Local Plan.

8. Provision and implementation of an Arboricultural Method Statement (AMS) and Tree Protection Plan (TPP)

No works or development shall take place until a scheme for the protection of the retained trees and hedges [BS5837: 2005 section 7 - Arboricultural method statements (AMS) and the tree protection plan (TPP)] has been agreed in writing with the by the Local Planning Authority and these works shall be carried out as approved LPA.

This scheme shall include:

(a) a plan to a scale and level of accuracy appropriate to the proposal that shows the position, crown spread and Root Protection Area (RPA) in accordance with paragraph 5.2.2 of BS5837: 2005 of every retained tree and hedge on site and on neighbouring or nearby ground to the site in relation to the approved plans and particulars. The positions of all trees and hedges to be removed shall also be clearly indicated on this plan and marked with a dashed outline.

(b) a tree work schedule for all the retained trees and hedges in paragraphs (a) and (b) above, specifying pruning and other remedial or preventative work, whether for physiological, hazard abatement, aesthetic or operational reasons. All tree works shall be carried out in accordance with British Standard 3998: 2010 Tree Work - Recommendations.

(c) the details and positions (shown on the plan at paragraph (a) above) of the Tree Protection Barriers (section 9.2 of BS5837), identified separately where required for different phases of construction work (e.g. demolition, construction, hard landscaping). The Tree Protection Barriers must be erected prior to each construction phase commencing and remain in place, and undamaged for the duration of that phase. No works shall take place on the next phase until the Tree Protection Barriers are repositioned for that phase.

(d) the details of the method to be employed for the translocation of existing hedges and banks to enable provision of visibility splays or highway widening, including details of any re-construction or replacement planting should the translocation result in plant losses. No retained tree, hedge or shrub shall be cut down, uprooted or destroyed, nor shall any retained tree or hedge, be topped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or

lopping approved shall be carried out in accordance with the British Standard [3998 (Tree Work)]. If any retained tree, or hedge is removed, uprooted or destroyed or dies, another tree or hedge shall be planted at the same place and that tree or hedge shall be of such size and species and shall be planted at such time, as may be specified in writing by the local planning authority.

Reason:

This is a pre-commencement condition that has been imposed to safeguard the appearance and character of the area in accordance with Policies DM04 and DM08A of the North Devon and Torridge Local Plan.

9. No part of the development hereby permitted shall be commenced until the detailed design of the proposed permanent surface water drainage management system has been submitted to, and approved in writing by, the Local Planning Authority, in consultation with Devon County Council as the Lead Local Flood Authority. The application for the detailed drainage should be submitted and agreed at the same time that the reserved matters for layout are submitted and agreed. The design of this permanent surface water drainage management system will be in accordance with the principles of sustainable drainage systems, and those set out in the Proposed Foul & Surface Water Drainage Strategy 18032 001 Rev A. No part of the development shall be occupied until the surface water management scheme serving that part of the development has been provided in accordance with the approved details and the drainage infrastructure shall be retained and maintained for the lifetime of the development.

Reason:

To ensure that surface water runoff from the development is managed in accordance with the principles of sustainable drainage systems.

Advice: Refer to Devon County Council's Sustainable Drainage Guidance.

10. No part of the development hereby permitted shall be commenced until the detailed design of the proposed surface water drainage management system which will serve the development site for the full period of its construction has been submitted to, and approved in writing by, the Local Planning Authority, in consultation with Devon County Council as the Lead Local Flood Authority. This temporary surface water drainage management system must satisfactorily address both the rates and volumes, and quality, of the surface water runoff from the construction site.

Reason:

To ensure that surface water runoff from the construction site is appropriately managed so as to not increase the flood risk, or pose water quality issues, to the surrounding area.

Reason for being a pre-commencement condition: A plan needs to be demonstrated prior to the commencement of any works to ensure that surface water can be managed suitably without increasing flood risk downstream, negatively affecting water quality downstream or negatively impacting on

surrounding areas and infrastructure.

Advice: Refer to Devon County Council's Sustainable Drainage Guidance.

11. No part of the development hereby permitted shall be commenced until details of the exceedance pathways and overland flow routes across the site in the event of rainfall in excess of the design standard of the proposed surface water drainage management system have been submitted to, and approved in writing by, the Local Planning Authority, in consultation with Devon County Council as the Lead Local Flood Authority.

Reason:

To ensure that the surface water runoff generated from rainfall events in excess of the design standard of the proposed surface water drainage management system is safely managed.

12. No part of the development hereby permitted shall be commenced until the full details of the adoption and maintenance arrangements for the proposed permanent surface water drainage management system have been submitted to, and approved in writing by, the Local Planning Authority, in consultation with Devon County Council as the Lead Local Flood Authority.

Reason:

To ensure that the development's permanent surface water drainage management systems will remain fully operational throughout the lifetime of the development.

Reason for being a pre-commencement condition: These details need to be submitted prior to commencement of any works to ensure that suitable plans are in place for the maintenance of the permanent surface water drainage management plan, for the reason above.

13. Contaminated Land Phase 1 condition

Prior to the commencement of any site clearance, groundworks or construction, the Local Planning Authority shall be provided with the results of a phase one (desktop) survey for potential ground contamination. The report shall be prepared by a suitably qualified person and sufficient to identify any and all potential sources of ground contamination on any part of the development site. Thereafter, depending on the outcome of phase one, a proposal for any phase two (intrusive) survey that may be required along with any remediation strategy shall be presented to and agreed with the planning authority.

Reason:

In the interest of human health in accordance with Policy DM02 of the North Devon and Torridge Local Plan.

14. Should any unexpected contamination of soil or groundwater be discovered during development of the site, the Local Planning Authority should be contacted immediately. Site activities within that sub-phase or part thereof,

should be temporarily suspended until such time as a procedure for addressing any such unexpected contamination, within that sub-phase or part thereof, is agreed upon with the Local Planning Authority or other regulating bodies.

Reason:

In the interest of human health in accordance with Policy DM02 of the North Devon and Torridge Local Plan.

15. A Landscape and Ecological Management Plan (LEMP) shall be submitted alongside any reserved matters application. The content of the LEMP will address the implementation and management of all landscape and biodiversity avoidance, mitigation and enhancement measures of the development. This shall include the measures as set out in the updated Phase 1 Habitat Survey and Protected Species Report of Land off Denes Road and the updated Protected Species Survey of Prospect House and shall include:
- (a) Proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.); retained historic landscape features and proposals for restoration, where relevant
 - (b) Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants (noting species, plant sizes and proposed numbers/densities); implementation and management programme
 - (c) A description and evaluation of landscape and ecological features to be created managed and ecological trends and constraints on site that might influence management
 - (d) Aims and objectives of management
 - (e) Appropriate management options for achieving aims and objectives
 - (f) Prescriptions for management actions
 - (g) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a 10- year period)
 - (h) Details of the body or organization responsible for implementation of plan
 - (i) Ongoing landscape and ecological monitoring and implementation of any necessary remedial measures
 - (j) Means of reporting of landscape and ecological monitoring results to [Natural England and the Local Planning Authority] and provisions for seeking written agreement to any changes to the management actions and prescriptions that may be necessary to ensure effective delivery of the aims and objectives of the LEMP over time.

The LEMP shall also include details of the mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will

be identified, agreed and implemented so that the development still delivers the fully functioning landscape and biodiversity objectives of the scheme. The development shall be implemented in accordance with the approved details.

Any alternative scheme for the management of this land shall be submitted to and agreed in writing by the Local Planning Authority.

Reason:

In order to protect and enhance biodiversity on the site in accordance with the aims of Policies ST14 and DM08A of the North Devon and Torridge Local Plan and paragraph 170 of the National Planning Policy Framework.

16. As part of the reserved matters application, a detailed lighting contour plan should demonstrate that the proposed external lighting, property orientation, window placement and boundary treatments are appropriate to ensure illumination levels stay within thresholds which are acceptable for the majority of bats accessing the site. The lighting scheme should inform any future layout revisions and be illustrated within the reserved matters LEMP.

Reason:

To ensure that a sensitive lighting scheme is implemented and to ensure that artificial light spillage is kept to an absolute minimum particularly around the boundary hedgerows in order to protect and enhance biodiversity on the site in accordance with the aims of Policies ST14 and DM08A of the North Devon and Torridge Local Plan and paragraph 170 of the National Planning Policy Framework.

17. The development shall be carried out in accordance with the recommendations and mitigation methods as proposed in the Updated Phase 1 Habitat Survey and Protected Species Report of Land off Denes Road and the Updated Protected Species Survey of Prospect House. For avoidance of doubt before occupation of the dwellings a sparrow terraced such as a Schwegler 1SP or RSPB Sparrow terrace next box should be affixed before occupation of the dwellings on the site of Prospect House and retained in perpetuity.

Reason:

To ensure there is no adverse impact on any protected species using the site in accordance with policy DM08 of the North Devon and Torridge Local Plan.

18. Prior to commencement of any part of the site the Planning Authority shall have received and approved in writing 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.

19. Construction Times Condition

During the construction phase no machinery shall be operated, no process shall be carried out and no deliveries taken at or dispatched from the site outside the following times:

- a) Monday - Friday 08.00 - 18.00,
- b) Saturday 09.00 - 13.00
- c) nor at any time on Sunday, Bank or Public holidays.

Reason:

To protect the amenity of local residents in accordance with Policy DM02 of the North Devon and Torridge Local Plan.

20. The site access and visibility splays shall be constructed, laid out and maintained for that purpose in accordance with the approved plans.

Reason:

To provide a satisfactory access to the site and to provide adequate visibility from and of emerging vehicles.

21. Prior to the occupation of any dwelling on the site visibility splays shall be provided, laid out and maintained for that purpose at the junction of Denes Road and Blakes Hill Road in accordance with the approved plans.

Reason:

To provide adequate visibility from and of emerging vehicles in accordance with Policy DM05 of the North Devon and Torridge Local Plan.

22. Provision shall be made within the site for the disposal of surface water so that none drains on to any County Highway.

Reason:

In the interest of public safety and to prevent damage to the highway in accordance with Policy DM05 of the North Devon and Torridge Local Plan.

23. Any proposed estate road, cycleways, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, road maintenance/vehicle overhang margins, embankments, visibility splays, accesses, car parking and street furniture shall be constructed and laid out in accordance with details to be approved by the Local Planning Authority in writing before their construction begins. For this purpose, plans and sections indicating, as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.

Reason:

To ensure that adequate information is available for the proper consideration of the detailed proposals in accordance with Policy DM05 of the North Devon and Torridge Local Plan

24. Within twelve months of the first occupation of the first dwelling in an agreed phase of the development, all roads, footways, footpaths, drainage, statutory undertakers' mains and apparatus, junction, access, retaining wall and visibility splay works shall be completed in accordance with the approved details.

Reason:

To ensure that the access arrangements are completed within a reasonable time in the interests of safety and the amenity of residents

25. The occupation of any dwelling in an agreed phase of the development shall not take place until the following works have been carried out to the written satisfaction of the Local Planning Authority:
- (a) The spine road and cul-de-sac carriageway including the vehicle turning head within that phase shall have been laid out, kerbed, drained and constructed up to and including base course level, the ironwork set to base course level and the sewers, manholes and service crossings completed;
 - (b) The spine road and cul-de-sac footways and footpaths which provide that dwelling with direct pedestrian routes to an existing highway maintainable at public expense have been constructed up to and including base course level;
 - (c) The cul-de-sac visibility splays have been laid out to their final level;
 - (d) The street lighting for the spine road and cul-de-sac and footpaths has been erected and is operational;
 - (e) The car parking and any other vehicular access facility required for the dwelling by this permission has/have been completed;
 - (f) The verge and service margin and vehicle crossing on the road frontage of the dwelling have been completed with the highway boundary properly defined;
 - (g) The street nameplates for the spine road and cul-de-sac have been provided and erected.

Reason:

To ensure that adequate access and associated facilities are available for the traffic attracted to the site in accordance with Policy DM05 of the North Devon

and Torridge Local Plan.

26. When once constructed and provided in accordance with condition 27 above, the carriageway, vehicle turning head, footways and footpaths shall be maintained free of obstruction to the free movement of vehicular traffic and pedestrians and the street lighting and nameplates maintained to the satisfaction of the Local Planning Authority

Reason:

To ensure that these highway provisions remain available in accordance with Policy DM05 of the North Devon and Torridge Local Plan.

27. The site access road shall be hardened, surfaced, drained and maintained thereafter to the satisfaction of the Local Planning Authority for a distance of not less than 15 metres back from its junction with the public highway

Reason:

To prevent mud and other debris being carried onto the public highway in accordance with Policy DM05 of the North Devon and Torridge Local Plan.

28. The car parking spaces, garaging and turning areas shall be provided for use by the development hereby permitted prior to the occupation of each dwelling and once provided shall not be used for any purpose other than the parking/garaging of vehicles. The design, layout and materials of construction and external appearance of this provision shall be included in the Reserved Matters application.

Reason:

To ensure adequate provision of parking to serve the development in the interests of highway safety in accordance with Policies DM05 and DM06 of the North Devon and Torridge Local Plan.

29. The site must be drained on a separate system of foul and surface water drainage, with all clean roof and surface water being kept separate from foul drainage.

Reason:

To prevent pollution of the water environment in accordance with Policy DM02 of the North Devon and Torridge Local Plan.

30. As part of the reserved matters application details of bin/cycle storage shall be fully detailed. No dwelling shall thereafter be occupied until the bin/cycle storage provision has been provided in accordance with the agreed details for each unit and this shall thereafter be maintained in perpetuity for these purposes.

Reason:

To ensure that the development is properly provided with amenities prior to occupation and in the interests of the amenities of the residential estate and that such facilities do not conflict with car parking areas, in accordance with policies

DM01, DM04 and DM05 of the North Devon and Torridge Local Plan.

31. As part of the reserved matter application, a waste audit statement shall be submitted to the Local Planning Authority and agreed in writing. This statement shall include all information outlined in the waste audit template provided in Devon County Council's Waste Management and Infrastructure Supplementary Planning Document. The development shall be carried out in accordance with the approved statement.

Reason:

To minimise the amount of waste produced and promote sustainable methods of waste management in accordance with Policy W4 of the Devon Waste Plan and the Waste Management and Infrastructure Supplementary Planning Document.

32. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any order revoking and re-enacting that Order) express planning permission shall be obtained for any development within class(es) A, AA, B, C, D, E and F of Part 1 and class(es) A and B of Part 2 of Schedule Two of the Order.

Reason:

To protect the amenities of adjoining properties due to change in levels on the land and by controlling roof and other alterations and to consider the implications on compatibility with affordable housing objectives. The impact of future development on the appearance and character of the development in the area and that of highway safety would also be enabled, in accordance with the requirements of Policies DM01, DM04 and DM05 of the North Devon and Torridge Local Plan.

33. Any dwelling to be used as a 'show house' for sales or demonstration purposes shall be provided with off street parking facilities, in addition to those required by any other condition of this permission, the number and siting to be agreed in writing with the Local Planning Authority and the provision to be made before the first use of the dwelling for that purpose.

Reason:

To minimise parking on the highway in the interest of public safety and to protect the amenities of occupiers of adjoining dwellings in accordance with policies DM01 and DM05 of the North Devon and Torridge Local Plan.

Informatives

1. The development to which this permission relates is the subject of an agreement under, inter alia, Section 106 of the Town and Country Planning Act 1990.
2. Planning Practice Guidance defines reserved matters as:

'Appearance' - the aspects of a building or place within the development which determine the visual impression the building or place makes, including the

external built form of the development, its architecture, materials, decoration, lighting, colour and texture.

'Landscaping' - the treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated and includes: (a) screening by fences, walls or other means; (b) the planting of trees, hedges, shrubs or grass; (c) the formation of banks, terraces or other earthworks; (d) the laying out or provision of gardens, courts, squares, water features, sculpture or public art; and (e) the provision of other amenity features;

'Layout' - the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development.

'Scale' - the height, width and length of each building proposed within the development in relation to its surroundings.

3. Bats and bat roosts are protected by law under Schedule 5 of the Wildlife & Countryside Act 1981 [as amended], Schedule 2 of the Conservation [Natural Habitats, &c] Regulations 1994, the Countryside Rights Of Way Act 2000, and the Conservation of Species and Habitats Regulations 2017. It is an offence to recklessly or deliberately kill, injure or capture [take] bats, recklessly or deliberately disturb bats, damage, destroy or obstruct access to bat roosts. For further advice contact the Bat Helpline 0345 1300 228.
4. It is an offence under section 1 of the Wildlife and Countryside Act 1981 (as amended) to intentionally take, damage or destroy the nest of any wild bird while it is in use or being built. It is strongly recommended that any buildings or land where consent for work has been granted are checked for nesting birds prior to any work being undertaken. Where inspection is obscured i.e. Hedgerows, Ivy and in trees of dense foliage it is advised that work is scheduled for outside the nesting season i.e. not undertaken between March and August (inclusive). For further advice please contact the RSPB Southwest Regional Office 01392 432691.
5. For the purpose of interpreting the restrictions expressed in condition 35 of this consent, permitted development rights have been removed in respect of the following classes:

Part I: CLASS A The enlargement, improvement or other alteration of a dwelling-house

Part I: CLASS AA The enlargement of a dwellinghouse by construction of additional storeys

Part I: CLASS B The enlargement of a dwelling-house consisting of an addition or alteration to its roof

Part I: CLASS C Any other alteration to the roof of a dwelling-house

Part I: CLASS D The erection or construction of a porch outside any external door of a dwelling-house

Part I: CLASS E The provision within the curtilage of a dwelling-house of -
a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwelling house as such, or the maintenance, improvement or other alteration of such a building or enclosure; or

b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas

Part I: CLASS F Development consisting of –

a) the provision within the curtilage of a dwelling-house of a hard surface for any purpose incidental to the enjoyment of the dwelling-house as such; or

b) the replacement in whole or in part of such a surface

Part II: CLASS A The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure

Part II: CLASS B The formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule [other than by Class A of this Part]

Further detailed information can be obtained from the Local Planning Authority, including a guide to householder development, and the Planning Portal at www.planningportal.gov.uk

6. From the Flood Defence aspect the Environment Agency advise that surface water run-off from the proposal should be managed by the use of Sustainable Urban Drainage Systems [SUDS]. These systems mitigate the potential effects of urban development including increased quantity of run off, increased rate of run off and deterioration of water quality through pollution. Such systems would include infiltration trenches, swales, infiltration basins and porous paving. Ground conditions will need to be investigated to determine the most efficient methods or if alternative solutions will need to be investigated. In the first instance it is advised that the design of such a system is investigated in accordance with CIRIA C522 - Sustainable Urban Drainage Systems - design manual for England and Wales. An outline or preliminary design should then be submitted to the Environment Agency for comment.
7. The building is of an age where materials containing asbestos may have been used in its construction or subsequent modification. The building should be surveyed for such materials prior to conversion by a suitably qualified person. Where found, materials containing asbestos should be removed and disposed of in accordance with current legislation and guidance.
8. The reserved matters application should be accompanied by a Building for Life 12 (BfL12) (117) (or successor) assessment to ensure that that the highest number of green scores can be achieved to comply with policy DM04(2) of the North Devon and Torridge Local Plan.
9. The applicant shall be required to enter into a highway agreement with the Highway Authority prior to works commencing to widen the road and for adoption of internal roads.
10. The above consent requires the submission of further details to be approved either before works commence or at identified phases of construction.

To discharge these requirements will mean further formal submissions to the

Authority on the appropriate forms, which can be completed online via the planning Portal www.planningportal.gov.uk or downloaded from the Planning section of the North Devon Council website, www.northdevon.gov.uk.

A fee may be required [dependent on the type of application] for each separate submission [if several or all the details are submitted together only one fee will be payable].

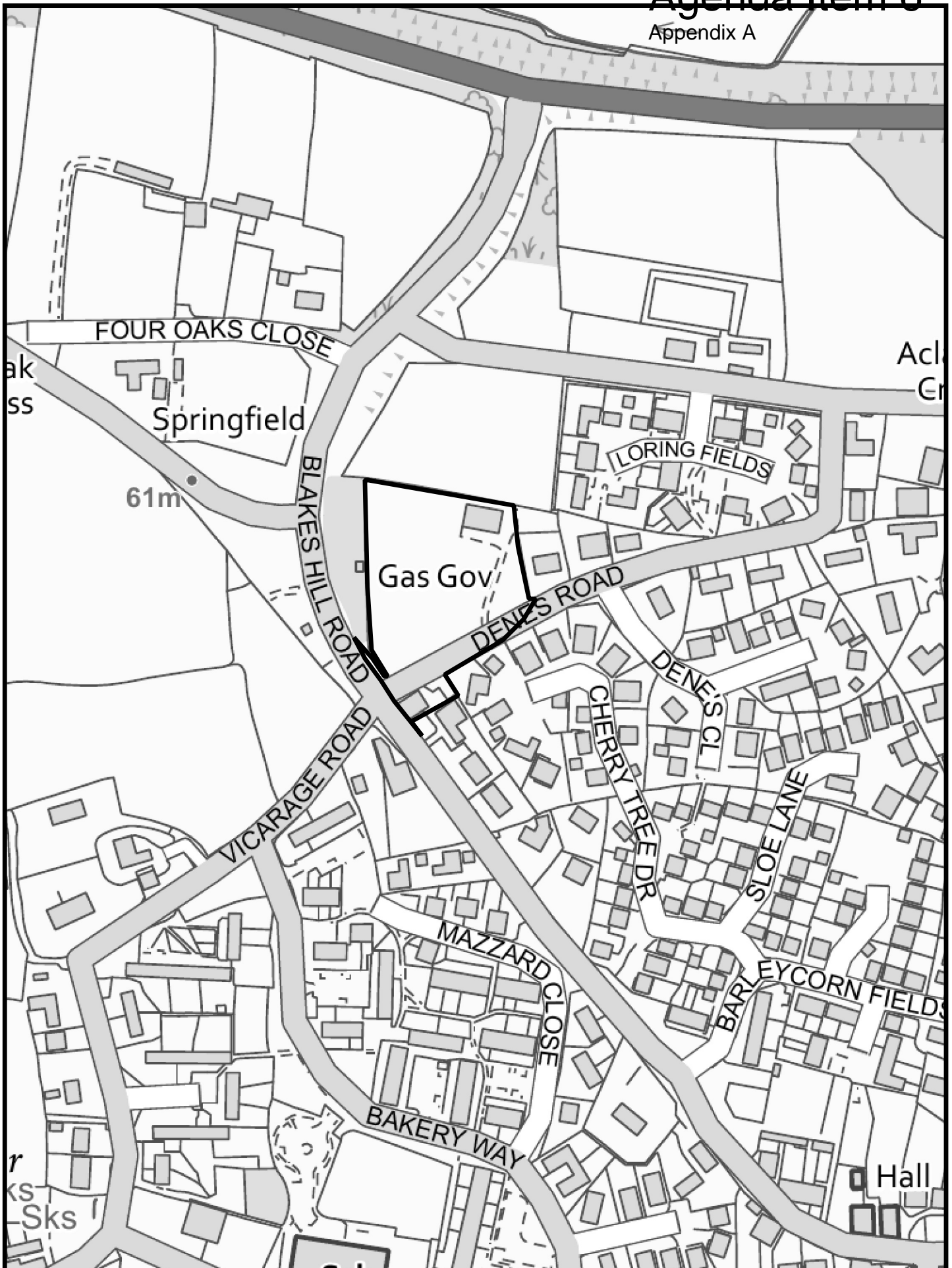
Further details on this process are available on the Planning section of the Council's website or by contacting the Planning Unit at Lynton House, Commercial Road, Barnstaple.

11. The Designing Out Crime Officer on reviewing the illustrative layout advises that off plot car parking areas should be well illuminated to provide the potential for natural surveillance during hours of darkness. If the existing hedgerow is likely to comprise new rear garden boundaries as appears will be the case then it must be fit for purpose. They should be of a sufficient height and depth to provide both a consistent and effective defensive boundary as soon as residents move in. If additional planting will be required to achieve this then temporary fencing may be required until such planting has matured. Any hedge must be of a type which does not undergo radical seasonal change which would affect its security function. The Designing Out Crime Officer has also advised that for all plots private front gardens are suitably defined. Open frontage, particularly but not exclusively, on corner plots, can for many reasons frequently lead to community conflict, for example, desire lines for pedestrians and cyclists are created, dog fouling, ball games and anti-social behaviour.
12. **Statement of Engagement**
In accordance with paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and pro-active way and has imposed planning conditions to enable the grant of planning permission. This has included seeking further information in respect of SUDS, biodiversity offsetting and affordable housing. The LPA has been required to apply the titled balance in regard to Paragraph 11 (d) of the National Planning Policy Framework and in this instance, whilst the illustrative mix of open market housing is potentially imbalanced with an emphasis on delivering 4 bed units it is considered that the provision of housing on this allocated site is on balance acceptable in light of the Council's absence of a 5 year housing land supply, the demand for larger houses with home office as evidenced by COVID-19 and due to housing mix that has fed into the viability.

Insert 1 Location Plan

Insert 2 Representations received

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Neighbour Representation List for Application 65528

4 OBJECTIONS

David Craft	31 Cherry Tree Drive Landkey EX32 0UE	Date Received 10 Oct 2018
Ms G Darke & Mr B Rockell	Prospect House, Blakes Hill Road, Landkey	Date Received 15 Oct 2018
Janet Dymond	Broadlands, Denes Road, Landkey EX32 0JY	Date Received 28 Sept 2018
Frederick W Parr	25 Grieg Drive, Barnstaple EX32 8AG	Date Received 7 Nov 2018

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Planning and Enforcement Appeals Report



Strategic Development & Planning
Place Services
North Devon Council
Lynton House, Commercial Road,
Barnstaple, EX31 1DG

REPORT TO: Planning Committee
COMMITTEE DATE: 14th October 2020

TOPIC: Planning and Enforcement Appeal Decisions received
REPORT BY: Sue Thomas – Senior Planning Support Officer (Appeals)

Please find attached copies of the Planning and Enforcement Appeal decisions received since those reported at the last Planning Committee Meeting. If Members wish to discuss any of the cases at the Planning Committee Meeting please would they email planningappeals@northdevon.gov.uk or telephone Sue Thomas on 01271 388296 by 12 noon on 12th October 2020.

Inserts

1. Planning Enforcement Appeal Decision re 11072 – Ring O' Bells, PRIXFORD – Appeal Dismissed 7th September 2020
2. Planning Appeal Decision re 70907 – North Week Farm, Chulmleigh – Appeal Dismissed 8th September 2020
3. Planning Enforcement Appeal Decision re 10667 – Chalet 12, Europa Park, Woolacombe – Appeal Allowed 17th September 2020

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Appeal Decision

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 7 September 2020

Appeal Ref: APP/X1118/C/19/3237425

The Ring O' Bells, Prieford, Barnstaple, Devon EX31 4DX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Philip J Milton Construction and Maintenance Ltd against an enforcement notice issued by North Devon District Council.
- The enforcement notice was issued on 23 August 2019.
- The breach of planning control as alleged in the notice is: *Within the last 4 years, unauthorised material change of use consisting of the residential use of a public house.*
- The requirements of the notice are to:
 1. *Cease the use of the residential use of [sic] the public house buildings and the land edged red on the attached location plan.*
 2. *Remove the kitchen and cooking facilities from the residential unit known as The Apartment.*
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with correction and variation.

Preliminary matters

The grounds of appeal

1. The appeal form submitted by the Appellant on 18 September 2019 indicated that the appeal was brought on ground (c): that is, that there has not been a breach of planning control. However, the statement which accompanied the appeal form indicated that ground (d) was at issue (that is, that at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice). In response to a letter from the Planning Inspectorate requesting clarification, the Appellant confirmed that the appeal is made on ground (d).

Appeal procedure

2. The Planning Inspectorate initially made arrangements for the appeal to be determined following a site visit, which was scheduled for 31 March 2020. That event could not take place given the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 ("the Coronavirus Restrictions") and related guidance.
3. As the appointed Inspector, I reviewed the file to assess the optimal procedure for the appeal. I considered that it could be determined without the need for a site visit. In summary, this is because there is no appeal made on ground (a)

(that is, that permission should be granted for the matters alleged) so the planning merits of the contested development are not at issue. This means that matters such as its impact on the character and appearance of the area, or any community benefits of retaining the building as a Public House, are not before me (as they would have been if a grant of planning permission were sought). Further, the key area of dispute between the parties is the timing of the alleged material change of use, and flowing from that, whether the time for taking enforcement action has lapsed. Determining the relevant dates will depend on an evaluation of the evidence as to events which occurred several years ago, and a site visit to inspect the current layout and physical state of the building would not assist with that assessment.

4. The Appellant and the Council were contacted on 2 July 2020, and confirmed their agreement that the appeal be determined without a site visit. I have proceeded on that basis.

The appeal on ground (d)

5. The ground of appeal is that at the date when the notice was issued, it was too late for the Council to take enforcement action against the alleged material change from a public house to residential use. The burden of proving relevant facts lies with the Appellant. So to succeed on ground (d) the Appellant would need to show that, on the balance of probabilities, the residential use began more than four years before the notice was issued and continued, without material interruption, for a period of four years thereafter.

The planning unit

6. In order to determine whether and when a material change of use has taken place, it is first necessary to ascertain the correct planning unit, and the present and previous primary (as opposed to ancillary) uses of that unit. Case law¹ has established that the planning unit is usually the unit of occupation, unless a smaller area can be identified which is physically separate and distinct, and/or occupied for different and unrelated purposes. In this case, the Council and the Appellant consider that the relevant planning unit is the Ring O' Bells in its entirety, and I agree with that assessment. The established use of the premises, which began in the early 19th Century, is as a public house; the bar is located on the ground floor, with living accommodation upstairs.
7. The Appellant rightly points out that there was, and is, no formal "tie" restricting the occupation of the upstairs living accommodation to those working in the pub downstairs. However, there is no evidence to suggest that the living accommodation has, at any time prior to the date at which the Ring O' Bells ceased trading, been occupied for any purpose that was not in some way associated with the primary use of the premises as a Public House. The implementation of planning permission granted in 2004² for the change of use of "staff bedrooms (east wing) to form 3 letting rooms" did not result in any subdivision of, or change to, the planning unit because the terms of the permission made it clear that the letting rooms were to be used "in association with Public House".
8. It is therefore clear that up until the Public House closed for business on 8 April 2012, the lawful use of the planning unit was as a public house. This was its

¹ *Burdle and Williams v SSE & New Forest DC* [1972] 1 WLR 1207

² Ref 37311, 21 May 2004

primary use. The residential accommodation provided on the first floor was used for purposes ancillary to the achievement of that purpose: that is, as the owners' residence and (until Mr and Mrs Squire decided to stop letting rooms commercially in 2008) for the provision of B&B accommodation.

The material change of use

9. The concept of "material change of use" is not defined in statute or statutory instrument; it is a question of fact and degree in each case. For there to be a material change of use, there needs to be some significant difference in the character of the activities from what has gone on previously. In this case, there is no dispute that the current primary use of the planning unit is residential (as it was on the date that the enforcement notice was issued), and that this constitutes a material change from the previous primary use of the unit as a public house. The point at issue is how to date the material change of use.
10. The Appellant's case is that a material change of use occurred when the Ring O' Bells ceased trading as a pub on 8 April 2012, because after that date, the residential use became the main use. The Council contends that the material change of use at which the notice is directed did not take place until after the Appellant's purchase of the premises in September 2015; its case is that the use made of the premises by the Squire family after 2012 did not amount to a material change of use or, if it did, that this unauthorised use did not continue unbroken for a sufficient period to achieve immunity from enforcement.
11. Looking at the evidence provided, the reason why the Ring O' Bells ceased trading as a public house in April 2012 is not entirely clear. The Appellant contends that the pub was no longer viable, but this is not mentioned in the "Statement of Fact" from Mr and Mrs Squire (which is dated 2 September 2019, but is not signed). The Statement of Fact does, however, describe the manner in which the Squire family occupied the accommodation. Following their purchase of the Ring O' Bells in December 2007, Mr and Mrs Squire and one of their children occupied "the larger half of the Owner flat with the kitchen and bathroom", and their other child occupied "the smaller half of the Owner flat with only two rooms". The first-floor accommodation that was used for B&B was known as the Blue Room (marketed as a family room) and the Red Room (marketed as a double room).
12. The Statement of Fact goes on to say that, having realised B&B was "not a worthwhile avenue" to follow, "...at the end of 2008 we spread ourselves out and used all of the upstairs area." After closing the pub in 2012 the family "made the most of the extra space"; the office store was used for motorbikes and accessories, the restaurant areas for art projects, and family gatherings were held in the bar area.
13. The difficulty in establishing whether or not the primary use of the planning unit changed in April 2012 is that there is no clear evidence as to whether or not the closure of the public house was, at that time, intended to be temporary or permanent. It would, after all, be a relatively straightforward matter to remove motorbikes from the office store and art projects from the restaurants to facilitate the re-opening of the pub. The Statement of Fact is silent as to Mr and Mrs Squire's intentions, realised or otherwise, for the property. It does however state that upon closing in April 2012 "we made our own family redundant", and that in June 2014 Mr and Mrs Squire moved out to take up a live-in position in North Devon.

14. In my judgment, based on the limited evidence available, the reference to redundancy as of April 2012 indicates that the Squires regarded the closure of the public house as a long-term rather than temporary measure; it also seems more likely than not that any possibility of the family re-opening the public house ceased when Mr and Mrs Squire moved out to take up work elsewhere in June 2014. I therefore consider that on the balance of probabilities, there was a material change in the use of the planning unit when the pub closed in April 2012. The residential use of the first-floor living accommodation ceased to be ancillary to the use of the premises as a public house, and instead became the primary use of the premises.

Continuity of unauthorised use

15. However, that is not the end of the matter. S.171B(2) of the Act provides that no enforcement action can be taken after the end of the period of four years "beginning" with the date of the breach – rather than "ending" with the date of issue of the notice. In other words, the unauthorised use must continue for a four year period before it can achieve lawfulness. Minor interruptions of the use, such as short suspensions during a change of ownership or period of illness, will not usually stop the period running, but in each case it will be a matter of fact and degree whether an interruption in activity on the ground has resulted in the cessation of the use such that no enforcement action could be taken against it during that period. In that event, the resumption of the unauthorised use would constitute a fresh breach of planning control, and the four year period would restart from zero.
16. In this case, the evidence is that the Squires had ceased all residential use of the premises by February 2015, at which point they "handed the keys to the Estate Agent". This means that the breach of planning control constituted by their use of the planning unit for residential purposes, after the pub had closed, lasted from April 2012 to February 2015: a period of some 2 years and 10 months. The Ring O' Bells then stood unoccupied and unused between February 2015 and 30 April 2016, a period of non-occupation in excess of a year, and clearly more than de minimis.
17. The Appellant bought the property on 28 September 2015, and has explained that this was with the intention of providing residential accommodation on the first floor, in the same configuration as that occupied by the Squire family: the delay between purchasing the property and its first occupation by a tenant was due to necessary repairs and maintenance taking longer than expected. However, case law³ has established that where (as here) there has been an unauthorised change of use and there is then a break in that use before any accrued planning right has arisen, neither the intention of the owner, or the suitability and availability of the property for residential accommodation, is decisive. The relevant question to ask is: could the Council have taken enforcement action during the period when the use was inactive?⁴
18. In this case, the answer is that it could not. On the basis of my finding above, it would have been possible (whether or not it would have been expedient is a different matter) for the Council to have taken enforcement action against the

³ *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226; *Swale BC v FSS & Lee* [2006] JPL 886

⁴ This is a very different question to whether a break in continuity approaches the abandonment of an existing use, which is (as I understand it) the test advocated by the Appellant. That applies in cases where the material change of use had already achieved immunity from enforcement prior to the break in question, but here, it had not.

residential use made of the premises by the Squires after the pub had ceased to trade. But when they vacated the premises in February 2015, their residential occupation ended and there was no longer any breach of planning control. While the Appellant contends that the Council was “well aware” of his intention to use the first-floor living accommodation for residential letting, the Council does not have the authority to issue an enforcement notice in respect of a potential unauthorised use which may take place in the future. In short, the Council could not have taken enforcement action between February 2015 and April 2016 because no actual use was being made of the premises which was in breach of its lawful use as a public house.

Conclusion on ground (d)

19. I find that when the first of the tenancies let by the Appellant commenced on 30 April 2016, this did not amount to the continuation of the breach of planning control that occurred in April 2012. Rather, that first period of residential use had ceased before it gained immunity from enforcement, and there then followed a period of some 14 months during which no active use of the premises, residential or otherwise, was being made and the Council could not have taken enforcement action. The commencement of the tenancy on 30 April 2016 amounted to a fresh breach of planning control, consisting of the residential use of the first-floor living accommodation that was wholly unconnected with any use of the Ring O’ Bells as a public house. Applying the test at s171B(2), this took place less than four years before the date on which the enforcement notice was issued.
20. For these reasons, I conclude that the notice was issued within the statutory time limit for taking enforcement action. The appeal on ground (d) must therefore fail.

Other matters

The requirements of the notice

21. The terms of the first requirement of the notice give rise to two concerns. The first is the presence of what is most likely a typographical error, in that it states “Cease the use of the residential use of...”. The intended meaning is nevertheless clear, so the syntax can be corrected to “Cease the residential use of...” without any question of injustice arising to either the Appellant or the Council.
22. The second, more substantial, concern is that the terms of this requirement may in operation exceed what is necessary to remedy the breach of planning control in this case. That is because the established lawful use of the premises is a public house, with ancillary living accommodation on the first floor. The requirement as drafted specifies the cessation of “residential use” which, notwithstanding the provisions of s.57(4) of The Act ⁵, could be interpreted as preventing any residential use whatsoever including, if the pub re-opened, the legitimate use of the first-floor living accommodation for residential purposes ancillary to the primary use of the property as a public house.

⁵ S.57(4) provides that *where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out.*

23. In order to prevent any such misunderstanding, I shall amend the terms of the requirement to specify that the residential use which must cease is such residential use as is unconnected with the use of the premises as a pub. I am satisfied that this will cause no injustice to either the Council or the Appellant. The notice will still achieve its intended aim of preventing any unauthorised residential use of the property, and the Appellant's right to use the first-floor living accommodation for purposes ancillary to the operation of the public house will be safeguarded.

The existing tenants

24. There is evidence that there are currently two separate households occupying the first-floor living accommodation at the Ring O' Bells. In circumstances where anyone stands to lose their home as the result of an appeal decision, as is the case here, there is likely to be a serious interference with their rights under Article 8 of the European Convention on Human Rights (ECHR) as enacted through the Human Rights Act 1998 (HRA). However, it does not necessarily follow that this would be a violation of their human rights.
25. Subject to the amendment described at paragraph 23 above I am satisfied that the requirements of the notice are not excessive, and the amount of time given to comply with them is adequate (I note that since no appeal has been made on grounds (f) or (g), this is not disputed by the Appellant). In terms of the HRA I find that the requirements of the enforcement notice are not a disproportionate remedy when balanced against the need to uphold the operation of the planning system, which includes the requirement for development to accord with the planning policies of the Council's adopted Development Plan; that being made and applied in the wider public interest.
26. The Appellant has provided a detailed commentary on the actions taken by the Council during the course of its enforcement investigation, and the impact these had upon the tenants of the property. Those actions cannot have any bearing on my determination of the appeal, although it is of course open to the Appellant to pursue his concerns through the appropriate channels. One matter that is however of relevance to my decision is that one of the existing occupiers has a "relevant protected characteristic" for the purposes of s.149(1)(b) and (c) of the Equality Act 2010.
27. I have therefore had due regard to the Public Sector Equality Duty (PSED) contained in that section of the Equality Act, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I appreciate that the level of stress and anxiety occasioned by being served with notice to vacate the property could have a greater impact on the person with this protected characteristic. I have considered possible steps to address that inequality, but have found no alternatives that would be both appropriate to the circumstances and less harmful in impact. Weighing all of the relevant considerations in the balance, I consider that upholding the notice is proportionate.

Conclusion

28. For the reasons given above I conclude that the appeal against the enforcement notice should not succeed. I shall uphold the notice with correction.

Formal Decision

29. It is directed that the enforcement notice be corrected by:

- at paragraph 6 requirement 1, between the word "Cease..." and the phrase "...the residential use of...", deleting the words "the use of"

and varied by:

- at paragraph 6 requirement 1, replacing the final full stop with a comma, and adding thereafter the words "other than for purposes ancillary to the primary use of the premises as a public house."

Subject to this correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Jessica Graham

INSPECTOR

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Appeal Decision

Site visit made on 4 August 2020

by Rachael Pipkin, BA (Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th September 2020

Appeal Ref: APP/X1118/W/20/3251008

North Week Farm House, Lane from Week Cross to South Week, Chulmleigh, EX18 7EE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
- The appeal is made by Mr M Askew against the decision of North Devon District Council.
- The application Ref: 70907 dated 11 December 2019, was refused by notice dated 5 February 2020.
- The development proposed is change of use of an existing agricultural building to two dwellings.

Decision

1. The appeal is dismissed.

Background and Main Issues

2. Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwelling/houses) of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended and any building operations reasonably necessary to convert the building. There is no dispute between the main parties that the proposal meets the requirements of paragraph Q.1. and therefore, that it constitutes permitted development under Class Q, subject to the prior approval of certain matters.
3. Paragraph Q.2.(1) lists conditions under which the development must apply to the local planning authority for a determination as to whether prior approval will be required as to the impact of the development on various matters. The Council's decision notice indicates that prior approval was refused in respect of matters (a) transport and highways impacts of the development. A further reason for refusal related to the lack of evidence to demonstrate whether or not there would be any harm to protected species.
4. Therefore, the main issues are whether or not the appeal building is suitable for conversion to a dwelling, having regard to its effect on:
 - highway safety; and
 - protected species.

Reasons*Highway safety*

5. The appeal building is one of a number of barns set around a courtyard within North Week farm, one of which has permission for conversion. A further farmhouse is located at South Week. Together these form a small cluster of agricultural buildings within a rural setting accessed via a long narrow, single-track country lane off the crossroads at Week Cross.
6. The proposed development would convert a barn into two dwellings. These would be accessed via the existing lane. This would be in addition to the two existing dwellings, South Week and North Week Farmhouse, which already use the lane and two additional barn conversions for which prior approval has already been granted¹.
7. The Council considers that the addition of two dwellings would increase the number of vehicle movements from two to four movements per day for two agricultural buildings to a combined twelve to sixteen movements a day for two dwellings. This increase in vehicle movements in combination with the existing and approved schemes would significantly increase the volume of traffic using the narrow lane and junction at Week Cross.
8. The appellant has highlighted that there has been a reduction in traffic utilising the lane as 107 acres of forestry and agricultural land previously accessed via this lane has been sold and is now only accessed from two other access points. From the evidence, it appears that this area of land benefitted from an alternative access.
9. Whilst I accept that there may have been some reduction in vehicle movements associated with this transfer of land, I have been provided with no details of how much traffic activities associated with this land used to generate along the lane from Week Cross and by how much it has reduced. In any case, the day-to-day movements associated with two domestic dwellings are likely to be considerably more frequent albeit in smaller and less intrusive vehicles than agricultural vehicles, particularly given that services and facilities can only be accessed via a private car. This leads me to conclude that the proposed development would result in a more intensive use of the lane.
10. Visibility for vehicles emerging from the lane onto Week Cross is severely restricted due to the narrowness of the lane and hedging and vegetation along its edge. Traffic speeds along the lanes are acknowledged to be low due to the characteristics of the lanes and the Council has accepted that a lower visibility splay based on speeds of 30 mph would be appropriate. The visibility to the right is indicated to be 12 metres and to the left, 5 metres. This falls significantly below the recommended visibility requirement of 2.4 metres x 43 metres in either direction for this speed of traffic as set out in the Manual for Streets (MfS).
11. Even adopting a flexible approach to the guidance in the MfS based on the low speeds and low traffic volumes, I am not satisfied that there is adequate visibility at this junction to allow for safe egress for emerging vehicles. Whilst I accept this junction is already used in association with the existing residential and agricultural uses, the cumulative effect of the additional traffic associated

¹ Council Ref 61198 and 65858

with the proposed development would increase the risk of conflict with other road users at this junction. This would have an unacceptable impact on highway safety.

12. The lane leading to the appeal site has no formal passing places and is enclosed on either side by high hedge banks and has limited forward visibility. When vehicles meet in this lane, they can only pass each other by driving onto the ground either side of the hard-surfaced track. The appellant has identified 4 locations along the lane where this can occur, all of which are soft verges rather than bound surfaces. One of these areas is in front of a gated access to a field. The proposed passing places appear to be of varying dimensions.
13. With vehicles regularly driving onto these verges, the ground would become damaged. I observed evidence of this at my site visit. Furthermore, during winter time or periods of inclement weather these verges would become muddy and potentially unpassable by some vehicles. It therefore seems to me that when vehicles meet in this lane it is difficult for them to pass each other. This would be more even more difficult where larger agricultural machinery or vehicles towing trailers such as would be associated with the agricultural activities of the existing farm.
14. In the absence of adequate passing places, when vehicles or other road users' approach from opposite directions there would be conflict. This would be likely to result in vehicles having to reverse along the lane which would be unsafe and lead to an increased risk of conflict with other road users, including pedestrians, cyclists or horse riders. Whilst I appreciate that this may occur already given the existing activities at the end of the lane, it would be exacerbated by the increase in vehicle movements associated with the addition of two further dwellings. This leads me to conclude that the passing places do not allow for safe and suitable access to the site.
15. I appreciate that the junction and the lane have served the existing residential and agricultural uses for many years. I also acknowledge that no adverse highway impacts were raised in the consideration of the two approved conversion schemes and that there have been no physical changes to the lane since these schemes were approved. I also note that emergency vehicles can and have accessed the site. However, I must assess the scheme before me on its own individual merits which I have done.
16. The proposed development would result in a more intensive use of this lane which does not have satisfactory passing places or adequate visibility at its junction at Week Cross. This would increase the risk of conflict between users of the highway. As such, I conclude that the proposed development would significantly harm highway safety. It would therefore conflict with the National Planning Policy Framework which requires safe and suitable access to the site for all users and sets out that development should be prevented if there would be an unacceptable impact on highway safety.

Protected species

17. The appeal buildings are made up of three traditional barns constructed of stone and cob with a timber trussed roof finished in slate tiles and corrugated sheeting. The buildings, whilst structurally sound, have gaps and cracks within the walls and roof as well as sizeable openings on their front elevations.

18. The Council has raised ecological concerns as a reason for refusal on the basis that the barns are traditional buildings with suitable features for use by protected species. No surveys have been provided with the appeal documentation.
19. I acknowledge that protected species are not specifically referred to in the GPDO. However, I am mindful that Regulation 9 of the Conservation of Habitats and Species Regulations 2017 imposes a statutory duty on the competent authority to "exercise their functions which are relevant to nature conservation....so as to secure compliance with the requirements of the Directives". Accordingly, competent authorities must consider the Directives in making decisions relating to any of their planning functions.
20. In view of the Council's concerns about protected species, as the competent authority, I must consider the Directives and whether there is a reasonable likelihood of European protected species being present and affected by the proposed development.
21. The traditional form of the appeal buildings, with a large timber framed roof area offering unencumbered flying space, as well as the cracks, crevices and dark spaces would, in my view, offer a suitable habitat for wildlife especially for bats which are European protected species. Consequently, I cannot give approval without adequate evidence demonstrating that the Regulations will not be breached.
22. The proposed scheme would deliver two dwellings which would provide some limited social and economic benefits. However, I have been provided with no substantive evidence of the need for and the extent of the benefits of the scheme to outweigh any adverse impact on protected species
23. I acknowledge that the Council did not specifically request additional information about ecology or protected species at the application stage. The Council states it did not request this due to fundamental highway concerns with the proposed scheme. Whilst I appreciate this is frustrating for the appellant, this is essentially a procedural matter that does not relate to the planning merits of the appeal proposal.
24. In the absence of any survey information regarding ecology or protected species, I cannot be satisfied that there would not be a material adverse effect on protected species. Consequently, I conclude that the proposed development would be in conflict with Policy DM08 of the North Devon and Torridge Local Plan 2018 which seeks to conserve, protect and enhance biodiversity and avoid, wherever possible, adverse impacts on protected species.

Conclusion

25. For the reasons set out above, I conclude that the appeal should be dismissed.

Rachael Pipkin

INSPECTOR



Appeal Decision

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2020

Appeal A Ref: APP/X1118/C/29/3249032

Appeal B Ref: APP/X1118/C/29/3249033

**Chalet 12, Europa Park, Woolacombe Station Road, Woolacombe,
Devon EX34 7AN**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Ms Rebecca Worth against an enforcement notice ('the notice') issued by North Devon District Council.
- Appeal B is made by Mr Dennis Worth against an enforcement notice issued by North Devon District Council.
- The enforcement notice, numbered 10667, was issued on 20 February 2020.
- The breach of planning control as alleged in the notice is within the last ten years, a breach of condition 2 of planning permission 28132 consisting of the permanent residential occupation of the holiday chalet.
- The requirement of the notice is cease the permanent residential occupation of the holiday chalet.
- The period for compliance with the requirements is within nine months from the date when this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Decision

1. With reference to Appeal A and Appeal B: It is directed that the enforcement notice is corrected by: the deletion of the words " Section 171(1)(a) of the Act" and the substitution of the words " Section 171(1)(b) of the Act " in section 1 of the enforcement notice.
2. Subject to the correction, the appeals are allowed and the enforcement notice is quashed.

Procedural Matter

3. Given that both appeals were made on ground (d) alone, the parties were asked whether they had any objection to the appeal being taken forward without a site visit. Neither objected to this. As no party would be prejudiced by doing so, my decision has been reached on this basis.
4. The notice was issued in respect of the alleged failure to comply with a condition subject to which planning permission has been granted. Thus, the reference to 'Section 171(1)(a) of the Act' is incorrect. This should read 'Section 171A(1)(b) of the Act'. As this would not cause injustice to either party, I will correct the notice by substituting the former with the latter.

Reasons

5. From the evidence, Chalet 12 is one of a number of similarly-designed single storey buildings on what was Europa Park. The Council tells me this is now known as Tranquility Park Homes; however, to avoid confusion, I will use the former as this is how it is described in the notice and appeal form.
6. On the 23 November 1999 the Council approved application 28132 allowing for the 'Variation of holiday occupancy conditions attached to planning consents 2/75/110/47/3 and 2/77/538/47/3 to allow all year round holiday occupancy at 9, 10, 12, 21 and 22 Europa Park, Woolacombe Station Road, Woolacombe'. The decision on 28132 was subject to two conditions, the statutory time-limit and that numbered 2 which reads: 'The chalet shall be occupied for holiday occupation only and for no other permanent residential accommodation'.
7. The reason for the condition reads: 'The chalet is located where permanent residential accommodation would be contrary to national and Development Plan policies and the associated domestic paraphernalia would have an adverse impact on the Area of Outstanding Natural Beauty and Coastal Preservation Area'.
8. There is an inconsistency between the title of planning application 28132, which relates to the variation of conditions for 5 chalets, and the text of the condition, which refers to a singular chalet. However, as this is not a matter that the appellants challenge in their submissions and has not hindered their ability to make their case, it is not one that need detain me.
9. The case to be made under ground (d) is at the time when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. Here, the Council alleges that condition 2 has been breached. In such a case, it is incumbent upon an appellant to show that the breach has occurred continuously for a period of ten years. Given that the notice was issued on 20 February 2020, such a breach would have had to have started on or before 20 February 2010. It is for the appellants to prove their case on the balance of probability, using evidence that is precise and unambiguous.
10. The appellants' case is supported by three statutory declarations, one from each of them and the other from the chalet's previous owner, Ivan Leslie.
11. Ivan Leslie owned Chalet 12 from 29 November 2002 until he sold it to Dennis Worth on the 19 April 2011. He undertook trials of letting the chalet for holiday purposes for two seasons, starting in 2003. However, this did not work out and he decided to rent it out on a permanent residential basis. This he did do continuously until he sold it.
12. A letter attached to the statutory declaration states that Beverley Luke lived in Chalet 12 on a permanent basis between 1 April 2008 to 13 September 2010. Between 13 September 2010 and 12 November 2010 the chalet was vacant to allow for cleaning, redecorating and re-carpeting, which I refer to as refurbishment, before new tenants took up occupation. There were two of these who lived in the chalet permanently until he sold it, he says, though they are not named.
13. Dennis Worth is the father to Rebecca Worth. Their statutory declarations are very similar and, for this reason, they can be summarised together. Dennis

- Worth states that before he bought Chalet 12, Rebecca Worth lived permanently at his home in Pilton, Barnstaple. She moved to Chalet 12 on a permanent basis on the 19 April 2011 and has continued to do so until the present day. Both state that, to the best of their knowledge, the chalet was used for permanent residential purposes under the ownership of Ivan Leslie. Dennis Worth says that this was from 1 April 2008.
14. Both of their statutory declarations attach, as Exhibit A, email correspondence from a Revenue Officer of the Council, relating to Council Tax records for Chalet 12. This confirms Rebecca Worth being registered as the sole occupier of the chalet and paying Council Tax since 19 April 2011. It further states that the Council could only give details of periods when the chalet was liable for Council Tax during Ivan Leslie's ownership. In this regard, it sets out that there were two periods when the chalet was registered as being 'empty and unfurnished' – between 13 September 2010 and 12 November 2010 and between 15 April 2011 and 18 April 2011.
 15. A letter was received from John Trull, whose address is given as Chalet 11 Europa Park. He states that Chalet 12 has been permanently occupied for residential purposes since May 2008. He corroborates Ivan Leslie's version of events, adding that the names of the two tenants that occupied Chalet 12 between its refurbishment in Autumn 2010. Further, a Councillor Malcolm Wilkinson states that to his knowledge Chalet 12 has been occupied as a dwelling for at least 10 years.
 16. For its part, the Council disputes the 10-year continuous use of the caravan for two reasons: the length of the period of refurbishment in Autumn 2010; and the response given by Dennis Worth to a Planning Contravention Notice (PCN) served on him.
 17. The Council's position is that the two-month break for refurbishment of Chalet 12 in the Autumn of 2010 was such that it ceased the continuous breach of condition 2 attached to planning permission 28132. In this respect, it cites case law in *Thurrock BC v SSE & Holding* [2002] EWCA Civ 2266 and quotes from an appeal relating to Chalet 19 at Europa Park, (Planning Inspectorate Ref: APP/X1118/C/19/3234179).
 18. In essence, these set out that to become lawful the ten year breach must be continuous, though there is scope for some interruption. However, such interruptions should be short and not significant. It will be a matter of fact and degree in each case.
 19. In the appeal at Chalet 19, the break lasted for 5 months and was found to be significant. Rather than that break being 'slightly longer' it was significantly longer. Although the refurbishment might have been carried out more quickly, two months was not an inordinate period of time to refurbish the chalet. It is tantamount to a 'substantial holiday', of the type referred to in *Swale BC v FSS & Lee* [2005] EWCA Civ 1568, [2006] JPL 886, and I find that this did not cease the continuous nature of the breach.
 20. The evidence given by Ivan Leslie has not been challenged by the Council, and I have not been provided with sufficient reason to find differently. On the balance of probability, Chalet 12 was used as a permanent dwelling in the manner he sets out. Similarly, the Council does not dispute that Rebecca Worth

has lived in the chalet in the manner that she and her father claim. Again, I find no reason to find differently.

21. The PCN, attached as Appendix 3 to the Council's statement, was dated 29 March 2019, with four of its six questions relating to the permanent residential occupation of Chalet 12. The evidence shows that the questions were not answered individually but through a handwritten letter. The signature for this is redacted, but the Council tells me that it was signed by Mr D Worth. This has not been challenged by Mr Worth in his final comments, so I take it to be the case. He has written that "The property has all year round holiday occupancy. It has been used solely by myself and family but not for residential purposes". This is very much at odds with the content of his statutory declaration.
22. Whilst Mr Worth's letter responding to the PCN does little for his credibility, I do not find that it has a fatal effect on his appeal. I find that, taken as a whole, the evidence provided relating to the permanent residential occupation of Chalet 12 by Rebecca Worth is sufficient on the balance of probability. Of the two versions of events given by Mr Worth, I find that the letter in response to the PCN was not accurate.
23. Had I found that there was sufficient doubt regarding the continuous period of the breach of condition 2, this might have amounted to an act of concealment that could have ceased the breach. As it is, the continuous breach of the condition had subsisted for a period in excess of 10 years at the time of Mr Worth's response to the PCN. Therefore, even had his response been accurate, the Council would not, on the evidence before me, have been able to take enforcement action against the breach of condition.

Other matters

24. A decision from an appeal¹ against an enforcement notice, in respect of the breach of a holiday occupancy condition attached to a permission for 1 Europa Park, was submitted as Appendix 1 to the Council's statement. Part of that appeal was also made under ground (d). The case on that ground failed as, unlike here, insufficient documentary evidence was submitted to prove the case. It does not alter the conclusion I reach on this appeal. Although the appeal is allowed, the condition remains in place. It would, however, be unenforceable unless at some point in future the chalet was used in compliance with the condition, which would restart the clock and the condition would be enforceable again.

Conclusion

25. On the balance of probabilities, the appeals on ground (d) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control. The enforcement notice will be corrected and quashed.

Roy Curnow

INSPECTOR

¹ APP/X1118/C/19/3229443