



## Public Document Pack

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 in the Barnstaple Rugby Club on **WEDNESDAY, 6TH SEPTEMBER, 2023 at 10.00 am.**

**(NOTE: A location plan for the Rugby Club is attached to the agenda front pages)**

**NOTE:** Please note that copies of letters of representation have been placed on North Devon Council's website and are also available in the Planning Department.

**ALSO:** A break at lunchtime may be taken at the discretion of the Committee dependent upon the speed of progress of determining the planning applications on the agenda.

**PARKING:** Please note that the Rugby Club is a pay and display car park (£1.70 all day). Other nearby car parks are located at Mill Road Car Park (adjacent to the Rugby Club – 40p per hour, maximum stay 3 hours), Fairview (£1.70 all day) or Rolle Quay (£1.10 per hour for 1 – 4 hours. 5 hours - £5.60, 6 hours - £6.80, 7 hours - £8.00, 8 hours - £9.20).

Members of the Planning Committee

Councillor Davies (Chair)

Councillors Bishop, Bulled, Crabb, Denton, Haworth-Booth, Knight, Lane, Leaver, Maddocks, Prowse, L. Spear, Walker, Whitehead and Williams

### **AGENDA**

1. Apologies for absence
2. To approve as a correct record the minutes of the meeting held on 9th August 2023 (Pages 9 - 14)
3. Items brought forward which in the opinion of the Chair should be considered by the meeting as a matter of urgency
4. 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)

5. To agree the agenda between Part 'A' and Part 'B' (Confidential Restricted Information)

## **PART A**

6. **76857: Land at Ley Lane, Patchole. Barnstaple, Kenstibury, EX31 4NB**  
(Pages 15 - 34)

Erection of open market dwelling. Report by Senior Planning Officer (attached).

7. **77246: Unit 1, 77 The Old Tannery East Street South Molton, Devon, EX36 3DQ** (Pages 35 - 48)

Application for a non-material amendment to planning permission 70262 (conversion of existing buildings to create 14 dwellings together with erection of 7 new dwellings & associated works) in respect of removal of (4) visitors car parking spaces. Report by the Senior Planning Officer (attached).

8. **Appeal report** (Pages 49 - 60)

To consider the report by the Senior Planning Support Officer (attached).

9. **To consider if any Planning Site Inspections are required and to agree the reason(s) and date(s) for those inspections to be held.**

## **PART B (CONFIDENTIAL RESTRICTED INFORMATION)**

**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*

## **REGISTERING TO SPEAK**

- If you wish to address the Planning Committee you should contact the Committee Administrator in advance of the Committee on 01271 388253 or speak to them just before the meeting commences.

## **WHAT HAPPENS AT COMMITTEE?**

- The Chairman will introduce himself/herself
- The Planning Officer will present his/her report
- The Chairman will call out the names of individuals who have registered to speak
- Speakers will be **restricted to 3 minutes each** (which is timed and bleeped). **A maximum of six supporters and six objectors of the application may speak at committee.** The applicant or agent and representative of the parish council may also speak at committee.
- ***Once public participation has finished, the Planning Officer will be given the opportunity to respond or to clarify any points that have arisen from the public participation exercise***
- The Members of the Committee shall then debate the application (**at this point the public shall take no further part in the debate**)

## **WHEN SPEAKING**

- State clearly your name, who you are representing and whether you are supporting or objecting to the application
- Speak slowly, clearly and loud enough for everyone to hear you, and direct your comments to the Chairman and the Committee
- Try to be brief, avoid being repetitive, and try to prepare what you want to say beforehand.

## **WHAT HAPPENS NEXT?**

- ***A record of the decisions taken at the meeting is produced (known as the “minutes of the meeting”)***
- The minutes of the meeting are published on the Council's Website:  
[www.northdevon.gov.uk](http://www.northdevon.gov.uk)



**APPOINTMENT OF SUBSTITUTE MEMBERS  
AT MEETINGS OF THE PLANNING COMMITTEE**

In accordance with the North Devon Council Constitution, a Member or Leader or Deputy Leader of a Political Group, appointing a substitute shall notify the Proper Officer of the name of his/her substitute.  
**Notification by a Member purporting to be a substitute Member will not be accepted.**

In the case of a substitution to the Planning Committee, the substitute Member shall sign and lodge this certificate with the Corporate and Community Support Manager confirming the acceptance of the appointment and that they have completed all Planning training modules provided to Members.

**DATE OF PLANNING COMMITTEE: ..... [Insert date]**

For completion by Member of the Planning Committee requiring a substitute

I, Councillor..... [print name], hereby declare that I appoint  
Councillor ..... [insert name of substitute Member] to substitute for  
me at the above mentioned meeting of the Planning Committee:

[signature]..... [date].....  
**OR**

For completion by Leader/Deputy Leader of a political group nominating a substitute

I, Councillor..... [print name of group Leader/Deputy Leader],  
hereby declare that I appoint Councillor ..... [insert name of  
substitute Member of same political Group] to substitute for Councillor  
.....[insert name] at the above mentioned meeting of the Planning  
Committee.

[signature]..... [date].....  
**AND**

For completion by substitute Member accepting appointment of substitute

I, Councillor ..... [print name], hereby confirm that I  
accept the appointment of Substitute for the above mentioned Planning Committee and  
hereby confirm that I have undertaken all appropriate Planning training modules in  
relation to the same.

[signature]..... [date].....

**NOTE: FORM TO BE COMPLETED AND RECEIVED BY CORPORATE AND COMMUNITY SUPPORT  
PRIOR TO THE COMMENCEMENT OF THE MEETING**

## **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. Members of the public that attend meetings must be aware that these meetings are open to the public and so therefore both individuals and the Council itself have the right to record the meeting. The Council understands that some members of the public attending its meetings may not wish to be filmed. The Chair of the meeting will make sure any request not to be filmed 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.
2. The Chair 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 recording should leave the room ensuring all recording equipment is switched off.
4. Any member of the public has the right not to be filmed. We ensure that agendas for, and signage at, Council meetings make it clear that recording can take place – anyone not wishing to be filmed must advise the Chair at the earliest opportunity to allow them to be directed to an area in the room where they will not be caught on camera. Subject to paragraphs 1, 2 and 3 above, audio recordings shall be permitted at all times during public meetings.
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](mailto:memberservices@northdevon.gov.uk) or the Communications Team on **01271 388278**, email [communications@northdevon.gov.uk](mailto:communications@northdevon.gov.uk).

The Barnstaple Rugby Club full address is: Barnstaple RFC, Pottington Road, Barnstaple, EX31 1JH.

At the traffic lights at the end of Rolle Street on the B3149 turn either left or right onto Mill Road according to the direction that you are travelling from. Follow the road along and turn right onto Pottington Road.

The Rugby Club is located on your left. Please note that the Rugby Club is a pay and display car park (£1.70 all day). Other nearby car parks are located at Fairview (£1.70 all day) or Rolle Quay (£1.10 per hour for 1 – 4 hours. 5 hours - £5.60, 6 hours - £6.80, 7 hours - £8.00, 8 hours - £9.20).



29.08.23

**NORTH DEVON COUNCIL**

Minutes of a meeting of Planning Committee held at Barnstaple Rugby Club on Wednesday, 9th August, 2023 at 10.00 am

PRESENT: Members:

Councillor Davies (Chair)

Councillors Lane, Bishop, Crabb, Haworth-Booth, Knight, Maddocks, Leaver, Prowse, L. Spear, Walker, Whitehead and Williams

Officers:

Service Manager (Development Management), Lead Planning Officer (Major Applications), Senior Planning Officer, Paralegal, Solicitor and Legal Advisor

**14. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Bulled and Denton.

**15. TO APPROVE AS A CORRECT RECORD THE MINUTES OF THE MEETINGS HELD ON 14TH JUNE AND 27TH JULY 2023.**

RESOLVED that the minutes of the meetings held on 14<sup>th</sup> June 2023 and 27<sup>th</sup> July 2023 (circulated previously) be approved as correct records and signed by the Chair.

**16. ITEMS BROUGHT FORWARD WHICH IN THE OPINION OF THE CHAIR SHOULD BE CONSIDERED BY THE MEETING AS A MATTER OF URGENCY**

The Chair mentioned an appeal decision received by the Authority within the last few days (so would not be included in the report within item 9 of the agenda). He noted it made reference, incorrectly, to the Authority being unable to prove it had a five year land supply. He advised that he would approach the Chief Executive and the legal team, with the aim to jointly consider the next course of action.

The Chair also requested the Committee provide him with their opinions (at a later date) with regard to the format and content of planning reports.

**17. DECLARATION OF INTERESTS**

The following declarations of interest were announced:

Councillor Davies      Planning application 76435: Disclosable Pecuniary



Interest as the Agent for the application.

**18. ORDER OF AGENDA**

RESOLVED that the order of the agenda be changed, and application number 76435 be considered prior to application 77075.

**19. 76435: RIVERSIDE HOUSE NEWNHAM BRIDGE UMBERLEIGH  
DEVON EX37 9EU**

Councillor Davies re-declared his discloseable pecuniary interest in the application and left the meeting during the consideration of this planning application.

The Vice-Chair took the Chair for this application.

The Committee considered a report by the Senior Planning Officer (circulated previously).

The Senior Planning Officer addressed the Committee and advised that the applicant had appealed against non-determination by North Devon Council and as such, the Committee members were requested to make a resolution to be put forward to the Planning Inspector. The Committee would not be making the decision themselves today; rather just a recommendation of their decision.

In response to a question from the Committee, the Senior Planning Officer advised that the Parish Council had recommended approval.

The committee noted that the impact of recommending this for approval could be widespread and that a fall-back plan could have been of use.

RESOLVED (11 for, 0 against, 1 abstained) that the application be agreed as recommended by the Senior Planning Officer in that the decision of 'Refused' be provided to the Planning Inspectorate.

**20. 77075: OPEN SPACE MEADOW PARK, ROUNDSWELL, DEVON**

The Committee considered a report by the Lead Planning Officer (Major Applications) (circulated previously).

In response to questions by the Committee, the Lead Planning Officer (Major Applications) advised the following:

- The plot was not adopted by North Devon Council (NDC).
- It was a public open space which should have been transferred to local authority ownership on completion of the site. This transfer had not taken place. NDC had managed the area until it had been privately sold.
- Considerations should be made regarding:
  - It was considered to be a cramped development



- The bedrooms did not meet the preferred minimal standards for dwellings
- The application stated it would be a 'car free development' which would be unlikely.
- Impact on hedgerows had not been considered
- The site did not have the benefit of a DEFFRA small-site metric.

Ann Hardy (of Rowan Homes South West) (applicant) addressed the Committee.

Statements from objectors; Lyn Simmons and Patricia Gillibrand were read to the Committee by the Corporate and Community Services Officer.

The Legal Officer advised that there was a Section 52 agreement in place which required the transfer of the land. This was a complex issue as the original developer of the site had gone into liquidation. The receivers had sold the land. Negotiations were taking place.

In response to questions from the Committee, the Legal Officer confirmed that NDC had maintained the plot for 20 years, under mandatory arrangements. However this did not provide the authority with any additional rights.

In response to questions from the Committee, the Lead Planning Officer (Major Applications) advised that on consulting with the Parks Team it had been noted that their view was that if the development was approved then there should be a Section 106 agreement to provide off-site provision of an open space. It was however considered that to off-set and remove the area would not be good 'place making' in contravention of DM09 of the North Devon and Torridge Local Plan.

The Service Manager (Development Management) advised that it was about good 'place-making' and to avoid creating high-density development and reconfirmed the possible consequences for other areas of public open space in the surrounding area.

Councillor Walker addressed the Committee as Ward Member.

Councillor Prowse advised the Committee that he had been involved with the original planning of Roundswell in the late 1980s and had noted that public open spaces had been intentionally added to provide green spaces to the design. He noted that the three original developers were all no longer trading but had been 'restructured' in different companies. He noted that an audit of those spaces should be performed.

In response, the Chair confirmed that any spaces should be listed within the Council's list of assets.

In response to questions from the Committee, the Lead Planning Officer (Major Applications) confirmed that should the application be refused the land would need to be returned as public open space and therefore any fencing removed in order to make the space accessible.

RESOLVED (11 for, 0 against, 1 Abstained) that the application be APPROVED as recommended by the Lead Planning Officer (Major Applications).

**21. 75927: LAND AT CASTLE PARK ROAD WESTACOTT GRANGE BARNSTAPLE**

The Committee considered a report by the Lead Planning Officer (Major Applications) (circulated previously).

The Lead Planning Officer (Major Applications) advised the Committee of the following:

- The plant and machinery to the side of the Triton building would be removed and replaced elsewhere by the developer.
- The farmland at the end of Westacott Lane was now part of the allocated land under BAR01 of the local plan.
- There would be an element of Biodiversity Net Gain to compensate the loss of some of the trees secured by S106.
- There would be a vehicle turning circle in the proposed plans.
- This application was for the access road only.
- This was an alternative to the previously proposed access through Westacott Park which had been deemed unacceptable by the Authority.

The Lead Planning Officer (Major Applications) advised that the access would open up the route to applications 62187 (149 dwellings) and 65448 (820 dwellings), however this connection would be established by further planning permissions. She showed the Committee the allocation map for the 'Westacott extension'.

Councillor Leaver declared an Other Registrable Interest as the Devon County Councillor for the area.

Devon County Council Highways Officer (Matt Collins) addressed the Committee and confirmed that Highways had no objections to the application.

In response to questions from the Committee, the Highways Officer advised:

- The level of detail provided at this stage would not enable him to confirm whether the road could be adopted by DCC in future. He did however note potential issues with the retaining wall (boundary with Westacott Meadow), width of the road, and the proximity to the building. He also confirmed that based on the height of the bank, DCC would require an AIP (Approval in principal).
- He could not confirm if a safety audit had been carried out.
- This application was currently for a single road and at present would not change the requirements for the junction with the main road. In future, when subsequent applications were submitted, the resulting effect of the junction would be considered.

The Service Manager (Development Management) confirmed that the road junction would be considered at the reserve matters stage.

RESOLVED (11 for, 1 against) that the application be APPROVED as recommended by the Lead Planning Officer's (Major Applications).

**22. ADJOURNMENT OF MEETING**

RESOLVED that it being 11.27 a.m. the meeting be adjourned for a comfort break and reconvene at 11.35 a.m.

RESOLVED, that it being 11.35 a.m. the meeting continue in order for the remaining business to be transacted.

**23. APPEAL REPORT**

The Committee considered a report by the Senior Planning Support Officer (circulated previously) regarding planning and enforcement appeal decisions received since those reported at the last meeting of the Committee.

The Service Manager (Development Management) summarised the appeals covered within the appendices.

The committee appreciated the detail of the appeal report and found it useful to see the proposed plans and what had, and had not been considered acceptable by the inspectors.

The Committee noted the report.

**24. TO CONSIDER IF ANY PLANNING SITE INSPECTIONS ARE REQUIRED AND TO AGREE THE REASON(S) AND DATE(S) FOR THOSE INSPECTIONS TO BE HELD.**

The Committee noted that a site visit would be required for application 76293 Land South of A39 Brynsworthy. This would be arranged as soon as the application was at the required stage.

Councillor Leaver declared a Discloseable Pecuniary Interest as her husband was employed to provide a technical report for the applicant on application 76293.

The Chair suggested that the Committee were provided with a visit to previously approved sites in order to consider what makes a good (or bad) development.

Chair

The meeting ended at 11.59 am

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

## **Application Report**

Planning, Housing and Health  
North Devon Council  
Lynton House, Commercial Road,  
Barnstaple, EX31 1DG

<b>Application No:</b>	76857
<b>Application Type:</b>	Full Application
<b>Application Expiry:</b>	15 September 2023
<b>Extension of Time Expiry:</b>	15 September 2023
<b>Publicity Expiry:</b>	29 April 2023
<b>Parish/Ward:</b>	KENTISBURY/BRATTON FLEMING
<b>Location:</b>	Land at Ley Lane Patchole Barnstaple Kentisbury EX31 4NB
<b>Proposal:</b>	Erection of open market dwelling
<b>Agent:</b>	Woodward Smith Chartered Architects
<b>Applicant:</b>	Mr Kent-Smith & Ms Grigg
<b>Planning Case Officer:</b>	Mr S. Emery
<b>Departure:</b>	Y
<b>EIA Development:</b>	
<b>EIA Conclusion:</b>	
<b>Decision Level/Reason for Report to Committee (If Applicable):</b>	Committee call in from Councillor Prowse – To discuss policy context.

### **Site Description**

The site is located part of the cluster of development at Patchole made up of a selection of dwellings centred around the road junction. The site is accessed from an unclassified road, with the land at a higher level from the road and enclosed by established hedgerows. The site appears to have been used for recreational purposes with a summer house and formal planting having taken place on site.



Site from the highway



Existing shed on site



From driveway looking east



Looking east



Access and highway

## **Recommendation**

### **Refused**

Legal Agreement Required: No

## **Planning History**

<b>Reference Number</b>	<b>Proposal</b>	<b>Decision</b>	<b>Decision Date</b>
<b>39564</b>	Erection of timber framed studio & erection of 2 polytunnels at land at North Patchole (OS Pt 6142NW), Kentisbury, Barnstaple, EX31 4NB	Full Planning Approval	6 June 2005
<b>65825</b>	Erection of one Self Build, Local Needs Sustainable Dwelling at land at North Patchole Paddock, Kentisbury, Barnstaple, Devon, EX31 4NB	Withdrawn	14 December 2018
<b>66536</b>	Erection of one Local Needs Affordable Dwelling (Amended Description) at North Patchole Paddock, Patchole, Kentisbury, Barnstaple., Devon EX31 4NB	Refused	13 October 2020

## Constraints/Planning Policy

<b>Constraint / Local Plan Policy</b>	<b>Distance (Metres)</b>
Advert Control Area Area of Special Advert Control	Within constraint
Chivenor Safeguard Zone Consultation Any Development	Within constraint
Landscape Character is: 5C Downland	Within constraint
Listed Building Curtilage (Adjacent to)	5.85
Non Mains Drainage Site: 65825	Within constraint
Non Mains Drainage Site: 66536	Within constraint
Unclassified Road	
USRN: 27501272 Road Class:R Ownership: Highway Authority	4.89
Within Adopted Unesco Biosphere Transition (ST14)	Within constraint
Within:, SSSI 5KM Buffer in North Devon (Exmoor NP),consider need for AQIA if proposal is for anaerobic digester without combustion plant	Within constraint
Within:, SSSI 5KM Buffer in NorthDevon,consider need for AQIA if proposal is for anaerobic digester without combustion plant	Within constraint
Within:Exmoor and Quantock Oakwoods, SAC 10KM Buffer if agricultural development consider need for AQIA	Within constraint
Within:Exmoor Heaths, SAC 10KM Buffer if agricultural development consider need for AQIA	Within constraint
SSSI Impact Risk Consultation Area	Within constraint
SSSI Impact Risk Consultation Area	Within constraint
DM01 - Amenity Considerations DM02 - Environmental Protection DM04 - Design Principles DM05 - Highways DM06 - Parking Provision DM07 - Historic Environment DM23 - Residential Development in defined Settlements without development boundaries ST01 - Principles of Sustainable Development ST03 - Adapting to Climate Change and Strengthening Resilience ST07 - Spatial Development Strategy for Northern Devon's Rural Area ST14 - Enhancing Environmental Assets ST15 - Conserving Heritage Assets ST17 - A Balanced Local Housing Market ST19 - Affordable Housing on Exception Sites	



## Consultees

Name	Comment
<p>Building Control Manager</p> <p>Reply Received 17 August 2023</p>	<p>No comments received.</p>
<p>Councillor M Prowse</p> <p>Reply Received 3 May 2023</p>	<p>Cllr Prowse called-in the application to be discussed at Planning Committee</p>
<p>Environmental Health Manager</p> <p>Reply Received 3 April 2023</p>	<p><b>1 Residential Amenity</b>  A sizeable building is shown in close proximity to the southwest of the proposed dwelling, The building appears to be in separate ownership. Certain uses of this building could significantly impact the amenity of future occupiers of the dwelling (such as due to noise, odour or flies),  Based on satellite imagery, the building appears to be under the control of and used in connection with the dwelling at Lower Basepark. I would not expect uses that are ancillary to the dwelling to cause any significant amenity concerns.  If the above understanding is incorrect, and the nearby building is authorised for agricultural or other commercial uses that could significantly impact amenity at the application site, please let me know so I can review my comments based on the circumstances.</p> <p><b>2 Land Contamination</b></p> <p>I do not expect land contamination issues to arise in relation to the proposals. However, given the sensitivity of introducing residential uses, I recommend the following condition be included on any permission to cover the possibility that unexpected contamination is discovered during development work:</p> <p>- Contaminated Land (Unexpected Contamination) Condition  Should any suspected contamination of ground or groundwater be discovered during development of the site, the Local Planning Authority shall be contacted immediately. Site activities within that sub-phase or part thereof shall be temporarily suspended until such time as a procedure for addressing the contamination is agreed upon with the Local Planning Authority or other regulating bodies.</p> <p>Reason: To ensure that any contamination existing and exposed during the development is assessed and remediated as necessary.</p> <p><b>3 Construction Phase Noise</b>  In order to reduce the risk of nearby residents being significantly impacted by noise during the construction phase of the development I recommend the following condition be imposed:</p>

Name	Comment
	<p>- Construction Times Condition</p> <p>During the construction phase of the development no machinery shall be operated and no noisy processes undertaken outside the following times:</p> <p>a) Monday - Friday 08.00 - 18.00,  b) Saturday 08.00 - 13.00  c) nor at any time on Sunday, Bank or Public holidays.</p> <p>Reason: To protect the amenity of local residents</p> <p>4 Advisory Note: Foul Drainage</p> <p>The proposed installation of a private system for treatment and disposal of foul drainage will need to comply with Building Regulations and the Environment Agency's General Binding Rules for small sewage disposal systems.</p>
<p>Heritage &amp; Conservation Officer</p> <p>Reply Received 6 April 2023</p>	<p>6/04/2023 14:29 - It is proposed to erect a new house on land to the east of Lower Basepark, in Patchole. This site is to the south of the grade II listed Higher Patchole Farm and its curtilage listed farm buildings most of which have been converted to domestic use. Lower Basepark is a relatively new single storey building, in a modern style. The land in question is currently open, and looks to be maintained as a garden area. It is not farmland, but its undeveloped nature does contribute to the open rural setting of the listed building. If the site is developed as proposed it will obviously have a house on it, so will not be open and undeveloped, and a part of the historic setting of the farmstead will be removed. The new house will be set back within the plot, is of a traditional design, and is not directly opposite the farm, so in some ways is less of an issue than it might be otherwise, but nonetheless is likely to give rise to a degree of less than substantial harm to significance arising from effect on setting. Under the terms of paragraph 202 of the NPPF, this harm will need to be balanced against the public benefits of the proposal.</p>
<p>Kentisbury &amp; Trentishoe Parish Council</p> <p>Reply Received 13 April 2023</p>	<p>We, Kentisbury and Trentishoe Parish Council, wish to object to the proposed application and support the objections already received.</p> <p>The detailed points for opposing this application are well made by several of the objectors and for the purposes of the avoidance of establishing precedent, should be taken good note of. This is particularly true in respect of the interpretation of policy DM23. To date planners seem to have taken a very loose interpretation—to the point of absurdity in one recent planning application—of the definition of 'Principal Built Form' of a settlement and where the boundaries of that lie. By definition, as pointed out, a new application cannot be within the principal built form of a settlement if it is on the edge of it and therefore outside it. That would mean that the provisions of DM23(b) must apply and that is precisely the interpretation you yourselves reached on a previous application for this site.</p>

# Agenda Item 6

Name	Comment
	<p>The simple fact is that there has to be an even playing field. You cannot make certain stipulations for one application and then, when a second application is received for the same site, disregard them and apply a different set of criteria.</p> <p>We would also support the view that the siting of the present application is inappropriate and unnecessarily close to the neighbouring property, not least because that property is a bungalow being overshadowed by a large house adjacent to it. The property, regardless of other considerations needs to be sited more centrally on the site to mitigate this.</p> <p>I believe that where there are 6 objections or more then it is a requirement that the application will be referred to the Planning Committee. The Parish Council's objection now makes 6. I am sure all objectors would be obliged for the relevant date in order to be able to attend and expand on their objections in person.</p>
<p>Sustainability Officer</p> <p>Reply Received 17 March 2023</p>	<p>17/03/2023 09:29 - The submitted Ecological Impact Assessment (EA) concludes that the site is of negligible value for protected species and no further survey effort is required. The proposed development is within an area of amenity grassland currently used as residential garden and all existing habitat features are to be retained. The EA recommended building integrated bat/bird boxes are appropriately illustrated on submitted Elevations.</p> <p>The EA includes recommendations for landscaping and further planting specifications should be added to a revised Block Plan.</p>
<p>Planning Policy</p>	<p>Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan in the determination of a planning application then the determination must be made in accordance with the development plan unless material considerations indicate otherwise. As you are aware, the Council have a recently adopted Local Plan (October 2018) which was considered by the Inspector to be 'Sound' and in general conformity with the NPPF; therefore, policies in the Local Plan are up to date. The NPPF is a material consideration in planning decisions.</p> <p>It should also be noted that in April 2023, the Councils published its updated 5 YHLS statement where it was concluded that a five year supply of deliverable housing sites is clearly demonstrated with a joint supply of specific deliverable housing sites equivalent to 5.9 years or 117% of the five year requirement. Therefore, this application should be considered against policies in the adopted Local Plan and not against paragraph 11(d) of the NPPF and the 'presumption in favour'.</p> <p>From a policy perspective I support the Officer interpretation of Policy DM23 in that the proposed site is not within the principle built form of Patchole but is 'well related' to the settlement where the glossary defines such locations as 'sites adjoining the main built-up form of a settlement, particularly in relation to villages</p>

Name	Comment
	<p>without identified development boundaries and 'exception sites' outside defined development boundaries'.</p> <p>I would suggest that if a development boundary were to be identified around the principle built form of Patchole then clearly, it would not include the land proposed but it would certainly adjoin the eastern boundary and therefore well related where Policies ST19, KKF and DM23 support the delivery of affordable housing to meet a locally identified need subject to the stated criteria as defined within paragraphs 7.35 and 7.36.</p>

## **Neighbours / Interested Parties**

Comments	No Objection	Object	Petition	No. Signatures
0.00	6	5	0.00	0.00

Five letters of objection and 6 letters of support have been received.

The Letters of support consider that the dwelling would be an improvement to the area through an acceptable design, together with the proposed occupants being a benefit to the local community.

The concerns raised in the letters of objection can be summarised as follows:

Inappropriate form of development contrary to the Local Plan  
Harm to the setting of the adjacent listed building  
Concerns with regard to drainage  
Impact upon the amenities of Lower Basepark.

The matters have been considered in the following report.

## **Considerations**

### **Proposal Description**

This application seeks detailed planning permission for the erection of one open-market dwellinghouse.

The dwelling is proposed to be sited on land to the east of a dwelling known as Lower Basepark.

The dwelling is to have a simple two storey gabled form, with a double and single storey protrusion to the northwest facing elevation. The southeast elevation is to have an open porch with a balcony above.

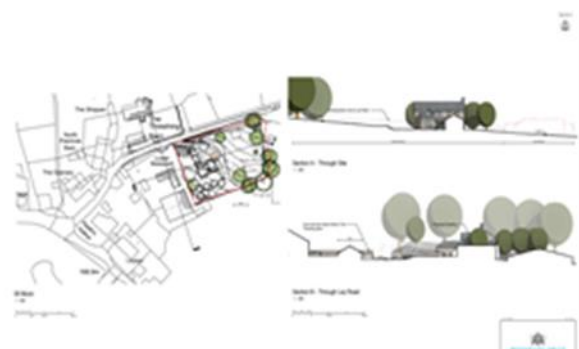
The dwellinghouse is to have a width measuring 13.4m, a depth measuring 15.84m (including the rear protrusions), an eaves height measuring 5m and a ridge height measuring 7.5m.

# Agenda Item 6

The site is located within the Countryside and also adjacent to the curtilage of the grade II listed Higher Patchole Farm.



Location Plan



Proposed Block Plan



Proposed dwelling.....



Aerial View of Site

## Planning Considerations Summary

- Principle of development
- Design
- Amenity
- Ecology
- Flood risk and drainage
- Highways/parking

## 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

For the purposes of the Local Plan policies, Patchole has traditionally been classed as part of the cluster of development forming Kentisbury Ford with the development in recent years of a number of local needs dwellings between the junction with the B3229 and one directly west of the application site at Lower Basepark.

As such for the purposes of considering the application North Devon and Torridge Local Plan Policies ST07(2), Policy KKF detailing the strategy for Kentisbury and Kentisbury Ford and Policies DM23 and ST19 will apply.

Within villages such as this, development will be enabled in accordance with the local spatial strategy to meet local needs and growth aspirations. Policy KKF: Kentisbury / Kentisbury Ford Spatial Strategy clearly sets out the communities vision over the plan period which seeks to maintain the area's character and appearance for the benefit of residents, while adopting a positive approach to development well related to the village that addresses a local need and which will be delivered through the stated criteria (a) to (f).

Paragraph 12.604 recognises that 'opportunities for residential development in Kentisbury are limited', mainly due to the dispersed settlement pattern with several small settlements and therefore 'the local community would wish to consider all future housing proposals on their own merits whilst recognising the requirement to provide additional housing to meet a local need still remains, as does addressing aspirations for improvements to local services and facilities'. As Kentisbury / Kentisbury Ford does not have a defined development boundary, proposals for residential development that are appropriate in terms of scale, location and landscape impact will be supported in principle subject to the stated criteria within Policy DM23.

The principal reason behind Kentisbury/Kentisbury Ford not having a development boundary within the plan is at the request of the Parish Council who, as part of the consultation on the rural areas advised that 'the boundary as proposed should be removed and new housing should be considered through a criteria based approach on a case by case basis'.

The location of the dwelling directly next to built form at Patchole yet not within the built form therefore requires its consideration under Policy DM23(1)(b) of the NDTLP whereby the development should have an affordable focus which accords with Policy ST19 (Exceptions sites) and the first occupancy should meet local needs criteria as outlined in paragraphs 3.35 and 3.36 of the NDTLP.

The proposal should also meet all the criteria of (2) of DM23 which will be discussed in the context of the relevant planning considerations below.

In terms of Policy ST19, as set out within paragraph 7.40 of the Local Plan, 'proposals enabled through this policy need to be justified on the basis of an identified local need for affordable housing. Development proposals should reflect on, and respond to up-to- date evidence of local housing needs, such as that presented through Housing Needs Surveys. Development schemes will therefore need to be accompanied by evidence to demonstrate that a local need exists for the scale and nature of affordable housing that is proposed, in terms of the number of dwellings, their size, type and tenure. The policy will not support speculative housing proposals.'

An earlier application 65825 was withdrawn as the proposed dwelling was shown at the eastern most point of the land parcel and was not considered to be well related to the built form of North Patchole.

A more recent application 66536 (Erection of one Local Needs Affordable Dwelling (Amended Description)) moved the dwelling closer to the western boundary where it would read with the context of the single storey local needs dwelling to the west 'Lower Basepark' and the cluster of development which extends eastwards from the road junction. The area

of land subject of the application appears to have been clearly used for recreational with aerial photos showing the area regularly mowed, with a vegetable patch, a trampoline, and summerhouse, such that it is not fully agricultural in nature. This application was refused for the following reasons:

1. In the absence of a signed Section 106 agreement, securing the dwelling as a discounted sale affordable dwelling and with a local occupancy requirement in perpetuity, the development would be contrary to the requirements of Policies ST07 (2), KKF, DM23 (1)(b) and ST19 of the adopted North Devon and Torridge Local Plan.
2. In the absence of a Section 106 agreement securing the dwelling as an affordable local needs dwelling in perpetuity, the public benefits afforded to the scheme are not considered to outweigh the less than substantial harm identified to the setting of the adjacent Grade II Listed Building, Higher Patchole Farmhouse, as identified in paragraph 196 of the National Planning Policy Framework, and therefore the development neither preserves nor enhances the setting of the Listed Building contrary to the statutory duty of Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and Policies ST15 and DM07 of the North Devon and Torridge Local Plan.
3. In the absence of a Section 106 agreement to secure the dwelling as an affordable local needs dwelling, the social sustainability benefits cannot be used to outweigh the unsustainable location of the development. As such the development would result in the reliance on a private car to access facilities and services required on a daily basis such that it is not considered to be environmentally sustainable and is therefore contrary to Policies ST10 and DM05 of the North Devon and Torridge Local Plan and paragraphs 108 and 110 of the National Planning Policy Framework.

The current application is for an open market dwelling to be sited to the west of the site adjacent to the dwellinghouse known as Lower Basepark. The entire site will form the residential curtilage. The Planning Statement Supporting this application justifies the principle of development in stating that the proposal site is within the built form of the village. Reference is made to a recent Appeal Decision in Patchole:

‘A key factor for the appeal refusal for the Land Adjacent to The Stables in Patchole, Kentisbury was primarily due to the inspector’s interpretation of DM23 and what is considered principle-built form. The term itself is down to the decision maker by justification of policy and material considerations, however there is no definition setting out the meaning of the term, thus lacking in clarity. The appeal site was not considered to be part of the principle-built form by virtue that it is sited on a private lane away from Ley Lane and is not fronting the road like the majority of the settlement.

The proposed dwelling set out within this statement, has been designed to sit among the key cluster of dwellings fronting Ley Lane, and offers a significant relationship to the physical built form and appearance of Patchole. The dwelling will complement the traditional architectural vernacular of Higher Patchole, including natural stone stonework and a fronting gable end’.

However, Officers consider it appropriate to quote the Inspectors entire interpretation of said appeal site, as follows:



‘9. The settlement network that forms the village of Kentisbury comprises dispersed clusters of built form, predominately focussed along the key roads in the area. In Patchole, the principal built form is clustered around the junction between Ley Lane and Ford Hill/Stonecombe Hill, with properties primarily fronting these roads. The private lane access to the site connects to Stonecombe Hill, with built form, including Patchole Manor and buildings to its rear, located on the opposite side of the lane to the site.

10. Although three sides of the site adjoin the property boundaries associated with the principal built form, combined with existing garden areas, the two paddocks create a ‘U’ shaped gap between the existing buildings. Existing landscape features along the site boundaries also provide a visual separation between the existing built form around Ley Lane/Higher Patchole Farm and Patchole Manor. Additionally, as the appeal site is located to the rear of Spring Cottage, away from Ford Hill/Stonecombe Hill, the proposed development would not front the road unlike the majority of the principal built form of the settlement.

11. Given the above, it is my view the appeal site is not located within the principal built form of Patchole. It does, however, meet the definition of being well-related to Patchole, as it adjoins the main built up form of the settlement’.

Whilst it is noted that the current proposal will have its own access and will be situated in a similar linear alignment to that of the neighbouring dwelling, this does not alone result in a site that is within the principle built form of the village. Although it appears that the site is currently being used as a residential use, no Lawful Development Certificate has been submitted to determine the lawful use of this plot of land. At present, it is an open piece of grass land to the east of Lower Basepark. The land to the south and the east of the site is open countryside with the highway located to the north. The proposal as detailed in the plans would result in a linear extension of the built form, but would not result in development within the existing built form. It is the opinion of Officers that the built form of the village in this location ends at the eastern boundary of Lower Basepark and therefore the proposal should be considered on the basis that it is ‘well-related to the main built form of the settlement’.

Officers recommend that a consistent approach should be taken to the determination of applications in this location. It is a material consideration that the development of the dwellinghouse known directly to the west of the site, known as Lower Basepark was approved under LPA ref; 59968 on the grounds that it is an affordable dwellinghouse and that it was well related to the built form of the village. This approved scheme resulted in the relation of the siting of the dwellinghouse from the other side of the site following a refused application. The Officer’s report read as follows:

‘Under application number 59083 permission was refused in May 2015 for the erection of a local needs restricted dwelling on part of the field to the south of the existing barn on this site. The sole reason was that the development was not considered to be well related to the main built up area of the settlement in that it intruded into the green field setting of this part of the village harming the rural character.

Following discussion the current application was submitted showing the bungalow located adjacent to an existing wooden summerhouse in the North West corner of the site in front of the barn.’

Relating this planning history with the currently proposed scheme, Officers continue to recommend that the application site is well-related to the built form, not within the built form of the village and would therefore need to comply with policy DM23(b) of Local Plan.

In having regard to the above, and given that the proposal is for the provision of an open-market dwellinghouse, not an affordable housing focused development, it does not comply with policies ST19 or DM23 of the North Devon and Torridge Local Plan. These policies, amongst other provisions, seek to ensure new development achieves the principles of sustainable development and supports the implementation of the Rural Areas Strategy. Therefore there is a conflict with policies ST19 and DM23 of the Local Plan. Given that the site is not within the built form of the settlement, there is a conflict with the Local Plan. The proposed development for the provision of one open-market dwelling will not meet an identifiable need for the provision for affordable housing focused development. The Local Planning Authority considers that the harm caused in not creating housing to meet the local need will result in an unsustainable form of development. The proposal is thereby contrary to policies ST01, ST19 and DM23 of the North Devon and Torridge Local Plan.

## **Design and Heritage**

Policy ST04 of the Local Plan states that development will achieve high quality inclusive and sustainable design to support the creation of successful, vibrant places. Design will be based on a clear process that analyses and responds to the characteristics of the site, its wider context and the surrounding area taking full account of the principles of design found in policy DM04.

Policy DM04 of the Local Plan encourages good design and ensures that development proposals should be appropriate and sympathetic to setting in terms of scale, density, massing, height, layout appearance, fenestration, materials and relationship to buildings and landscape features in the local neighbourhood; reinforce the key characteristics and special qualities of the area in which the development is proposed; and contributes positively to local distinctiveness, historic environment and sense of place.

The site is not in any landscape designation however it does sit within 50 metres of a Grade II Listed Farmhouse. In considering to grant planning permission which affects a listed building or its setting the Local Planning Authority shall have special regard to the desirability of preserving the building or its setting or any features of architectural or historic interest which it possesses in accordance with Section 66 of the Listed Building Act. In consultation with the Heritage and Conservation Officer the following comment is made:

*'It is proposed to erect a new house on land to the east of Lower Basepark, in Patchole. This site is to the south of the grade II listed Higher Patchole Farm and its curtilage listed farm buildings most of which have been converted to domestic use. Lower Basepark is a relatively new single storey building, in a modern style. The land in question is currently open, and looks to be maintained as a garden area. It is not farmland, but its undeveloped nature does contribute to the open rural setting of the listed building. If the site is developed as proposed it will obviously have a house on it, so will not be open and undeveloped, and a part of the historic setting of the farmstead will be removed. The new house will be set back within the plot, is of a traditional design, and is not directly opposite the farm, so in some ways is less of an issue than it might be otherwise, but nonetheless is likely to give rise to a degree of less than substantial harm to significance arising from effect on setting. Under the terms of paragraph 202 of the NPPF, this harm will need to be balanced against the public benefits of the proposal'.*

Whilst Officers concur with the Conservation Officer that the proposed dwelling is of a traditional form, concerns are raised with the size, scale and siting. As described above, the site currently forms part of the open landscape to the south of Ley Lane, with the larger, traditional farm buildings being located to the northwest. The neighbouring dwelling to the west, known as Lower Basepark, is a dwelling of reduced scale in the form of a bungalow. Due to the two-storey form and massing of the current proposal, together with its more elevated location above this neighbouring dwelling, it will result in a more prominent form in the local landscape that will not adhere to its setting.

Although the traditional form of the dwelling acknowledges the local vernacular, harm will be caused by the size, scale and siting of the dwelling in this open setting, and consequently on the significance of the setting of the historic building. It is therefore recommended that the proposed dwelling, by reasons of its size, scale and siting, will not respond well to the open character of the site on the edge of the settlement, which forms part of the significance of the setting of the adjacent listed building Higher Patchole Farm. The proposal will therefore will not reinforce the key characteristics and special qualities of the area in which the development is proposed; and will not contribute positively to local distinctiveness, historic environment and sense of place, contrary to policies ST04, ST15, DM04 and DM07 of the North Devon and Torridge Local Plan.

This harm would need to be balanced against any benefits of the provision of an open market dwellinghouse in this location.

## **Amenity**

Policy DM01 of the Local Plan (Amenity Considerations) states that development will be supported where:

- (a) it would not significantly harm the amenities of any neighbouring occupiers or uses; and
- (b) the intended occupants of the proposed development would not be harmed as a result of existing or allocated uses.

## Lower Basepark

Objections have been received on the matter of amenity, especially from that of the occupants of Lower Basepark.

The dwellinghouse known as Lower Basepark is located to the west of the application site. This neighbouring dwelling has fenestration facing to the application site that serves a lounge, kitchen, utility room and a study. The proposed building will be separated by a distance of approximately 15m. The fenestration of the proposed dwelling that faces this neighbouring dwelling are to the ground floor and serve a lounge, wc, and a utility room.

On the matter of privacy, it is noted that proposed dwelling will be sited in fairly close proximity to this neighbouring property, especially given the size of the plot currently available. It is also noted that this neighbouring dwelling is located on lower ground to that of the application site. However, the proposed dwelling is not proposed to have first floor windows to this elevation. The insertion of such windows post-development, that are not obscure glazed and fixed shut (unless the parts opened are more than 1.7m above the finished floor level of the room to which they are to serve) would not be 'permitted development', therefore requiring formal consent. Whilst the buildings would be within close proximity, the proposed ground floor windows would not have an outlook of this neighbouring dwelling and therefore there will unlikely be an impact upon privacy.

It is noted that the proposed dwelling proposed to have a balcony to the southeast elevation. Due to the siting of the balcony within close proximity of the neighbouring dwelling, together

with the elevated position of the proposed dwellinghouse in comparison, it is likely that the users of the balcony would have uninterrupted outlook of this neighbouring property. Whilst not large, at a depth of 1.6m and a width of 3.7m, the balcony would be large enough to encourage its use for longer periods of time. Given its size, together with its siting 15m from this neighbouring dwelling, it is reasonable that if minded for approval, planning permission should be subject to a condition that ensures securing in perpetuity a privacy screen measuring 1.8m in height to the west elevation of the balcony.

With regard to outlook, it is agreed that the outlook from this neighbouring dwelling would be affected by the size and siting of the proposed dwelling. However, given the distanced separating the properties, this will not be to an extent as to warrant a refusal of the application.

With regard to light provision, given the orientation of the dwellings and the distance separating, this proposal will not result in harm.

Whilst the concerns raised by the occupants have been acknowledged, this proposal will result in an acceptable relationships with this neighbouring dwelling.

#### Other neighbouring properties

Given the spacing between the proposed dwelling and the other neighbouring dwellings, this proposal will not result in harm to neighbour amenity.

#### Future occupants

The application accords with National Space Standards. The external amenity space is acceptable.

#### Environmental Health Officer's comments

The Environmental Health Officer (EHO) raised the following comments with regard to a neighbouring building:

‘A sizeable building is shown in close proximity to the southwest of the proposed dwelling. The building appears to be in separate ownership. Certain uses of this building could significantly impact the amenity of future occupiers of the dwelling (such as due to noise, odour or flies),

Based on satellite imagery, the building appears to be under the control of and used in connection with the dwelling at Lower Basepark. I would not expect uses that are ancillary to the dwelling to cause any significant amenity concerns.

If the above understanding is incorrect, and the nearby building is authorised for agricultural or other commercial uses that could significantly impact amenity at the application site, please let me know so I can review my comments based on the circumstances’.

In looking at the planning history, it appears that this barn is not used for any purposes that would result in odour, noise or flies. Given that Lower Basepark was approved to be sited adjacent to this barn, it is unlikely that its siting will result in harm.

The EHO also recommended that, in order to reduce the risk of nearby residents being significantly impacted by noise during the construction phase of the development, a construction times condition be imposed. Officers recommend that such a condition is

acceptable to protect the amenities of nearby residents, in accordance with policy DM02 of the Local Plan.

Finally, the EHO recommended an Unsuspected Contamination condition to cover the possibility that unexpected contamination is discovered during development work. Such a condition is necessary to ensure that any contamination existing and exposed during the development is assessed and remediated as necessary.

## **Amenity Summary**

In considering the above, and in considering that this proposal would not result in harm to any other neighbouring dwelling, this proposal accords with the amenity considerations of the Local Plan

## **Ecology**

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).

Policy DM08 of the Local Plan states that Adverse impacts on European and UK protected species and Biodiversity Action Plan habitats and species must be avoided wherever possible, subject to: (i) the legal tests afforded to them where applicable; or otherwise unless (ii) the need for and benefits clearly outweigh the loss. Also, where adverse impacts are unavoidable they must be adequately and proportionately mitigated, if full mitigation cannot be provided, compensation will be required as a last resort.

Given the information received, it is unlikely that the development would result in harm to protected species. However, it is reasonable that any grant of planning permission be subject to a condition that states that prior to the approved extension being brought into use, a bat and bird box shall be sited on the building and shall be retained thereafter. This is considered to be reasonable to achieve net gains in biodiversity in compliance with Policy ST14 of the North Devon and Torridge Local Plan and paragraph 174 of the National Planning Policy Framework.

The Sustainability Officer has commented that the Ecological Appraisal supporting this application recommends landscaping and further planting specifications to be added to the Block Plan. It is reasonable that a landscaping scheme could be produced on this site to result in a net gain in biodiversity. Although for the reasons as outlined above Officers recommend refusal for this application, if minded for approval, it is reasonable that any grant of planning permission be subject to a condition requiring the submission and approval of a landscaping scheme prior to the commencement of development.

## **Flood Risk and Drainage**

The site is located within Flood Zone 1 and not within a Critical Drainage Area. Flood risk is therefore not a constraint.

The EHO has recommended that, if minded to grant planning permission, the decision should include an advisory note with regard to foul drainage that states that: 'The proposed installation of a private system for treatment and disposal of foul drainage will need to comply with Building Regulations and the Environment Agency's General Binding Rules for small sewage disposal systems'.

## Highways

Policy DM05 of the Local Plan (Highways) states that: (1) All development must ensure safe and well-designed vehicular access and egress, adequate parking and layouts which consider the needs and accessibility of all highway users including cyclists and pedestrians, and (2) All development shall protect and enhance existing public rights of way, footways, cycleways and bridleways and facilitate improvements to existing or provide new connections to these routes where practical to do so.

Policy DM06 of the Local Plan (Parking Provision) states that development proposals will be expected to provide an appropriate scale and range of parking provision to meet anticipated needs, having regard to the: (a) accessibility and sustainability of the site; (b) availability of public transport; (c) provision of safe walking and cycling routes; and (d) specific scale, type and mix of development. Proposals must also encourage the use of sustainable modes of transport through careful design, layout and integration to the existing built form.

The scheme provides sufficient off-road parking and vehicle turning facilities. The development proposes to use an existing vehicular access. The development will not result in harm to highway safety and capacity.

## Planning Balance

The proposal is for the development of an open-market dwellinghouse. However, Officers contest that whilst it is noted that the current proposal will have its own access and will be situated in a similar linear alignment to that of the neighbouring dwelling, this does not alone result in a site that is within the principle built form of the village. The land to the south and the east of the site is countryside with the highway located to the north. The proposal as detailed in the plans would result in a linear extension of the built form, but would not result in development within the existing built form. It is the opinion of Officers that the built form of the village in this location ends at the eastern boundary of Lower Basepark (which itself was granted planning permission as an affordable dwelling due to it being well-related to the built form) and therefore the proposal should be considered on the basis that it is 'well-related to the main built form of the settlement'.

Given that the proposal is for the provision of an open-market dwellinghouse, not an affordable housing focused development, it does not comply with policies ST19 or DM23 of the North Devon and Torridge Local Plan. These policies, amongst other provisions, seek to ensure new development achieves the principles of sustainable development and supports the implementation of the Rural Areas Strategy. Officers therefore recommend that the application be refused for the reason that the application site is considered to be well-related to the existing settlement of Patchole. The proposed development for the provision of one open-market dwelling will not meet an identifiable need for the provision for affordable housing focused development. The Local Planning Authority considers that the harm caused in not creating housing to meet the local need will result in an unsustainable form of development. The proposal is thereby contrary to policies ST01, ST19 and DM23 of the North Devon and Torridge Local Plan.

In addition, Officers recommend that the proposed dwelling, by reasons of its size, scale and siting, will not respond well to the open character of the site on the edge of the settlement, which forms part of the significance of the setting of the adjacent listed building Higher Patchole Farm. The proposal will therefore will not reinforce the key characteristics and special qualities of the area in which the development is proposed; and will not contribute positively to local distinctiveness, historic environment and sense of place,

contrary to policies ST04, ST15, DM04 and DM07 of the North Devon and Torridge Local Plan.

Whilst the other matters as considered is the above report as acceptable, and the support for the application as received have been noted, the adverse impacts of the development significantly and demonstrably outweigh the benefits. The proposed development conflicts with the development plan when read as a whole.

Officers therefore recommend refusal for this application.

## **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

Section 149(1) of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it (the Public Sector Equality Duty or 'PSED'). There are no equality implications anticipated as a result of this decision.

## **Recommendation**

### **Refused**

Legal Agreement Required: No

## **Reason(s) For Refusal**

1. The application site is not within the built form of the existing settlement of Patchole. The proposed development for the provision of one open-market dwelling will not meet an identifiable need for the provision for affordable housing focused development. The Local Planning Authority considers that the harm caused in not creating housing to meet the local need will result in an unsustainable form of development. The proposal is thereby contrary to policies ST01, ST19 and DM23 of the North Devon and Torridge Local Plan.
2. The proposed dwelling, by reasons of its size, scale and siting, will not respond well to the open character of the site on the edge of the settlement, which forms part of the significance of the setting of the adjacent listed building Higher Patchole Farm. The proposal will therefore will not reinforce the key characteristics and special qualities of the area in which the development is proposed; and will not contribute positively to local distinctiveness, historic environment and sense of place, contrary to policies ST04, ST15, DM04 and DM07 of the North Devon and Torridge Local Plan.



## **Informatives**

1. The following plans were considered during the determination of this application:-  
K134 22 201 Location Plan and received on the 14/03/23,  
K134 22 202 Block Plan & Sections A-B Proposed and received on the 14/03/23,  
K134 22 301A Elevations, Floors & Roof Proposed and received on the 14/03/23,

2. INFORMATIVE NOTE: -  
POLICIES AND PROPOSALS RELEVANT TO THE DECISION

### Development Plan

North Devon and Torridge Local Plan 2018: -

DM01 - Amenity Considerations

DM02 - Environmental Protection

DM04 - Design Principles

DM05 - Highways

DM06 - Parking Provision

DM07 - Historic Environment

DM23 - Residential Development in defined Settlements without development boundaries

ST01 - Principles of Sustainable Development

ST03 - Adapting to Climate Change and Strengthening Resilience

ST07 - Spatial Development Strategy for Northern Devon's Rural Area

ST14 - Enhancing Environmental Assets

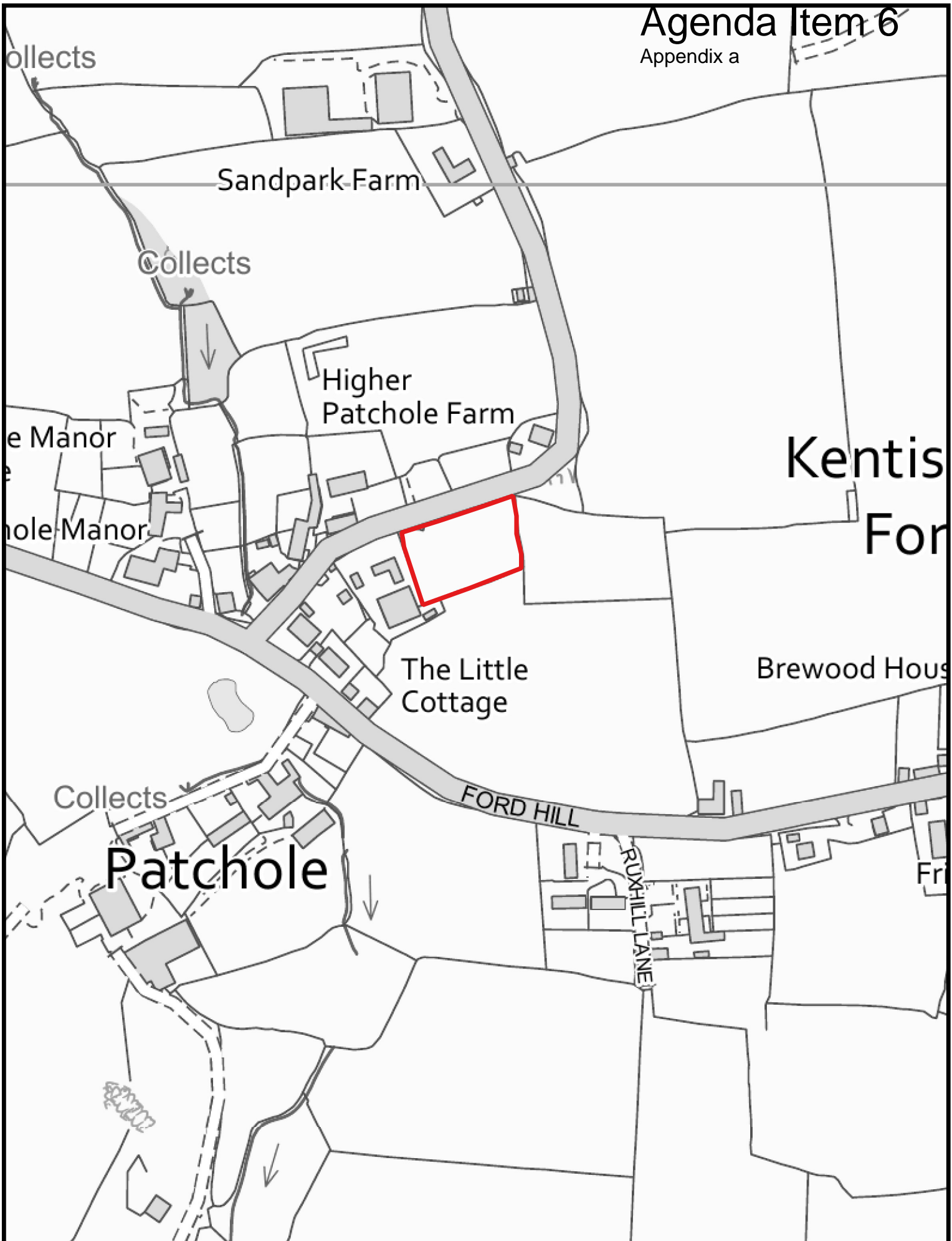
ST15 - Conserving Heritage Assets

ST17 - A Balanced Local Housing Market

ST19 - Affordable Housing on Exception Sites

3. Statement of Engagement

In accordance with paragraph 38 of the National Planning Policy Framework the Council works in a positive and pro-active way with Applicants and looks for solutions to enable the grant of planning permission. However in this case the proposal is not sustainable development for the reasons set out and the Council was unable to identify a way of securing a development that improves the economic, social and environmental conditions of the area.



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## **Application Report**

Planning, Housing and Health  
North Devon Council  
Lynton House, Commercial Road,  
Barnstaple, EX31 1DG

<b>Application No:</b>	77246
<b>Application Type:</b>	Non-Material Amendment
<b>Application Expiry:</b>	22 September 2023
<b>Extension of Time Expiry:</b>	22 September 2023
<b>Publicity Expiry:</b>	
<b>Parish/Ward:</b>	SOUTH MOLTON/SOUTH MOLTON
<b>Location:</b>	Unit 1 77 The Old Tannery East Street South Molton Devon EX36 3DQ
<b>Proposal:</b>	Application for a non-material amendment to planning permission 70262 (conversion of existing buildings to create 14 dwellings together with erection of 7 new dwellings & associated works) in respect of removal of (4) visitors car parking spaces
<b>Agent:</b>	Mr Paul Boundy
<b>Applicant:</b>	Mr Paul Boundy
<b>Planning Case Officer:</b>	Miss S. May
<b>Departure:</b>	
<b>EIA Development:</b>	
<b>EIA Conclusion:</b>	Development is outside the scope of the Regulations.
<b>Decision Level/Reason for Report to Committee (If Applicable):</b>	Called in by Councillor Bushell for the following reasons: <i>I requested that planning dept allow public consultation, this request was denied!</i> <i>Escalation by 'call in' is the only remaining recourse available allowing residents and councillors to give representation towards this application. Doing so protects the Nolan principles of 'openness' and 'integrity' (and the potential for reputational damage to NDC) and also upholding democracy.</i> <i>Local knowledge identifies that parking is a serious issue in this immediate area of S.Molton and the application seeks to remove 4 visitor parking spaces. Parking and Highways were discussed by the planning committee when the original application was submitted and thus I believe these to be material consideration.</i> <i>There is also no justification held within this application for the abolition of a right of way.</i>

## Site Description

The site is on the south eastern edge of the Town accessed from East Street and comprises 77 East Street (within the blue outline) and The Tannery. The Design and Access Statement on approved application 70262 refers to the site as 'an important late 19th century industrial complex which may incorporate late 17th century and certainly early to mid-19th century elements. The complex was at the centre of an area of light industry to the east of the town along East Street. Towards the middle of the 20th century there was a steady decline in the tannery business, although the industry continued until the business and most of the tannery buildings were sold in 1954. By 1988 most of the tannery buildings were bought back and subsequently rented by small local businesses'. The type of recent uses includes car repairs, light manufacturing and storage.

Access from East Street is between two buildings; a building known as "The Stables" on the east side and No .77 East Street to the west side, which is not included within the development proposals. From the entrance, the driveway dog-legs around the L-shaped residence of No .77 before continuing southwards, with former tannery buildings on either side. It then passes between a walled garden to the east and a field to the west, providing access to the buildings at the southern end of the complex.

The ground descends steadily from c. 123 Metres Above Sea Level (MASL) at East Street (to North) to c. 107m MASL at the southern extent of the Site. At the lowest edge of the site is a drainage ditch/brook.

The land to the west of the driveway is long and narrow, the top half sloping gently downhill from c. 123 MASL to c. 117 MASL before sloping more steeply to c. 108 MASL at the southern end.

At the northern end of the Site the tannery complex is flanked by houses situated along East Street and their respective gardens. Fields surround the remainder of the Site although modern housing developments are located a short distance to the west and to the south.

The Site area is 0.99ha

At the time of the site visit it was evident that works had commenced on site and a number of foundations had been laid for the proposed dwellings. And the site is currently being developed in accordance with planning permissions 70262 and 70263.



Land to north



Views northeast facing north (The Apple Loft)



# Agenda Item 7



Views from south facing northwards (the Nicholls Shed)



Views towards south of site



Foundations laid for proposed dwellings to west of site



Location Plan

## **Recommendation**

**Approved**

Legal Agreement Required: No

## Planning History

Reference Number	Proposal	Decision	Decision Date
<b>17288</b>	Conservation Area Application in connection with proposed conversion of Old Stables to form 2 no. flats at the Old Tannery, East Street, South Molton, EX36 3DQ	Withdrawn	1 June 1993
<b>17287</b>	Proposed conversion of Old Stables to form 2 no. holiday units (amended description) at the Old Tannery, East Street, South Molton, EX36 3DQ	Full Planning Approval	13 September 1993
<b>17762</b>	Proposed removal of existing wooden roof vent & re-instatement of slate roof at Old Tannery, East Street, South Molton, EX36 3DQ	Full Planning Refusal	12 October 1993
<b>70263</b>	Listed building application for conversion of existing buildings to create 14 dwellings together with erection of 7 new dwellings at The Old Tannery, East Street, South Molton Devon EX36 3DQ	Approved	8 June 2020
<b>70262</b>	Conversion of existing buildings to create 14 dwellings together with erection of 7 new dwellings & associated works at The Old Tannery, 77 East Street, South Molton, Devon EX36 3DQ	Approved	14 July 2020
<b>72132</b>	Approval of Details in respect of discharge of conditions 6 (Land Contamination) and 9 (Landscape and Ecological Management Plan) attached to planning permission 70262 Conversion of existing buildings to create 14 dwellings together with erection of 7 new dwellings & associated works at The Old Tannery 77 East Street, South Molton Devon	Approved	9 November 2020
<b>76096</b>	Erection of a stand-alone bat roost at The Old Tannery, East Street, South Molton Devon EX36 3DQ	Approved	12 December 2022
<b>75738</b>	Approval of details in respect of discharge of condition 10 (surface water drainage), 11 (surface water drainage management system, 12 (surface water exceedance pathways & overland flow routes) & 13 (adoption & maintenance arrangements of permanent surface water drainage management system) attached to planning permission 70262 (conversion of existing buildings to create 14 dwellings together with erection of 7 new dwellings	Approved	18 January 2023

Reference Number	Proposal	Decision	Decision Date
	& associated works) at 77 The Old Tannery, East Street, South Molton Devon EX36 3DQ		
<b>77157</b>	Application for a non-material amendment to planning permission 70262 (Conversion of existing buildings to create 14 dwellings together with erection of 7 new dwellings & associated works) in respect of addition of PV panels to plots 15-21, changes to incorporate brick detailing, railings to plot 18, insertion of window opening on plot 20 and base of stepped approach on plot 21 at 77 The Old Tannery East Street, South Molton Devon	Approved	26 June 2023

## **Constraints/Planning Policy**

<b>Constraint / Local Plan Policy</b>	<b>Distance (Metres)</b>
Adjacent to Conservation Area: 30 South Molton Adopted 09/12/2008;	Within constraint
Advert Control Area Area of Special Advert Control	Within constraint
Burrington Radar Safeguard Area consultation required for: All buildings, structures, erections & works exceeding 90 metres in height.	Within constraint
Class II Road	
Conservation Area: 30 South Molton Adopted 09/12/2008;	Within constraint
Land is potentially contaminated, site was used for:Leather tanning & dressing, Is ranked:MEDIUM, Year:1890	Within constraint
Land is potentially contaminated, site was used for:Leather tanning & dressing, Is ranked:MEDIUM, Year:1905	Within constraint
Land is potentially contaminated, site was used for:Leather tanning & dressing, Is ranked:MEDIUM, Year:1938	Within constraint
Landscape Character is: 3A Upper Farmed & Wooded Valley Slopes	Within constraint
Listed Building Adjacent: 39.0 EH Ref 1106842 No 77, East Street (north east side), South Molton	Within constraint
Listed Building Curtilage (Adjacent to)	Within constraint
Listed Building Curtilage (within)	Within constraint
Listed Building: 39.0 EH Ref 1106842 No 77, East Street (north east side), South Molton	Within constraint
Tree Preservation Order: 206 - A1, Land off Brook Meadow, Rear of East Street, South Molton Tree Preservation Order 1986	Within constraint
USRN: 27503090 Road Class:B Ownership: Highway Authority	4.57
Within adopted Development Boundary: South Molton Development Boundary DM04	Within constraint
Within Adopted Unesco Biosphere Transition (ST14)	Within constraint
Within Surface Water 1 in 30	Within constraint



# Agenda Item 7

<b>Constraint / Local Plan Policy</b>	<b>Distance (Metres)</b>
Within:Exmoor Heaths, SAC 10KM Buffer if agricultural development consider need for AQIA	Within constraint
SSSI Impact Risk Consultation Area	Within constraint
Listed Building Grade: 2	
Conservation Area: SOUTH MOLTON	

## **Consultees**

<b>Name</b>	<b>Comment</b>
DCC – Development Management Highways	Yes I agree.  Issues regarding the number of parking spaces within a site are for the LPA to determine against their own policy.
Reply Received 26 June 2023	You would need to consider the possibility that the owner may stop all parking on the site at any time without the need for planning permission to do so.
DCC – Development Management Highways	Internal parking layouts, and the number of parking spaces provided on a site are not a matter for the Highway Authority to consider.
Reply Received 18 August 2023	

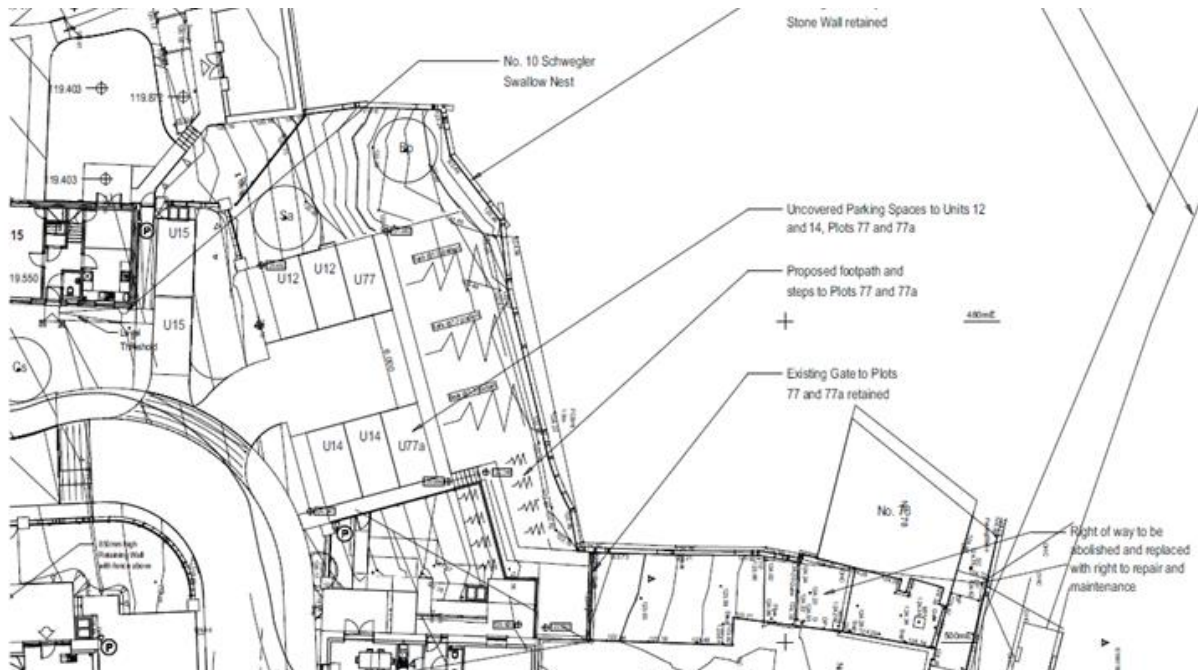
## **Neighbours / Interested Parties**

<b>Comments</b>	<b>No Objection</b>	<b>Object</b>	<b>Petition</b>	<b>No. Signatures</b>
0.00	0.00	0.00	0.00	0.00

## **Considerations**

### **Proposal Description**

This application seeks a non-material amendment to planning permission 70262 in respect of the removal of 4 no. visitor parking spaces.



**Amended car parking drawing no. P1**

The plan details that this would allow the existing 1:3 bank to remain in situ and no further excavations would be required.

## **Planning Considerations**

The sole consideration in respect of the application is whether the proposed amendments to the extant full planning approval are considered to be non-material.

Section 96A(1) of the Town and Country Planning Act 1990 provides that: A local planning authority may make a change to any planning permission, or any permission in principle (granted following an application to the authority), relating to land in their area if they are satisfied that the change is not material.

Section 96A(3) clarifies that: The power conferred by subsection (1) includes power to make a change to a planning permission-

- (a) to impose new conditions;
- (b) to remove or alter existing conditions.

The government's Planning Practice Guidance (PPG) establishes that: 'There is no statutory definition of 'non-material'. This is because it will be dependent on the context of the overall scheme – an amendment that is non-material in one context may be material in another. The local planning authority must be satisfied that the amendment sought is non-material in order to grant an application under section 96A of the Town and Country Planning Act 1990.'

The NMA application relates to the removal of 4 no. visitor parking spaces.

## **History relating to site**

Application 70262 – Conversion of existing buildings to create 13 dwellings together with erection of 7 new dwellings and associated works

# Agenda Item 7

### Call-in

Application 70262 was called-in to committee by Cllr Worden for the following reason:

*"As you no doubt are aware the South Molton Town Council would like the application regarding the Tannery, East Street called in for discussion by the Planning Committee if you are of a mind to grant permission for the full scheme. As ward member I too am concerned about the access on to East Street for lots of extra traffic. The access is not good and East Street has traffic problems of its own and I think that it should be looked at by committee"*

Site plan as approved



## Site plan as approved under 70262

The original plans as approved showed two parking spaces for each new dwelling plus four visitor spaces. In addition 1 space each was shown for number 77 and 77a with an internal path allowing access to the rear of no 77.

Whilst Councillor Bushell has stated in his call-in there is no justification held within the application for the abolition of a right of way, it is noted that original plan as approved states "Right of way to be abolished and replaced with right to repair and maintenance".



**Enlarged site plan as approved under 70262 showing original visitor spaces**

## DCCHW consultation response on 70262

The original consultation response from DCCHW on approved application 70262 states:

*The proposal would result in the reuse of existing buildings and land that already generates a level of traffic similar to or higher than that which will result from the proposed dwellings. I therefore have no objection to the proposal on traffic impact grounds.*

*Visibility at the site entrance is substandard, however, due to the lack of vehicle collisions recorded here in the past and the existing use of the site as mentioned above, the future situation would be likely to see less traffic using this access than previously, and therefore a potential improvement in highway safety.*

*The internal road will not be suitable for adoption as public highway due to its narrow layout and likely level of contamination which would require to be removed entirely and rebuilt for the road to be adopted. APC charges will therefore apply under section 219 of the Highways Act until an exemption from these can be found as set out in part 4 of that section of the Act.*

*For the avoidance of doubt, this is not a reason to refuse the planning application. To ensure that there is safe and suitable access between the site and the facilities within the town for all people, my only requirement for this site is that the dropped crossing footway at the site entrance is remade properly and the (two) steps in the footway to the left of the entrance (on exiting) are removed and a non-stepped footway provided.*

*With the above improvements the site will be within easy walking distance of facilities within the town as well as bus services to other locations.*

## Committee Report – Parking section of report

The material consideration of the original report is re-iterated here for transparency:

- **Parking**

*Policy DM06: Parking Provision*

*(1) Development proposals will be expected to provide an appropriate scale and range of parking provision to meet anticipated needs, having regard to the:*

- (a) accessibility and sustainability of the site;*
- (b) availability of public transport;*
- (c) provision of safe walking and cycling routes; and*
- (d) specific scale, type and mix of development.*

*(2) Proposals must encourage the use of sustainable modes of transport through careful design, layout and integration to the existing built form.*

*The layout provides two car parking spaces per unit with provision for the existing dwellings and two visitor spaces. The Local Plan does not specify a standard albeit it has always been accepted that as South Molton is rural that two car parking spaces per property is a reasonable requirement. In this instance given the size of the units two spaces are considered essential. The site is only a short walk from Town Centre facilities so cycle and pedestrian use is easily achievable.*

*It is understood that some local residents rent car parking spaces on the site. This was part of the commercial use of the Tannery. There is no obligation on a private landowner to make provision for car parking for third parties. South Molton has limited on road car parking due to the nature of the Town. Again this would not be a reason to refuse this planning application.*

*Car Charging Points have been provided where possible. There is no conflict with DM06.*

Minutes from Committee meeting 09 October 2019

Having looked at the minutes for the approved application it is noted the following was stated:

***.... On-site parking would be provided and that parking rights for other third parties could not be granted....***

It was resolved to grant planning permission as follows:

***RESOLVED (8 for, 0 against, 2 abstained) that the application be APPROVED as recommended by the Head of Place subject to:***

- (a) That the Head of Place be delegated authority to resolve those issues identified in the report that were awaiting clarification and to apply appropriate conditions as required by the consultees to address the issues raised, secure the heads of terms of the section 106 agreement and seek a reduction in the construction hours as detailed in condition 8 on Monday to Fridays;*
- (b) That representations be made to Devon County Council requesting that: a comprehensive review of on street parking in East Street be undertaken; an assessment of traffic speeds which were considered excessive; an assessment of whether a weight restriction would be appropriate and whether a formal pedestrian crossing was required at the eastern end of East Street.*



**It should be noted that no car parking conditions were imposed on the original application.**

## **Highways**

The Local Plan does not specify any parking standards and as stated in the history section the original committee report refers to this as being a sustainable location.

An e-mail has been sent to DCCHW commenting that in light of the fact the LPA has no parking standards they did not see how we could insist on the 4 no. visitor parking spaces being retained. DCCHW were in agreement that we could not insist on this and responded as follows:

*“Issues regarding the number of parking spaces within a site are for the LPA to determine against their own policy.*

*You would need to consider the possibility that the owner may stop all parking on the site at any time without the need for planning permission to do so”.*

Furthermore, DCCHW are aware that the application has been called in to committee and were again asked if there was anything further they wished to add. They have commented stating:

*“Internal parking layouts, and the number of parking spaces provided on a site are not a matter for the Highway Authority to consider”.*

## **Design**

The removal of visitor spaces would not be materially different to the approved scheme given the scale and size of the scheme as a whole. The removal of the visitor spaces would allow a further landscaped area which is a Bank with a 1:3 gradient. The plan details that the proposed footpath and steps to Plots 77 and 77a would remain.

## **Amenity**

No unacceptable consequential amenity impacts are identified.

## **Flood Risk and Drainage**

No unacceptable consequential impacts are identified.

## **Conclusion**

The proposed non material amendment does not affect the number of parking spaces approved for each of the new dwellings or those approved for the existing dwellings.

The proposed amendment does not affect any of the conditions attached to the extant permission, or the Section 106 agreement associated with the permission. No adopted planning policy is breached.

It is the Local Planning Authority’s view that the proposal represents a non-material amendment to the extant permission. Accordingly it is recommended that the application be approved.

## **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

Section 149(1) of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it (the Public Sector Equality Duty or 'PSED'). There are no equality implications anticipated as a result of this decision.

## **Recommendation**

### **Approved**

Legal Agreement Required: No

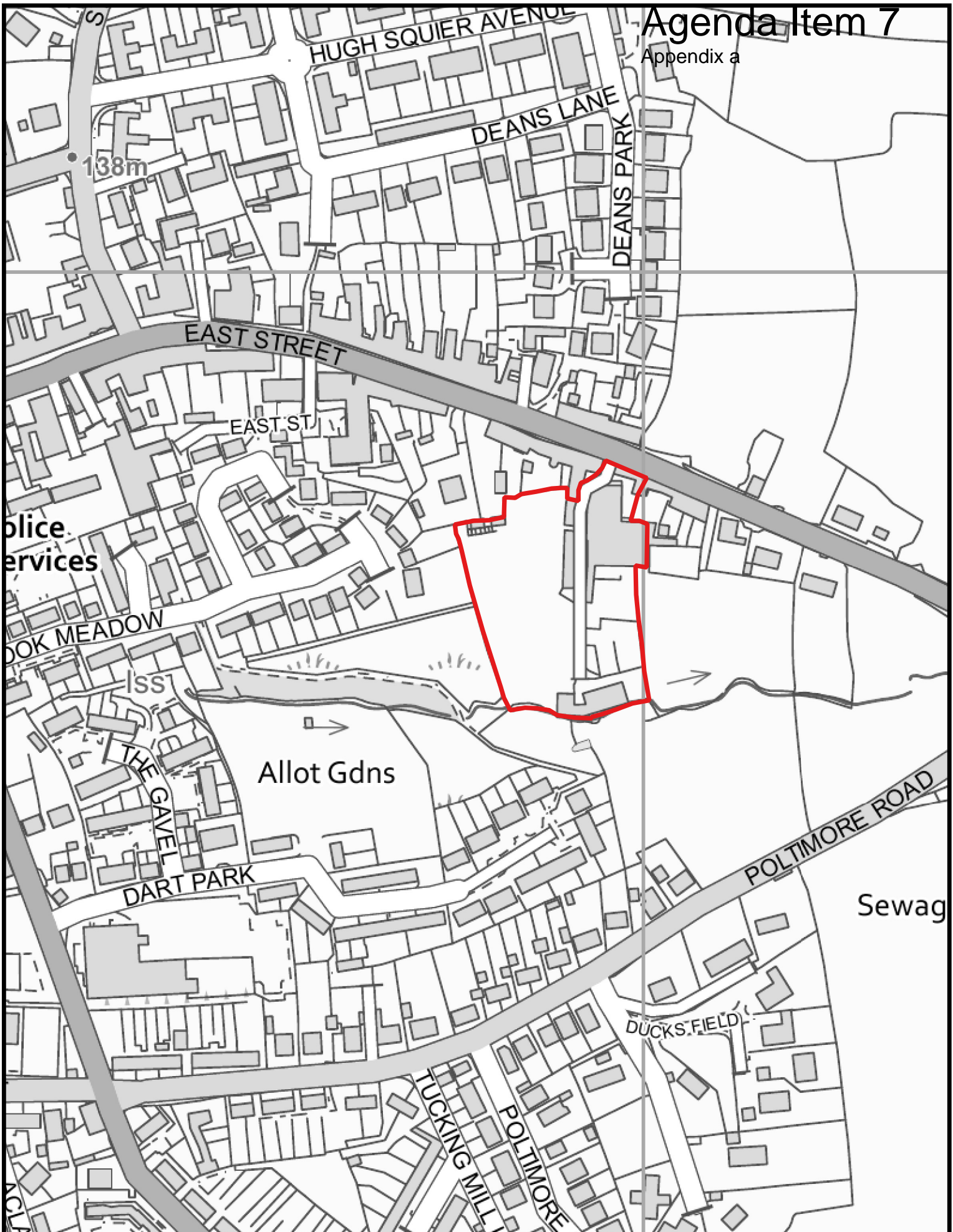
## **Informatives**

1. Having now considered the submitted details P1 Amended Car Parking received on the 09/06/23 the Local Planning Authority have determined that this is acceptable as a non-material amendment to application 70262.

The works are now required to be carried out in accordance with these details.

You are reminded that this decision has to be read in conjunction with application 70262 and the conditions, informatives and Section 106 agreement relating to this previous consent remain applicable.

## **End of Report**





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## North Devon Council

Report Date: 24<sup>th</sup> August 2023

Topic: Planning and Enforcement Appeal Decisions received since last report to Planning Committee. See Agenda for Planning Committee held on 9th August 2023.

Report by: Sue Thomas – Senior Planning Support Officer (Appeals).

### 1. INTRODUCTION

1.1. This report is to inform Planning Committee Members of the Planning and Enforcement Appeal Decisions received from the Planning Inspectorate.

### 2. RECOMMENDATIONS

2.1. That Members and other interested parties note the appeal decisions reported.

### 3. REASONS FOR RECOMMENDATIONS

3.1. The Appeal Decisions are reported for general information and to enable consideration of any implications they may have on future cases.

### 4. REPORT

4.1 **Appendix A** – Planning Appeal re 74895 – Outline application for the erection of 5 dwellings including access & associated works with some matters reserved (appearance, layout, scale and landscaping) - Land at Back Lane, Chulmleigh, Devon - Appeal Allowed on 7<sup>th</sup> August 2023.

The Planning Inspectorate has been contacted with a request that the Inspector provides an explanation for their comments at paragraph 10 of their appeal decision (Appendix A - highlighted). As I am sure that you are aware, North Devon and Torridge District Councils DO have a 5 Year Housing Land Supply as advised in the communication sent to the Inspectorate on 3rd May 2023 (also attached).

It should be noted that:

- the appeal decision, once issued, cannot be amended or re-issued
- at the time of submitting the planning application and the subsequent appeal, North Devon and Torridge District Councils did not have a 5 Year Housing Land Supply
- with regard to this particular appeal case, the Inspector's decision might not have been influenced by the existence of a 5YHLS

At the time that this report was created no response has been received from the Planning Inspectorate.

### 5. RESOURCE IMPLICATIONS

5.1. Where an application by the appellant for an award of Appeal Costs is successful it is expected that this will be paid from the Planning budget (financial resource implication)



- 5.2. Where an application by the LPA for an award of Appeal Costs from the appellant is successful it is expected that this will be paid into the Planning budget (financial resource implication)
- 5.3. There may be a financial implication if Consultants are employed to confirm that any claim for Appeal Costs is reasonable/acceptable (financial resource implication)
- 5.4. There may be a call on NDC staff (Planning/Legal) to confirm that any claim for Appeal Costs is reasonable/acceptable (staffing resource implication)

## 6. EQUALITIES ASSESSMENT

- 6.1. There are not any equalities implications anticipated as a result of this report.

## 7. ENVIRONMENTAL ASSESSMENT

- 7.1. It is considered by the Author that, as this report is simply to advise Planning Committee Members and other interested parties of recent Planning and Enforcement Appeal decisions, there are no Environmental implications arising from its contents.

## 8. CORPORATE PRIORITIES

- 8.1. What impact, positive or negative, does the subject of this report have on:
  - 8.1.1. The commercialisation agenda: - Positive as will learn lessons to reduce potential costs awards against the Council
  - 8.1.2. Improving customer focus and/or – Positive as will learn lessons for future consideration
  - 8.1.3. Regeneration or economic development – Positive as will learn lessons for future consideration

## 9. CONSTITUTIONAL CONTEXT

- 9.1. Article of Part 3 Annexe 1 paragraph: - Not applicable
- 9.2. Referred or delegated power? – Not applicable

## 10. STATEMENT OF CONFIDENTIALITY

This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

## 11. BACKGROUND PAPERS

The following background papers were used in the preparation of this report: (The background papers are available for inspection and kept by the author of the report).

- 11.1 Information extracted from MasterGov Appeals Records (Appendix A)

## 12. STATEMENT OF INTERNAL ADVICE

The author (below) confirms that advice has been taken from all appropriate Councillors and Officers:



Sue Thomas – Senior Planning Support Officer (Appeals) - Planning, Housing & Health

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## Appeal Decision

Site visit made on 25 July 2023

**By C Cresswell BSc (Hons), MA, MBA, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 07 August 2023**

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**Appeal Ref: APP/X1118/W/22/3307462**

**Land to the west of Back Lane, Back Lane, Chulmeigh, Devon, EX18 7AX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Mr S Rives-Roberts (Rives Developments Ltd) against North Devon District Council.
  - The application, Ref 74895, is dated 22 February 2022.
  - The development proposed is erection of 5no. dwellings & associated works with some matters reserved.
- 

### Decision

1. The appeal is allowed and outline planning permission is granted for a development described as "erection of 5no. dwellings & associated works with some matters reserved" at Land to the west of Back Lane, Back Lane, Chulmeigh, Devon, EX18 7AX, in accordance with the terms of the application, Ref 74895, dated 22 February 2022, subject to the conditions set out in the Schedule at the end of this Decision.

### Procedural Matter

2. The application was made in outline with all matters reserved apart from access. I have determined the appeal on that basis.

### Main Issue

3. The main issues in this case are:
  - whether the development would provide an appropriate quantity and mix of housing.
  - whether the development would make adequate provision for green infrastructure.

### Reasons

#### *Housing*

4. The appeal concerns an agricultural field which is situated on the edge of Chumleigh. It is part of a larger area of land which has been allocated for housing development in the Local Plan<sup>1</sup>. Policy CHU02 of the plan explains how the housing allocation should be developed. My attention has been drawn to paragraph (1) of the policy which says that the allocated site *is proposed for*

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<sup>1</sup> North Devon And Torridge Local Plan 2011-2031, adopted October 2018.

*residential development that provides approximately 20 dwellings, the size and tenure of which will be reflective of local needs.*

5. I have read an email from the Council's Housing Enabling Officer which explains the need for affordable housing in Chumleigh for both sale and rent, including a particularly strong demand for one bedroom houses. Yet while I appreciate the need for such housing, the application before me was made in outline with all matters, except access, reserved for future determination. The size and tenure of dwellings on the site would be matters for consideration at a later stage in the planning process. As only 5 dwellings are being proposed on the appeal site at present, there is no policy requirement to provide affordable housing. However, the situation may change if the remainder of the housing allocation were to come forward for development.
6. Paragraph 125 of the Framework<sup>2</sup> says that planning policies and decisions should *avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site.* In this case, the site in question is part of a Local Plan allocation which would have been subject to scrutiny at the examination. Though Policy CHU02 anticipates approximately 20 dwellings across the whole of the allocated site, no minimum target is specified. Hence, while the appeal site may be capable of accommodating more than 5 homes, the density being proposed is within the bounds of the policy. If the remainder of the allocation were to be developed in the future, it would potentially bring the total quantity of housing closer to the 20 dwellings anticipated.
7. I have been referred to paragraph (2)(a) of Policy CHU02 which indicates that the site should be released *in phases through the plan period in response to the needs of the community.* Exactly what is meant by community need in this context is not specified in the policy. However, the evidence indicates that there is a limited supply of deliverable housing sites in the area at present. Given these circumstances, it seems to me that the needs of the community would be well served by releasing the site for development, therefore helping to increase the supply of local housing.
8. I therefore conclude on this issue that the development would provide an appropriate quantity and mix of housing. For the reasons given above, the proposal would comply with Policy CHU02 of the Local Plan and paragraph 125 of the Framework.

## Green infrastructure

9. The development would trigger a requirement for the provision of green infrastructure in accordance with Policy DM10 of the Local Plan. However, there is no legal agreement to secure a financial contribution for off-site provision. In the absence of such an agreement, or other way of securing green infrastructure, the proposal would fail to comply with Policy DM10. I therefore conclude on this issue that the proposed development would not make adequate provision for green infrastructure.

## Planning Balance

10. The Council is currently unable to demonstrate a 5-year supply of deliverable housing sites and so, according to footnote 8 of the Framework, the policies of the Local Plan should be considered out of date. In these circumstances,

<sup>2</sup> National Planning Policy Framework, July 2021

Paragraph 11(d)(ii) of the Framework says that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

11. In this case, development would provide 5 dwellings on a site that has already been allocated for housing following a public examination process. Given the imperative of the Framework to significantly boost housing supply, this is a substantial benefit to be weighted in the planning balance.
12. On the other hand, the proposal would also result in harm as no provision has been made for green infrastructure. However, the contribution being sought is relatively modest in this case. The lack of an off-site contribution would be unlikely to significantly undermine the Local Plan strategy for green infrastructure provision. I am also mindful that the development is part of a larger housing allocation and the layout of the site is reserved for future determination. The possibility of an on-site contribution for green infrastructure cannot be discounted. Hence, I consider the harm arising from this aspect of the proposal to be moderate.
13. For these reasons, the moderate harm arising from the lack of green infrastructure provision is outweighed by the substantial benefits of providing new housing on the site. As such, the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. It is therefore justified to deviate from the Local Plan and allow the appeal.

### Conditions

14. I have imposed the standard requirement for further details to be approved before development takes place, together with standard time limit conditions. In the interests of character and appearance, there are conditions requiring details of external materials, means of enclosure and landscaping. Certain permitted development rights are also removed. For highway and pedestrian safety there are conditions requiring visibility splays and the installation of roads and footpaths. To protect surrounding residents there are conditions to control the construction process. There are also conditions to ensure that any ground contamination is remediated. Finally, conditions are imposed to promote nature conservation interests.

### Conclusion

15. The appeal is allowed.

*C Cresswell*

INSPECTOR



**Schedule of Conditions**

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans/details insofar as the access and visibility splays are concerned: 128 21 001 Location Plan, 128 21 002 Rev A Proposed Access Plan, 128 21 003 Rev A Proposed Site Block Plan.
- 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 as set out in the design code within the Planning Statement and shall be carried out as approved.
- 6) As part of the reserved matters application, scaled drawing(s) showing existing levels on the site and proposed finished floor levels of the approved dwellings shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with such drawings.
- 7) No dwelling shall be occupied until the means of enclosure and the bin storage area for that dwelling have been provided in accordance with the approved plans or details submitted as part of the reserved matters.
- 8) Prior to the first occupation of any dwelling on the site, access onto the public highway, parking areas and footpath shall be hardened, surfaced, drained and maintained thereafter to the satisfaction of the Local Planning Authority.
- 9) Visibility splays shall be provided, laid out and maintained for that purpose at the site access prior to the first occupation of any dwelling hereby approved in accordance with the approved plans.
- 10) 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 Local Planning Authority.
- 11) 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.

- 12) 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 07.30 – 19.00,
  - b) Saturday 08.00 – 13.00
  - c) Nor at any time on Sunday, Bank or Public holidays.
- 13) Prior to the commencement of development, including any demolition, site clearance, groundworks or construction (save such preliminary or minor works that the Local Planning Authority may agree in writing) a Construction Management Plan (CMP) to manage the impacts of construction during the life of the works shall be submitted in writing for the approval of the Local Planning Authority. For the avoidance of doubt and where relevant, the CMP shall include:
  - a) details of measures to prevent mud contaminating public footpaths and roads;
  - b) details of control measures for addressing fugitive dust from earthworks and construction activities; dust suppression;
  - c) noise control plan which details hours of operation and proposed mitigation measures;
  - d) specified parking for vehicles associated with the development works and the provision made for access thereto;
  - e) a point of contact (such as a Construction Liaison Officer/site manager) and details of how complaints will be addressed.

The details so approved and any subsequent amendments as shall be agreed in writing by the Local Planning Authority shall be complied with in full and be monitored by the applicants to ensure continuing compliance during the construction of the development.
- 14) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation or the substantial completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority give written consent to any variations.
- 15) As part of the reserved matters details of the location of the five integrated bat roosts and 10 integrated birds nest boxes shall be included in accordance with the details set out in the Ecological Impact Appraisal by Orbis Ecology. These shall be sited in accordance with the approved details and retained thereafter.

- 16) The development shall be carried out in accordance with the recommendations as detailed in the other mitigation requirements Section 6 of the Ecological Impact Appraisal by Orbis Ecology.
- 17) As part of the reserved matters, a detailed landscape and ecological management plan (LEMP) shall have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. The content of the LEMP will address and expand upon the provision and management of all landscape and biodiversity avoidance, mitigation and enhancement measures of the development as set out within the ecological appraisal and preliminary ecological appraisal shall include:
- a) a description and evaluation of landscape and ecological features to be created, managed and ecological trends and constraints on site that might influence management;
  - b) a biodiversity impact assessment in accordance with the North Devon UNESCO World Biosphere Reserve Offsetting Strategy 2013-2018 / DEFRA Methodology
  - c) aims and objectives of management;
  - d) appropriate management options for achieving aims and objectives;
  - e) prescriptions for management actions;
  - f) preparation of a work schedule (including an annual work plan capable of being rolled forward over an initial 10-year period);
  - g) details of the body or organisation responsible for implementation of plan;
  - h) ongoing landscape and ecological monitoring and implementation of any necessary remedial measures;
  - i) means of reporting of landscape and ecological monitoring results to 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.

- 18) 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 or E (a) of Part 1 and class(es) A and B of Part 2 of Schedule Two of the Order.

**Sue Thomas**

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**From:** Planning Appeals  
**Sent:** 03 May 2023 17:47  
**To:** West-1  
**Cc:** Treetops Planning; Peter Rowan  
**Subject:** 3307462 - Land at Back Lane, Chulmleigh

Our ref: 74895

Dear Ms Langridge

**Town and Country Planning Act 1990  
Appeal by Rives Developments Ltd.**

The above appeal is currently under consideration by the appointed Inspector. Since the submission of the appeal documents, including the LPA's Statement of Case, it has been determined that the Council now has a 5 year housing land supply.

A press release was made on Friday 27<sup>th</sup> April 2023, announcing that North Devon and Torridge District Councils now have a joint supply across the Local Plan area of 5.9 years. This is detailed in the report at the following link: <https://consult.torridge.gov.uk/kse/folder/91966>

The Planning Officer Report submitted as Questionnaire Paper 24d (pages 7,8 & 9 (23/24/25)), the Appellant's Statement of Case (at paragraphs 6.1 – 6.6 ) make reference to the lack of 5 year housing land supply across the Local Plan area at the time that these documents were created. The LPA's Statement of Case addresses issues around the proposed partial development this, allocated, site.

I would be grateful if this information could be passed to the Inspector for their consideration if it is appropriate to do so. Please note that this email is also copied to the appellant's agent.

Kind regards

Sue Thomas

Sue Thomas | Senior Planning Support Officer (Appeals) ~ Planning, Housing and Health  
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Tel: 01271 388 296 | [www.northdevon.gov.uk](http://www.northdevon.gov.uk)



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