



Application Report

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

Application No:	75140
Application Type:	Full application
Application Expiry:	3 June 2022
Extension of Time Expiry:	
Publicity Expiry:	10 May 2022
Parish/Ward:	KINGS NYMPTON/CHITTLEHAMPTON
Location:	Heal Lodge Kings Nympton Umberleigh Devon EX37 9TB
Proposal:	Erection of a single dwelling
Agent:	Planning Partnership Ltd
Applicant:	Mr & Mrs R Petch
Planning Case Officer:	Miss S. May
Departure:	N
EIA Development:	
EIA Conclusion:	
Decision Level/Reason for Report to Committee (If Applicable):	Called in by Councillor Jenkins for the following reasons: <ul style="list-style-type: none">• There seems to be considerable support locally for the delivery of the proposed dwelling as an affordable local needs dwelling once Mr and Mrs Petch no longer occupy it.• Alternatively, the option of the dwelling, which is of modular construction, being removed at the end of a personal permission seems worth exploring

Site Description

The application site is situated within the open countryside around 2.3 km from Kings Nympton and comprises approximately 0.22 hectare of land which comprises the north-east corner of a larger field. A section of Devon bank and hedging has been removed to facilitate the access to the mobile home which has been stationed to the north western corner of the field and is currently occupied. Access to the site is from the north via a narrow unclassified road. There is currently a small area of hardstanding. The northern boundary comprises a mature hedgerow and trees whilst the eastern boundary is a relatively young hedge. The western boundary comprises a newly formed bank planted with native species and the southern boundary comprises a post and rail fence with stock fence attached.



Figure 1: Devon bank and hedging severed to create access point



Figure 2: Mobile home on site which applicants are living in



Figure 3: Post and rail fencing erected by applicants to south of site



Figure 4: Access to site via narrow country lanes



Figure 5: Access to site via narrow country lanes

Recommendation

REFUSE

Legal Agreement Required: No

Planning History

Reference Number	Proposal	Decision	Decision Date
73164	Erection of a single storey dwelling (amended plans) at Hele Lodge, Hele Farm, Kings Nympton, Umberleigh, Devon, EX37 9TB	Refused	23 November 2021
74608	Erection of single storey dwelling at Hele Lodge, Kings Nympton, Umberleigh, Devon, EX37 9TB	Withdrawn	16 March 2022

Constraints/Planning Policy

Constraint / Local Plan Policy	Distance (Metres)
Advert Control Area Area of Special Advert Control	Within constraint
Ancient Woodland: BIAS/PADELY WOODS Ancient & Semi-Natural Woodland	83.04
Ancient Woodland: HELE WOOD Ancient & Semi-Natural Woodland	423.44
Ancient Woodland: HELE WOOD Ancient Replanted Woodland	343.45
Burrington Radar Safeguard Area consultation required for: All buildings, structures, erections & works exceeding 45 metres in height.	Within constraint
Landscape Character is: 5A Inland Elevated Undulating Land	Within constraint
Unclassified Road	
USRN: 27503406 Road Class:R Ownership: Highway Authority	2.88
Within Adopted Unesco Biosphere Transition (ST14)	Within constraint
DM01 - Amenity Considerations	
DM02 - Environmental Protection	
DM04 - Design Principles	
DM05 - Highways	
DM06 - Parking Provision	
DM08 - Biodiversity and Geodiversity	
DM08A - Landscape and Seascapes Character	
DM11 - Planning Enforcement	
KGN - King's Nympton Spatial Strategy	
ST01 - Principles of Sustainable Development	
ST02 - Mitigating Climate Change	
ST03 - Adapting to Climate Change and Strengthening Resilience	
ST04 - Improving the Quality of Development	
ST07 - Spatial Development Strategy for Northern Devon's Rural Area	
ST10 - Transport Strategy	
ST11 - Delivering Employment and Economic Development	
ST14 - Enhancing Environmental Assets	
ST21 - Managing the Delivery of Housing	

Consultees

Name	Comment
Building Control Manager	No response received but previously Building Control have commented as follows: Suitable fire brigade access required. Septic tank to discharge to a drainage field. Surface water to discharge to a soakaway. Level access approach to meet requirements of Part M. Bedrooms require means of escape windows due to open plan living arrangement. Interlinked smoke detection required.
Councillor R Jenkins	Called in by for the following reasons:
Reply Received 9 May 2022	Planning reason for the removal of delegated powers: This application raises a number of issues that I feel should be considered by members. There seems to be considerable support

Name	Comment
	locally for the delivery of the proposed dwelling as an affordable local needs dwellings once Mr and Mrs Petch no longer occupy it. Alternatively, the option of the dwelling, which is of modular construction, being removed at the end of a personal permissions seems worth exploring. Consequently, I would like the application taken to Planning Committee. You will recall that I wish to call the previous application (73164) to committee late last year to try and resolve such issues. If negotiations with the applicants and their agents on these issues can bring about an acceptable solution then I would be quite prepared to consider withdrawing this request.
Environmental Health Manager Reply Received 21 April 2022	I have reviewed this application in relation to Environmental Protection matters and comment as follows: 1 Land Contamination I do not expect land contamination issues to arise in relation to the proposals. However, given the sensitivity of introducing a residential use, I recommend the following condition be imposed on any permission to cover the possibility that unexpected contamination is discovered during development work: - Contaminated Land (Unexpected Contamination) Condition Should any 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. Reason: To ensure that any contamination existing and exposed during the development is assessed and remediated as necessary. 2 Advisory Note: Foul Drainage 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.
King Nympton Parish Council Reply Received 13 May 2022	The Parish Council meeting was yesterday evening and the majority of the councillors (6-2) had no objections to this application. North Devon District Councillor Ray Jenkins has advised the Parish Council that he will be calling this application to go before a Planning Council Committee meeting. Could you please advise us if you know the date and time of this meeting as it is possible that there are members of the parish that would like to speak on this application.
Planning Policy Unit Reply Received 27 June 2022	As our policy position is unlikely to change, I would agree that our previous response still stands and could be used for this amended application. Previous response 1/02/2022 states:

Name	Comment
	<p>Thank you for consulting the Planning Policy team concerning the erection of a single dwelling on land at Heal Lodge, King's Nympton.</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 has an 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 as is the fact that North Devon cannot currently demonstrate a 5 year supply of deliverable housing sites.</p> <p>The site is well outside of any recognised development boundary where Policy ST07(4) will apply. In the Countryside, development will be limited to that which is enabled to meet local economic and social needs, rural building reuse and development which is necessarily restricted to a Countryside location.</p> <p>Isolated homes in the Countryside are still resisted both nationally and locally without a justified need, one being to meet an identified agricultural need (Policy DM28). I note the agent's comment that this site is not considered isolated and to a certain extent I would not disagree with this analysis as the site is located within a small cluster of existing residential uses. An interpretation of isolation was recently considered within the Oakland Parks appeal decision in Torridge where the Inspector also recognised that particular site to not be isolated due to it 'lying on the northern edge of a cluster of dwellings, so is not isolated from other buildings' (paragraph 10). However, the Inspector also recognised and not unlike this proposed site that 'residents of the appeal proposal would be at a considerable distance from any services, and heavily reliant on long private car journeys for everyday needs. The inaccessibility of the site to services and facilities makes it unsuitable for the development' (paragraph 13).</p> <p>As I have set out above, it is accepted that North Devon cannot clearly evidence a five year supply of deliverable housing sites. In such circumstances, Policy ST21 sets out the location and scale of proposals for additional residential development outside of defined settlement limits that would be supported although paragraph 7.65 indicates that such sites will normally be expected to adjoin development boundaries or the principal built form of defined settlements. Clearly, this site is contrary to criterion (2a) and (2c) of Policy ST21 although I do accept that a single dwelling may contribute to our shortfall (2b), such a contribution would not be significant that would outweigh the harm to allowing a dwelling in the Countryside, contrary to the spatial strategy.</p>

Name	Comment
	<p>It would appear the agent has no justification for the provision of a new dwelling in the Countryside for a rural worker. Also, I do not see anything within the DAS in terms of the new dwelling being justified under paragraph 80(e) of the NPPF which is a material planning consideration as the Local Plan is silent regarding such matters.</p> <p>Should you be minded to support the application then paragraph 6.5 of the Local Plan sets out that, 'all development will be expected to provide a net gain in biodiversity where feasible. Where biodiversity assets cannot be retained or enhanced on site, the Councils will support 'biodiversity offsetting' to deliver a net gain in bio-diversity off-site'. If there is some loss of existing habitat then this should be mitigated against by providing additional planting on or off site. The Defra metric should be used to ensure there is an overall net gain in biodiversity. All issues around ecology should be considered against ST14 and DM08 including the response from Mark Saunders.</p> <p>The design of the new dwelling should be considered against Policies ST02, ST03, ST04, DM01, DM04 and DM08A. All highway matters should be considered against Policies ST10, DM05 and DM06.</p> <p>Although I understand the desire for the applicant to remain in the area due to ongoing medical issues and associated support network, from a policy perspective, I can see no evidence within the application submission to justify a new dwelling in the Countryside. Therefore, I am of the opinion that the proposal would conflict with the spatial strategy (Policy ST07) and (Policy ST21) of the Local Plan.</p> <p>I trust the above comments are of assistance to you but should you wish to discuss the matter further then please do not hesitate to contact me.</p>
Sustainability Officer Reply Received 13 April 2022	13/04/2022 15:47 - The submitted Ecological Assessment (EA) concludes that the proposed development would have a negligible impact on protected species and no further survey effort is considered necessary. The Biodiversity Metric calculation states that the indicative Landscape Plan would be likely to deliver a net gain for biodiversity. Should you be minded to support the current application I would request a Landscape Plan including detailed planting specifications and Devon hedge bank cross sections is submitted prior to determination.

Neighbours / Interested Parties

Comments	No Objection	Object	Petition	No. Signatures
1	5	2	0	0

The two letters of objection cite the following:

- Visual impact
- Unnecessary development
- Nothing addresses previous reasons for refusal
- Isolated home in the countryside and conflicts with policy and paragraph 80 of the National Planning Policy Framework.

Considerations

Proposal Description

This application seeks full planning permission for the change of use of land to erect a single storey chalet style bungalow and associated works. The dwelling would be set back approximately 11 metres from the existing roadside boundary.

The building would have a footprint of approx. 12 metres by 8 metres and have an enclosed porch measuring 2 metres by 2 metres, height to eaves, 2.4 metres with overall ridge height being 5.5 metres.

The accommodation would provide 2 bedrooms, wet room, open plan lounge/kitchen/dining room, pantry and utility room.

The plans detail that the building would be constructed with interlocking plastic shiplap cladding, PVCu windows and natural slate roofing materials.

An area of hardstanding would be provided to the rear of the dwelling. The plans indicate that the hedging to the east would remain. The boundaries fronting the principal elevation which are shown on the block plan have lengths of 27.8 and 34.5 metres respectively and would have native species planted inside the post and rail stock proof fencing. The boundary to the west (24.9 metres) is shown as a new hedgerow with native species. Whilst the plans indicate that there is a 10.5 metre opening in the hedge to facilitate access arrangements when scaling from the plans this appears to be approx. 14 metres. The plans detail that there would be a wildflower meadow (block plan stating 'exact size TBD').

Since the previously refused and withdrawn applications the footprint has now been extended. The plans previously indicated a footprint of 80.4 square metres whereas a footprint of 96 square metres has been proposed. In addition the proposed ridge height would be 5.5 metres (previously 5.29 metres).

Planning Considerations Summary

- Principle of development and history relating to site
- Character and appearance
- Highway safety
- Neighbouring amenity
- Flood risk and drainage
- Ecology and biodiversity
- Other matters including Call-in by Councillor Jenkins and letters of representation

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 and history relating to site

History

A pre-application enquiry was submitted under reference ENQ/1288/2020 for the creation of a chalet style dwelling in August 2020 which stated that the current occupiers of The Roundhouse who live adjacent are elderly and due to health and financial reasons wish to sell their current property and live in the proposed property which would be located in the adjacent field. An area of land which was approximately 0.34 hectare was indicated with the proposed dwelling being sited approx. 100 metres to the east of The Roundhouse.

The informal officer opinion at that time stated that the proposed development was not considered acceptable (for the reasons discussed below in that the location of the development within the open countryside would not meet with the principle of development). The applicant was informed on 16 September 2020 that if an application was forthcoming it was unlikely to meet with officer approval.

The Local Planning Authority (LPA) also have an enforcement case for change of use of land – storage and residential use of a caravan. Since the pre-application enquiry was submitted the applicants have removed a section of hedgerow to facilitate the siting of a mobile home which they are now living in.



Figure 6 – Photograph taken of site 03 November 2020 when hardcore had been laid

Application 73164 was refused for the following reasons:

Refusal reason 1

The provision of an unrestricted open market dwelling in this location constitutes isolated development in the open countryside, where the Local Planning Authority would only permit development which is necessary in the interests of agriculture or where special justification exists. In the absence of any functional justification or demonstrated reasoned need for the new dwelling, the proposal would introduce inappropriate development which would result in a modern domestic dwelling resulting in landscape harm and visual intrusion in this countryside setting. It is considered the personal circumstances of the applicant do not outweigh the other material planning considerations as an exception to the Development Plan policies. Furthermore, there are no overriding economic, social or environmental benefits such as to outweigh the harm of the siting of the dwelling within this landscape setting. In such circumstances the proposal is considered contrary to Policies ST04, ST07(4), ST14, DM04, DM08A, DM28 and KGN of the North Devon and Torridge Local Plan as well as conflicting with the North Devon and Torridge Landscape Character Assessment 2011. Furthermore, paragraph 80 of the National Planning Policy Framework which states that Local Planning Authorities should avoid new isolated homes in the countryside unless there are special circumstances.

Refusal reason 2

The Local Planning Authority considers the location of new housing within the open countryside to be unsustainable; being located a distance from services and amenities. The Local Planning Authority wishes to deliver housing within sustainable rural communities. The provision of an unrestricted open market dwelling in this countryside location would result in an unsustainable form of development where the occupiers would have a reliance on private car travel. In such circumstances the proposal is considered contrary to Policies DM05 and ST10 of the Joint North Devon and Torridge Local Plan and does not meet the sustainable development aims of Chapter 2 of the 2021 National Planning Policy Framework.

Application 74608 was withdrawn earlier this year. At the time of this application the LPA commented that due to the isolated location and policies prohibiting an application for an open market dwelling in this location without a paragraph 80(e) there would be no benefit in approving an isolated dwelling in the open countryside.



Figure 7: Proposed block plan submitted under refused application 73164 and withdrawn application 74608

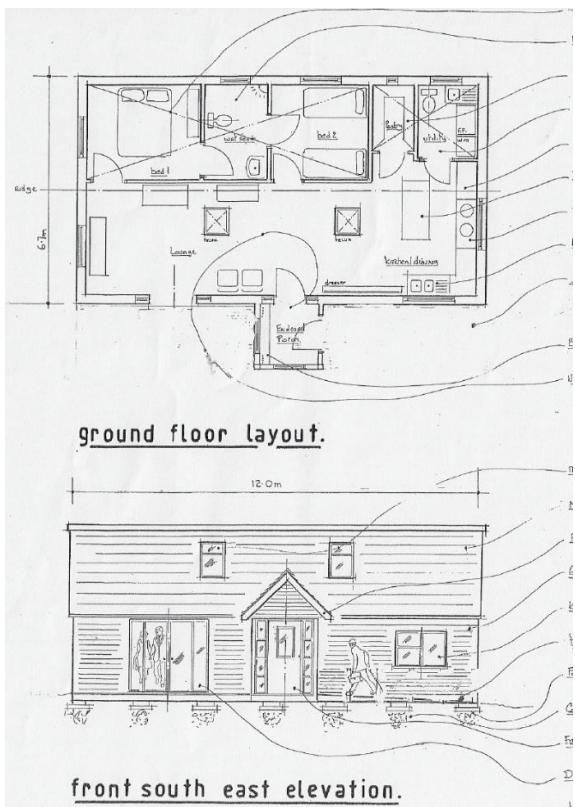


Figure 8: Plans submitted under refused application 73164 and withdrawn application 74608

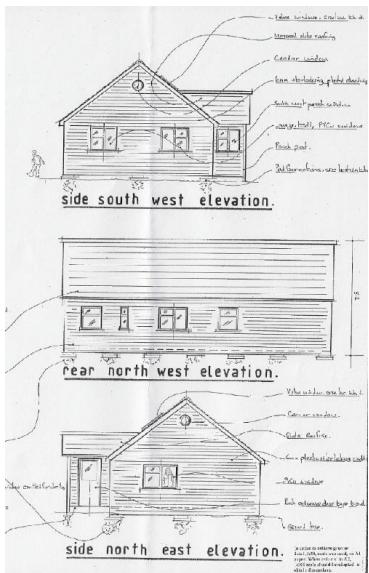


Figure 9: Plans submitted under refused application 73164 and withdrawn application 74608

Principle

The decision here is whether the siting of the proposed dwelling falls under ST07 (2B) or whether it is considered to be within the 'Countryside' where Policy ST07(4) is relevant.

Kings Nympton is recognised as a Schedule B village as set out within Policy ST07(2B) where development will be enabled in accordance with the local spatial strategy to meet the identified local needs and growth aspirations. Policy KGN: King's Nympton Spatial Strategy states that the local community has a vision for the parish to ensure the tranquillity and beauty of the countryside around the village is preserved whilst facilitating

some additional housing and employment, particularly for young people in order to maintain a spread of age groups in the area, and to preserve and enhance the existing community spirit. The spatial strategy will be delivered through:

(a) provision of a minimum of 20 new dwellings to meet the range of needs in the community including for elderly residents. The supply of housing will be delivered through extant planning permissions, with no new sites allocated for housing but one non-strategic housing site;

Paragraph 12.614 of the policy states that the majority of the future housing growth for King's Nympton will be delivered through the extant planning permission at Steeple Meadow, on the eastern edge of the village. Land at Skibbows is identified as a non-strategic housing site for approximately 12 dwellings. At 31st March 2017 there was a relatively high level of housing commitments in King's Nympton. No additional sites are proposed for housing development but some opportunities for infill may be available within the development boundary. Paragraph 12.615 goes onto state that where suitable land is available for development that is appropriate in terms of its scale and location, it will be considered for development in accordance with the requirements of Policy ST07: Spatial Development Strategy for Northern Devon's Rural Area and other relevant policies.

The development boundary of Kings Nympton lies some 2.3 km metres to the south east of the proposed dwelling. For the purposes of the local plan the location of the proposed dwelling is a Greenfield site and therefore considered to be within the open countryside whereby Policy ST07(4) states that development will be limited to that which is enabled to meet local economic and social needs, rural building re-use and development which is necessarily restricted to a Countryside Location. As the development is for an open market dwelling it does not meet with the above criteria and therefore is considered contrary to Policy ST07 of the NDTLP.

The LPA note the agent's comment that the site is not considered isolated and the Policy team have commented that to a certain extent they would not disagree with this analysis as the site is located within a small cluster of existing residential uses. An interpretation of isolation was recently considered within the Oakland Parks appeal decision in Torridge where the Inspector also recognised that particular site to not be isolated due to it 'lying on the northern edge of a cluster of dwellings, so is not isolated from other buildings (paragraph 10). However the Inspector also recognised and not unlike this proposed site that 'residents of the appeal proposal would be at a considerable distance from any services and heavily reliant on long private car journeys for everyday needs. **The inaccessibility of the site to services and facilities makes it unsuitable for the development** (paragraph 13) – See Appendix 1.

The application site lies a considerable distance from any public services and facilities. The nearest public house, at Kings Nympton, is at a road distance of about 2.5 km. Most employment, shopping and leisure needs for occupants of the dwelling would need to be met elsewhere. The closest settlement where these services could be obtained is South Molton, approximately 7 km away by road.

Access to these services would be via narrow, unlit lanes with no segregated footways or cycle paths. Consequently, it is unlikely that occupants of the development would regularly access these facilities by foot or bicycle.

The inaccessibility of the site to services and facilities makes it unsuitable for development as the occupants would be heavily reliant on long private car journeys for everyday needs.

Consequently the proposed development would be contrary to Policies ST10 (Transport Strategy) and DM06 of the Local Plan, which seek to reduce the need to travel by car and to encourage the use of sustainable modes of transport. The proposal would also conflict with the Framework's aim to promote sustainable transport.

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

Therefore, National planning policy (Footnote 8, National Planning Policy Framework 2021 (NPPF)) establishes that when a local planning authority is unable to demonstrate a five year supply of deliverable housing sites, for the purposes of triggering the presumption in favour of sustainable development, it should consider the policies which are most important for determining the application to be out-of-date. Accordingly, the presumption in favour of sustainable development (paragraph 11(d), NPPF as a material consideration), should be applied for decision-taking involving applications for housing.

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

From a policy perspective, although the lack of a 5 YHLS is a material planning consideration, very little weight in the tilted balance to a single dwelling would be applied and the view is that it would only make a very modest contribution to the Council's shortfall in deliverable housing sites.

The application would effectively be an open market dwelling within the open countryside to which Policy DM28: Rural Worker Accommodation would apply (which also corresponds with Paragraph 80 of the 2021 framework).

This states:

- (1) *Proposals for the provision of accommodation in the countryside for a rural worker will be supported where:*
 - (a) *it can be demonstrated that there is an essential operational need for a full time worker to be resident at or near the place of work;*
 - (b) *the size and nature of the development is such that it can be sustained by the scale of the operation, reflective of the location and setting and proportionate to the needs of the intended occupants;*
 - (c) *the accommodation needs cannot be met by any other means including:*
 - (i) *accommodation in a nearby settlement; or*
 - (ii) *by an existing dwelling at or near the site; or*
 - (iii) *through the conversion of a suitable redundant or disused building on site; and*
 - (d) *appropriate highway access can be provided.*

- (2) *Where the enterprise is well established, of a sufficient size to support a full-time worker, economically viable and has clear prospects of remaining so, support will be given to the provision of a permanent new dwelling.*
- (3) *Where the enterprise does not meet the criteria set out to support the provision of a new permanent dwelling, the provision of temporary accommodation will be considered for an initial period of three years.*
- (4) *New accommodation provided for rural workers will be, and all existing dwellings at the rural business may be, subject to occupancy restrictions and, where it is felt appropriate by the Local Planning Authority, may be subject to a legal agreement tying its use to the specific rural business.*
- (5) *Applications for the removal of occupancy conditions or ties on dwellings for rural workers will only be permitted where there is compelling evidence to demonstrate that such a restriction is no longer justified.*

The application as submitted does not meet any of the above criteria.

It is accepted that North Devon cannot clearly evidence a five year supply of deliverable housing sites. In such circumstances, Policy ST21 sets out the location and scale of proposals for additional residential development outside of defined settlement limits that would be supported although paragraph 7.65 indicates that such sites will normally be expected to adjoin development boundaries or the principal built form of defined settlements. Clearly, this site is contrary to criterion (2a) and (2c) of Policy ST21 although the Policy team have commented that they do accept that a single dwelling may contribute to the shortfall (2b), such a contribution would not be significant that would outweigh the harm to allowing a dwelling in the Countryside, contrary to the spatial strategy.

Paragraph 80 of the 2021 framework promotes sustainable development in rural areas and discourages new isolated homes in the countryside unless special circumstances are met. It would appear there is no justification for the provision of a new dwelling in the Countryside for a rural worker. It would not represent the optimal viable use of a heritage assets or secure the future of heritage assets, it would not involve the reuse of a redundant or disused building, it would not involve the subdivision of an existing residential property and the proposal is not considered to be of exceptional quality.

Whilst the supporting statement comments that the proposed dwelling has been amended to offer very high standards of insulation, this would be required as part of building regulations. In addition the provision of solar panels, whilst acknowledged would provide renewable energy, is not considered to equate to a para 80 dwelling. It is therefore considered that these special circumstances are not met in this case.

In this instance the design is not considered to be of an exceptional quality. The proposed development does not meet the criteria of paragraph 80. It is not truly outstanding, does not reflect the highest standards in architecture, and would not help raise standard of design in this rural area. Furthermore, it does not significantly enhance its immediate setting or be sensitive to the defining characteristics of the local area.

The Policy team have commented that they do not see anything within the Design and Access Statement in terms of the new dwelling being justified under paragraph 80(e) of the NPPF which is a material planning consideration as the Local Plan is silent regarding such matters.

In terms of Chapter 2 of the Framework this states that there are three dimensions to sustainable development: economic, social and environmental.

In terms of the economic strand, the alterations to the existing structure would support jobs in the local construction industry and the need for building materials would benefit local suppliers. Future residents of the development would spend locally and make use of local services and facilities. However this is a proposal for one dwelling thus any contribution it would make would be very limited.

In terms of the social aspect to sustainability, the proposal would in a small way add to the supply of housing in the area and future occupants would support local services and facilities.

The environmental dimension of sustainability relates amongst other things to protecting and enhancing the natural and built environment. Whilst insufficient information has been submitted in respect of the biodiversity offsetting measures have been proposed, the LPA did not want to put the applicant to extra cost in light of the in-principle objection to the application.

In this instance concerns are raised to the appropriateness of the proposed dwelling in relation to the landscape setting. North Devon and Torridge Landscape Character Assessment defines this area as 5A: Inland elevated undulating land whose summary of special qualities include:

- Long views from elevated ridgelines
- Patchwork of fields and hedges
- Working, rural landscape
- Valued Culm grassland and wetland habitats providing texture to the landscape
- Quiet, relaxed and tranquil



Figure 10: Proposed development is within a prominent location with far reaching views from the site



Figure 11: Proposed development is within a prominent location and there are far reaching views towards the site with the existing unauthorised mobile unit being visually prominent

Furthermore Policy ST14: Enhancing Environmental Assets states that the quality of northern Devon's natural environment will be protected and enhanced by ensuring that development contributes to ensuring development conserves and enhances northern Devon's local distinctiveness including its tranquillity as well as protecting and enhancing local landscape character.

The changes to the landscape character, to a modern domestic dwelling and its associated paraphernalia is considered to have landscape harm as a result of the proposal.

The site is situated within the open countryside to which the LPA would wish to protect in order to retain its recognised quality and character.

The application is effectively a new open market dwelling which does not require a rural location, nor does it protect or enhance the special qualities of the landscape as required by the aforementioned policies. It is acknowledged it would have some social benefit in the supply of housing and economic benefits in terms of employment relating to construction, these benefits however are limited.

The site does not represent a sustainable location for development and would be contrary to Policies ST07 and ST14 of the NDTLP, guidance in the 2021 Framework as well as being in conflict with the North Devon and Torridge Landscape Character Assessment.

The LPA acknowledge that the Design and Access Statement submitted alongside application 75140 comments that in 2020 the applicant suffered a severe stroke and he is slowly recovering. The applicant's made a decision for a change in lifestyle. It was therefore decided to sell their property and land apart from a small section which is that which forms part of this application. The D&A comments that the applicant's wife was

professionally advised that it was unwise to move Mr Petch from familiar surroundings as the stress and anxiety could aggravate her husband's medical condition. The Planning Support Statement comments that it is intended that the property should remain affordable in the future commenting that the applicants would be happy to discuss how such on-going affordability is secure with the LPA as part of the determination process.

Whilst the delivery of a dwelling that remains affordable in the future and the suggested reasons for the call-in may be considered as being a material consideration to go against the development plan the Local Planning Authority are not convinced it is enough to warrant an approval for a dwelling in the Countryside within an unsustainable location which is considered contrary to both national and local planning policy.

Whilst a human factor...can...and sometimes should, be given direct effect as an exceptional special circumstance in this instance it is considered that the personal circumstances of the applicant's should not outweigh the development plan.

Having regard to case law, Torridge District Council granted planning permission on 24th April 2009 under reference 1/0017/2009/FUL for a detached dwelling and garage on the site of a ruined barn opposite Hayne Barton, a farmhouse listed Grade II.

The justification for granting planning permission was based on the personal circumstance of Mr Taylor who suffered from a severe form of Parkinson's disease. The nature and severity of this condition was set out in letters from his medical practitioners which impacted on his physical and mental well-being.

Mr Stewart, an occupier of Hayne Barton challenged this decision by judicial review. The Court granted permission for the claim to proceed on 19 June 2009 and the planning permission was subsequently quashed by the Court in September 2009 through a Consent Order. The planning permission was quashed as unsound partly because the Council gave undue weight to personal circumstances and because it failed to take account of material considerations in making its decision. The decision was subsequently quashed by the courts.

As such the principle of the development fails in terms of its location.

It should be noted that the applicant's agent has been repeatedly advised though the pre-application advice, enforcement and this application that the development does not meet with the principle of development but has decided to proceed with the application.

Character and Appearance

Paragraph 130 of the Framework 2021 states that planning policies and decisions should ensure that developments are visually attractive as a result of good architecture, layout and appropriate and effective landscaping as well as being sympathetic to local character and history, including the surrounding built environment and landscaping setting, while not preventing or discouraging appropriate innovation or change. Also that development should establish or maintain a strong sense of place.

Paragraph 134 of the 2021 Framework states that "*Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design....*"

Policy ST04 (Improving the Quality of Development of the NDTLP states that “*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 design principles of design found in policy DM04*”. Policy DM04 (Design Principles) of the NDTLP states that design should be of high quality and should integrate effectively with its surroundings and reinforce distinctiveness of the surrounding area. The pattern of development is scattered and dominated by large areas of agricultural land and fields with the site immediately surrounded by agricultural land and fields.

The building would be constructed with interlocking plastic shiplap cladding, natural slate roofing materials and UPVC doors and windows.

The Design and Access Statement comments that that the proposal does not affect any existing flora and fauna and that all existing hedges and trees would remain.

A new mixed species mainly evergreen hedge would be planted on the southern boundary.

The Sustainability Officer has commented that should the LPA be minded to support the application that an appropriately detailed planting specification be submitted in support of the revised site plan.

Policy DM08A: Landscape and Seascape Character states that Development should be of an appropriate scale, mass and design that recognises and respects landscape character of both designated and undesignated landscapes and seascapes; it should avoid adverse landscape and seascapes and seek to enhance the landscape and seascape assets wherever possible. Development must take into account and respect the sensitivity and capacity of the landscape/seascape assets, considering cumulative impact and the objective to maintain dark skies and tranquillity in areas that are relatively undisturbed, using guidance from the Joint Landscape and Seaside Character Assessments for North Devon and Torridge. As mentioned in the principle section earlier the application site is situated within Landscape Character Type 5A of the Joint Landscape Character Assessment for Northern Devon and Torridge adopted January 2011.

No further details have been requested in terms of landscaping as the LPA would not want to put the applicant to further expense when the proposed development does not meet with the principle of development.

An informative will be placed on the decision in this regard, which will also advise the applicant that should they appeal they would need to provide the additional information.

In the absence of reasoned need, the proposed development and associated works would not respect the rural character of the countryside and would not accord with policies ST04, DM04, or DM08A of the NDTLP.

Highway Safety

Policy DM05 (Highways) of the NDTLP requires safe access for all users and will only permit development where there is no adverse impact on the highway network. Furthermore, Policy DM06 (Parking Provision) states that:

- (1) *Development proposals will be expected to provide an appropriate scale and range of parking provision to meet anticipate 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 proposed dwelling would be situated within what is considered to be the open countryside which in highway terms would be considered to be unsustainable given the distances which would need to be travelled from the site to visit essential facilities due to the inaccessibility of the site to services and facilities. If an exceptional circumstance could be demonstrated then the planning balance would need to be applied to determine whether the site was acceptable in highway terms. In this instance, it is considered there is no justified/functional need to reside on site and as such a dwelling in this location is considered unsustainable in highway terms thus failing the requirements of DM05 (Highways) and ST10 (Transport Strategy) and the objectives of the National Planning Policy Framework.

The site is accessed from the unclassified road and the route provides no footways and there appears to be no bus stops to be able to access alternative modes to travel to employment and facilities. In terms of the overall transport sustainability of the site, as referred to within the principle of development, this site is not within the development boundary and provides poor connectivity to the nearest facilities with the settlement of Kings Nympton being approx. 2.45 km in distance to the south east of the application site.

Manuals for Streets and Manual for Streets 2 states that walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes (approx. 800 metres) walking distance of residential areas that residents may access comfortably on foot.

The distances involved and the suitability of the safety of walking route are such that the site is not considered to be sustainable and would encourage access by private car resulting in a negative environmental impact as a result of the proposal. The proposal therefore fails to comply with policies ST10: Transport Strategy and DM05: Highways of the NDTLP. It would also not meet the sustainable transport aims of Chapter 9 of the framework.

Amenity

Amenity considerations will be considered primarily in line with policy DM01: Amenity considerations and part (i) of DM04: Design principles which seeks to ensure the amenities of existing and future neighbouring occupiers are safeguarded.

Policy DM01 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.

The nearest neighbouring properties are Bias Wood approx. 100 metres to the north east of the site and the Roundhouse, approx. 80 metres to the south west of the site. In light of

the separation distances, it is not considered there would be any undue impact upon neighbouring amenity, therefore in accordance with Policy DM01 of the NDTLP.

Flood Risk and Drainage

The application site is situated in flood zone 1 and no concerns are raised in this respect.

A Foul drainage assessment accompanies the application stating that a septic tank would be used for the development to soakaway. No soakaway has been detailed on the plans as submitted. An advisory will be placed on decision notice stating that if the applicant intends to appeal the decision they would need to provide this information.

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).

The Sustainability Officer has commented that the submitted Ecological Assessment (EA) concludes that the proposed development would have a negligible impact on protected species and no further survey effort is considered necessary. The Biodiversity Metric calculation states that the indicative Landscape Plan would be likely to deliver a net gain for biodiversity and should the LPA be minded to support the current application a landscape plan with detailed planting specifications and Devon hedge bank and cross sections should be submitted prior to determination.

The LPA did not want to put the applicant to extra cost to address further comments in light of the in-principle objection to the application. An informative will be imposed on the grant of refusal indicating that amended plans and a detailed landscaping scheme and information should accompany any appeal.

Other Matters

On the previously refused application Kings Nympton Parish Council objected to the application. They had commented that the applicants had sold 5 residential properties plus the original Farm House. The Parish had commented that the rules and procedures are put in place to protect the public interest and prevent people from acting unfairly without planning rules and procedures. Given the fact that the people involved here have been involved previously in developing the site one might reasonably believe that they would have had an understanding of the requirement to seek the relevant permission before proceeding to site a mobile home on the land including full services. The Parish are now in support of the application.

Call-in

As stated previously in the principle section above, whilst the suggested reasons for the call-in may be considered as being a material consideration to go against the development plan the Local Planning Authority are not convinced that the suggested reasons warrant an approval for a dwelling in the Countryside within an unsustainable location which is considered contrary to both national and local planning policy. Whilst the lack of a 5YHLS has been considered in the balance, the provision of one dwelling in the Countryside does

not outweigh the significant and demonstrable harm identified above when applying paragraph 11d(ii) of the framework.

Conclusion

In considering planning applications case law has determined that the personal circumstances of an applicant are not to be ignored in the administration of enabling planning development, the human factor is always present as background to the consideration of the character of land use.

However, as a general rule consideration of such circumstances as being material to the consideration of an application is an exception and they seldom outweigh more general planning considerations.

Whilst the medical conditions of the applicant are noted there is no justification or exceptional circumstances put forward which indicates why the suffering of that medical condition means that a new dwelling in this location is justified as an exception to the Development Plan Policies. There is nothing that suggests that the type of accommodation could not be provided within an existing dwelling or settlement.

It is acknowledged that it would have some social benefit in the supply of housing and economic benefits in terms of the employment relating to construction, these benefits however are limited. Whilst the LPA acknowledge they cannot clearly demonstrate a 5 year supply of deliverable housing (due to the Burwood appeal) the contribution from one unit is likely to be extremely minimal to reducing that perceived shortfall.

The provision of an unrestricted open market dwelling in this location is not considered acceptable where the Local Planning Authority would only permit development which is necessary in the interests of agriculture or where special justification exists. No justification has been submitted to prove there is a functional need for this accommodation in this countryside location.

In such circumstances the proposal is considered contrary to Policies ST07(4), ST21, DM28 and KGN of the North Devon and Torridge Local Plan and Paragraph 80 of the National Planning Policy Framework 2021 which states that Local Planning Authorities should avoid new isolated homes in the countryside unless there are special circumstances. It follows that in the absence of reasoned need for the proposed development the siting does not respect the rural character of this agricultural land and is not acceptable within this landscape setting and is considered contrary to policies DM04, DM08A and the North Devon and Torridge Landscape Character Assessment 2011. Furthermore, the location is unsustainable, being located a distance from services and amenities and considered contrary to Policies DM05 and ST10 of the Local Plan and does not meet the sustainable development aims of the Framework.

Refusal is recommended.

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

REFUSE

Legal Agreement Required: No

Reason(s) For Refusal

1. The provision of an unrestricted open market dwelling in this countryside location, where the Local Planning Authority would only permit development which is necessary in the interests of agriculture or where special justification exists, is unacceptable. In the absence of any functional justification or demonstrated reasoned need for the new dwelling, the proposal would introduce inappropriate development which would result in a modern domestic dwelling resulting in landscape harm and visual intrusion in this countryside setting. It is considered the personal circumstances of the applicant do not outweigh the other material planning considerations as an exception to the Development Plan policies. Furthermore, there are no overriding economic, social or environmental benefits such as to outweigh the harm of the siting of the dwelling within this landscape setting. In such circumstances the proposal is considered contrary to Policies ST04, ST21, ST07(4), ST14, DM04, DM08A, DM28 and KGN of the North Devon and Torridge Local Plan as well as conflicting with the North Devon and Torridge Landscape Character Assessment 2011.

Furthermore, paragraph 80 of the National Planning Policy Framework states that Local Planning Authorities should avoid new isolated homes in the countryside unless there are special circumstances. In this instance the design is not considered to be of an exceptional quality. The proposed development does not meet the criteria of paragraph 80. It is not truly outstanding, does not reflect the highest standards in architecture, and would not help raise standard of design in this rural area. Furthermore, it does not significantly enhance its immediate setting or be sensitive to the defining characteristics of the local area.

2. The inaccessibility of the site to services and facilities makes it unsuitable for development as the occupants would be heavily reliant on long private car journeys for everyday needs. The Local Planning Authority wishes to deliver housing within sustainable rural communities. The provision of an unrestricted open market dwelling in this countryside location would result in an unsustainable form of development where the occupiers would have a reliance on private car travel, in such circumstances the proposal is considered contrary to Policies DM06 and ST10 of the Joint North Devon and Torridge Local Plan and does not meet the sustainable development aims of the 2021 National Planning Policy Framework.

Informatives

1. 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

DM08 - Biodiversity and Geodiversity

DM08A - Landscape and Seascapes Character

DM11 - Planning Enforcement

KGN - King's Nympton Spatial Strategy

ST01 - Principles of Sustainable Development

ST02 - Mitigating Climate Change

ST03 - Adapting to Climate Change and Strengthening Resilience

ST04 - Improving the Quality of Development

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

ST10 - Transport Strategy

ST11 - Delivering Employment and Economic Development

ST14 - Enhancing Environmental Assets

ST21 - Managing the Delivery of Housing

North Devon and Torridge Landscape Character Assessment 2011.

2. Advisory - Building Control

Building control have advised of the following:

Suitable fire brigade access is required.

Septic tank to discharge to a drainage field.

Surface water to discharge to a soakaway.

Level access approach to meet requirements of Part M.

Bedrooms require means of escape windows due to open plan living arrangement.

Interlinked smoke detection required.

The applicant is advised that should they appeal they would need to provide the additional information.

3. Advisory - Landscaping, biodiversity off-setting

The Sustainability Officer has commented that should the Local Planning Authority be minded to support the application that an appropriately detailed planting specification be submitted in support of the revised site plan. In addition integrated bat/bird boxes should be illustrated on the proposed elevations.

The applicant is advised that should they appeal they would need to provide the additional information.

4. Advisory - Soakaway

The applicant is advised that should they appeal they would need to provide the additional information and annotate on the plan the position of the soakaway.

5. Advisory - Design

The applicant is advised that should they appeal the interlocking plastic shiplap clad elevations are not considered appropriate in this location.

6. 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.

Inserts

1) Location Plan

2) Appeal Decision – Oaklands Park, road from Branches Cross to Woodacott Cross, Woodacott Cross, EX22 7BU (Appeal Ref: APP/W1145/W/21/3273230)