



Application Report

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

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

REPORT UPDATE

Judicial Review Of Previous Decision

This application was presented to the Planning Committee on 6th September 2023 where contrary to the Officer recommendation, Members resolved that the decision for approval be delegated to the Service Manager (Development Management) in consultation with the Ward Member to negotiate changes to the application in terms of the scale, size and location of the dwelling and that if there was disagreement that the application be presented to the Committee for consideration as the Committee accepted the principle that it was within the built form in accordance with Policy DM23.

On 30th January 2024, following the submission of amended plans, the development was considered to be acceptable, in accordance with the decision made by the Committee. Planning permission was therefore granted subject to conditions.

On 8th February 2024 the Council received a judicial review pre-action protocol letter challenging the decision made by the Committee.

On 3rd April 2024 a Consent Order was issued by the High Court of Justice allowing the judicial review and concluding that the aforementioned decision be quashed on the grounds

that decision should have, but failed, to give any or any adequate reasons for its decision to grant planning permission contrary to Officer’s recommendation.

Therefore the application has to be reconsidered as originally submitted. The following therefore returns the report as presented to the Planning Committee on 6th September 2023 for consideration. The recommendation made by Officers remains that planning permission should be refused for the reasons as detailed in the following report.

Previous Report as Presented to Members 6/09/2023

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

Recommendation

Refused

Legal Agreement Required: No

Planning History

Reference Number	Proposal	Decision	Decision Date
39564	ERECTION OF TIMBER FRAMED STUDIO & ERECTION OF 2 POLYTUNNELS at LAND AT NORTH PATCHOLE (OS PT 6142NW), , KENTISBURY, BARNSTAPLE, EX314NB	FULL PLANNING APPROVAL	6 June 2005
65825	ERECTION OF ONE SELF BUILD, LOCAL NEEDS SUSTAINABLE DWELLING at LAND AT NORTH PATCHOLE PADDOCK, , , KENTISBURY, BARNSTAPLE, DEVON, EX31 4NB	WITHDRAWN	14 December 2018

Reference Number	Proposal	Decision	Decision Date
66536	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

Constraint / Local Plan Policy	Distance (Metres)
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	
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
Building Control Manager Reply Received 17 August 2023	No comments received.
Councillor M Prowse Reply Received 3 May 2023	Cllr Prowse called-in the application to be discussed at Planning Committee
Environmental Health Manager Reply Received 3 April 2023	<p>1 Residential Amenity</p> <p>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),</p> <p>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.</p> <p>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>2 Land Contamination</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>3 Construction Phase Noise</p> <p>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 & 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 & 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>

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 or 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 Base park.

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.

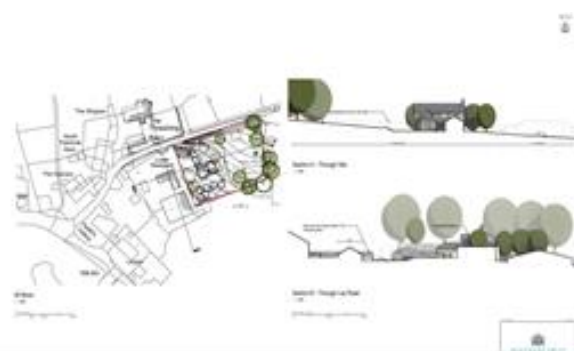
The dwelling is to have a simple two storey gabled form, with a double and single storey protrusion to the northwest facing elevation. The southeast elevation is to have an open porch with a balcony above.

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.

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 it not used for any purposes that would result in odour, noise of 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 in the above report are acceptable, and the support for the application as received has 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 of 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.