

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 February 2025
Extension of Time Expiry:	15 February 2025
Publicity Expiry:	11 October 2024
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:	N
EIA Conclusion:	
Decision Level/Reason for Report to Committee (If Applicable):	Committee call in from Councillor Prowse – To discuss policy context.

Report Update

Members resolved at their Committee on 6th November 2024 (6 for, 4 against, 0 abstained) that the application be APPROVED subject to the Service Manager (Development Management) being delegated power to attach the associated planning conditions. The approved minutes read:

“Having carried out a site inspection, the Committee finds that the proposal for an open market dwelling in this location is acceptable and in accordance with Policy DM23 (1) (a) of the North Devon and Torridge Local Plan with reference to the following material considerations:

(a) Planning Inspectorate Appeal 2022 reference (APP/X1118/W/21/3288689) states that “the principal built form is clustered around the junction between Ley Lane and Ford Lane/Stonecombe Hill with properties primarily fronting these roads” and that the Committee viewed the triangulation of the two storey dwelling to the North East (property known as Roseley);

(b) That the officers significant weighting of the previous planning decision 66536 on the site is given less weight due to the findings of what principal built form can consist of as referenced in the Planning Inspectorate Appeal 2022

reference (APP/X1118/W/21/3288689);

(c) That the officers significant weighting of the previous planning decision 59968 is given less weight as it was determined under a previous Local Plan and no longer forms part of the Development Plan for North Devon;

(d) Consider the proposal is in accordance with Paragraph 89 of the National Planning Policy Framework, supporting a prosperous rural economy, which states “the use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist”;

(e) Whilst the objections for the application received have been noted by the Committee, the proposed development is therefore in accordance with the Development Plan when read as a whole.

Following the above determination, it was noted that there was an incorrect reference in reason (d) and that reason (a) would benefit from some clarification. As this was the case, Officers also viewed that it would be beneficial for the reasons given to be ‘tested’ through obtaining an external legal opinion to aid Members when the application returned to the Committee.

The full external legal advice has been supplied to Members in Part B, due to the fact that such legal advice would ordinarily be considered as that falling within the legal professional privilege as exempt information falling under paragraph 12, Part 1, Schedule 12A of Local Government (access to Information) Act 1985.

The external legal advice provided a legal opinion on the reasons given and that those reasons should be re-visited by the Committee to ensure that they could be considered as legally sound.

The reasons element has since been overtaken by the updated National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) in December 2024 and given these changes and the potential impact on this application, Officers sought an addendum to the initial external legal advice to provide advice on the updated position.

The full addendum external legal advice has been supplied to Members in Part B, due to the fact that such legal advice would ordinarily be considered as that falling within the ‘legal professional privilege’ as exempt information falling under paragraph 12, Part 1, Schedule 12A of Local Government (access to Information) Act 1985.

The external legal advice provided an opinion on how the above changes would impact the consideration of this application for the Planning Officer and accordingly Members.

The Planning Officer has taken these changes into account when producing this updated report for the Committee.

Reasons for return to Planning Committee

Following the external legal advice, the following matters raise concerns with regard to the adequacy of the reasons to recommend the grant of planning permission contrary to the delegated Officers report. The initial matter is with regard to the reasons explaining why the Committee concluded the proposal would comply with ST01 and ST19 of the Local

Plan. It has been noted the policy ST01 (Sustainable Development) is not mentioned in the resolution granting planning permission. Also, the matter of the critical difference between officers and the Committee concerning whether the application site is within the principal-built form of Patchole. Following the raising of these concerns, together with the introduction of the revised National Planning Policy Framework (NPPF), National Planning Practice Guidance (PPG) and the housing land supply, the reasoning for the previous decision as made will require further justification/ explanation.

Revised National Planning Policy Framework (NPPF), National Planning Practice Guidance (PPG) and the Housing Land Supply

Local planning authorities are required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement; the so-called 'five[1]year housing land supply' (Paragraph 78, National Planning Policy Framework; December 2024). The Government published a revised version of the NPPF on 12th December 2024 along with associated revisions to the National Planning Practice Guidance (PPG).

Most significant to the calculation of the five year housing land supply is the revision of the methodology to calculating local housing need within the NPPG, the reimposition of this as a mandatory approach for establishing housing requirements and alterations to the application of the relevant buffer within national planning policy.

These revisions introduced changes that have a direct impact and notable bearing on the assessment of five-year housing land supply for North Devon and Torridge. As a consequence of these changes, North Devon District Council in association with Torridge District Council have determined that they are unable to demonstrate a sufficient supply of deliverable sites for housing across their joint local planning authority areas.

The assessment, as set out in the Five Year Housing Land Supply Addendum (January 2025), concludes that the Councils are able to identify a 4.86 year supply, equivalent to circa 97.2% of the five-year requirement, with the identified supply showing a shortfall of 192 dwellings when measured against the local housing need and applying the appropriate prescribed buffer. Accordingly, the Council considers **that in accordance with the provisions of Footnote 8 of the National Planning Policy Framework, it is necessary to apply the presumption in favour of sustainable development and the provisions of Paragraph 11(d) of the National Planning Policy Framework in relation to applications involving the provision of housing.**

The absence of a five-year supply means that in cases where policies ST19 or ST07 of the NDTLP are the most important for determining a planning application they will be deemed "out-of-date". There are exceptions to this in footnote 7 of paragraph 11 of the NPPF however these do not apply in this instance. This means that the tilted balance of paragraph 11d will be triggered even if the policies in the NDTLP otherwise reflect the policies of the NPPF(the tilted balance can be engaged in more than one way).

However, the Plan's policies will not cease to be relevant to the determination of an application; the development plan remains the starting point for decision makers even if the tilted balance is engaged. The key issues are instead (a) how much weight ought to be attached to relevant development plan policies; and (b) whether a scheme is "sustainable development" having regard to the policies of the Framework as a whole. The second issue will usually turn on ordinary development management principles, applied in accordance with the policies of the Framework. **The bottom line is that when the tilted**

balance applies because of the absence of a five-year supply, development plan policies which restrict the supply of new homes should usually attract less weight if a scheme is otherwise sustainable development which will not cause any material “concrete” harm.

Planning Considerations

Given the above, this application will need to be re-assessed applying the ‘tilted balance’ test. Although the Council’s cannot demonstrate a 5YHLS, as always the starting point is to consider the relevant policies of the Local Plan to determine what weight should be applied in the determination of the application.

The weight to be given to the elements taking into account for the planning balance is one for the decision maker and a matter of planning judgement.

Principle of Development

Policies ST19 and DM23 of the Local Plan are the relevant Local Plan policies given that Officers consider that the site is not within the built form, but instead is well-related to the extent of the contiguous built form of Patchole. These policies are considered to be out-of-date resulting from the lack of 5YHLS and therefore are given **limited weight** in the determination of this application.

However, as described in paragraph 11 of the NPPF, due to the Councils not being able to demonstrate a 5YHLS, the tilted balance is triggered where weight is given to key policies that place emphasis on sustainable development. On these grounds, with having regard to the principle of development, policy ST01 of the Local Plan (Sustainable Development) is relevant where the Councils will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. Paragraph 8 of the NPPF details that achieving sustainable development means that the planning system has three overarching objectives (economic, social and environmental), which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives). It is therefore reasonable to consider the proposal from each of these perspectives and to include these findings in the planning balance.

Economic Perspective

From an economic perspective, the construction of one dwelling and the introduction of additional residents to the village and District is likely to contribute to the local economy. However, Officers consider that insufficient information has been presented to allow for a detailed and informed judgement on the precise value of economic gain and therefore the economic gain is given **limited weight** in the determination of this application.

Environmental Perspective

From an environmental perspective, Officers retain that the site is closely related to the principal-built form of the village. . Officers return to paragraph 9 of the appeal decision 3288689 which gives a description of the built-form:

‘the principal built form is clustered around the junction between Ley Lane and Ford Hill/Stonecombe Hill, with properties primarily fronting these roads’.

In this statement the Inspector details how the built-form is clustered around this junction with each of these properties fronting the highway, and concluded that the appeal site did not sit within the built form of the dispersed settlement. Whilst this gives the Inspectors interpretation of the built form, in itself is not sufficient enough evidence to rely on why current site is part of the principle-built form of Patchole. The use of this example by Officers in making their recommendation was purely with regard to the Inspectors interpretation of the principal built form; however, an analysis was made on the specific site subject to this application, the recent planning history of this site and the neighbouring site, and how it relates to that built form. The determining factors must therefore be the physical attributes of the application site and how this relates to the principal built form through an assessment of the site.

The Affordable Housing SPD as published by the Council's in support of the Local Plan offers the following guidance to what is meant by 'well-related':

'6.10 The starting point should be to carry out an assessment to establish the contiguous built form of the settlement. The Councils consider the contiguous built form of a settlement (also referred to in Policy DM23 as the principal built form) to extend to the bounds of the substantive cluster(s) of buildings, their associated curtilage and any other developed land that collectively hold a strong physical relationship and sense of place. In addition it includes any greenfield land that is not otherwise protected within the bounds of those main cluster(s).

6.11 The principal built form is not however considered to include the following:

1. any agricultural buildings, associated yards and built farm complexes;
2. any greenfield land on the edge of the settlement;
3. any curtilage of properties that are considered to extend unduly into the countryside; and
4. any buildings or other developed land that are sporadic, disconnected or remote from the main cluster(s) of buildings, their associated curtilage or other developed land.

6.12 A site is generally considered to be within the principal built form when it is fully contained within the bounds of the definition set out above'

As it is understood, Patchole forms part of the dispersed cluster of settlements that form the Village of Kentisbury/ Kentisbury Ford. Due to this dispersed nature, Officers have identified that the built form and that, as determined in the consideration of the previous proposal for an affordable unit on this site (LPA ref: 66536), the site is well-related to the principal built form of the village, but not within the built form. With regard to the impact upon the setting and landscape character as detailed in the previous Officers reports as presented to the Committee, following the alterations made to the size, scale, siting and design of the proposed dwellinghouse, the proposal would not result in harm to the character and appearance of the locality. The retention of such can be reasonably assured through the imposition of planning conditions, including the removal of permitted development rights, control over landscaping and external materials of construction.

In having regard to the above, Officers consider that the development of a dwelling in this location from an environmental perspective is accepted and therefore given **moderate weight** in the determination of this application.

Social Perspective

With regard to the social perspective, Officers retain the position that sites that are adjacent to the principal built-form of settlements should continue to support the sustainability and future viability of such settlements. Whilst policies ST19 and DM23 are now out-of-date resulting from the short-fall in the 5YHLS, the principal reasoning behind the policies are for sustaining the long term viability of Local Centres, Villages and Rural Settlements remains as: *'Ensuring housing needs are addressed locally is an essential component in delivering a long-term future for communities across northern Devon. The Local Plan seeks to ensure that housing needs can be appropriately realised to support the creation of sustainable communities, providing housing in response to locally generated social needs'* [paragraph 7.38]. With regard to the above, Officers retain the position that sites that are adjacent to the principal built-form of settlements should continue to support the sustainability and future viability of such settlements. The retention of such sites for affordable housing led development is therefore given **significant weight** in the determination of this application.

Other Material Planning Considerations

On the matter of applying the 'tilted balance' on the determination of an application when not being able to demonstrate a 5YHLS, Officers return to the refusal of the application and the dismissed planning appeal at the neighbouring Land Adjacent to The Stables, LPA ref 72698 (Appeal ref: APP/X1118/W/21/3288689) Appendix A. This decision was made when the Councils previously could not demonstrate a 5YHLS, which is relevant to this current application on the grounds of defining well-related and applying the tilted balance to the decision making.

In making the determination, the Inspector found that policies ST01 and DM23 were largely consistent with the NPPF:

'As I have found that policies ST01 and DM23 of the Local Plan are consistent with the Framework, I apportion considerable weight to the conflict identified above.

In terms of the appeal scheme's benefits, it would have social, environmental and economic benefits. The construction of three additional dwellings supports the Framework's objective of significantly boosting the supply of homes whilst supporting local jobs and income. Whilst the appellant argues that the proposed dwellings would provide much needed family homes to meet local needs, I have limited evidence to justify this. Nevertheless, three additional units would make a limited contribution to the Council's housing land supply. As such, I attach moderate weight to the benefits that would be brought about by additional open market housing. Further social benefits from the green infrastructure contributions, in the form of open space and play provision in Kentisbury would be small and therefore of limited weight. The environmental benefits resulting from a net gain in biodiversity ultimately achievable would be modest given the site's size and such benefit would attract limited weight.

Therefore, the adverse impacts of the development significantly and demonstrably outweigh the benefits, and the presumption in favour of sustainable development, as set out in the Framework, does not apply. The proposed development conflicts with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise'.

As such, Officers continue to recommend that there is a significant social benefit with regard to requirement for the provision of affordable housing in such sites well related to the built form.

All other matters, such as design and landscape impacts, ecology, flood risk and drainage and highways, remains acceptable, as detailed in the previous Officers report.

Planning Balance

Similar to the Inspector's determination of the Appeal on this neighbouring site, Officers are of the opinion that the determination of this application is very finely balanced.

Due to the Councils being unable to demonstrate a 5YHLS, policies ST19 and DM23 are considered to be out-of-date for the purpose of decision making and therefore are now given **limited weight** in the determination of the application. The 'tilted balance' is therefore now engaged in the determination of the application in accordance with paragraph 11 of the NPPF where planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

In having reference to the Committee report as previously presented to the committee, the benefits of the proposal can be identified as the development not being detrimental to the character and appearance of the locality and not result in harm to material considerations, such as amenity, ecology, flood risk and drainage and highways. These are given **moderate weight** in the determination of the application.

The development will contribute to the shortfall in housing provision; however, only one dwelling will not result in a significant contribution to the deficit and therefore can only be given **limited weight** in the determination of the application. This weighting is reflected in the appeal decision whereby the Inspector stated "*three additional units would make a limited contribution to the Council's housing land supply.*"

The construction of one dwelling and the introduction of additional residents to the village and District would contribute to the local economy. However, given the lack of evidence to justify the extent of economic benefit, this is only given **limited weight** in the determination of the application.

The principal reasoning behind policies ST19 and DM23 are for sustaining the long-term viability of Local Centres, Villages and Rural Settlements: 'Ensuring housing needs are addressed locally is an essential component in delivering a long-term future for communities across northern Devon. The Local Plan seeks to ensure that housing needs can be appropriately realised to support the creation of sustainable communities, providing housing in response to locally generated social needs' [paragraph 7.38]. From a social perspective, Officers continue to consider that there is an identifiable social need for affordable housing within the settlement and therefore **significant weight** is given to the principle of the requirement of this provision on sites such as this that is well-rated to the principal-built form of the settlement.

In conclusion, Officers are of the opinion that the determination of this application is very finely balanced. However, the adverse impacts of the proposal not meeting an identifiable

local need for the provision for affordable housing focused development significantly and demonstrably outweighs any limited or moderate benefits of the delivery of one open-market dwelling in this location. The recommendation as previously proposed therefore remains and Officers recommend refusal of this application.

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 a local 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 inappropriate form of development. The proposal is thereby contrary to policies ST01, ST19 and DM23 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 202B Block Plan & Sections A-B Proposed and received on the 20/12/23,
K134 22 301C Elevations, Floors & Roof Proposed and received on the 20/12/23,
22-335-EclA-RT Ecological Impact Assessment and received on the 14/03/23,
K134 22 202B Block Plan - Through Sections A-B and received on the 31/07/24,
K134 22 301C Proposed Floor - Elevations and received on the 31/07/24,

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.

Previous Report 6 November 2024

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.

The application was returned to the Planning Committee on 3rd July 2024 to be reconsidered as originally submitted (on 6th September 2023) whereby they resolved "*(10 for, 0 against, 3 abstained) that the application be DEFERRED for up to 3 months pending a site inspection to be undertaken by the Committee to look at the principle of the built form*".

A site inspection was held on 13th September 2024 following the decision made by the Committee on 3rd July 2024.

Amended plans were received from the applicant with the aim of overcoming the reasons for refusal as recommended by Officers. The amended plans were advertised; however, the consultation period extends beyond the October Committee date (9th October). At the Committee on 9th October, Officers therefore recommended that the application is deferred for a minimum of one committee cycle to allow for the consultation period to expire and the proposal considered following any responses received.

The Planning Committee resolved (unanimous) that the application be deferred for a minimum of one committee cycle to allow for the consultation period to expire as recommended.

Site Description

The site is located outside of Patchole. Patchole is 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
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
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

Constraint / Local Plan Policy	Distance (Metres)
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 North Devon, 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.
Building Control Manager Reply Received 26 January 2024	No comments received.
Councillor M Prowse	No comments received.

Name	Comment
Reply Received 26 January 2024	
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 29 August 2024	<p>1 Residential Amenity A sizeable building is shown in close proximity to the southwest of the proposed dwelling, The building appears to be in separate ownership. Certain uses of this building could significantly impact the amenity of future occupiers of the dwelling (such as due to noise, odour or flies), Based on satellite imagery, the building appears to be under the control of and used in connection with the dwelling at Lower Basepark. I would not expect uses that are ancillary to the dwelling to cause any significant amenity concerns. If the above understanding is incorrect, and the nearby building is authorised for agricultural or other commercial uses that could significantly impact amenity at the application site, please let me know so I can review my comments based on the circumstances.</p> <p>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 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> <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>

Name	Comment
	<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 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>1 Residential Amenity I note that the Planning Officer's report of 15 September 2023 addresses my comments about a sizeable building in separate ownership close to the southwest corner of the application site. I accept the Planning Officer's conclusion regarding potential amenity harm and have no further comment on this issue.</p> <p>2 Land Contamination My previous comments stand.</p> <p>3 Construction Phase Noise My previous comments stand.</p> <p>4 Foul Drainage It is important that suitable and sufficient provision is made for foul drainage from new dwellings in order to protect human health and avoid adverse impacts to neighbouring land and the natural environment. I note that a number of representation comments raise concerns about foul drainage provisions. Previous Application 66536 for erection of a 2 Bedroom affordable dwelling at the application site included details of a proposed foul drainage approach. Percolation test results had identified unsuitable ground conditions at the site and the test report noted the results did not comply with the relevant British Standard. As such, an application would need to be made for a bespoke Environmental Permit from the Environment Agency based on using a package treatment plant and an enhanced design of soakaway located where ground conditions were most suitable. The proposal here is for a 4 bedroom dwelling located quite centrally within the application site. The larger size of dwelling compared to Application 66536 will likely require a larger capacity</p>

Name	Comment
	<p>drainage system taking up more of the available site area. The positioning of the treatment plant and soakaway will also be subject to certain separation requirements under building regulations (as well as any Environmental Permit requirements). Any private water supplies in the vicinity could also affect the land available for such a system.</p> <p>Based on the information provided with the application and taking account of the evidence of challenging ground conditions at the site, it is not clear that suitable and sufficient foul drainage provisions can be made for the proposed development.</p> <p>- Recommendations</p> <p>I recommend the Applicant be asked to provide additional information with a view to demonstrating that suitable and sufficient provision can be made for foul drainage, taking account of ground conditions, regulatory requirements and other relevant circumstances affecting the site.</p> <p>The Applicant should also be asked to confirm that the water supply to the dwelling will be from the mains supply as stated in the FDA form (a private supply was indicated under application 66536).</p>
<p>Environmental Health Manager</p> <p>Reply Received 26 January 2024</p>	<p>No comments received.</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>Heritage & Conservation Officer</p>	<p>No comments received.</p>

Name	Comment
Reply Received 26 January 2024	
Heritage & Conservation Officer Reply Received 12 September 2024	I do not consider that this proposal will cause harm to the significance of the nearby heritage asset through effect on setting.
Kentisbury & Trentishoe Parish Council Reply Received 12 September 2024	Refusal proposed by Councillor Isacc, Seconded by Councillor Mather, decision unanimous. The Parish Council now has more information on this planning application and its history. I goes against the local plan and specifically the area about affordable local dwellings. This planning application appears contrary to planning policy in the area and allowing this application to continue will set a precedent. It is also contrary to the North Devon Plan.
Kentisbury & Trentishoe Parish Council Reply Received 26 January 2024	No comments received.
Kentisbury & Trentishoe Parish Council Reply Received 13 April 2023	We, Kentisbury and Trentishoe Parish Council, wish to object to the proposed application and support the objections already received. 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. 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. 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

Name	Comment
	<p>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>Yours faithfully Jonathan Kelway Chairman For and on behalf of Kentisbury and Tentishoe Parish Council</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>Sustainability Officer</p> <p>Reply Received 26 January 2024</p>	<p>No comments received.</p>

Neighbours / Interested Parties

Comments	No Objection	Object	Petition	No. Signatures
0.00	6	13	0.00	0.00

13 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.

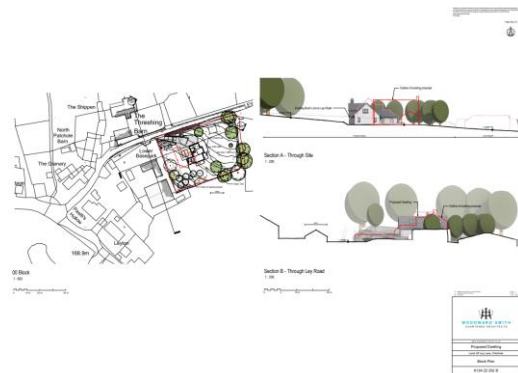
The dwelling is to have a simple chalet bungalow gabled form, with a double storey protrusion to the east elevation. The west elevation is to have a single storey protrusion.

The dwellinghouse is to have a length measuring 15m, a depth measuring 15 m (including the rear protrusions), an eaves height measuring 3.3m and a ridge height measuring 6.9m.

The site is located 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 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.

Policy

Policy DM23: Residential Development in defined Settlements without development boundaries

(1) Residential development in Local Centres and Villages without development boundaries will be supported on allocated sites and where:

- (a) the site is located within the principal built form of the settlement and is not protected for any other use; or
- (b) the site is well related to the main built form of the settlement and provides an affordable housing focused development in accordance with Policy ST19.

(2) Subject to the above qualification development proposals should:

- (a) not harm the settlement's rural character, setting, form or the surrounding countryside;
- (b) be proportionate to the settlement's size, form and level of facilities available in the Local Centre or Village; and
- (c) conserve the special landscape character and qualities of areas designated for their local, national or international importance including the setting of Exmoor National Park.

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).

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.'

Relevant Planning History

Officers recommend that a consistent approach should be taken to the determination of applications in this location. The following therefore discusses previous applications on the current site, and those on neighbouring sites, which should be given weight in the determination of this application.

Current site – Application references 65825 and 66536

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 on 13th October 2020 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 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 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.

This application was refused for a very similar proposal to that currently proposed for the reasons that the applicant did not enter into a S106 Agreement to secure the property as an affordable dwelling. Officers consider that this refusal, given its similarity with that currently proposed, and that it was determined under the current Local Plan, is given significant weight in the determination of this application.

Lower Basepark - 59968

It is a material consideration that the development of the dwellinghouse 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 reads 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.'

This approval on the neighbouring land was determined under the previous Local Plan policy HSG4, not the current Local Plan policies. However, the similarities are that at the time of determination, the Officers had determined that siting of the principle built form of the settlement, and the site of Lower Basepark would be well-related to it. This previous determination by the Local Planning Authority of the extent of the built form of the settlement is given significant weight in the determination of this application. 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.

Land Adjacent to The Stables – 72698 (Appeal ref: APP/X1118/W/21/3288689)

The Planning Statement supporting this current application justifies the principle of development in stating that the proposal site is within the built form of the village. In addition, reference is made to a recent Appeal Decision (above) 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'.

Officers interpret the Inspectors observations as the principle-built form extending as far as Patchole Farm. The built form is primarily clustered around the junction with Ley Lane and Ford Hill/Stonecombe Hill, with properties facing these roads. The application site, which is also absent of development, cannot be considered to be within the built form. This recent planning history should be given moderate weight in the determination of the current application.

Summary on Principle of Development

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'.

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.

Officers previously objected to this proposal on the following grounds:

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’.

During the process of the application the Applicant was given the opportunity to amend the proposal, and the application went through full period of re-consultation to allow for further analysis of the proposal.

The proposed dwelling has been moved further away from the neighbouring boundary with Lower Basepark. The dwelling has been reduced in scale to that of a chalet bungalow with protrusions to the east and west. Letters of concern have been received from residents that the changes proposed are minimal and the development will not be suited to its rural setting. Whilst Officers note that the application still proposes a building of a scale to the periphery of the settlement, it is not considered that the size and scale, together with the siting would be such as to result in harm to the rural landscape.

The Heritage and Conservation Officer has commented that the proposal will not cause harm to the significance of the nearby heritage asset through the effect of setting. Officers concern that the proposal will not result in harm to the character and appearance of the locality, or that of the neighbouring listed building.

The design of the dwelling is such as to allow to offer a positive contribution to its setting of and not detract from the wider rural character of the countryside. It is reasonable to consider that post development the owner may wish to exercise ‘permitted development rights’ that would materially alter the appearance of the dwelling and how it contributes to its setting, including the erection of outbuildings within this open rural landscape. For this reason, it is reasonable and necessary that any grant of planning permission is subject to a condition that removes classes A, AA, B, D, and E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

The external materials of construction are listed as follows:

- Walls - Natural Cut Stonework, 2 Coat Render - White Painted, Natural Slate Tiles
- Roof - Natural Slate Tiles
- Windows and Doors - Timber - Painted Sage Green

These materials are acceptable and therefore is reasonable that any grant of permission be subject to a condition that ensures such.

In having regard to the above, this proposal accords with the design and heritage considerations of the Local Plan.

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, which 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 21m.

On the matter of privacy, it is noted that the proposed dwelling proposed to have a balcony to the south elevation. Given the siting of the balcony and the orientation of the proposed dwelling, together with distance of approximately 28m separating the balcony from the neighbouring dwelling, it is unlikely that the users of the balcony would have uninterrupted outlook of this neighbouring property and therefore will not cause harm.

The ground floor windows to the west elevation, given their low level and the distance of approximately 28m separating them from the neighbouring dwelling, will not result in harm to privacy. In addition, the proposed rooflights to the west elevation roof slope serve shower rooms and a landing and will not result in significant surveillance of the neighbouring dwelling.

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

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

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

Other neighbouring properties

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

Future occupants

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

Environmental Health Officer's comments

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

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

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

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

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

The EHO also recommended that, in order to reduce the risk of nearby residents being significantly impacted by noise during the construction phase of the development, a construction times condition be imposed. Officers recommend that such a condition is acceptable to protect the amenities of nearby residents, in accordance with policy DM02 of the Local Plan.

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

Summary on amenity

In considering the above, and in considering that this proposal will 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 180 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.

With regard to foul drainage, the EHO has noted that it is important that suitable and sufficient provision is made for foul drainage from new dwellings in order to protect human health and avoid adverse impacts to neighbouring land and the natural environment.

It has been noted that a number of representation comments raise concerns about foul drainage provisions. The EHO comments that:

‘Previous application 66536 for erection of a 2 Bedroom affordable dwelling at the application site included details of a proposed foul drainage approach. Percolation test results had identified unsuitable ground conditions at the site and the test report noted the results did not comply with the relevant British Standard. As such, an application would need to be made for a bespoke Environmental Permit from the Environment Agency based on using a package treatment plant and an enhanced design of soakaway located where ground conditions were most suitable.

The proposal here is for a 4-bedroom dwelling located quite centrally within the application site. The larger size of dwelling compared to Application 66536 will likely require a larger capacity drainage system taking up more of the available site area. The positioning of the treatment plant and soakaway will also be subject to certain separation requirements under building regulations (as well as any Environmental Permit requirements). Any private water supplies in the vicinity could also affect the land available for such a system.

Based on the information provided with the application and taking account of the evidence of challenging ground conditions at the site, it is not clear that suitable and sufficient foul drainage provisions can be made for the proposed development.

- Recommendations

I recommend the Applicant be asked to provide additional information with a view to demonstrating that suitable and sufficient provision can be made for foul drainage, taking account of ground conditions, regulatory requirements and other relevant circumstances affecting the site. The Applicant should also be asked to confirm that the water supply to the dwelling will be from the main’.

On the matter of drainage, the delegated Officers report for 66536 stated that:

‘In terms of surface water drainage and foul water disposal, a package treatment plant requiring a soakaway is proposed to deal with foul flows and soakaways to deal with surface water. Percolation test results were requested by the LPA which subsequently demonstrated the site had inadequate percolation rates to use a conventional soakaway. As such an enhanced soakaway design has been designed by a qualified drainage engineer which would comply with British Standard and Environment Agency requirements, which are later physically secured by the Building Control phase of the development. For the purposes of determining the planning application this evidence is sufficient to demonstrate compliance with NDTLP Policies ST03 and DM04’.

Officers note that recent up-to-date percolation tests have not been undertaken to demonstrate that the proposed crate system would reduce existing rates of surface water runoff. However, given that previously a suitable solution was engineered, there is no reason to conclude that an appropriate approach to surface water drainage could not be provided as part of the development. Indeed, Officers are satisfied that this issue could be

addressed through a suitably worded condition that requires further details of the surface water drainage scheme, including the outcome of percolation tests, to be approved by the Council prior to any further development taking place.

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.

Whilst the other matters as considered is the above report as acceptable, and the support for the application as received have been noted, the adverse impacts of the development

significantly and demonstrably outweigh the benefits. The proposed development conflicts with the development plan when read as a whole.

Officers therefore recommend refusal for this application.

Human Rights Act 1998

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

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

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

Recommendation

Refused

Legal Agreement Required: No

Reason(s) For Refusal

1. The application site is not within the built form of the existing settlement of Patchole. The proposed development for the provision of one open-market dwelling will not meet an identifiable need for the provision for affordable housing focused development. The Local Planning Authority considers that the harm caused in not creating housing to meet the local need will result in an unsustainable form of development. The proposal is thereby contrary to policies ST01, ST19 and DM23 of the North Devon and Torrington 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 202B Block Plan & Sections A-B Proposed and received on the 20/12/23,
K134 22 301C Elevations, Floors & Roof Proposed and received on the 20/12/23,
22-335-EclA-RT Ecological Impact Assessment and received on the 14/03/23,
K134 22 202B Block Plan - Through Sections A-B and received on the 31/07/24,
K134 22 301C Proposed Floor - Elevations and received on the 31/07/24,
2. INFORMATIVE NOTE: -
POLICIES AND PROPOSALS RELEVANT TO THE DECISION

Development Plan

North Devon and Torrington 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.

INSERTS

Appeal ref: APP/X1118/W/21/3288689) Appendix A