

PLANNING APPLICATION REPORT

Case Officer: Matt Jones

Parish: Inwardleigh **Ward:** Okehampton North

Application No: 1326/17/FUL

Agent/Applicant:

Mr Martin Lee
Wyndham
Station Road
Hemyock
EX15 3SE

Applicant:

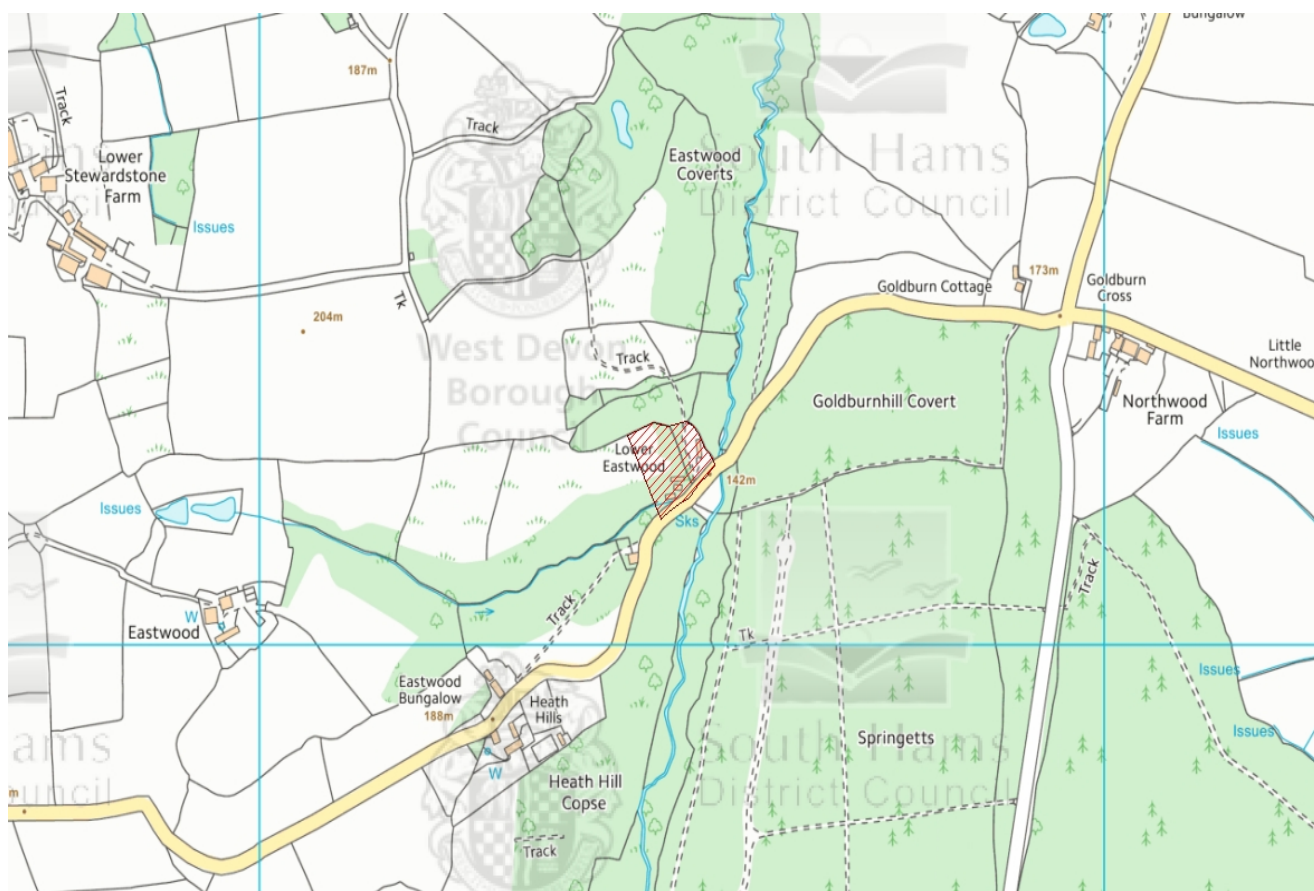
The Golden Square Group
9 Golden Square
W1F 9HZ

Site Address: Lower Eastwood Farm, Okehampton, EX20 3AE

Development: Single eco-dwelling to replace 2No. residential dwellinghouses given prior approval under LPA Ref. 00954/2015

Reason taken to Development Management Committee:

Cllr Leech has requested that this be determined by Development Management Committee, the reasons being that *'it is a domestic building in the open countryside, it will have an impact on the neighbour's amenity, it will have an unacceptable impact on the Public Right of Way and the design is out of keeping with the rural locality*



Recommendation: Conditional Approval

Conditions

Time
Accord with Plans
Accord with materials schedule
Accord with landscaping plan
Removal of existing buildings prior to occupation
Drainage details prior to commencement
Removal of Permitted Development Rights
No external lighting unless otherwise agreed
Unsuspected contamination

Key issues for consideration:

The main issues are the principle of development, access and parking, landscape and trees, ecology, visual impact and design, and the weight which should be attributed to the extant Class Q approval as a fall-back position.

Site Description:

The application site is located within rural Inwardleigh Parish to the east of Folly Gate, within designated countryside. It contains an existing vehicular access which travels on to higher land where it passes an existing small clearing surrounded on all sides by woodland. This part of the existing access track is part of a designated Public Right of Way.

At the lower roadside level are the site access, a small shed, two agricultural buildings and a Nissan hut. The two agricultural buildings have class Q consent for conversion into a total of two dwellings under reference 3372/17/PDM. The 2017 Class Q approval is effectively a renewal of Class Q consent which was approved in 2015.

Although the higher part of the site is only viewed obliquely when glimpsed through the woodland from the adjacent PROW, it contains a number of high quality trees and woodland features, none of which are protected by any Tree Preservation Orders.

The Proposal:

Planning permission is sought for the demolition of the two roadside buildings with Class Q consent dwellings and the erection of a single detached dwelling house on the higher clearing. The Nissan hut is proposed for retention and a small shed is proposed for relocation.

The proposed dwelling sits on a large linear footprint and is single storey. Two low category trees are recommended to be felled, with all moderate and high quality trees to be retained and incorporated into the landscaping and curtilage. Retained trees are augmented by a comprehensive landscape scheme at both levels, including new planting within the location of the two demolished buildings.

Consultations:

- County Highways Authority

No objection

- Inwardleigh Parish Council

Objection – *‘The Councillors voted against this application as it would be a new build in the countryside and in a different location to the existing buildings that it would replace.’*

Representations:

2 letters of objection have been received at the time of writing this report. Concerns raised are summarised as follows:

- The development will have an unacceptable impact upon neighbour amenity
- Will have an unacceptable impact upon the adjacent Public Right of Way
- The lane cannot safely accommodate an increase in vehicular movements
- The design is out of keeping with the locality

Relevant Planning History

00954/2015 - Prior notification for change of use from agricultural building to 2 dwellings - Prior Approval Given

3372/17/PDM - Notification for prior approval for proposed change of use of agricultural buildings to 2no. dwellinghouses (Class C3) and for associated operational development (Class Q(a+b)) – Prior Approval Given

Analysis

Principle of Development/Sustainability:

The scheme proposes a new residential intervention into greenfield land in a rural location well outside of any Settlement Boundary. As such, the scheme is in clear conflict with the Council's relevant policies H31 and SP5. However, there exists extant Class Q Prior Approval for the conversion of two existing buildings into two separate dwellings under reference 3372/17/PDM within the application site. This is considered by officers to be a legitimate fall-back position which is a genuine material consideration.

The scheme is also considered within the context of the presumption in favour of sustainable development, and the 'tilted balance'

The legitimacy of the extant Class Q approval as a fall-back position

The concept of a fall-back influencing a planning application as a material consideration is not new. Whether through Permitted Development Rights, extant Prior Approvals or extant alternative planning approvals, it is well held that alternative schemes with a realistic prospect of coming forward can be decisive material considerations.

In addition to that, helpfully last year the Court of Appeal in **Mansell v Tonbridge And Malling Borough Council [2017] EWCA Civ 1314** clarified when a Class Q 'fall back' development may be a material planning consideration for an alternative development scheme in very similar circumstances, and the need for that fall-back to be a realistic prospect, and what that entails. It related to the demolition of a bungalow and a barn which itself had Prior Approval under Class Q for its subdivision into three units. In that case the appellant sought to replace the four approved units with an alternative scheme of four units.

Although the scheme did not conform to the Development Plan for reasons similar to the situation here, the judge concluded that the original case officer's assessment that the proposal was an enhancement in comparison to the extant Prior Approval scheme, and should therefore be recommended for approval on that basis, was sound. The original committee report stated that *'a scheme confined to taking advantage of permitted development would, in my view, be to the detriment of the site as a whole in visual terms...the current proposal therefore, in my view, offers an opportunity for a more comprehensive and coherent redevelopment of the site as opposed to a more piecemeal form of*

development that would arise should the applicant seek to undertake to implement permitted development rights”.

Within the judgment it was clarified that the officer was right to take this approach, stating ‘It was crystal clear from that contact that the Trust were intending, one way or another to develop the site. Alternative proposals had been advanced seeking the Council’s likely reaction to planning applications. It is in my view wholly unrealistic to imagine that were all such proposals to be turned down the owner of the site would not take advantage of the permitted development provided for by Class Q to the fullest extent possible.’

He also states that ‘In my view it was, in the circumstances, entirely reasonable to assume that any relevant permitted development rights by which the East Malling Trust could achieve residential development value from the site would ultimately be relied upon if an application for planning permission for the construction of new dwellings were refused. That was a simple and obvious reality – whether explicitly stated by the East Malling Trust or not. It was accurately and quite properly reflected in the officer’s report to committee.’

The applicant in this case is a property developer, and it is similarly entirely realistic that the applicant will seek to realise the land as an asset through implementation of the Class Q scheme in the event that planning permission is not forthcoming. As such, officers conclude the fall-back under extant Prior Approval reference 3372/17/PDM to be a legitimate and entirely realistic fall-back which is a significant material consideration.

Design/Landscape/Ecology:

The proposed dwelling is a low profile modern style building. Its isolated location and discreet setting provides an opportunity for it to present its own design response, and in these circumstances there is little need to adhere to the local vernacular. In any case, surrounding dwellings are a mixture of architectural styles.

The proposed dwelling is discreetly located within a clearing surrounded by woodland, and served by an existing vehicular driveway. Visuals of the dwelling and associated land would be restricted to the resurfacing of the existing access, achieved within the landscaping by a subtle gravel finish, and limited to glimpsed and oblique views through woodland when passing the site along the PROW to the east. The PROW will not be in any way obscured or diverted, but simply upgraded within its confines. This element of the scheme is Permitted Development under Part 9 Class E of the General Permitted Development Order 2015.

In addition, the scheme includes the removal of two incongruous and unsightly buildings which are in a prominent roadside location, and their replacement with a more typical and natural rough planting. Officers agree with the submitted landscape strategy which concludes that there will be a limited degree of environmental gain in comparison to the existing situation. The submission also concludes that the additional planting will lead to a net benefit in the ecological potential of the site.

In addition, officers are mindful that the residential conversion of the two existing buildings would inevitably lead to additional domestication and associated clearance in the future, which would undoubtedly increase the harmful visual impact of the roadside buildings and diminish rural character in these most publically experienced parts of the site.

As such, the visual and landscape impact of the development is considered by officers to be an enhancement on the current situation, and a significant enhancement when compared to the extant Class Q fall back position.

Neighbour Amenity:

The Class Q units would share a less than harmonious relationship between the two private spaces, which itself would be cause for potential conflict, a desire to spread away into the countryside and potentially to erect hard boundary treatments. In comparison, the proposed dwelling is very well screened and isolated from neighbouring properties, the nearest property being Eastwood Bungalow, which is located approximately 300m to the west of the site for the proposed dwelling. The scheme will therefore have no unacceptable impact upon neighbour amenity

Highways/Access:

The scheme would lead to the net reduction in residential units in comparison to the fall back, and therefore less vehicular use of the access.

But the access is existing in any case and there is an assumed level of existing use. The proposed use of the access by a single dwelling will lead to no additional impacts upon the highways network.

Other Matters:

Soakaway testing has identified that a blanket soakaway may be required, and officers recommend that the final specification of both the surface water and foul drainage specification are secured by way of planning condition.

Planning Balance

The Council cannot currently demonstrate a policy compliant five year land supply of residential sites. The presumption in favour of sustainable development is therefore engaged.

In this case the scheme, with its clear conflict with the Council's principle policies, must be assessed against the scenario presented by the extant Class Q approval, which is a legitimate and realistic fall-back position which has a significant influence on this scheme as a material planning consideration.

In comparison, the proposal now before the Council provides environmental enhancement through the discreet location of the dwelling coupled with the removal of unsightly buildings, and provides a limited ecological benefit through additional planting in those areas. There is also a net reduction in dwellings and an associated net reduction in dependence on the motor car. Taken together, these elements are considered by officers to constitute a significant environmental benefit in comparison to the existing situation on site and the legitimate and realistic fall-back position, which officers are satisfied will be implemented if this scheme is not approved.

That the proposal is demonstrably more representative of sustainable development than the legitimate fall-back position is considered by officers to be a significant material consideration which weighs in favour of this scheme, and which overcomes the principle objection that the scheme has with the Council's relevant policies owing to its location within designated countryside.

The application is therefore recommended for approval subject to appropriate conditions.

This application has been considered in accordance with Section 38 of the Planning & Compulsory Purchase Act 2004

Planning Policy

Section 70 of the 1990 Town and Country Planning Act requires that regard be had to the development plan, any local finance and any other material considerations. Section 38(6) of the 2004 Planning and Compensation Act requires that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise.

The relevant development plan policies are set out below:

West Devon Borough Council Core Strategy 2011

SP1 – Sustainable Development
SP5 – Spatial Strategy
SP8 – Inclusive Communities
SP19 – Biodiversity
SP20 – Promoting High Quality Design

West Devon Borough Council Local Plan Review 2005(as amended 2011)

NE10 – Protection of the Countryside and Other Open Spaces
BE13 – Landscaping and Boundary Treatment
H31 – Residential Development in the Countryside
T9 – The Highway Network
PS2 – Sustainable Urban Drainage Systems
PS3 – Sewage Disposal
PS4 – Private Water Supply

Emerging Joint Local Plan

The Plymouth and South West Devon Joint Local Plan (the JLP) will replace the above as the statutory development plan once it is formally adopted.

Annex 1 of the National Planning Policy Framework (the Framework) provides guidance on determining the weight in relation to existing and emerging development plan policies.

- For current development plan documents, due weight should be given to relevant policies according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
- For the JLP, which is an emerging development plan, the weight is to be determined by the stage of its preparation, the extent to which there are unresolved objections, and its degree of consistency with the Framework.

The JLP is at a relatively advanced stage of preparation. The precise weight to be given to policies within the JLP will need to be determined on a case by case basis, having regard to all of the material considerations as set out on the analysis above.

PLYMOUTH AND SOUTH WEST DEVON JOINT LOCAL PLAN -: PUBLICATION (as considered by the Full Councils end Feb/Early March 2017)

SPT2 Sustainable linked neighbourhoods and sustainable rural communities
TTV31 Development in the Countryside
DEV1 Protecting amenity and the environment
DEV2 Air, water, soil, noise and land
DEV8 Meeting local housing need in the Thriving Towns and Villages Policy Area
DEV9 Accessible housing
DEV10 Delivering high quality housing
DEV20 Place shaping and the quality of the built environment
DEV24 Landscape character
DEV28 Protecting and enhancing biodiversity and geological conservation
DEV30 Trees, woodlands and hedgerows

Considerations under Human Rights Act 1998 and Equalities Act 2010

The provisions of the Human Rights Act 1998 and Equalities Act 2010 have been taken into account in reaching the recommendation contained in this report.

Planning Conditions

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.

Reason: To comply with Section 91 of the Town and Country Planning Act, 1990 (as amended).

2. The development hereby permitted shall be carried out in accordance with the approved plans and documents to be listed on the decision notice.

Reason: To ensure that the proposed development is carried out in accordance with the drawings forming part of the application to which this approval relates.

3. The materials to be used in the construction of the external surfaces of the dwelling, including roofs, shall conform strictly to the schedule supplied in the email dated 01 October 2018 by Martin Lee unless otherwise agreed in writing with the Local Planning Authority.

Reason: To enable the Local Planning Authority to consider the details of the materials.

4. All planting, seeding, turfing or hardsurfacing in the approved landscaping scheme 2035.06 Rev A shall be carried out by the end of the first planting and seeding seasons following the occupation of the buildings or completion of the development, whichever is the sooner. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation. The landscaping scheme shall be strictly adhered to during the course of the development and thereafter.

Reason: To ensure the provision of an appropriate landscaping scheme in the interests of the visual amenities of the locality and to assimilate the development into its surroundings.

5. Prior to the occupation of the dwelling hereby approved, the existing buildings as identified on the approved landscape plan reference 2035.06 Rev A shall be demolished, removed from the site and the land cleared.

Reason: To ensure that the environmental gains associated with the application are delivered, to ensure the scheme achieves sustainable development.

6. Prior to the commencement of development, details of a scheme for the provision of surface and foul water management shall have first been submitted to and agreed in writing by the Local Planning Authority. The development shall take place strictly in accordance with these details and maintained in perpetuity thereafter unless the Local Planning Authority gives written permission to any variation.

Reason: To prevent the increased risk of flooding and minimise the risk of pollution of surface water by ensuring the provision of a satisfactory means of surface water control

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), there shall be no provision of buildings, structures or enclosures within residential curtilage that falls within Flood Zone 2 or 3, that fall within the terms of Schedule 2, Part 1, Class E and Part 2 of that Order.

Reason: In the interests of visual amenity

8. There shall be no external lighting within the site unless otherwise agreed in writing with the Local Planning Authority. Any submitted lighting scheme shall include details of the position, type, luminance and cowl of all external lights to the building and external areas. Upon the commencement of the use the external lighting shall accord strictly with the approved details.

Reason: To safeguard the appearance of the locality and biodiversity.

9. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with.

Following completion of measures identified in the approved remediation strategy and verification plan and prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority.

Reason: No site investigation can completely characterise a site. This condition is required to ensure that any unexpected contamination that is uncovered during remediation or other site works is dealt with appropriately.