

PLANNING APPLICATION REPORT

Case Officer: Steven Stroud
Aveton Gifford

Parish: Aveton Gifford **Ward:** Loddiswell and

Application No: 4151/21/FUL

Agent/Applicant:

Mr Eric Davis - Ercle Designs Ltd
Gordon Court
Ground Floor East
4 Craigie Drive
Millfields
Plymouth
PL1 3JB

Applicant:

Mr Iain Doyle
Unit C
Nepshaw Lane South
Gildersome
Leeds
West Yorkshire
LS27 7JQ

Site Address: South Efford House, Aveton Gifford, TQ7 4NX

Development: Proposed demolition of existing C2 care home and replacement of 6 C3 Residential Dwellings

Recommendation:

Refusal

Reasons for Refusal:

1. The development represents new development in the Countryside, in an isolated and poorly connected location beyond the defined settlement boundary, and is without adequate justification and proven need, contrary to the adopted spatial strategy of an up-to-date development plan. As a result, the development is not considered to support the principles of sustainable development and is contrary to policies SPT1, SPT2, TTV1, and TTV26 of the Joint Local Plan, and policy AG1 of the Aveton Gifford Neighbourhood Plan, and the NPPF (noting paras. 78, 79, and 80).
2. The proposed development would result in the loss of an existing employment site without adequate justification and where it has not been demonstrated that there is no reasonable prospect of the site being used for employment purposes in the future. The application therefore conflicts with policy DEV14 of the Joint Local Plan.
3. The provision of 6no. substantial and detached, 4-bedroomed dwellings is a form of development that would not contribute to meeting local housing needs or redressing existing imbalances in housing stock. The development is therefore contrary to policies SPT2 and DEV8 of the Joint Local Plan.
4. The proposed development is a major development within the AONB and is also sited within the designated Undeveloped Coast. By virtue of the siting, scale, form, and appearance of the proposed development it would neither conserve, nor enhance the AONB and Undeveloped Coast, and would instead be injurious to their special qualities. The circumstances of the application are not exceptional, nor is it in the public interest to allow the development to proceed. The application is therefore contrary to policies DEV20, DEV23, DEV24, DEV25, and DEV28 of the JLP, policies

AG2 and AG8 of the Aveton Gifford Neighbourhood Plan, and the NPPF (notably paras. 174, 176, and 177).

5. The application proposes new development within Flood Zone 3 and has not complied with the Sequential Test, contrary to policy DEV35 and the NPPF (notably chapter 14). Furthermore, the application is not supported by sufficient detail to judge that the proposed surface and foul water drainage strategies are acceptable.
6. The application is supported by insufficient ecological information, such that the Council cannot be sure that adverse impacts to protected species and/or the adjacent County Wildlife Site can be adequately avoided, mitigated, or compensated. It is not clear that the mitigation/compensation proposed is suitable or adequately justified. It is appropriate in such circumstances to adopt a precautionary stance. The application is therefore contrary to policy DEV26 and the NPPF (notably paras. 179 and 180, and footnote 61).
7. In the absence of a completed s106 agreement or undertaking to provide for contributions to mitigate the infrastructural impacts of the development, the application is contrary to policies DEV8 and DEV30.

Key issues for consideration:

Principle/Justification

Housing Mix

Landscape (AONB and Undeveloped Coast) / Character and Appearance of the Area; Trees

Drainage

Ecology

Highways

Climate Change/Energy Efficiency

Planning Balance and Conclusion

Site Description:

South Efford House comprises a large detached residential care home, with 19 bedrooms and ancillary accommodation. The property is vacant and is indisputably in a state of disrepair. By virtue of the Applicant seeking to claim Vacant Building Credit (“VBC”) in order to offset contributions relevant to affordable housing, it would be common ground that the current lawful use is that of a Use Class C2 residential institution (e.g. care home in this case) and that use has not been abandoned. This is affirmed through the Applicant’s ‘Design and Access Statement’ where it is stated:

“The existing use of South Efford house is as a C2 care facility with 19 residents and 10 full time employees.”

For the purposes of the development plan (“JLP”) it therefore follows that the application relates to an existing employment site, as policy DEV14, albeit recognising the residential care component.

The site as previously assessed by planning officers remains largely unchanged save for the increasing dilapidation of the subject building. The central three-storey core of the building, which was purportedly a country house of 17th century origins, has a pair of two-storey, subservient, wing extensions, one to either side, which although generally more modern in

character, are similar to the original building in respect of rendered and tile hung elevations, and roof coverings. The building is therefore of some merit and interest although it is accepted that it has not been identified in any plan document as being a non-designated heritage asset; English Heritage have previously declined to list the building as a designated heritage asset, and it is accepted that the Council has previously allowed for the total loss of the building under a previous planning permission (now lapsed). As set out in the submitted Heritage Statement, building recording could be undertaken which would offset concern, and this could be secured by planning condition if minded to grant planning permission. No other heritage matters arise.

The building is elevated slightly above road level, and lies within relatively flat, partially screened, generously proportioned grounds, of some 0.5ha in gross area. The site benefits from a forecourt area, accessed by a driveway, off a short rural lane which in turn spurs off the A379 at Bridge End some 200m to the east, and provides additional access to some six residential properties along its length [The applicant states seven properties but this is disputed by a resident on the lane]. Surrounding land comprises agricultural enclosures.

The village of Aveton Gifford lies some 800m to the northeast on the opposite side of the River Avon. The site is beyond the discernible built up area of the village, and the defined settlement boundary as effected by the 'Aveton Gifford Neighbourhood Plan' ("AGNP", as policy AG1).

The applicant accepts that the site is within the AONB but goes on to claim that no other special designations apply. This is wrong as a matter of fact: the site falls *within* the highly important Plan designation of the Undeveloped Coast and is adjacent to the 'South Efford Fields County Wildlife Site' ("CWS") and 'South Efford Marsh Devon Wildlife Trust Nature Reserve'. The site lies in close proximity to the Marine Conservation Zone ("MCZ") within the Avon Estuary.

Aveton Gifford PRoW Footpaths 3 and 23 lie across the estuary to the north. The site is also just south of part of the 'South Efford Marsh Wild Walk' promoted by Devon Wildlife Trust ("DWT"). The subject building is expressly identified as a wayfinder as part of that walk:

"Turn right following the Avon Estuary Walk (AEW) sign and follow the minor road to the nature reserve entrance through a gate on the right opposite South Efford House."

The Proposal:

Planning permission is sought for the demolition of South Efford House and the erection of 6no. dwellinghouses.

The proposal is effectively as represented by the applicant through their submission and explanation in the DAS.

Consultations:

- Aveton Gifford Parish Council – Objects:

"1.The proposed site lies outside the Development Boundary as ratified by AG Neighbourhood Plan.

Policy AG1 includes - Outside the settlement boundary, development will be strictly controlled and only supported where it is in accordance with National Policy and

guidance, the Development Plan, and require a countryside location, or will meet a proven local need which cannot be met inside the settlement boundary. We have land available that has been brought into the village curtilage by the Neighbourhood Plan to allow controlled extra housing. There is no need for developments outside the village.

2. Policy DEV8. This requires applicants to show how their proposal meets local needs by diversifying the housing stock and broadening the choice for home ownership. This proposal does not address specialist needs or those of younger people, working families or older people as identified in this policy. The high end houses proposed here are unlikely to be within the budget for any of the above already looking for homes in the parish. The data from supporting Housing Need surveys in Aveton Gifford indicates an imbalance of larger properties, and evidence that smaller and starter properties are required to redress the balance of existing housing. This evidence has been used in applications since the adoption of the NP to support the limitation of new builds to 3 bedrooms.

3. This proposal is in contravention of Policy TTV27 JLP, Meeting local housing needs. Residential development on sites adjoining an existing settlement may be permitted if it is proved to meet a need for affordable housing, or a mix of affordable and open market as long as the latter is not over 40% of the whole. This is not the case with this proposal.

4. Re housing needs in the document Supporting Information – Marketing Assessment. AG parish councillors find it troubling that the content of this market evidence produced by an estate agent has been requested in detail by the developers representative, offering “I’m sure we could pay you for your time or agree to use you as the agent for any sales should the application proceed”. Councillors feel that this evidence is compromised, and is to satisfy the requirements of this agency, with 60 offices nationwide, by identifying a commercial need for more high-end properties for their books, rather than to meet the proven Neighbourhood Plan housing needs of this parish.

5. Inside the AONB. DEV25 states that LPAs will protect the AONBs from potentially inappropriate development within the protected landscapes or their settings. The design, size and layout here is not in keeping with the surroundings and vernacular. This small estate of modern executive housing will not conserve, enhance or restore the protected landscape, and is inappropriate within the setting of the Avon estuary which includes the adjacent County Wildlife Site, and surrounding AONB valley which gives a view to the site from some distance to the east.

6. Visual impact of the design. The statement re betterment on the existing condition (design and access p7) by removing height and mass of one large building and replacing with greater number of lower ones with more fragmented mass does not take into consideration that the old house at South Efford has been an iconic building in its garden within the setting of the wider valley since 1760, and has formed a part of our parish history. As such, its visual impact will in fact be missed. It is true that the deterioration of the fabric of the building will need to be addressed, but it is certainly not a given that replacement with six new dwellings will constitute a visual betterment.

7. Connectivity to the village and facilities. There is no connectivity on foot to the main village, two schools, shop, pub, play and recreation areas. For over 20 years the

parish council has sought to address this situation, and the need for a separate footbridge was identified yet again in the Key Issues arising from community consultation in the AGNP. Councillors challenge the present Highways consultation assessment, and also challenge easy walking distance to village and facilities from a previous officers report as quoted here from a planning application that was never implemented. This is incorrect. To reach the village pedestrians have to cross A379 at a dangerous crossroads where a bend in road and brow of bridge completely obscures oncoming traffic for part of the time required to cross. There is no pavement, the A379 carries fast traffic including HGVs and wide vehicles over a bridge with restricted width. Permissive footpaths only cover half the route, the remainder requires walking in the main road over the brow of the bridge, and the road approaching Timbers roundabout. Local children cannot walk safely to the primary school from Bridge End, and residents find attempts to reach play park, shop etc on foot with children are too dangerous to repeat.

8. Highways consultation. Councillors challenge the Highways report. The junction of S Efford lane and the A379 is probably the most dangerous in the whole parish with obscured vision of approaching fast traffic from both directions, and local drivers say they take their life in their hands when exiting. Comparison of potential traffic use for this proposal with the use from the old residential home is completely misleading as the home shut in 2012, and the volume of traffic on the A379 has increased steadily in these years.

9. Foul drainage. Raw sewage from this site has been an ongoing issue for over 20 years, and due to its proximity to the MCZ protected Avon estuary, and the proximity to the County Wildlife site only the width of the access lane away, AGPC insists that any foul drainage for this site be given maximum consideration. Contrary to the assertion, from a previous application which was never implemented, that drainage remained contained within the site, in fact all sewage drained to a pit within South Efford Marsh. There must be every effort to remove all existing pipework leaving the site and to prevent further contamination. The number of houses here prevents the use of one onsite drainage system due to site constraints, so the proposal put forward is for individual treatment systems which would discharge clean water via piped drainage into a watercourse in an adjoining field which does not in fact exist.

10. Light emission at night –The retirement home here closed in April 2012. The statement that proposed night-time light emissions will be a betterment on conditions for the care home is misleading as the site has been unused since then. The more relevant comparison is with the present situation with no light emissions for ten years. In reality there will be a significant detrimental impact, with a direct effect on the adjacent South Efford Marsh, a County Wildlife Site, and the wider rural surroundings, in direct contrast to the existing 10 years dark sky conditions. Light emission would also be invasive during the construction phase. The minimisation of such threats is an important objective of the SDAONB's 'Dark Skies' policy,

11. Flood Zone 3 The access lane to the site is in Flood Zone 3, and more vulnerable in recent years with increased incidents of increased rainfall.

Aveton Gifford parish council's overall response to this application – Object."

- Aveton Gifford Parish Council, Tree Warden – Objects:

“Aveton Gifford parish council, and Aveton Gifford parish tree warden would like to register their concerns about the tree work carried out to clear the site in preparation for submitting this application – the tree felling which took place in November 2020 - without going through any due process required for any such work, in particular the ring barking of a mature beech tree right in the middle of the garden in direct contravention of the instruction to stop all work and the TPO notified to the operators by the Tree Office. However, the inevitable subsequent application for felling of this tree, now damaged beyond any possible recovery, was granted (3962/20/TPO), but with a condition for its removal - that the tree be replaced with 1 x Fagus sylvatica ‘Asplenifolia’ 12-14cm Girth Selected Standard which is to be planted as close as practically possible to where the tree was removed.

Aveton Gifford parish tree warden would like to point out that no replacement tree has been planted yet, in spite of this condition imposed in February 2021, and that the replacement would also be protected under this TPO. The removal of any tree from the position here would constitute a material consideration for this application and also a loss to the landscape setting within the AONB. The council would like to add these considerations to their previous response in objecting to it.

Our tree warden and councillors are concerned that SHDC’s own planning condition, and the status of a TPO, and additionally the due process required by SHDC’s planners for tree work have all been ignored by the applicants here.

Overall response; object.”

- South Devon AONB Unit – Objects:

“In summary, the South Devon AONB Unit objects to the proposed development on the following grounds:

- *It is considered that the proposed development constitutes major development under paragraph 177 of the NPPF and therefore should be refused planning permission other than in exceptional circumstances and where it is demonstrated to be in the public interest.*
- *Without prejudice to this assessment, this is a prominent estuary location and sparsely settled valley floor which contributes positively to the special qualities of the South Devon AONB.*

Reason

The proposed development will be contrary to the Development Plan including: JLP Policy TTV26, TTV27 and Policy DEV25; and AVGNP Policy AG1, AG2 and AG8. It would also conflict with policies of the South Devon AONB Management Plan.

The test for the proposed development should be the achievement of 'high quality design' in the South Devon AONB and not just the avoidance of 'bad design'”

- Tree Specialist – Objects:

- *“The aggregation of the non-replaced loss, proposed removal of trees to allow room for houses and crown reduction works would combine to create a scheme that led to visual harm to the amenities of the area whilst engendering a poor relationship between new occupants and protected trees.*
- *If approved it would be probable that requests to fell or prune trees of visual and ecological amenity value would ensue, which given a consented scheme would be difficult for the Planning Authority to resist. Such works would be harmful to the amenities of the area and would be of long-term detriment to the sylvan character of the area.”*

- Devon Wildlife Trust – Objects:

“We object to the planning application because we consider that the proposals do not provide sufficient evidence to satisfy the requirements relating to biodiversity in paragraphs 174d, 175d and 180c of the National Planning Policy Framework or the requirements of paragraph 99 of ODPM Circular 06/2005 Biodiversity and Geological Conservation.”

[The required bat roost report has subsequently been provided by the applicant, but the DWT have not reviewed it]

- DCC Ecology – Objects at this time due to lack of information. [The DCC ecologist has reviewed the submitted bat report]
- DCC Heritage – Objects due to lack of information.

[The Applicant subsequently provided a heritage statement which officers consider to be satisfactory in explaining that the overall significance of the building is low and under a balanced exercise the harm can be mitigated through suitable building recording]

- Environment Agency – Objects on flood risk grounds.

[The Applicant has subsequently provided rebuttals to the position of the EA, considered later in this report.]

- Local Highway Authority – Comments/no objection: trip generation would be less than current use, and a pedestrian connection to reduce the distance walked on the 3m carriageway is welcome.
- Drainage Specialist – Objects:

“Based on the information provided we would object to the current proposal on the grounds of insufficient information. As such we would recommend that the application is not decided until these issues have been overcome.”

[Following receipt of further information the drainage specialist has confirmed that they still object to the proposal and their previous comments still stand.]

- Affordable Housing – A contribution of £43,200 is required. It is understood from the Applicant that this has factored into account the VBC where the amount of building to be credited is less than the amount of floorspace created.
- DCC Education – Comments: School transport contribution required; £22,922 (primary) and £4,317 (secondary).
- OSSR – Comments:
 - A financial contribution is required: £31,713 (£15,805 capital and £15,908 20 year maintenance costs) towards improvements to, and maintenance of, OSSR facilities (including the village hall) in Aveton Gifford. Note that whilst the JLP Developer Contributions Evidence Base focuses primarily on the provision of outdoor facilities, it is considered reasonable to ask that the contribution could be used for the village hall in this instance in the acknowledgment that it would deliver enhanced opportunity for sport that gives the broadest opportunity for exercise across the local demographic.
 - Difference between public and private space is unclear; question the location of the bat house within the curtilage of Plot 2.

Representations:

At least 20no. letters of objection have been received in response to the application, including representations on behalf of the South Hams Society, and Aune Conservation Association. Comments received being summarised as follows but the full content of all submissions have been considered.

- Concern regarding noise pollution
- The building is historically important
- Overdevelopment of the site
- Dangerous access
- Property values would decrease
- Sewage issues
- Concern regarding construction impacts
- Concern over light pollution/dark skies policy
- Rising sea levels must be taken into account
- Concerns regarding appropriateness of email exchange between applicant's agent and estate agent
- Quantum of development is disproportionate to location
- Where is the LVIA?
- The new development would have a significantly greater visual impact than existing
- Concern over scale of buildings
- Ground level of houses would be more or less at eye level with walkers on Bridge End/Estuary Walk.
- Estate appearance and layout is at odds with the area
- Boundary trees are unlikely to last
- The proposal is not betterment to the existing situation
- Query whether the building is genuinely beyond repair
- The building is not in existing use
- The site as a whole is not brownfield land
- Planning considerations have moved on since the previous approval
- The road network is not suitable for the development/unsafe.
- Fails to meet local housing needs
- Is outside the settlement boundary / contrary to the AGNP
- Facilities are not within walking distance
- Access to Plot 1 is not feasible
- The lane often floods
- Not compliant with policy DEV32
- The viewpoints of the LVIA are incorrectly dated.
- Concern regarding the location/public accessibility of LVIA viewpoints chosen.
- Positioning error with Viewpoint A

No comments have been received in support of the proposal.

Relevant Planning History:

3962/20/TPO Ian Pinkus

T1: Beech - Fell due to damage to stem and dead material in canopy

Tree Works Allowed

South Efford House Aveton Gifford TQ7 4NX

09 December 2020

3872/20/TEX Mr Eric Davis

T1: London Plane - immediately adjacent to entrance, fell remaining stems, previous works compromised stability leaving hazard to road users.

Exempt Works

South Efford House Road To Stadbury Farm Aveton Gifford Devon TQ7 4NX

24 November 2020

02/1529/13/F Mr P Ewer

Resubmission of planning application 02/2160/12/F (withdrawn) for change of use from residential care home to three attached dwelling houses. Associated works to include new conservatory to rear of central dwelling, changes to elevations, installation of new windows and doors and new sewage treatment plant

Conditional Approval

South Efford House Aveton Gifford Kingsbridge Devon TQ7 4NX

02 July 2013

02/2160/12/F Mr Paul Ewer

Change of use from residential care home to 3 attached dwelling houses and associated alterations and extensions and installation of sewerage treatment plant.

Withdrawn

South Efford House Aveton Gifford Near Kingsbridge Devon TQ7 4NX

19 September 2012

02/1425/09/F Crocuscare Ltd

Demolition of rear extension and construction of new single storey wing containing 5 en-suite bedrooms, lounge/dining area, treatment room and disabled toilet with associated external landscaping

Conditional Approval

South Efford House Aveton Gifford Kingsbridge Devon TQ7 4NX

12 August 2009

02/0834/05/F Ms C Hunter

Installation of Calor gas supply tank

Conditional Approval

South Efford House Bridge End Aveton Gifford Kingsbridge TQ7 4NX

09 May 2005

02/0847/03/F Mrs A Critchlow

Variation of permission 02/0874/01/F for the use of extension for managers/owners accommodation as two additional en-suite bedroom spaces in conjunction with nursing home, and extension to provide three close care units for managers apartment over

Withdrawn

South Efford House Bridge End Aveton Gifford Kingsbridge TQ7 4NX

22 April 2003

02/0552/95/3 Ms. A. Critchlow.

Single storey extension to provide laundry room,

Conditional Approval

South Efford House Bridge End Aveton Gifford

27 April 1995

02/2047/87/4 B.C. Crump,

Change of use of hotel to old peoples nursing home,

Conditional Approval

South Efford House Aveton Gifford

18 November 1987

02/0001/84/3 Mr. & Mrs. H. Tucker,

Replacement of defective section of roof, providing extra bedroom and fire escape with minor rearrangements,

Conditional Approval

South Efford House Bridge End Aveton Gifford

03 January 1984

In respect of the 2013 planning permission, which is not understood to have been implemented and therefore cannot be relied upon, the applicant's agent has made much of the importance of the planning considerations underpinning that decision and in correspondence with officers the importance of consistency in decision making, and an alleged risk of costs if not following the principle of development that has ostensibly been established. Such a position is misconceived for the following reasons:

Firstly, whilst consistency in decision taking is important, like cases are not bound to be judged alike so long as adequate reasoning is given to depart from that earlier finding¹.

Secondly, the nature of development in the present case is plainly different to that of the approval: questions of quantum, mix, siting, and scale all fall into play; the permission was for the redevelopment of the subject building and generally fell within the footprint/silhouette of it. Even if the previous permission were capable of being carried out, it would bring with it alternative impact/different planning outcomes.

¹ *North Wiltshire DC v Secretary of State for the Environment* [1993] 65 P&CR 137.

Thirdly, the planning policy context was entirely different, predating the current JLP and latest iteration of the NPPF, and related case law (e.g. in relation to isolated development). In relation to local policy, policies are notably different in the current Plan and also now provide for protection to the Undeveloped Coast; in relation to the NPPF, paragraph 9 expressly warns against treating the three objectives of sustainability (economic, social, and environmental) as criteria against which every decision can or should be judged. The applicant has failed to take that clear exhortation into account.

Fourthly, and apart from the above, the site is also now subject to the AGNP which is recently made and carefully sets out where sustainable development should, and should not, go.

Therefore, whilst judgements previously undertaken by the Council in 2013 may be of some use, they need to be placed into context. Very little weight is given to that very historic planning permission and the reasons previously given for granting it. This application is treated on its individual merits.

ANALYSIS

Principle / Justification:

The Plymouth and South West Devon Joint Local Plan ('JLP') sets an overarching strategy for delivering sustainable development that complements the existing settlement pattern within the plan area. The high-level strategy for delivering sustainable development is expressed within policies SPT1 and SPT2, with other policies amplifying and giving effect to those requirements.

The adopted JLP establishes a hierarchy of settlements to which development will be directed, and those settlements are named as part of policy TTV1. Policy TTV1 of the JLP sets out the Council's development strategy across the Thriving Towns and Villages Policy Area. The policy describes how the settlement hierarchy of (1) Main Towns, (2) Smaller Towns and Key Villages, (3) Sustainable Villages and (4) Smaller Villages, Hamlets and the Countryside will be used to inform whether a development proposal can be considered sustainable or not.

Paragraph 5.5 of the JLP explains that policy TTV26 - Development in the Countryside will be applied 'outside built up areas'. The application site is far removed from the nearest settlement or built up area and is considered to be sited in the Countryside.

Consequently, for the purposes of policy TTV1 of the JLP, the proposal site is considered to be located within the fourth tier of the Council's settlement hierarchy. In such circumstances policy TTV1 explains that: *'development will be permitted only if it can be demonstrated to support the principles of sustainable development and sustainable communities (Policies SPT1 and 2) including as provided for in Policies TTV26 and TTV27.'* The applicant makes no case under policy TTV27, and the scheme is not for an affordable housing exception site.

The aim of policy TTV26, as articulated in the first line, is to protect the role and character of the countryside. The policy is divided into two different sets of policy requirement; the first part applies to development proposals considered to be in isolated locations.

The JLP SPD (§11.50) states that the Council applies the test of isolation in a manner consistent with the *Braintree*² case and any superseding judgment. The recent *Bramshill*³ judgment affirmed that the essential conclusion in *Braintree* (at para. 42 of that judgment) was that in determining whether a particular proposal would be "isolated", the decision-maker must consider '*whether [the development] would be physically isolated, in the sense of being isolated from a settlement*'. What is a "settlement" and whether the development would be "isolated" from it are both matters of planning judgment for the decision-maker on the facts of the particular case.

Having regard to the particular circumstances of this case, where the site would be accessed via a narrow lane along the estuary, with limited building thereabouts and generally set apart from the proposed development, and divorced from the nearest settlement of Aveton Gifford by a notable and perceptible degree (despite being some 500m away as the crow flies), it is considered that the site is isolated. The limited incidence of building at Bridge End and further down the lane is simply not a settlement: apart from a judgement that can be carried out "on the ground" the area in question has no plan status either and instead falls within the Countryside and Undeveloped Coast.

It is important to pause at this point to consider the application of case law advocated by the applicant's agent.

Firstly, in relation to the *Braintree* case, the agent refers to the judgment of the lower court albeit no citation is provided. Whilst the judgment of Lang J (as she then was) was effectively affirmed by the Court of Appeal, it is important to stress how the issue of "isolation" has evolved and been reframed i.e. in accordance with the direction cited above. It is not enough that there is a sporadic incidence of building along the lane/Bridge End (but the site is clearly separate from the Bridge End terrace); officers do not consider that to represent a settlement and the application site is judged to be isolated from the nearest settlement of Aveton Gifford.

Secondly, in relation to the *Dartford* case⁴, the applicant's DAS states:

"In paragraph 15 of the judgement the judge said the relevant definition of previously developed land took at its starting point that the development would be within the curtilage of an existing permanent structure. By virtue of this decision the site must in its entirety be considered previously developed land – brownfield".

Paragraph 15 of *Dartford* also goes on to suggest that in such context a new dwelling within that curtilage would not be isolated. However, it is important to place *Dartford* into its own context. It was at its heart a case which highlighted that statements made by ministers about previous iterations of planning policy could not detract from the clear words of the definition of "previously developed land" in the NPPF and that the public was entitled to rely on the NPPF as it stood. It is also important to note that both *Braintree* and *Bramshill* make clear that the commentary at paragraph 15 of the *Dartford* judgment is strictly *obiter* i.e. that it sets no binding precedent and that the

² *Braintree DC v SSCLG* [2018] EWCA Civ 610.

³ *Bramshill v SSHCLG* [2021] EWCA Civ 320.

⁴ Again, no citation is given but it is presumed from the quotation used by the agent that it is the judgment of the Court of Appeal being referred to: *Dartford Borough Council v Secretary of State for Communities and Local Government* [2017] EWCA Civ 141.

isolation test remains as set out above as para. 42 of *Braintree* and reaffirmed in *Bramshill*.

Furthermore, it is superficial of the applicant to state that the site in its entirety is brownfield/previously developed land (“PDL”), without going on to explain that the Glossary to the NPPF in respect of PDL states that regarding land in the curtilage of a permanent structure “it should not be assumed that the whole of the curtilage should be developed”. The applicant is seemingly unaware of that important point.

In the case of isolated development, policy TTV26 states that such development is to be avoided and only permitted in exceptional circumstances, consistent with the requirements of paragraph 80 of the NPPF.

The application development does not accord with any of the exceptional circumstances provided under the policy and no exceptional justification has been provided. The application involves the wholesale loss of the existing building and use and proposes instead a new use as part of a built development that would effectively span the entirety of the site to the detriment of the AONB and Undeveloped Coast. The use in the configuration proposed is entirely inappropriate.

The second part of the policy is set out as follows, applying to all development in the Countryside.

“2. Development proposals should, where appropriate:

- i. Protect and improve public rights of way and bridleways.*
- ii. Re-use traditional buildings that are structurally sound enough for renovation without significant enhancement or alteration.*
- iii. Be complementary to and not prejudice any viable agricultural operations on a farm and other existing viable uses.*
- iv. Respond to a proven agricultural, forestry and other occupational need that requires a countryside location.*
- v. Avoid the use of Best and Most Versatile Agricultural Land.*
- vi. Help enhance the immediate setting of the site and include a management plan and exit strategy that demonstrates how long-term degradation of the landscape and natural environment will be avoided”.*

Not every criterion within this part of the policy would be engaged or relevant to every proposal. However, in this case the proposal does not accord with any in particular either; and, crucially, the application does not respond to a proven occupational need that requires development of the application site. Nor would the existing building be retained. The applicant proposes new development on land in the Countryside, beyond existing built form and the discernible self-contained village envelope, and no adequate justification pursuant to the policy is given for siting the development in the location or manner proposed. It follows that the application scheme does not accord with policy TTV26.

Even if the site were not found to be “isolated”, the failure to meet the requirements of the second part of TTV26 reach the same end.

Policy AG1 of the AGNP also carefully controls new development beyond the defined settlement boundary. Development will only be supported where it is in accordance with national policy and guidance, the JLP, and requires a Countryside location or will meet a

proven local need which cannot be met inside the settlement boundary. The application does not accord with this policy and no attempt has been made to do so or explain how any needs will be met that cannot be met through residential development within the settlement boundary, bearing in mind that the AGNP allocates new development precisely for that purpose.

Consistent with policies SPT1 and SPT2, Strategic Objective SO10 provides context and gives effect to policy TTV26 and clarifies what the plan seeks to achieve in Countryside locations. Of particular relevance to this application, the strategic objective states:

“SO10 Maintaining a naturally beautiful and thriving countryside

To protect, conserve and enhance the natural beauty of South West Devon's countryside, and to avoid the creation of new homes development in unsustainable or inappropriate locations.

Delivering new homes only in areas where there is an identified local need.

Protecting and managing the landscape.

Contributing to carbon reduction measures by reducing the need to travel...”

As will be explored below there is no local housing need identified by the applicant that the development is required to meet in the nearby settlement, or in fourth-tier Countryside locations in general, which leads to conflict with SO10.1. In light of the characteristics of the site, within the AONB and Undeveloped Coast, the landscape would not be protected, at odds with SO10.2. Reliance upon the private vehicle to access local services and amenities results in a conflict with SO10.3 and policies SPT1 and SPT2, and where for the purposes of access to services within the village of Aveton Gifford the site is also severed from them by the main road which is not considered to be a safe or suitable pedestrian route. It is therefore inevitable that the proposal cannot meet any of the specific criteria contained within policy TTV26(2). The lack of reasonable access to the centre of the village, with the site poorly served by sustainable transport opportunities, also leads to conflict with policy SPT2.

The application development therefore fails to accord with policies SPT1, SPT2, TTV1, TTV26, and AG1.

Having regard to paragraphs 78 and 79 of the NPPF, and the local circumstances set out above (and below regarding housing mix), it cannot be the case that the application development respects local needs or is responsive to those circumstances. The policies of the development plan have identified opportunities for the village to grow and thrive in a sustainable way and taken together with the AGNP they direct where new sustainable development should and should not go. The application proposal is at odds with that strategy.

The importance of the plan-led system, and in particular neighbourhood planning, is a key plank of Government policy and there is no indication that the JLP or AGNP are not meeting required needs going forward.

Loss of the Employment Use

Policy DEV14 states that change of use of existing employment sites (including vacant sites whose lawful use is for employment purposes) will only be allowed where the following applies:

- i. The proposal is specifically provided for by the local plan to deliver wider strategic objectives, or

- ii. There are overriding and demonstrable economic, regeneration and sustainable neighbourhood / communities benefits from doing so, or
- iii. There is no reasonable prospect of a site being used for employment use in the future.

The site is subject to a lawful use which the applicant states supported 10 FTE jobs. Officers consider it reasonable to class the site as an employment site on that basis. That judgement is supported by the SPD which classes “residential institutions” as falling within the definition for the purposes of applying the policy.

Criterion i. does not apply to this proposal.

Criterion ii. is not satisfied and in light of the nature of the proposal it is not considered that there is an overriding benefit in allowing the use to cease. The proposed development for residential dwellings across the site, isolated and in the Countryside, would be contrary to the AGNP; there is little if any neighbourhood / community benefit in allowing development to proceed instead of a resumption of the lawful use of the site or any other employment use.

The JLP SPD provides guidance on how an applicant might demonstrate that criterion iii. is satisfied. In that regard it is stated:

“5.12 In these circumstances, clear and robust evidence will be required to demonstrate that there is no demand for employment floorspace in the form of a marketing report. This report should be proportionately relative to the nature of the proposal and advice should be sought with the LPA on the extent of the justification required.

5.13 The report should contain proof of the following:

- *The site has been continuously marketed as an employment site for 12 months;*
- *The site has been marketed for an appropriate mix of employment uses, tailored to its location in the Plan Area and local evidence such as the size of nearby units and the mixture of uses appropriate to the site;*
- *A viability assessment was undertaken on the site, addressing the feasibility and economic viability of refurbishing, renewing or modernising larger scale office buildings for use as smaller units, produced by a qualified surveyor familiar with the local market for business uses;*
- *The site has been marketed by a workspace provider/commercial agent;*
- *The site has been marketed through appropriate methods. Evidence could include:*
 - o *A copy of the dated letter of instruction to the workspace provider/commercial agent and dated copies of the property details;*
 - o *Web based marketing through the appointed commercial agents website and other relevant search engines;*
 - o *Advertising within target publications such as the local press; and/or,*
 - o *On-site/premises marketing boards constant throughout the period in which the property is being marketed;*
- *Evidence that the premises/site was marketed at a price with associated terms that are commensurate with market values and based on evidence from recent and similar transactions and deals.*
 - o *Where possible at least three examples should be provided of completed transactions involving similar sites or premises with similar terms within*

- the local area, preferably in the last 12 months. Alternatively, written evidence from an independent qualified valuer on the market values in the local area could be provided;*
- *All information about prices and terms should be provided in a format that enables easy comparisons, using equivalent and comparable expressions of price per unit of floorspace. Where the price changed during the marketing campaign, the reasons for this should be included within the report;*
 - *Where premises are marketed with a lease, the length of the lease offered should not be unduly restrictive and should include the potential for short term lease in appropriate places.*
- *A record of enquiries through the period of the marketing campaign. This should include the date, contact details and nature of the enquiry including the type of business or individual enquiring, how the enquirer found the premises and the follow up actions taken.*
- *Where the flow of enquiries has been limited or decreasing, the marketing report should explain the measures undertaken to refresh the campaign.”*

The applicant has not followed the guidance in the SPD. The procedure in the SPD is obviously not mandatory, and does not represent planning policy of itself, however it clearly sets out how a robust case can be made to satisfy the Council that criterion iii. of policy DEV14 has been met.

In response, the applicant has provided three items: a letter from an existing care home operator; a collection of headline sales particulars for various care homes being sold currently; and a letter from a local builder estimating the cost of works for refurbishment and resumption of the care home use.

The letter from Hartley Park Care Home explains why the site is not attractive from a care home operator perspective. Apart from highlighting the “very rural location” and “poor access” of/to the site, which serves to reinforce officer concerns about the appropriateness of the site for new residential development, the letter goes on to explain that the level of investment required to make a care home use viable would be prohibitive – this is partly due to the poor location, and the current size and state of the building.

Taken together the applicant states as following:

“I believe it to be clear. The cost of bringing the building in its current form back into use as a 24 bed care home far exceeds the end value of the property. It is not economically viable to bring the care home back in to use. That in conjunction with the letter from the care provider shows that the site cannot be seen to be a viable business. As a result the conversion of the building to residential does not constitute a loss of employment space. We trust this meets the requirements of the guidance on relation to loss of employment space and negates the need for the site to be marketed for 12 months.”

Unfortunately, this does not convince.

Firstly, the submission of a sample of care homes currently for sale is absent any detailed explanation or analysis. None of the care homes cited are local to the parish

or district; several are a considerable distance away. It is therefore not clear whether the values of those properties are reflective of the local market i.e., whether they represent lesser values than might be achieved for the site in this case. Two of the properties cited were “locked” such that no further information could be gleaned.

Moreover, what is apparent is that for two of those properties that could be reviewed they were being sold as going concerns with detail indicating that they were profitable endeavours (but again no commentary is given by the applicant). Thus, the applicant’s position above is not wholly convincing because it is premised on a strategy of a developer buying the application site, investing in the building’s refurbishment, and then immediately seeking a return on that investment. What is missing from the applicant’s argument, and no commentary is provided regarding this, is that it would not be unreasonable to assume that an alternative approach would be to then run that operation and seek to make a return over a longer period of operation.

Secondly, the letter from a Plymouth builder is helpful but obviously contains various unknowns and is also clearly prepared only on the basis of seeking to reinstate a care home use. The builder states:

“In terms of refurbishment, the building is difficult to price for all elements of the works, as there are far too many unknowns.”

It would have been more helpful had a detailed schedule of works been provided and costed. In any event, even if the estimate of the builder is accepted at face value, it is of limited use when considering the broader issue of there being no clear explanation or commercial strategy as to how that investment could be managed i.e. at present the applicant takes a simplistic approach of comparing cost of refurbishment vs final value, and does not account for any operating profit if a longer term investment strategy were to be pursued. Perhaps that is a flight of fancy, but the burden rests with the applicant to prove on the balance of probabilities that this is the case. They simply have not done so.

The policy is explicit in requiring there to be no reasonable prospect of the site being used as employment land in the future. The evidence presented by the applicant only narrowly considers the prospect of the lawful use resuming as opposed to any other commercial operation or configuration of use at the site. It is not the role of the Council to prove a negative, but the applicant has simply failed to deal with the terms of the policy.

Therefore, even if taken together and factoring into account the letter from a care home operator which indicates that there is a view that such a resumption of use is simply not viable, there is no consideration of other alternative uses for the building (or indeed the site itself). So even if the applicant’s case is accepted without question, it only answers criterion iii. in relation to only a potential resumption of the lawful use as opposed to alternative employment opportunities.

It follows that the application does not accord with policy DEV14 and this weighs against a grant of permission.

[It is also observed that, in consideration of potential alternative uses such as office space, the vulnerability of such a use may be less vulnerable than a residential use bearing in mind the access into the development falls within Flood Zone 3. That being said, the nature of the proposed end use in this case would also represent a lesser impact in highway terms bearing

in mind the lawful use and movements associated with it. That tempers the weight afforded to the policy conflict to a degree, but that does not remove the reasonable prospect that other employment generating uses might be found that would also be preferential in highway terms. The applicant has failed to discharge the burden of providing evidence to the contrary]

Housing Mix

Policy DEV8 of the JLP states that a mix of housing sizes, types and tenure appropriate to the area and as supported by local housing evidence should be provided, to ensure that there is a range of housing, broadening choice and meeting specialist needs for existing and future residents. It is explained that the most particular needs in the policy area are:

- i. Homes that redress an imbalance within the existing housing stock.
- ii. Housing suitable for households with specific need.
- iii. Dwellings most suited to younger people, working families and older people who wish to retain a sense of self-sufficiency.

Similarly, Policy SPT2 which concerns sustainable rural communities, specifies that development should support the creation of communities which have a good balance of housing types and tenures to support a range of household sizes, ages and incomes to meet identified housing needs.

As others have pointed out, the exchange of emails provided by the Applicant to support the proposed housing mix is most surprising because it implies an offer of financial inducement from the applicant's agent to a local estate agent in exchange for an endorsement of the opinion of the applicant's agent. This would not unreasonably bring into question the credibility of the advice subsequently given.

Regardless, even if the marketing advice provided is credible (and officers do not seek to gainsay that advice and thereby take it on face value), such marketing advice must be taken as exactly that: an opinion as to the market desirability of the six, large, detached homes. What the opinion does not do is properly assess local housing need and the very clear terms of policy DEV8. The Applicant makes no attempt to answer that policy question and their position, to effectively deliver what they believe people would like to buy (and notably from the estate agent's opinion this would relate to people moving into the area from outside of South Hams), is entirely misconceived.

The JLP SPD explains the rationale behind policy DEV8 as follows:

"4.14 In South Hams and West Devon there is an imbalance between existing housing stock and the projected size and needs of newly forming households. There is a higher proportion of 4 or more bed homes than the rest of Devon and Cornwall and both are also in the top three in Devon and Cornwall for under-occupancy with around 35 per cent of homes having at least two spare bedrooms. The planning system cannot prevent people from under-occupying their homes, or buying a home with a spare room, but it can ensure that the mix of new homes is better suited to the needs of smaller households. A step-change in the delivery of smaller homes will enable greater churn within the existing housing stock as it will facilitate down-sizing for older people, as well as providing a first-step towards independent living for young people and young families.

4.15 Housing stock that comprises a relative over-provision of large houses makes it increasingly difficult to rebalance the demographic profile and increase home

ownership because the current housing stock is inherently unaffordable. Large dwellings, particularly those in coastal settlements, are not suited to smaller households or households that are earning close or similar to the national wage.”

Apart from the guidance provided within the SPD, had the Applicant undertaken an assessment of local housing need in qualitative terms, it would have been found that:

Firstly, accounting for local ONS data there is a clear imbalance in existing housing stock with significantly higher proportion of 4+-bedroomed dwellings compared to smaller properties.

Secondly, accounting for the SHMNA and in terms of owner-occupied accommodation, there is a far greater need for properties smaller than 4 bedrooms; the relevant table 4.4 showing that some 34.7% of new owner-occupied dwellings should be three-bedroom homes, with 31.0% being two bedroom units, 23.0% should have four or more bedrooms and 11.2% one bedroom accommodation, over the assessment period.

Thirdly, the AGNP evidence base includes a local housing needs survey representing recent evidence from within the NP plan area. It effectively serves to corroborate the other information sited above.

The application proposes 6no. substantial and detached, multi-storey, 4-bedroomed properties. Based on the drawings, all bedrooms would be double bedrooms. By any measure the proposal simply cannot be said to redress existing imbalances in housing stock (rather, the imbalance that does exist would be exacerbated), and it is not proposed to meet any particular housing need; nor would the proposed dwellings suit younger people or smaller households. In fact, no attempt has been made to provide for any mix of housing within the scheme at all.

The proposed development would fail to accord with policy DEV8 and this weighs against the application.

Landscape; Character and Appearance of the Area:

The policies of the development plan recognise the intrinsic character and beauty of the countryside and through the application of policies DEV20, DEV23, DEV24, DEV25, and AGNP policies AG2 and AG8, generally seek to secure development that is compatible with it.

In accordance with policy DEV24, development that would have a detrimental effect on the undeveloped and unspoilt character, appearance or tranquillity of the Undeveloped Coast will not be permitted except under exceptional circumstances. Development will only be permitted where among other matters it protects, maintains and enhances the unique landscape and seascape character and special qualities of the area. It must also be demonstrated that the proposed development either requires a coastal location or reasonably cannot be located outside of the designated area.

Policy DEV25 also states that the highest degree of protection will be given to the protected AONB landscapes, with *great weight* being afforded to conserving landscape and scenic beauty in the protected landscapes. Development proposals within the AONB are therefore required to conserve and enhance the natural beauty of the protected landscape with particular reference to its special qualities and distinctive characteristics or valued attributes.

This is consistent with s.85 of the *Countryside and Rights of Way Act 2000* which requires that:

“...in exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty”.

That legal duty is another material consideration (as opposed to forming part of the development plan) but it has the force of statute and must be followed.

Policies of the South Devon AONB Management Plan are also material. The Management Plan seeks to ensure that the AONB is conserved, managed and enhanced to support and benefit present and future generations. It goes on to identify ten special qualities that summarise the unique natural beauty for which the South Devon AONB is designated as a nationally important protected landscape, alongside various policies to meet the stated purpose of the Management Plan.

Officers would agree with the AONB Unit that the special qualities of the AONB most pertinent to this application are:

- Intricate networks of tidal creeks, waterways often with salt marshes and reed beds.
- Deeply rural rolling patchwork agricultural landscape
- Iconic wide, unspoilt and expansive panoramic views
- A landscape with a rich time depth and a wealth of historic features and cultural associations
- Areas of high tranquillity, natural nightscapes, distinctive natural soundscapes and visible movement.

Paragraph 174 of the NPPF requires planning decisions to contribute to and enhance the natural and local environment, where the intrinsic character and beauty of the countryside should be recognised alongside maintaining the character of the undeveloped coast (while improving access to it, where appropriate). Paragraph 176 states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in relation to those issues.

Both policy DEV25(1) and paragraph 177 of the NPPF state that permission for major developments within a protected landscape such as an AONB should be refused, except in exceptional circumstances and where it can be demonstrated that they are in the public interest. NPPF 177 goes on to state that consideration of such applications should include an assessment of:

- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

In light of the comments of the South Devon AONB Unit, officers have carefully considered the question as to whether, in accordance with NPPF 177 (and the first point of policy

DEV25), the application proposes *major development* ('Major') in the AONB. The applicant provides no counter view, instead appearing to adopt an "out of sight, out of mind" approach.

In such circumstances the definition of Major is not the same as that statutorily defined in the DMPO 2015. Instead, the relevant definition is provided at Footnote 60 to the Framework, and is consistent with that provided in the JLP SPD, stating:

"For the purposes of paragraphs 176 and 177, whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined."

Accordingly, the NPPF and JLP anticipate the decision taker exercising a planning judgement. They require decision-takers, when coming to that planning judgement, to have regard to four specific considerations in relation to the proposal, namely:

- its nature;
- its scale;
- its setting; and,
- whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.

The relevant considerations are taken in turn below, supported by the judgements undertaken relating to landscape character and visual amenity impacts. In so doing it is important to keep in mind the ordinary, common sense, meaning of the word "major"⁵ whilst viewing the application development within its local context.

The application is supported by very little landscape analysis. The submitted 'Landscape and Visual Impact Assessment' ("LVIA") is in fact no such thing when considered against typical expectations for such documents, including that they be prepared in accordance with the Landscape Institute's publication "GLVIA3". The LVIA prepared by the applicant's agent is in fact a series of viewpoints (albeit not unhelpful in the round) with some limited commentary.

Paragraph 164 of the Management Plan states:

"All proposals should be informed by a clear process of contextual analysis, understanding the site, its features and surroundings. More particularly with regards to the AONB this will require an understanding of how the development affects special qualities and distinctive characteristics and identifying, describing and evaluating any harm that would result. This will include, but is not limited to, analysis of landscape, visual and/or perceptual impacts on the defined special qualities and distinctive characteristics of the AONB, ecological assessments, and assessments of historic environment features."

In landscape terms this has not been followed.

⁵ The term "major development" is to be given its ordinary, natural meaning, rather than applying any rigid or precise criteria: *Ashton v Secretary of State for Communities and Local Government* [2013] EWHC 1936 (Admin), at §93-94.

On balance, and as an exercise of independent planning judgement, it is the opinion of the AONB Unit that is preferred.

In relation to the “Nature” of the proposed development, there are at least two important considerations to take into account. Firstly, the proposal involves a use of the site that has not already been accounted for in the development plan; the existing use as a care home is largely confined to the subject building at one end of the site and the grounds/curtilage within which it sits are open and verdant. Secondly, the new building proposed is residential in nature of and of clearly domestic appearance, not strongly related to other residential development thereabouts. As the AONB Unit observe:

“There is a strong sense of transition as you pass the modest terrace at Bridge End and walk the public footpath, towards South Efford Marsh. There is a clear sense of walking alongside an estuary, where dwellings and built form are a recessive feature.”

The nature of the development would therefore be quite alien for its location bearing in mind the expanse of development proposed.

The “Scale” of the development is not considered to be compatible with the surrounding area and landscape character; the proposed dwellinghouses are substantial with little recessive aesthetic and are arranged parallel to the lane such that from the north they would be highly prominent and would present one long run of built form (this is also corroborated through consideration of the applicant’s Viewpoints H and I; and the submitted Visualisations, notably 5). The existing building is of itself prominent, but it is oriented perpendicular to those views from the north and is viewed in relative isolation. The scale of the proposal should also be viewed in the local context of the existing site and limited development thereabouts, isolated from the settlement of Aveton Gifford beyond the estuary and tightly drawn settlement boundary.

It is necessary to view the proposed development in its “Setting” and local context in order to come to an informed view on whether it constitutes Major development. There is in this case an overlap with issues highlighted under “Nature” and “Scale” above. That context is particularly important in this case, where, as above there is a transitional experience from the inland, on to Bridge End, and then the estuary (which forms part of the Undeveloped Coast). The views of the AONB Unit are further endorsed where it is stated:

“The topography of the site, and surrounding landscape and trees combine to limit the extent and nature of views, however the significance of South Efford house lies in its height and commanding stance within the landscape. The main impact would be loss of this somewhat dominant building and erection of six individual substantial dwellings, which would not only be visible from the adjacent public footpath, but also the County Wildlife Site, Nature Reserve and from the village itself. Furthermore, Aveton Gifford lies at the foothills of the South Devon AONB, at the forefront/entrance to the AONB and this juxtaposition emphasises the importance of this site, and South Efford House in re-enforcing the functions of the South Devon AONB.”

Officers also agree/consider that “Significant Adverse Impact” upon the AONB and its special qualities would be posed by the development on account of the substantial nature of the dwellings spread across the site such that they would be highly conspicuous and injurious to the landscape character and visual amenity when viewed from the north. General lighting, both external and due to spill from the various openings on the dwellings, would disturb tranquillity and dark sky appreciation views from the shoreline.

In light of the above, whether the four considerations are taken individually or cumulatively together, officers accept the professional view of the AONB Unit that the application represents Major development in the AONB.

It is now necessary to consider the matters set out under a) – c) of NPPF 177, or the first point of policy DEV25, in the context of an “exceptional circumstances/public interest test”.

Being the case, the circumstances of the application are not considered to be exceptional, and the application is outwith a whole suite of development plan policies. It is in the public interest to take planning decisions in accordance with the development plan – for many reasons the application proposal is inimical to the plan-led system.

Specifically:

- a) There is no overriding need for the proposed housing development, especially in a location that is isolated and otherwise poorly connected, contrary to the neighbourhood plan. The application also results in the loss of an existing employment site.
- b) No consideration for alternatives has been presented by the applicant. As above, it has not been thoroughly demonstrated that there is no reasonable prospect of a future for the building or the site in employment terms.
- c) The detrimental effect upon the nationally protected landscape is significant, including the visual amenity afforded to the public and users of the local footpath and Marsh walk users, and cannot be moderated to any acceptable degree.

The test under Paragraph 177 of the NPPF, and the first point of policy DEV25 would therefore not be satisfied.

The application also fails to accord with policies DEV20, DEV23, DEV25, and policies AG2/AG8 more generally in light of the above assessment, where careful consideration has been paid to the extent, scale and appearance of development and its likely landscape impacts.

There are also arboricultural concerns arising, in conflict with policy DEV28. Whilst the loss of certain trees would to a limited extent be mitigated through new planting elsewhere, the tight arrangement of curtilages for the proposed dwellings when juxtaposed with existing and future landscaping, would lead to shading and pressure upon amenity space and outlook for future residents. This would inevitably lead to irresistible pressure to fell or severely prune. Not only would this adversely impact the sylvan character of the site and its surroundings, it would serve to compound the visual harm of the development already identified.

For similar reasons the application would conflict with policy DEV24 because no adequate justification is provided: the development is otherwise unacceptably located in an isolated location which is subject to sparse and sporadic development. The development would pose a deleterious effect upon the undeveloped and unspoilt character, appearance and tranquillity of the Undeveloped Coast. There is no inherent justification for the siting of six, substantial dwellings across the site in lieu of the subject building.

Again, the applicant may point to the “baseline” of the existing use. But again, that use, were it to resume (or any other proposed use for the building subject to planning permission), would be more contained and capable of some degree of control because future proposals

would also require planning permission. That “fallback” does not outweigh the specific harm of this proposal.

The application is therefore unacceptable in respect of its impacts upon visual amenity and the landscape character of the area including the special qualities of the AONB and Undeveloped Coast, having regard to local and national policy.

This matter weighs heavily against the application. Great weight is applied to the harm identified.

Highways

No objection has been received from the LHA.

On a very fine balance, it is considered that the proposed access is safe and suitable for users; the nature of the lane being such that users would likely factor in a degree of additional caution when moving along it. The minor nature of the development would have little effect upon the capacity and use of the local highway network.

Whether on its own merits or judged against the baseline of the existing use, the application accords with policy DEV29.

Drainage

The applicant acknowledges that part of the site falls within Flood Zone 3 and this would appear to be settled as common ground (as part of the access into the site). That is before considering any disputes between the applicant and the Environment Agency (“EA”) regarding climate change allowances.

The applicant is, however, strongly of the opinion that the Sequential Test of policy DEV35 and the NPPF cannot engage as a requirement because the application only proposes a change of use. The applicant also considers that the Sequential Test is not required because the dwellings would be set within Flood Zone 1.

Such a position is not accepted, and the application Sequential Test is of vital importance to the assessment of this application. The views of the EA, as a statutory body, need to be afforded great weight⁶. The EA object to the development and consider that the Sequential Test must apply, consistent with the view of Officers.

Firstly, the application does not merely propose a change of use. The application relates to operational development providing for the redevelopment of the site and the total loss of the existing C2 building, with six substantial dwellings to be developed across the site (which despite being designated as PDL is otherwise undeveloped beyond the subject building). The access into the site is part and parcel of the development and it passes through Flood Zone 3.

Secondly, the application is not for “minor development” as defined by the NPPF and national PPG, accounting for the other potential exceptions to the application of the Sequential Test.

Thirdly, under the NPPF, (and by implication policy DEV35 which is consistent with the Framework) the Sequential Test for the location of new developments in areas at risk

⁶ *Shadwell Estates Ltd v. Breckland District Council* [2013] EWHC 12 (Admin).

of flooding is required both for new development on sites not previously developed *and* for new development on land already developed. Further, the Sequential Test must be applied before exceptions to it under the NPPF can be considered (i.e., the Sequential Test must be passed before the Exceptions Test can be considered). Those points were made clear by the Court of Appeal in *Watermead Parish Council v Aylesbury Vale DC* [2017] EWCA Civ 152.

Fourthly, and as *Watermead*, satisfaction of any flood compensation requirements or “betterment” does not of itself overcome the Sequential Test as the starting point of directing new development to areas at a lower risk of flooding.

In *Watermead*, the proper interpretation of the policy context is provided as follows (at paras. 28 and 29):

“The sequential test is distinct from, and is to be applied prior to, the exception test, which involves a different exercise (see paragraphs 4 and 5 above). The aim of the sequential test, as paragraph 101 explains, is to “steer new development to areas with the lowest probability of flooding”. Where it applies, it involves an assessment of the availability of “sites appropriate for the proposed development in areas with a lower probability of flooding”. It is required not only for “new development” proposed on sites which have not previously been developed but also for “new development” on land that is already developed (see paragraphs 52, 67 and 68 of Lloyd Jones J.’s judgment in Tonbridge and Malling Borough Council, quoted in paragraph 19 above). And it is not said to be inapplicable to development that would reduce flood risk. The Government provided expressly for exemptions from it, in paragraph 104. There is a general exemption for developments “on sites allocated in development plans through the Sequential Test”, and two specific exemptions – for “minor development” and for “changes of use”. None of those exemptions applied here. It follows that if – as I think – the officer’s advice in the fourth sentence of paragraph 9.41 of his report was that under NPPF policy a sequential test was unnecessary in this case because the proposal was for “an already developed site”, that advice was based on a misinterpretation of the policy. This was an error of law.

...

A local planning authority is, of course, free to depart from national planning policy, even policy as basic as this. But if it does that, it must do so consciously and for good reason.”

Officers see no good reason to depart from the clear direction of local and national planning policy irrespective of the current nature and use of the site, which is presently vacant. The application proposes new, “more vulnerable” development and has provided no adequate justification for it. The Council is not obliged to move on to the Exception Test which is where the applicant would need to show that the sustainability benefits of the development to the community outweigh the flood risk. The applicant has not explicitly provided any detail regarding the Exception Test either.

Instead, the applicant has submitted over a hundred pages’ worth of detail rebutting the EA’s position on flood risk more generally and its assumptions regarding climate change allowances and flood modelling/historic flood data.

Straightforwardly, the application fails to comply with policy DEV35 and the NPPF in respect of flood risk matters. Such an issue may, at least conceptually, be capable of being overcome but as set out above the applicant does not accept that the Sequential Test applies and as below there remains outstanding detail to be provided. This consideration is also irrespective of whether the strategy for dealing with flood risk and drainage is technically adequate because that assessment should reasonably form part of the Exception Test, after the Sequential Test has been dealt with.

Following receipt of further information/rebuttal from the applicant regarding surface water and foul matters, officers have sought further advice from the Council's drainage specialist – it has been confirmed that objection still remains; not least, up to date groundwater monitoring is required alongside a foul network to an adoptable standard (which in practice means the provision of a single, adoptable system).

The application fails to accord with policy DEV35 and the NPPF.

Ecology

Policy DEV26 requires development to support the protection, conservation, enhancement and restoration of biodiversity and geodiversity across the Plan Area. Among other matters, harmful impacts on protected species must be avoided wherever possible, subject to the legal tests afforded to them where applicable, and unless the need for, or benefits of the development clearly outweigh the loss.

The NPPF echoes those objectives. Paragraph 174 states that planning decisions should contribute to and enhance the natural environment by minimising impacts on, and providing net gains for, biodiversity. Paragraph 180 goes on to state that planning permission should be refused for developments that pose significant harm to biodiversity (in the absence of avoidance, mitigation, or, as a last resort, compensatory measures).

ODPM Circular 06/2005, which is referenced in the NPPF at footnote 61, states at paragraph 99:

“It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted. However, bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development. Where this is the case, the survey should be completed and any necessary measures to protect the species should be in place, through conditions and/or planning obligations, before the permission is granted. In appropriate circumstances the permission may also impose a condition preventing the development from proceeding without the prior acquisition of a licence under the procedure set out in section C below.”

The application is accompanied by a Preliminary Ecological Appraisal, Ecological Impact Assessment, and Bat Survey.

Updated views have been sought from the County ecologist, notwithstanding the objection from the Devon Wildlife Trust.

In relation to the SAC, officers are satisfied that in light of the scale and nature of the proposal (and the mitigation proposals provided), there can be confidence that the proposed development would not result in a Likely Significant Effect on the integrity of the South Hams SAC. For this reason, a Habitat Regulations Assessment is not required.

However, various other concerns remain.

Firstly, the applicant states that there are no adverse effects predicted for Efford Fields CWS from the proposed development, but further information is required to adequately justify such an assertion. For example, the effects of increased noise on the CWS and associated protected / priority species recorded there (e.g. harvest mouse, black oil beetle and wading birds) has not been assessed. This requires consideration. The County views therefore accord with those of DWT.

Secondly, under the proposal, the demolition of the main building would result in the destruction of multiple bat roost locations including those for species of particularly high conservation concern. This effect would be major and permanent without significant mitigation/compensation. Further justification is required in order to ensure that the proposed suite of bat roost mitigation features can provide adequate mitigation for the loss the multiple bat roosts currently present in South Efford House. The prospect of a concrete bat building within the garden of one of the proposed residential plots is also a cause for some concern; officers are not convinced that it is sufficient.

Lastly, the BNG report is very hard to decipher. The applicant could have provided the actual net gain metric tables for review in order to ensure that requirements of policy DEV26 can be met.

Overall, there is additional information required, including a more thorough assessment of impacts upon the adjacent CWS, justification for the bat roost mitigation and the full BNG metric tables (i.e. not the screenshots provided). The latter is probably capable of quick resolution but the first two require more careful consideration.

The application is therefore considered to conflict with policy DEV26 and the NPPF, and in light of the legal duties imposed upon a decision taker it is not possible at this time to accept the proposed development in so far as ecological matters are concerned.

Such matters have the potential for positive resolution subject to further information and justification regarding CWS impact(s) and the proposed bat strategy. However, in the absence of such at this present time, this forms an additional reason for refusal that may be capable, at least conceptually, of falling away should there be an appeal or subsequent application.

Infrastructure:

JLP policy DEV30 (Meeting the community infrastructure need of new homes) requires that the development of new homes should contribute to the delivery of sustainable communities with an appropriate range of community infrastructure, such as schools, primary health care infrastructure, sports / recreation and community facilities / village halls.

Contributions are required in this case to mitigate impacts relating to OSSR and education transport. Where there is a minor deficit relating to VBC, a contribution for affordable housing is also required.

Such matters are capable of positive resolution with the appropriate mechanism for securing obligations being a s106 legal agreement or undertaking. However, in the absence of such at this present time, this forms an additional reason for refusal that can fall away should there be an appeal or subsequent application.

Planning Balance and Conclusion:

The recent case of *Corbett*⁷ has re-emphasised that a key part of the s38(6) statutory duty is to determine whether the development accords with the development plan when viewed as a whole. It has long been recognised by the courts that it is not unusual for development plan policies to pull in different directions and that the decision taker must therefore make a judgement as to whether a proposal is in accordance with the plan as a whole, bearing in mind the relative importance of the policies which are complied with or infringed and the extent of the compliance or breach.

There is a statutory presumption in favour of the development plan. The NPPF, an important material consideration, reiterates this fundamental point.

On account of the planning policy conflict identified, the application development fails to accord with the development plan as a whole. The starting point for determination of the application must be to withhold a grant of permission.

Other material considerations do not point to a different conclusion but reinforce the direction of the development plan that the application should be refused. When assessed against the policies of the NPPF taken as a whole the application performs no better where the development would be outwith the strategy in an up-to-date plan; would propose new homes in an isolated location where special circumstances have not been satisfied; would not respect local circumstances and would fail to respect local housing needs; would be harmful to a nationally protected landscape without adequate justification; is contrary to flood policy; and is potentially harmful to protected species and other ecological interests.

The Council can demonstrate that it has a five-year housing land supply and continues to pass the Housing Delivery Test; the development plan is up to date. The consequence of such being that:

- i. The most important development plan policies for determining the application cannot be deemed as out of date by virtue of NPPF footnote 8
- ii. The development plan is meeting the Government's housing land supply requirements without the proposed scheme; and, accordingly
- iii. Although still a material benefit, the provision of market housing proposed by the applicant cannot be as weighty a consideration as it would be in the event that such a supply or HDT result could not be demonstrated.

Furthermore, the other public benefits of the development are relatively modest. There is no inherent presumption that the whole of the site should be developed and without exploration of other employment alternatives it is not clear that the building must be demolished either. Limited weight is afforded to the notion of redevelopment in this case.

⁷ *R (Corbett) v Cornwall Council* [2020] EWCA Civ 508.

The applicant looks to the 'Fixing our Broken Housing Market' White Paper (2017), but such a consideration was not of itself planning policy and, in any event, is generally consistent with current national planning policy as of 2021. It is no answer to the significant and varied harms that have been identified in relation to the proposal and, if anything, the Paper actually reinforces the direction to refuse in this case because among other things the new homes would be in the wrong place; the brownfield land is in an area of high flood risk; the brownfield land is not within a settlement; and the mix of homes to be provided would do nothing in supporting diversification in the housing market.

The proposed development would be contrary to the development plan and national planning policy and there are no material considerations that justify a departure from those policies; the harm that has been identified significantly and demonstrably outweighs the benefits.

There are no other considerations that would indicate a planning balance being struck any other way than to refuse planning permission.

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

Planning Policy:

Relevant policy framework

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. For the purposes of decision making, as of March 26th 2019, the Plymouth & South West Devon Joint Local Plan 2014 - 2034 is now part of the development plan for Plymouth City Council, South Hams District Council and West Devon Borough Council (other than parts of South Hams and West Devon within Dartmoor National Park).

On 26 March 2019 of the Plymouth & South West Devon Joint Local Plan was adopted by all three of the component authorities. Following adoption, the three authorities jointly notified the Ministry of Housing, Communities and Local Government ('MHCLG')* of their choice to monitor the Housing Requirement at the whole plan level. This is for the purposes of the Housing Delivery Test ('HDT') and the 5 Year Housing Land Supply assessment. A letter from MHCLG to the Authorities was received on 13 May 2019 confirming the change.

On 13th January 2021 MHCLG published the HDT 2020 measurement. This confirmed the Plymouth, South Hams and West Devon's joint HDT measurement as 144% and the consequences were "None". On 14th January 2022 DLUHC published the HDT 2021 measurement. This confirmed the Plymouth, South Hams and West Devon's joint HDT measurement as 128% and the consequences are "None". Therefore a 5% buffer is applied for the purposes of calculating a 5 year land supply at a whole plan level.

When applying the 5% buffer, the combined authorities can demonstrate a 5-year land supply of 5.8 years at end March 2021 (the 2021 Monitoring Point). This is set out in the Plymouth, South Hams & West Devon Local Planning Authorities' Housing Position Statement 2021 (published 12th November 2021).

[*now known as Department for Levelling Up, Housing and Communities]

The most important development plan policies are set out below:

The Plymouth & South West Devon Joint Local Plan was adopted by South Hams District Council on March 21st 2019 and West Devon Borough Council on March 26th 2019.

TTV1 Prioritising growth through a hierarchy of sustainable settlements
TTV2 Delivering sustainable development in the Thriving Towns and Villages Policy Area
TTV26 Development in the countryside
SPT1 Delivering sustainable development
SPT2 Sustainable linked neighbourhoods and sustainable rural communities
DEV1 Protecting health and amenity
DEV2 Air, water, soil, noise, land and light
DEV8 Meeting local housing need in the Thriving Towns and Villages Policy Area
DEV10 Delivering high quality housing
DEV20 Place shaping and the quality of the built environment
DEV21 Development affecting the historic environment
DEV23 Landscape character
DEV26 Protecting and enhancing biodiversity and geological conservation
DEV29 Specific provisions relating to transport
DEV32 Delivering low carbon development
DEV35 Managing flood risk and water quality impacts

Aveton Gifford Neighbourhood Plan to 2034:

Following a successful referendum, the AGNP was made on 20th May 2021.

Relevant policies:

AG1 Settlement Boundary
AG2 Design and Layout of New Development
AG3 Affordable, Self Build, and Sheltered Housing
AG8 Protecting the Landscape and Biodiversity

Other Material Considerations:

Additionally, the following planning documents are also material considerations in the determination of the application:

- The Plymouth and South West Devon Supplementary Planning Document
- Developer Contributions Evidence Base
- South Devon AONB Management Plan

Other material considerations include the policies of the NPPF and guidance in the PPG.

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.

The above report has been checked and the plan numbers are correct in APP and the officers report. As Determining Officer I hereby clear this report and the decision can now be issued.

Name and signature: Steven Stroud

Date: 30th May 2022