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Development Management – West Team
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17th December 2018

Dear West Planning Team,

Re. Planning application 18/2589/MFUL for the demolition of existing polytunnels / greenhouses and erection of 10 dwellings, public open space and a car park for use by the church at Lypstone Nurseries, Church Road, Lypstone, Exmouth, EX8 5JU

I write on behalf of my clients, a group of concerned Lypstone residents, to object to the planning application that has been submitted at the above site. I would like to stress that they have no, in principle, objections to the redevelopment of the former nursery site for residential development. They support the proposals to provide a new village green and permanent car parking for the church along with a scheme that allows overflow onto the village green/open space, when required. However, they consider this should not be provided outside of the former Lypstone Nursery site and the village's Built-up Area Boundary (BuAB). I would, therefore, raise a number of concerns on their behalf which include the scale of the submitted proposal and its non-compliance with the development plan. The concerns with the proposal are set out in detail in this letter.

Principle of development and the development plan

The 'golden thread' running through the National Planning Policy Framework (NPPF) is the presumption in favour of sustainable development the meaning of which is set out by the Government in Section 2, paragraphs 7 to 14 of the Framework. The NPPF explains that the planning system has three overarching objectives, economic, social and environmental, to achieve sustainable development. The NPPF is a material consideration in planning decisions.

Planning law also requires planning applications to be determined in accordance with the development plan, which in this instance is the East Devon Local Plan 2013-2031 (the “Local Plan”), unless material considerations indicate otherwise¹.

The development plan for the area in which the application site is located comprises the adopted East Devon Local Plan 2013-2031 (the “Local Plan”) and the Lymptone Neighbourhood Plan (the “LNP”) which was made by EDDC in April 2014 following a public referendum held on 27th March 2014 where 86.5% of those who voted chose to accept it.

The LNP highlights that its preparation involved extensive consultation with the community, using a methodology set out by East Devon District Council for assessing potential housing sites in villages, to identify and allocate 4 sites for future development to provide a target of 40 additional dwellings (Objective 1).

Policy 1 of the LNP identifies these sites as Jackson Meadow (for 6 dwellings in addition to a further 13 that already have planning permission), Glebelands South (a site with planning permission for 15 houses) and the former Lymptone Nursey (for 6 dwellings).

The application site is located at the southern edge of Lymptone which is a settlement with a Built-up Area Boundary (BUAB) designated under Strategy 27 of the Local Plan. The BUAB for Lymptone is identified in the LNP and its allocation for the development of the site follows the same boundary as that used for the consideration of the site under the 2011 SHLAA². The LNP at pages 8 and 9 highlights that the site is:

“...extremely sensitive due to its position within the Conservation Area and proximity to nearby listed buildings, therefore any development there will be subject to a development brief and removal of existing visually intrusive structures. The BuAB amendment would be a line tight to the west of the existing greenhouses down to the main east/west sewer and bounded by the lane to the East and Church Road to the north. Any such development must not compromise the current open views in front of the church and will retain the prominent oak.”

The application site for the submitted development comprises land that is partly within the former Lymptone Nursery site as well as agricultural land to the south and west that are outside of the BUAB and are classified as countryside and within the Green Wedge and the Lymptone conservation area.

My clients are concerned that development is now proposed on a site far greater (approximately 50% larger) than that allocated by the LNP and that set out by the Development Brief. It includes land to the south and west of the former nursery site which is beyond the designated BuAB. The Local Planning Authority recognises that the submitted proposal is contrary to the development plan and has appropriately advertised the proposal as a ‘departure’³.

Paragraph 6.20 of the Local Plan highlights that:

“Built-up Area Boundaries are a fundamental policy tool for determining areas and locations that are appropriate, suitable and acceptable for development. The boundaries serve three primary functions:

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004, section 70(2) of the Town and Country Planning Act 1990 and paragraph 2 of the National Planning Policy Framework

² Strategic Housing Land Availability Assessment

³ i.e. not in line with the development plan in force in the area where the application is being made.

- a) *They set limits for outward expansion of settlements and in so doing control the overall scale and location of development that occurs in order to ensure implementation of the plan strategy;*
- b) *they prevent unregulated development across the countryside and open areas;*
- c) *They define (within the boundary) locations where many development types, in principle, will be acceptable because they will complement objectives of promoting sustainable development.”*

The development as submitted would be contrary to the aims of the BuAB and the guidance set out in paragraph 6.20 as the proposal would result in outward expansion of Lypstone and consequently encroach into the surrounding countryside as it proposes development on agricultural land adjacent to the former nursery and give rise to harm to the landscape, amenity and environmental qualities of the area as set out under Strategy 7.

Therefore, it is considered that the proposal would be contrary to strategies 6, 7, 8 and 49 along with policies EN8, EN10 and RC2 of the Local Plan [see Appendix A].

Development Brief

The LNP makes clear that the development of the site is to be led by a development brief and is explicitly stated several times within the document. Policy 1 identifies that a development brief will be prepared for the Lypstone Nursery site and page 10 the LNP highlights that *“There may be an opportunity to develop the Nursery Site for up to 9 dwellings but this will be subject to a development brief and consultation.”*

It is noted that a previous Development Brief, dated May 2014, commissioned by Lypstone Parish Council, was prepared for the site by Architectural Thread as part of the Neighbourhood Plan process to provide guidance for the development.

This Development Brief highlights that it was intended to be a Supplementary Planning Document (SPD) to be taken into account to determine any future planning application for the development of the former nursery site.

This Development Brief was prepared in consultation with a number of stakeholders and consultees including the land owner, Local Planning Authority, the County Highway Authority, Historic England, Parish Council, Parish Church, the author of the Village Design Statement and residents that overlook/adjoin the site. The Brief highlights that it is:

“...intended to provide guidance to help ensure that high quality, sustainable, residential development at this site. Any development must also respect its setting, the character of the area and its sensitivity in respect of the surrounding open countryside, listed buildings – including the Church – and importance within the community and its heritage values and significance”.

It provides a review of the sites constraints and took into account factors affecting the potential development of the site. The Development Brief summarises:

“...there is an opportunity to remove the dilapidated nursery buildings that have an adverse impact on the Conservation Area and provide a sensitive development that provides housing and a village green together with landscape and biodiversity improvements”.

This Development Brief proposes a number of options for the potential layout of the site. However, all of these proposed development options were to be restricted to the eastern portion of the nursery site.

It is unclear why the guidance of the 2014 Development Brief has been disregarded in favour of a scheme proposing a greater extent and higher proportion of development. It is considered that the Brief is a material consideration that should be taken into account in the determination of any planning application for the site.

It is noted that additional concept design proposals and a Design Brief, which outlines a design competition that was undertaken with design concepts for the site prepared by four separate architects for the applicant and owners of the site, have been submitted in support of the application. However, each of the 4 design concepts proposed would appear to propose a greater extent and number of dwellings than that allocated by the LNP

The applicant's submitted Statement of Community Involvement provides details of public exhibition of the increased development proposals. However, the submitted proposal goes beyond the extent and scale of that allocated by the LNP (i.e. the development of the site for 6 or potential total of 9 dwellings and the designated eastern portion of the nursery site) and should be subject to further public consultation, including the preparation of a new Development Brief for the site prepared in conjunction with the community, consultees and stakeholders. This should be done through a review and amendment to the LNP.

Village green

Policy 17 of the LNP explains that *"The Nursery site will be developed as an 'Enabling Development' and in so doing create a new 'village green' on the land opposite the church. This will be the subject of a 'Development Management Brief' and an agreement between the Parish Council and the Landowners."*

The applicant's Planning Statement at paragraph 3.2 advises that *"The priority objective underpinning the allocation of the Lympstone Nursery site is the delivery of the village green. A secondary objective is to secure the removal of what are held to be 'existing visually intrusive structures'"*.

My clients support the creation of a new village green, however, the proposal would appear to require the use of an open area of adjacent agricultural land to deliver an increased number of dwellings and to accommodate drainage infrastructure, including an attenuation pond and an access road and car park. Enabling development to provide a new 'village green' and remove the former nursery's glasshouses / polytunnels could still be achieved without the drainage infrastructure proposed on the adjacent land all of which is within the Green Wedge.

Previously developed land

The applicant's Planning Statement asserts that the land is 'brownfield' (or previously-developed land), however, this assertion is queried.

The NPPF defines 'previously developed land' as *"Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure"*.

It excludes *"land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up*

areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.”.

The Oxford English Dictionary defines a nursery as “*a place where plants, trees, etc., are reared for sale or transplantation*” while section 336(1) of the Town and Country Planning Act 1990 (as amended) defines ‘agricultural’ as, among other things “*the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds”.*

It is noted that the existing access to the nursery site was approved under permission 86/P1169. The officer’s report available on the Local Planning Authority’s website for that application highlights that the need for the development was because “*The applicant wishes to provide a new access to his market garden in Church Road and to provide a new parking area for customer*”.

Typically a plant nursery use entails propagating plants, growing them to a usable size and then selling them on. Sales can be either retail (in small quantities to the general public) or wholesale (in larger quantities to other businesses or commercial gardeners). Therefore, the retail sale of plants would be ancillary to the agricultural use of growing plants.

The Courts have held that a plant nursery may grow plants on a large scale and sell all of them from the premises and those sales would be regarded as ancillary to the primary agricultural use, however large the volume and scale⁴.

The courts have also held that the sale of produce that is imported to the site is not ancillary to use of land as a plant nursery⁵. However, it would depend on the individual circumstances pertaining to the site to determine whether the proportion of imported produce would result in a material change of use⁶ to a mixed use rather than continuing to be used primarily for agricultural purposes.

The Concise Oxford English Dictionary defines a garden centre as “*an establishment where plants and garden equipment etc., are sold*”. The Courts have held that the use of land as a garden centre falls within Class A1 of the Use Classes Order 1987 as the primary use is for the retail sale of goods to visiting members of the public where commonly there is little, if any, produce reared on site⁷. While it is noted many garden centres evolve from plant nurseries, or mixed uses, it is again a matter of fact and degree as to what stage a material change of use may have occurred.

It is my understanding that the Lympstone Nurseries site was operated firstly as a market garden and more recently as a plant nursery. Therefore, the existing lawful use of the site would be defined as agricultural and that the activities carried out on site would not have resulted in a material change of use to a mixed use (selling a proportion of imported produce) or a retail use (i.e. a garden centre).

I would, therefore, query the inclusion of the site within the Council’s Brownfield Land Register (ref. BL25 Lympstone Nursery) given that it may not meet the NPPF’s definition of ‘previously developed land’. I would also query the applicant’s reliance on paragraph 118(c) of the NPPF in giving substantial weight to the value of using suitable brownfield land within settlements for homes and whether the Brownfield Land Register should be revised accordingly⁸.

⁴ Allen v SSE and Reigate and Banstead BC [1990] JPL 340

⁵ Bye Williams v MHLG and Another [1967] 18 P&CR 514

⁶ Bromley LB v George Haeltschli and Son [1977] 244 Eg 49

⁷ Wiggins v Arun District Council [1997] 74 P&CR 64

⁸ Under section 17 of The Town and Country Planning (Brownfield Land Register) Regulations 2017

Even if the former Lympstone Nursery site were considered to be previously developed land there is a question as to whether the whole of the site could be included, particularly the southern portion of the site which is open in character particularly noting the findings of *Lee Valley Regional Park Authority, R (on the application of) v Britannia Nurseries [2015] EWHC 185 (Admin)*.

Vacant building credit

On the basis of the above, I would also question the applicant's reliance on the use of the Vacant Building Credit to offset/reduce the proportion of affordable housing contributions by including the floorspace of the vacant buildings/structures on site if the proposed development would not support the re-use of brownfield land. The Planning Practice Guidance⁹ states that "*the [Vacant Building Credit] policy is intended to incentivise brownfield development, including the reuse or redevelopment of empty and redundant buildings*".

While it is noted there are a number of former glasshouses used by the former nursery to propagate plants as well as several polytunnel structures remaining on the site, it is unclear from the applicant's supporting information how the figure of 2,400m² has been derived as there are no details submitted showing the dimensions of these buildings/structures or the existing floorspace they occupy.

Affordable housing

The Planning Statement also asserts that "*There is no reference in the LNP to the delivery of affordable housing as either an objective or a benefit*". This not correct. Objective 3 of the LNP highlights that new housing will, first and foremost, be required to meet the needs of the Parish community identifying that there is particular need for affordable housing, Two and three bedroom family homes and single storey homes adapted for the elderly.

Given that the proposal is for major development (i.e. 10 dwellings) it is my view that the policy requirement would be to provide on-site affordable housing at rate of 50% (i.e. 5 dwellings) in accordance with Strategy 34 (District Wide Affordable Housing Provision Targets) and to meet the need for affordable housing outlined by Objective 3 of the LNP.

Please do not hesitate to contact me if you have any questions about the information or require further clarification about the matter raised in this letter.

Yours sincerely,



Mathew Dalton-Aram MSc BSc (Hons) MRTPI
Director

⁹ Paragraph: 023 Reference ID: 23b-023-

Annex A – relevant Local Plan policies

Strategy 6 (Development within Built-Up Area Boundaries) states that:

“Built-up Area Boundaries are defined on the Proposals Map around the settlements of East Devon that are considered appropriate through strategic policy to accommodate growth and development. Within the boundaries development will be permitted if:

- 1. It would be compatible with the character of the site and its surroundings and in villages with the rural character of the settlement.*
- 2. It would not lead to unacceptable pressure on services and would not adversely affect risk of flooding or coastal erosion.*
- 3. It would not damage, and where practical, it will support promotion of wildlife, landscape, townscape or historic interests.*
- 4. It would not involve the loss of land of local amenity importance or of recreational value;*
- 5. It would not impair highway safety or traffic flows.*
- 6. It would not prejudice the development potential of an adjacent site.*

For the main Local Plan the boundaries relate to the Towns of East Devon. For our Villages they will be defined in the Villages Development Plan Document.

Where a local community prepare a Neighbourhood Plan they may specifically allocate sites and/or include criteria based on other policies for promoting development/land uses beyond the boundary. Such ‘outside of boundaries’ policy provision would supersede relevant constraint considerations set out in ‘Strategy 7 - Development in the Countryside’ and also other relevant constraint policies”.

Strategy 7 (Development in the Countryside) highlights that:

“The countryside is defined as all those parts of the plan area that are outside the Built-up Area Boundaries and outside of site specific allocations shown on the Proposals Map. Development in the countryside will only be permitted where it is in accordance with a specific Local or Neighbourhood Plan policy that explicitly permits such development and where it would not harm the distinctive landscape, amenity and environmental qualities within which it is located, including:

- 1. Land form and patterns of settlement.*
- 2. Important natural and manmade features which contribute to the local landscape character, including topography, traditional field boundaries, areas of importance for nature conservation and rural buildings.*
- 3. The adverse disruption of a view from a public place which forms part of the distinctive character of the area or otherwise causes significant visual intrusions”.*

Strategy 8 (Development in Green Wedges) highlights that development will not be permitted if it would add to existing sporadic or isolated development or damage the individual identity of a settlement or could lead to or encourage settlement coalescence.

Strategy 49 (The Historic Environment) highlights that the physical and cultural heritage of the district, including archaeological assets and historic landscape character, will be conserved and enhanced and the contribution that historic places make to the economic and social well-being of the population will be recognised, evaluated and promoted. We will work with our partners and local communities to produce or update conservation area appraisals and conservation area management plans.

EN8 (Significance of Heritage Assets and their Setting) highlights that when considering development proposals the significance of any heritage assets and their settings, should first be

established by the applicant through a proportionate but systematic assessment following East Devon District Council guidance notes for 'Assessment of Significance' (and the English Heritage guidance "The Setting Of Heritage Assets"), or any replacement guidance, sufficient to understand the potential impact of the proposal on the significance of the asset. This policy applies to both designated and non-designated heritage assets, including any identified on the East Devon local list.

Policy EN10 (Conservation Areas) identifies that development proposal will only be permitted where it would preserve or enhance the appearance and character of the area.

Policy RC2 (New Open Space, Sports Facilities and Parks) states that:

"Within or adjoining urban or built-up areas, permission will be granted for new open space areas, allotments, sports facilities and parks, the accommodation of the visual and performing arts, and the upgrading or enhancement of existing facilities provided the following criteria are met:

- 1. They do not unduly affect the character and appearance of the area and the visual and physical amenities enjoyed by adjoining residential areas.*
- 2. They are accessible by public transport, bicycle and on foot.*
- 3. Appropriate car and cycle parking is provided.*
- 4. The proposed road access to the site provides for safe exit and entry and the local road network can safely accommodate the extra traffic the proposal would generate.*
- 5. The facilities are located without detriment to the best and most versatile agricultural land, nature conservation interest and the conservation of areas of landscape, scientific, archaeological or historic interest."*