

PLANNING APPLICATION REPORT

Case Officer: Jeffrey Penfold
Staverton

Parish: Staverton **Ward:** Dartington and Staverton

Application No: 3285/20/FUL

Agent:

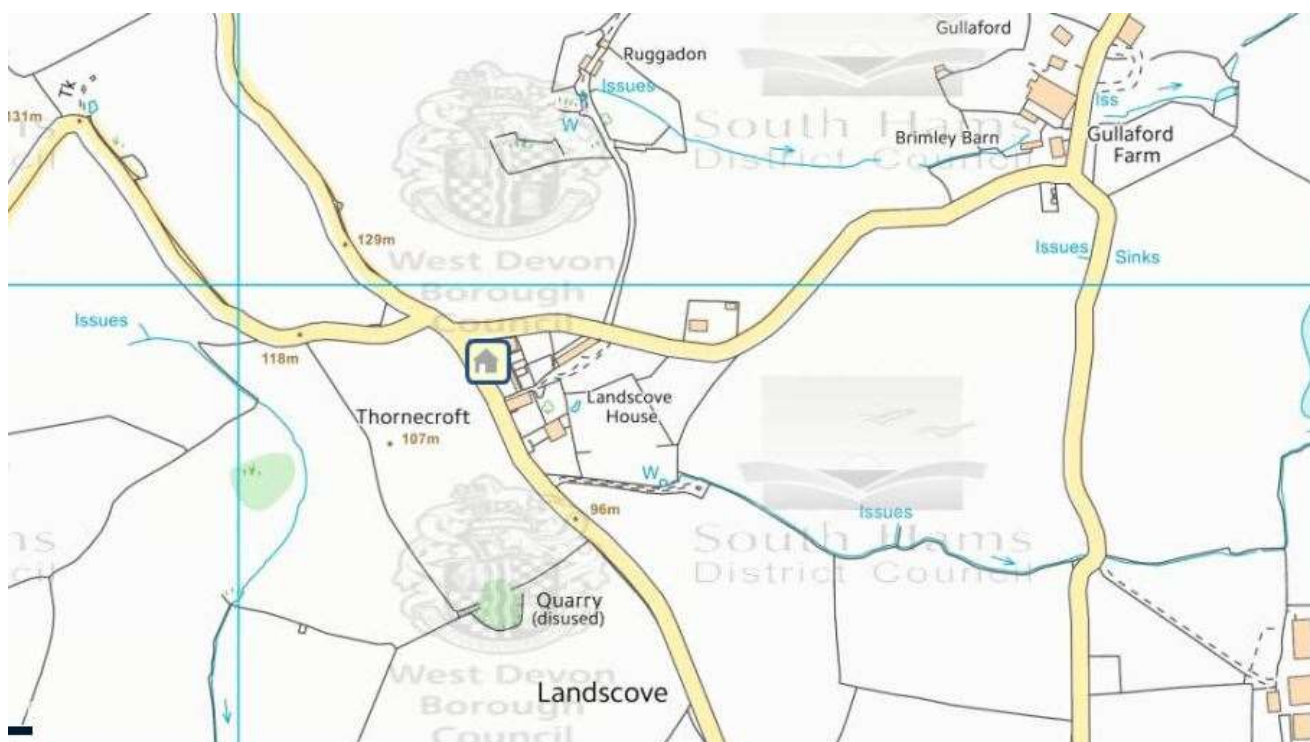
Mr Neal Jillings
Hutton Planning
25 Shillingford Road
Exeter
EX2 8UB

Applicant:

Mr N Gray-Thompson
Rose Cottage
Landscape
Ashburton
TQ13 7LT

Site Address: Rose Cottage, Landscape, Ashburton, TQ13 7LT

Development: Retrospective change of use of existing shed from domestic use to use for commercial motorcycle maintenance and servicing.



Reason application is called in to Committee:

- 1 This is a long-established business in the parish that provides sustainable employment for a local resident.
- 2 The application has the full support of the PC.
- 3 There are no objections, but there is support.

Recommendation: Refuse Planning Permission.

Reasons for refusal:

1. The proposed development, by virtue of its proposed change of use from C3 Dwellinghouse to B2 General Industrial and its siting within this countryside location would result in a development that is removed from services and, given the identification and availability of other available and sustainable sites offering B2 General Industrial Uses across the plan area, would result in unsustainable development that does not require this countryside location and would result in a greater reliance upon the private vehicle. As such, the proposal fails to accord with JLP Policies TTV1, TTV2, SPT1, SPT2, TTV26 and DEV15 and NPPF Paragraphs 83, 84 and 148

Key issues for consideration:

Principle / Sustainable Development

Design, Visual Impacts and the SWD Landscape Character Area (1E)

Neighbouring Amenity.

Site Description:

The application site comprises an existing garage which serves as ancillary accommodation to the host dwelling: Rose Cottage, Ashburton. The existing garage is currently in use as a motorcycle repair workshop.

The site is located within the South West Devon Landscape Character Area (1E), a Greater Horseshoe Bats Special Area of Conservation, the Countryside, a Site of Special Scientific Interest Impact Risk Zone and has an Agricultural Land Value of 3.

The site is not located within a Flood Risk Zone as identified by the Environment Agency nor is it, nor located near to, any listed buildings / heritage assets.

The Proposal:

The application seeks retrospective planning permission for the use of the existing C3 dwellinghouse / ancillary accommodation use of the garage to B2 General Industrial use. The existing industrial use covers 36sqm of the 105sqm site area.

Consultations / Representations:

Representations from Residents:

10 letters of support have been received in response to the public consultation exercise, highlighting the following matters:

- No increase in noise and / or traffic.
- No increased impact on daily domestic living.

Representations from Internal Consultees:

Environmental Health: *“The planning statement sets out the history of use and there are a number of comments from near neighbours supporting the application and confirming that*

they have not been affected by unacceptable noise levels. The applicant offers that a working hours condition is included in any approval and suggests appropriate hours. A suitable condition would be:

“No machinery shall be operated, no noisy processes carried out and no deliveries accepted or despatched except between the hours of 9am and 6pm Monday to Friday, or 9am to 1pm on Saturdays, and not at all on Sundays or Bank Holidays.

Reason: To protect the amenities of local residents from noise.”

Other than this we do not anticipate that there are any environmental health concerns with respect to this proposal”.

Drainage: Standing Advice applies.

Representations from Statutory Consultees:

DCC Highways: Standing Advice applies.

Natural England: No comments.

Staverton Parish Council: Support.

Relevant Planning History:

Ref: 50/1000/15/F - Householder application for replacement timber shed/workshop – Conditional Approval – 23 June 2015.

ANALYSIS:

Principle / Sustainable Development:

The application seeks retrospective planning permission for the change of use of the existing, ancillary (C3 Dwellinghouse Use) garage element approved under planning permission Ref: 50/1000/15/F to B2 General Industrial Use.

The starting point for this application is that of JLP 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.

Paragraphs 5.8-5.10 of the supporting text to Policy TTV1 of the JLP identify the ‘Main Towns’, ‘Smaller Towns and Key Villages’ and ‘Sustainable Villages’ within the Thriving Towns and Villages Policy Area. However, ‘Smaller Villages’ and ‘Hamlets’ are not identified as part of the Policy TTV1.

Paragraph 5.5 of the JLP explains that Policy TTV26 - Development in the Countryside will be applied 'outside built up areas'. The site is located outside of the built up area of Staverton and Buckfastleigh, which is confirmed by the site specific circumstances of being some 2.4 miles from Staverton and 3.8 miles from Buckfastleigh. The site is located within

the Neighbourhood Plan Area of Staverton but, given the early stage of the Neighbourhood Plan in the designation process (Reg 5, 6a and 7), no weight can be given to the NP at this stage.

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, which relates to Smaller Villages, Hamlets and the Countryside.

Assessment of site characteristics

Policy TTV26 of the JLP relates to development in the countryside. The aim of the policy, 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, and only part 1 applies to development proposals considered to be in isolated locations. The second part of the policy is applied to all development proposals that are considered to be in countryside location.

Assessment of whether the site should be considered isolated in planning terms

The Local Planning Authority is applying the Braintree Ruling ([Braintree District Council v Secretary of State for Communities and Local Government & Ors \(2017\) EWHC 2743 \(Admin\) and the subsequent Court of Appeal Judgement](#)) when considering whether a proposal site should be described as 'isolated' in planning terms. Para 5.169 of the JLP should not be read as an alternative interpretation to the Braintree ruling in terms of isolation. The JLP establishes a settlement hierarchy and a spatial strategy that are considered robust basis from which to assess the suitability of development proposals across the TTV policy area; a proposal site in the countryside will not be considered suitable for development if it does not accord with the wider aims of TTV26 and paragraph 5.169. In terms of isolation, in applying the Braintree ruling, the LPA will consider if the proposal site 'is far away from other places, buildings or people' as required by case law.

The application proposes to utilise the existing (C3 Dwellinghouse Use) garage element on site which is located in close proximity to other similar, existing and operational C3 dwellinghouse uses. As such, the proposal is not considered to constitute isolated development.

As such, the starting point for this application is that of JLP Policy TTV26, which states:

Development in the countryside:

The LPAs will protect the special characteristics and role of the countryside. The following provisions will apply to the consideration of development proposals:

1. Isolated development in the countryside will be avoided and only permitted in exceptional circumstances, such as where it would:

i. Meet an essential need for a rural worker to live permanently at or near their place of work in the countryside and maintain that role for the development in perpetuity; or

ii. Secure the long term future and viable use of a significant heritage asset; or

iii. Secure the re-use of redundant or disused buildings and brownfield sites for an appropriate use; or

iv. Secure a development of truly outstanding or innovative sustainability and design, which helps to raise standards of design more generally in the rural area, significantly enhances its immediate setting, and is sensitive to the defining characteristics of the local area; or

v. Protect or enhance the character of historic assets and their settings.

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.

Given the application site would not constitute isolated development, sub-paragraph TTV26 (2) only is engaged:

The proposal would fail to accord with the main principle policies of TTV26 (2) and is not considered to require this countryside location. It does not re-use a traditional building, nor is it complementary to any viable agricultural operations on a farm nor any other lawful uses on-site that requires this countryside location.

In addition to TTV26, the proposal is also considered against JLP Policy DEV15, which states:

Supporting the rural economy:

Support will be given to proposals in suitable locations which seek to improve the balance of jobs within the rural areas and diversify the rural economy. The following provisions apply:

1. Appropriate and proportionate expansion of existing employment sites in order to enable retention and growth of local employers will be supported, subject to an assessment that demonstrates no adverse residual impacts on neighbouring uses and the environment.

2. Business start-ups, home working, small scale employment and the development and expansion of small business in residential and rural areas will generally be supported, subject to an assessment that demonstrates no residual adverse impacts on neighbouring uses and the environment.

3. *Proposals should explore opportunities to improve internet connectivity for rural communities where appropriate.*

4. *Support will be given to the reuse of suitable buildings for employment uses.*

5. *The creation of new, or extensions to existing, garden centres or farm shops in the open countryside and unrelated to a settlement will only be permitted if the proposed development is ancillary to, and on the site of, an existing horticultural business or existing farming operation, and provided that 75 per cent of the goods sold will be produced within the immediate and adjoining parishes.*

6. *Development will be supported which meets the essential needs of agriculture or forestry interests.*

7. *The loss of tourist or leisure development will only be permitted where there is no proven demand for the facility. Camping, caravan, chalet or similar facilities that respond to an identified local need will be supported, provided the proposal is compatible with the rural road network, has no adverse environmental impact and is not located within the Undeveloped Coast policy area.*

8. *Development proposals should:*

i. Demonstrate safe access to the existing highway network.

ii. Avoid a significant increase in the number of trips requiring the private car and facilitate the use of sustainable transport, including walking and cycling, where appropriate. Sustainable Travel Plans will be required to demonstrate how the traffic impacts of the development have been considered and mitigated.

iii. Demonstrate how a positive relationship with existing buildings has been achieved, including scale, design, massing and orientation.

iv. Avoid incongruous or isolated new buildings. If there are unused existing buildings within the site, applicants are required to demonstrate why these cannot be used for the uses proposed before new buildings will be considered.

A principle aspect of JLP Policy DEV15 is supporting proposal that are: “*sited within suitable locations*”. In this instance, the proposal is, by virtue of its location and proximity to services, considered unsustainable development and would constitute inappropriate development in the countryside.

With regard to the council’s employment needs, the evidence that was considered during the Examination in Public for the JLP was accepted by the Inspectors, and identified a need of B1, B2 and B8 floorspace of a combined 83,700sqm:

The data contained in the council’s latest Authorities Monitoring Report is that within the Thriving Towns and Villages policy area, over a third of the need has already been delivered (including nearly 14,000sqm of B1/B2 against a need figure of 21,700sqm)

And in addition to the floorspace already delivered, there is an additional 54,550sqm either consented or being constructed. In combination this already exceeds the independently examined and accepted need figure in the JLP.

The figures contained within the plan are not maximums, but with the identified amount of floorspace contained within existing but as yet unimplemented planning consents, any additional consents on unallocated sites risks undermining the delivery of consented schemes.

In summary, the plan is already over-delivering in terms of B2 General Industrial floorspace delivered and consented, and jobs created. This is the backdrop against which all other employment applications will be considered, and in instances where the proposal site is not well related to the settlement hierarchy, there is little justification for the LPA to disregard its own adopted policies.

DEV15 also concerns avoiding increases in the use of the private car / vehicle. It is felt that other existing and approved, viable B2 General Industrial uses exist across the plan area which would be sited in more sustainable and convenient locations, therefore avoiding an overall increase in vehicular trips (both alone and cumulatively) to and from the application site (outgoing trips also include the disposal of tyres at John Tremlett Motorcycles, Ashburton (approx. 3.4 miles); Oil at Devon Motorhomes, Ashburton (approx. 6.6 miles) and scrap parts and batteries at Newbury Metals Ltd, Newton Abbot (approx. 8.6 miles)) in addition to those experienced with the residential uses associated with it.

The number of 10 letters of support received are noted and attributed due weight in the planning process. However, given the proposal's general failure to accord with JLP Policies SPT1, SPT2, TTV1, TTV2, TTV26 and DEV15, and the sites unsuitable / unsustainable siting, the likely impacts of the proposal is considered sufficient to outweigh any benefits the proposal would likely give rise to in the form of any contribution to the rural economy via a limited number of employees (noted as not increasing from current levels which given the limited 36sqm floorspace is considered minimal) and the limited landscape and visual impacts; both of which are considered achievable in allocated / existing and approved sites for B2 General Industrial Use located in more sustainable and suitable locations.

The applicant makes reference to a potential fallback position to which the application site could be afforded. Specifically, this purports to be the existing incidental C3 Dwellinghouse Use (e.g. motorcycle enthusiast) being somewhat akin to an unrestricted B2 General Industrial Use which could be considered acceptable on balance with the imposition of 2no. conditions restricting the use of the garage in terms of operating hours and providing data in the form of a register of clients that should be periodically made available to the council for checking.

Whilst it is noted that the use of such conditions would be acceptable means to mitigate the impacts of proposal to a degree, such conditions would fail to address the fact that the application site is sited within an unsustainable location and mitigate the resultant increase in carbon dioxide emissions, and that the proposed use could reasonably be located in an area considered to be more in-line with both national and local policy aims of achieving sustainable development.

In addition, the proposed conditions would fail to restrict the development so as to avoid the use of other types of operations which fall within the category of B2 General Industrial Uses which given the proximity of nearby residential properties, would likely give rise to significant, detrimental amenity impacts upon the living conditions of neighbouring residents even if restricted in terms of operating times.

Should the proposal achieve a change of use to B2 General Industrial, it is considered that the likely impacts of the proposal in terms of neighbouring amenity, noise and other nuisances could not reasonably be restricted via conditions and the increased flexibility of the proposal to operate under Use Class B2 would likely give rise to further amenity concerns. This matter is discussed in the section below.

As such, the proposal fails to accord with JLP Policies TTV1, TTV2, SPT1, SPT2, TTV26 and DEV15. The principle of the development in this location is therefore not supported.

Design, Visual Impacts and the SWD Landscape Character Area (1E):

No concerns are raised in respect of any likely design and / or visual impacts.

As such, the proposal accords with JLP Policies DEV20 and DEV23.

Neighbouring Amenity:

It is noted that a number of representations pledging support for the proposal have been received. The change of use of the C3 dwellinghouse garage element to a B2 General Industrial Use is considered likely, in absence of any control over the number of motorbikes being serviced on at any one time and likely resultant noise disturbances in this dominant residential cluster, as well as the potential the B2 General Industrial Use would allow for in terms of scope of different industrial uses, to give rise to an increase in amenity impacts to the detriment of the living conditions of neighbouring residents.

However, the council's environmental health department has confirmed its satisfaction of the proposed works and should any later planning permission be granted then the below condition is strongly recommended to be attached so as to restrict the use of the B2 Use:

- 1. The development hereby approved shall only be used for General Industrial Uses in accordance with Classe B2 of The Town and Country Planning (Use Classes) Order 1987 (as amended) and restricted only to the maintenance, servicing and / or repair of motorcycles, or in any provisions equivalent to those Classes in any Statutory Instrument revoking and re-enacting that Order, and for no purpose, including any use falling within Class E.*

Reason: In order to ensure compliance with Policy TTV24 and to prevent uses which might be inappropriate for this rural location.

- 2. No machinery shall be operated, no noisy processes carried out and no deliveries accepted or despatched except between the hours of 9am and 6pm Monday to Friday, or 9am to 1pm on Saturdays, and not at all on Sundays or Bank Holidays.*

Reason: To protect the amenities of local residents from noise.

As such, subject conditions, the proposal is not likely to give rise to any significant, detrimental amenity impacts upon the living conditions of neighbouring residents. As such, the proposal accords with JLP Policies DEV1 and DEV2.

Planning Balance:

The proposed change of use to B2 General Industrial is not considered likely to give rise to any social benefits and the proposed economic benefits would be limited to the floor space of the garage of 36sqm. The accompanying application form confirms there would be no increase to the number of employees employed on site.

The permanent change from C3 Dwellinghouse to B2 General Industrial would likely, even if restricted via suitable conditions restricting the hours of operation and allowing the council the ability to monitor the number of customers / intensity of the use, result in a development sited in an unsustainable location and would likely increase the reliance upon the private vehicle and therefore increase carbon dioxide emission. When considering the council's evidence base and provision for B2 General Industrial sites across the plan area, the above impacts are considered avoidable and unnecessary. On balance, the proposal is considered unacceptable.

Other:

A recent appeal reference: APP/Q1153/W/19/3230781 (Land North of A30, Whiddon Down) is considered relevant to this application in terms of site characteristics and justification as to why this proposal could be located in a more appropriate location (DEV 15):

“Policy DEV15 supports proposals in suitable locations that improve the balance of jobs in rural areas and diversify the rural economy. During the VH, the parties agreed that the proposed development would not constitute a ‘farm shop’ for the purposes of provision 5 of Policy DEV15. There was subsequently a divergence of opinion as to whether or not provision 8 of Policy DEV15 would be applicable in this case. I believe it would. Indeed, my reading of Policy DEV15 is that it provides support for the growth of local employers and businesses to diversify the rural economy and improve the balance of jobs in rural areas, but that support will only be given to proposals in suitable locations. It is through the four points listed under provision 8 of Policy DEV15 that the suitability of the development proposal’s location is gauged”.

The applicant has been requested to provide additional information on the following points:

1. Can you please confirm how many vehicles the workshop can contain and how many are worked on at any one time? Around 12 bikes depending on size if necessary, including 6 of my own.
2. What are the normal hours of operation per week? 9-6 weekdays , 9-1 Saturday.
3. Is the outdoor space used at all for the works proposed? Outdoor space used for storage only in work hours.

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 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. This confirmed the Plymouth, South Hams and West Devon's revised joint Housing Delivery Test Measurement as 163% and that the consequences are "None". It confirmed that the revised HDT measurement will take effect upon receipt of the letter, as will any consequences that will apply as a result of the measurement. It also confirmed that that the letter supersedes the HDT measurements for each of the 3 local authority areas (Plymouth City, South Hams District and West Devon Borough) which Government published on 19 February 2019. On 13th February 2020 MHCLG published the HDT 2019 measurement. This confirmed the Plymouth, South Hams and West Devon's joint HDT measurement as 139% 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 6.4 years at end March 2019 (the 2019 Monitoring Point). This is set out in the Plymouth, South Hams & West Devon Local Planning Authorities' Housing Position Statement 2019 (published 26 July 2019). The methodology and five year land supply calculations in the Housing Position Statement are based on the relevant changes in the revised National Planning Policy Framework published 19 February 2019 and updates to National Planning Practice Guidance published by the Government in September 2018, subsequently amended by NPPG Housing Supply and Delivery published 22 July 2019.

As a result of Government policies and guidance regarding lockdown due to Covid 19, the 2020 Housing Survey was delayed by approx. 2 months as site visits could not take place. The 2020 5YLS update is therefore delayed by four months and will now be published in November 2020. The impact from Covid 19 is likely to slightly reduce the supply identified for 2020/21 due to 2-3 months of limited/nil construction activity during lockdown. There is no evidence to suggest that this would have a material change to the JLP Authorities 5YLS position, given the substantial 5YLS position at the 2019 monitoring point i.e. 6.4YLS which represents a surplus of 1,977 deliverable dwellings above what is required over the period 2019-2024 to demonstrate a 5YLS.

The relevant 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.

SPT1 Delivering sustainable development

SPT2 Sustainable linked neighbourhoods and sustainable rural communities

TTV1 Prioritising growth through a hierarchy of sustainable settlements

TTV2 Delivering sustainable development in the Thriving Towns and Villages Policy Area

TTV20 Land at KEVICC

TTV26 Development in the Countryside

DEV1 Protecting health and amenity
DEV2 Air, water, soil, noise, land and light
DEV20 Place shaping and the quality of the built environment
DEV23 Landscape character
DEV26 Protecting and enhancing biodiversity and geological conservation
DEV29 Specific provisions relating to transport
DEV32 Delivering low carbon development
DEV33 Renewable and low carbon energy (including heat)
DEV35 Managing flood risk and Water Quality Impacts.

Neighbourhood Plan: The Staverton Neighbourhood Plan – Reg 5, 6a and 7 - All that is indicated at this stage is that it is the intention of a community to prepare a plan – there is unlikely to be any content to take into consideration and detailed proposals are unlikely to have been widely consulted on or endorsed by the community. No weight can be given to the NP at this stage.

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 officer's report. As Determining Officer I hereby clear this report and the decision can now be issued.

Name and signature: Jeffrey Penfold

Date: 27 November 2020