

**TOWN AND COUNTY PLANNING ACT 1990**  
**PRE-APPLICATION ENQUIRY RESPONSE**

|                   |  |                              |                         |
|-------------------|--|------------------------------|-------------------------|
| <b>Applicant:</b> |  | <b>Application No:</b>       | ENQ/2000/2021           |
| <b>Address:</b>   |  | <b>Application Type:</b>     | Pre Application Enquiry |
| <b>Agent:</b>     | Mr Mike Kelly  | <b>Date of Registration:</b> | 14 April 2021           |
| <b>Address:</b>   |  | <b>Date of Decision:</b>     | 12 May 2021             |
| <b>Proposal:</b>  | Residential development comprising up to 6 dwellings |                              |                         |
| <b>Location:</b>  | Land at Park Gate Umberleigh Devon EX37 9DA          |                              |                         |

Thank you for your enquiry which was received on the 14 April 2021.

It is my understanding that you are seeking an informal offer opinion on the residential development of 6 dwellings on land adjacent to Park Gate and Parkend Cottages, Umberleigh.

The site currently comprises agricultural land which amounts to approx. 1.6 hectares and lies to the east of the A377, River Taw and railway line with the land rising upwards from a west to easterly direction. You have indicated that the land sits below the 40 metres contour line.

In the determination of a planning application Section 38 of the Planning & Compulsory Purchase Act 2004 is relevant. It states that for the purpose of any determination to be made under the planning Acts, the determination is to be made in accordance with the development plan unless material considerations indicate otherwise. The development plan for this area includes the Devon Waste Plan and North Devon and Torridge Local Plan.

The National Planning Policy Framework (NPPF) is a material consideration.

**Principle of development and policy requirements**

Umberleigh is a Schedule B village where Policy ST07(2) (Spatial Development Strategy for Northern Devon's Rural area) applies. In identified villages such as Umberleigh, development will be enabled in accordance with the appropriate local spatial strategy (Policy UMB – Umberleigh Spatial Strategy) in order to meet local housing needs.

From a policy perspective, Umberleigh has no defined development boundary where Policy DM23 (Residential Development in defined Settlements without development boundaries) will support new development where the economic and social needs of the community are addressed within the context of the locally specific vision and spatial strategy. DM23 states:

- (1) Residential development in Local Centres and Villages without development boundaries will be supported on allocated sites and where:
  - (a) The site is located within the principal built form of the settlement and is not protected for any other use; or*
  - (b) The site is well related to the main built form of the settlement and provides an affordable housing focused development in accordance with Policy ST19**
- (2) Subject to the above qualification development proposals should:
  - (a) Not harm the settlement's rural character, setting, form or the surrounding countryside;*
  - (b) Be proportionate to the settlement's size, form and level of facilities available in the Local Centre or Village; and*
  - (c) Conserve the special landscape character and qualities of areas designated for their local, national or international importance including the setting of Exmoor National Park**

The Policy team have commented that they are of the opinion that in this particular instance it is very difficult to clearly identify the principal built form of the settlement (criterion (a)) of Policy DM23. The location of the proposed dwellings within Umberleigh which has a very dispersed settlement pattern and where it could be argued that this area is not within the principal built form and therefore an affordable housing focussed development (criterion b) should be delivered in accordance with Policy ST19. However, a large majority of the village is within an indicative flood zone where new housing is not considered acceptable. The Policy team are of the opinion that as the site is within flood zone 1 then we should look more positively to a proposed housing development in accordance with criterion (a) of Policy DM23 subject to the stated criteria (2 (a to c)) and Policy UMB(a) which supports a limited number of new dwellings well related to existing housing. Therefore, the acceptability of housing to meet a locally identified need on land to the east of Park Gate and Lower Park in accordance with Policies UMB and DM23 is supported in principle.

Also, following the Burwood appeal decision in Torridge, the Councils recognise that they are currently unable to demonstrate a five year supply of deliverable housing land sufficient to meet their housing requirements; with the appeal determining there to be a 4.23 year supply as of 1<sup>st</sup> April 2019, based on the application of a 20% buffer and the use of the 'Liverpool' method to distribute any backlog of under-delivery since the beginning of the plan period in 2011, over the remainder of the plan period up to 2031. The Policy Team have commented that they recognise the base date for this assumed housing supply is April 2019 and although the Council has not updated that position to April 2021, from a policy perspective they have commented that they do not see that the 4.23 year supply would have improved to a position that we could confidently demonstrate a 5 year supply of deliverable housing sites.

Therefore, National planning policy (Footnote 7, National Planning Policy Framework (NPPF)) establishes that when a local planning authority is unable to demonstrate a five year supply of deliverable housing sites, for the purposes of triggering the presumption in

favour of sustainable development, it should consider the policies which are most important for determining the application to be out-of-date. Accordingly, the presumption in favour of sustainable development (paragraph 11(d), NPPF as a material consideration), should be applied for decision-taking involving applications for housing.

If there is no clear reason to refuse an application based on a protected area or asset, the decision taker needs to consider as a material consideration the NPPF's requirement to grant permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits – the so-called *tilted balance* (Paragraph 11(d)(i), NPPF). From a policy perspective, the lack of a 5 YHLS is a material planning consideration and the policy team have suggested that moderate weight must be applied in the tilted balance to a proposal of up to 6 homes as they are of the opinion that it would make a very modest contribution to the Councils' shortfall in deliverable housing sites if the proposed homes were to be developed within the next 5 years.

The Policy team have further commented that, as set out above, they do not consider this proposal to be a potential 'hostile application' and therefore one that is challenging the Council on its lack of a 5 YHLS as the principle of housing is considered acceptable in accordance with current policy and therefore this site should be considered as contributing to the current shortfall and they do not agree that clause (2) of Policy ST21 is triggered.

The Policy team would wish to understand how and when your client anticipates these proposed dwellings would be delivered as we would wish to ensure a degree of certainty around housing delivery.

If a planning application were to be submitted then I would welcome a 'Full' application so development can start almost immediately post planning permission. The Policy Team would wish to understand when ownership will be transferred to a developer and how and when their timings for housing delivery will contribute to the current shortfall in the five year supply of deliverable housing sites. It would be good to understand whether the site would be available for those wishing to build their own home as part of a small community self-build project. Any timeline to demonstrate delivery must also include the potential need for a signed s106 agreement or Unilateral Undertaking (UU), I would also expect the Heads of Terms to be agreed up-front.

Clarity is also needed around a clear housing trajectory on delivery which is suitably conditioned or through the s106/UU as the Inspector at the Torrington appeal considered that email confirmation from the developer is not good enough. To help ensure the proposal is implemented in a timely manner, the LPA would give consideration to only granting a 2 year approval as supported by paragraph 76 of the NPPF (where this would not threaten viability) at the very most rather than the standard 3 years.

### **Affordable Housing**

The Policy Team have commented as follows:

*Policy ST18(1a) of the Local Plan will expect housing developments over the threshold to provide on-site delivery of affordable housing equal to 30% of the total number of dwellings (gross). In this instance (up to 6 dwellings) there should be an on-site requirement of at least one affordable dwelling with the 0.8 being collected as a financial contribution towards affordable housing off-site. The proposed housing mix should meet the identified housing need in accordance with Policies ST17. Page 180 of the HEDNA (CE21) provides*

guidance on the mix of bed sizes by tenure that would be appropriate to help meet identified housing needs. For information, Part (1) of the policy could be used to seek particular forms of housing where there is evidence of need. I have provided an extract from the HEDNA (Table 114: Recommended Housing Mix – page 214) which identifies the recommended housing mix across the Plan area.

|               | 1 – bed | 2 – bed | 3 - bed | 4 - bed |
|---------------|---------|---------|---------|---------|
| Market        | 5-10%   | 30-35%  | 40-45%  | 15-20%  |
| Affordable    | 30-35%  | 35-40%  | 20-25%  | 5-10%   |
| All Dwellings | 15%     | 35%     | 35%     | 15%     |

Clause (1) of policy ST17 provides a mechanism to influence the mix of housing on proposals. The HEDNA can be used for evidence of need - including house sizes. More localised evidence, such as housing needs surveys, can be used if they are available and up-to-date. The policy is intended to influence both market and affordable tenures. On smaller schemes such as this, the mix should generally be taking account of local character and context.

The Housing Enabling Officer has commented as follows:

Paragraph 12.864 of the North Devon and Torridge Local Plan states “Villages have a role in providing services and development opportunities. Umberleigh has no defined development boundary. Proposals that are well related to the existing settlement and appropriate to the scale of the locality will be considered against the general policies of the Local Plan.”

Policy DM23 states:- (1) Residential Development in Local Centres and Villages without development boundaries will be supported on allocated sites and where:

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

The applicant’s document submitted with the enquiry states at paragraph 3.10 “In this context the present site is clearly well related to existing development in the Schedule B Village and its wide range of community facilities and there are no site-specific planning objections to residential development of an appropriate scale, design and tenure mix. As such, the application site does not need to be considered as a rural exceptions site and a full viability appraisal to justify the provision of an indicative figure of x 6 dwellings only is not required under the provision of Policy ST19: Affordable Housing on Exceptions Sites.”

Housing Enabling considers that if Planning determine the site meets either (1) (a) or (1) (b) of Policy DM23 then an affordable housing provision of 30% would be required. If determined that it meets (1) (a) then 30% affordable housing would be required for a development of 6 or more dwellings. If determined that it meets (1) (b) then although generally Policy ST19: Affordable Housing on Exception Sites of the Local Plan would apply in this location, due to the current absence of a 5 year housing land supply 30% affordable housing provision would apply.

Devon Home Choice (DHC) shows there are 7 households living in the parish of Chittlehampton registered as being in need of affordable housing for rent as of January 2021.

There are 33 households registered in the adjoining rural parishes in North Devon Council’s administrative area (Satterleigh and Warkleigh, Atherington, Bishops Tawton, Swimbridge and Filleigh) as being in need of affordable housing for rent as of January 2021.

Not all households tend to register themselves on the housing register as they don’t think that they will have the opportunity to be housed so this figure is often significantly higher. It should be noted that although DHC data identifies the number of households living within the parish in housing need, it does not always provide sufficient information to firmly establish how long households have been resident in the parish or if they wish to remain in the parish; it is a snap shot in time and people’s circumstances can change extremely quickly. In addition, some households may seek affordable home ownership options (shared ownership/discounted sale). We don’t hold data on numbers of households requiring some form of affordable housing for sale.

Property sizes for affordable housing should aim to meet or exceed the “Technical housing standards – nationally described space standard”, which can be accessed at <https://www.gov.uk/government/publications/technical-housing-standards-nationally-described-space-standard> (see “Table 1 – Minimum gross internal floor areas and storage (m2)” of the Department for Communities and Local Government document).

The table below shows the policy requirement for dwelling mix & occupancy levels. Registered providers require housing to be built to National Space Standards; these are indicated below:

| <b>Bed size &amp; dwelling type</b> | <b>Occupancy</b> | <b>NDC dwelling mix requirement</b> | <b>Dwelling type</b>  | <b>National Space Standards (m2)</b>                                  |
|-------------------------------------|------------------|-------------------------------------|---|---|
| 4 bedroom house                     | 6 person         | 5-10%                               | <ul style="list-style-type: none"> <li>• House (2 storey)</li> <li>• Bungalow</li> </ul>        | <ul style="list-style-type: none"> <li>• 106</li> <li>• 99</li> </ul> |
| 3 bedroom house                     | 5 person         | 20-25%                              | <ul style="list-style-type: none"> <li>• House (2 storey)</li> <li>• Bungalow</li> </ul>        | <ul style="list-style-type: none"> <li>• 93</li> <li>• 86</li> </ul>  |
| 2 bedroom house                     | 4 person         | 35-40%                              | <ul style="list-style-type: none"> <li>• House (2 storey)</li> <li>• Bungalow</li> </ul>        | <ul style="list-style-type: none"> <li>• 79</li> <li>• 70</li> </ul>  |
| 1 bedroom house                     | 2 person         | 30-35%                              | <ul style="list-style-type: none"> <li>• House (2 storey)</li> <li>• Bungalow / flat</li> </ul> | <ul style="list-style-type: none"> <li>• 58</li> <li>• 50</li> </ul>  |

*The tenure mix would need to be at least 75% social rent (in accordance with policy) and the remainder intermediate (shared ownership, intermediate rent or discounted sale).*

*The affordable homes should be designed and of the same material and construction as the open market – including car parking.*

*Those who are allocated or buy the housing would need to have a local connection. First cascade would be to the parish of Chittlehampton, second cascade to the adjoining rural parishes and third cascade to the whole district of North Devon Council.*

### **Character and appearance**

This greenfield site is approximately 1.6 hectares and with the development of up to 6 dwellings this would equate to an approximate density of 4 dph which in the Policy team's opinion is far too low when the adjoining housing development (12 dwellings) has an approximate density of 14 dph. Considering the very limited development opportunities in Umberleigh and where any new housing development would support existing services and facilities in the village such as the Primary School, Village Hall and railway station, a slightly higher number of houses may be more appropriate and would be better reflective of existing housing development within this area of the village in terms of scale, density and massing of development.

The design and layout of the development would be considered against Policies ST02 (Mitigating climate change), ST03 (Adapting to Climate Change and Strengthening Resilience), ST04 (Improving the Quality of Development), DM01 (Amenity considerations), DM04 (Design Principles), DM08A (Landscape and Seascape Character), UMB(c) and DM23 of the Local Plan and the National Design Guide.

Whilst I have consulted the Arboricultural Officer I have yet to receive a response from him.

### **Highways**

All highway issues would be considered against Policies ST10 (Transport Strategy), DM05 (Highways) and DM06 (Parking Provision) as well as the response from the local highway authority. Policy DM05 of the NDTLP states that all development must ensure safe and well-designed vehicular access and egress adequate parking and layouts which consider the needs and accessibility of all highway users including cyclist and pedestrians. You would need to ensure that there are sufficient visibility splays when exiting the site. In addition, sufficient vehicular parking would need to be provided for the development in accordance with Policy DM06

Devon County Highways have commented as follows:

- 1. Although the proposed access is outside of the posted speed limit, visibility splays for a 30 mph limit would be acceptable. Given the width and alignment of the carriageway; as well as the likely vehicle speeds and volume, there are a number of compromises that I would accept, such as the visibility splays being taken to the centre of carriageway, as well as the 'x' axis being 2 metres rather than the standard 2.4 metres. In which case, I would expect visibility measurements of 2 x 43 metres in either direction when measured to the centre of carriageway.*

2. *Proposals will need to be included to ensure that excess surface water does not flow onto the public highway.*
3. *I would expect a minimum of two parking spaces per dwelling.*
4. *I did initially have concerns relating to the additional traffic movements generated by this proposed development on the public highway and whether this would lead to an increase in reversing movements to allow confronting motorists to pass one another. This would be between the site access and where the public highway reaches a higher classification of road. However, I am satisfied that there is either acceptable width available or suitable passing places with reasonable inter-visibility between them. Therefore, I do not believe that the impact of the proposed development could be considered 'severe'.*
5. *Suitable turning will need to be provided within the site to ensure motorists do not have to reverse onto the carriageway.*

*Assuming the above points can be met, I believe that it's unlikely that the Highway Authority would raise objections against this application.*

### **Ecology and Biodiversity**

Local Planning Authorities have a statutory duty to ensure that the impact of development on wildlife is fully considered during the determination of a planning application under the Wildlife and Countryside Act 1981 (as amended), Natural Environment and Rural Communities Act 2006, The Conservation of Habitats and Species Regulations 2017.

As set out in paragraph 6.5 of the Local Plan, *'all development will be expected to provide a net gain in biodiversity where feasible. Where biodiversity assets cannot be retained or enhanced on site, the Councils will support 'biodiversity offsetting' to deliver a net gain in biodiversity off-site'*. If there is some loss of existing habitat then this should be mitigated against by providing additional planting on or off site. The Defra metric should be used to ensure there is an overall net gain in biodiversity. All issues around ecology should be considered against ST14 Enhancing Environmental Assets) and DM08 (Biodiversity and Geodiversity).

I note that you have commented that to facilitate the new access a small part of the hedge would be removed. I am not quite sure how much hedgerow would need to be removed to facilitate the development and provide adequate visibility splays. It maybe that a hedgerow survey is required.

Whilst I have consulted the Sustainability Officer, I have yet to receive a response from him.

### **Flood risk and drainage**

The application site is situated in flood zone 1 and no concerns are raised in this respect.

In terms of foul drainage, the preferred connection should be a mains connection unless this is not feasible and can be appropriately demonstrated as such through the submission of a Foul Drainage Assessment form, which also includes details of the non-mains solution. This can be found at the following link:

<https://www.gov.uk/government/publications/foul-drainage-assessment-form-fda1>

Any forthcoming application would need to provide a foul drainage assessment and percolation tests to substantiate the use of a non-mains sewerage system if you cannot connect to the mains system.

Any detailed submission would need to demonstrate surface water can be dealt with by a sustainable drainage scheme to accord with DCC Flood Risk guidance available at the following link:

<https://www.devon.gov.uk/floodriskmanagement/planning-anddevelopment/sustainable-drainage/>

### **Amenity**

Future construction and environmental management of the site should be considered against Policy DM03 (Construction and Environmental Management). Whilst I have consulted Environmental Health I have yet to receive a response from them. I would however comment that it is likely that on the grant of any approval a construction phase impacts condition would be imposed in order to ensure that nearby residents are not unreasonably affected by dust, noise or other impacts during the construction phase of the development; in addition a construction hours condition would be imposed to protect the amenity of local residents.

### **Infrastructure requirements**

The delivery of necessary infrastructure to serve the development should be considered against Policy ST23 (Infrastructure) and the response of the statutory undertakers.

### DCC Education

Regarding the proposed pre-application, Devon County Council has identified that the proposed 6 family type dwellings will generate an additional 1.50 primary pupil and 0.90 secondary pupils which would have a direct impact on Umberleigh Primary School and South Molton Community College.

In order to make the development acceptable in planning terms, an education contribution to mitigate its impact will be requested. This is set out below:

The designated primary schools for this site are forecast to have enough capacity for the number of pupils expected to be generated from this development and therefore a contribution towards primary education would not be sought. We have forecasted that the nearest secondary school has not got capacity for the number of pupils likely to be generated by the proposed development and therefore, Devon County Council will seek a contribution towards this additional education infrastructure to serve the address of the proposed development. The contribution sought for secondary would be £20,261 (based on the DfE extension rate of £22,513 per pupil). These contributions will relate directly to providing education facilities for those living in the development.

We will also require a contribution towards secondary school transport costs due to the development being further than 2.25 miles from South Molton Community College. The costs required are as follows: -

0.90 Secondary pupils

£4.52 per day x 0.90 pupils x 190 academic days x 5 years = £3,864

The contribution above has been calculated based on the DCC contract cost of transporting a pupil from the area of development to the named school. The number of academic days and years is based on the number of term days in a school year and the number of years a pupil will attend the school. The contribution will ensure pupils living



within the development will have school transport available for every year they are attending the school.

All contributions will be subject to indexation using BCIS, it should be noted that education infrastructure contributions are based on March 2019 prices and any indexation applied to contributions requested should be applied from this date.

The amount requested is based on established educational formulae (which related to the number of primary and secondary age children that are likely to be living in this type of accommodation) and It is considered that this is an appropriate methodology to ensure that the contribution is fairly and reasonably related in scale to the development proposed which complies with CIL Regulation 122.

In addition to the contribution figures quoted above, the County Council would wish to recover legal costs incurred as a result of the preparation and completion of the Agreement. Legal costs are not expected to exceed £500.00 where the agreement relates solely to the education contribution. However, if the agreement involves other issues or if the matter becomes protracted, the legal costs are likely to be in excess of this sum.

Please note, the potential contributions will be reassessed when the application is formally submitted.

#### Green infrastructure

Paragraph 13.68 of the adopted Local Plan clearly sets out that new development will be required to make provision for public open space, recreation, sports facilities and green infrastructure and where possible, such facilities should be provided on site as an integral part of the development. Also, Policy UMB(d) supports additional recreation and social facilities to meet locally generated requirements and the Policy team have suggested that considering the size of the land promoted and limited development opportunities, consideration should be given to delivering a more comprehensive development that delivers a housing and a community package. The proposal should deliver green infrastructure in accordance with Policies UMB and DM10 and the standards as set out in Table 13.1 together with guidance from the consultation response of our Parks Team also set out below.

The Parks, Leisure and Culture Officer has commented as follows:

*This application generates a requirement for open space and green infrastructure in accordance with policy DM10. The applicant has stated that the development would be 6 units but has not outlined number of bedrooms in any unit as yet. We have therefore provided an indicative calculation based on 6x3 bed units to give the applicant an indication of approximate contribution that would be sought. We can provide a more accurate calculation when the number of units and bedrooms in each is confirmed. If this scheme progresses to a formal application which is recommended for approval, we will be able to provide details of specific open space schemes, in line with CIL regulations.*

#### Impact on local health care provision

Whilst I have consulted the NHS Devon Clinical Commissioning Group, I have yet to receive a response from them.

## **CONCLUSION**

From a policy perspective, due to the limited development opportunities in the village of Umberleigh there is potentially scope here to deliver a policy compliant scheme that will also help contribute to the spatial strategy for Umberleigh although I would be interested to understand the thoughts of the Parish Council in regard to a more comprehensive form of development on this site.

Any forthcoming application would be considered in terms of weighing the benefits and harm, having regard to the development plan and the presumption and material planning considerations as discussed above.

If you wish to test this advice then you can submit and pay for applications through the Planning Portal which can be accessed via the North Devon Council's Website. Application forms are also available from our website. Go to [www.northdevon.gov.uk](http://www.northdevon.gov.uk) and follow the links to 'planning' and then the links to 'planning application forms'.

The application form (full planning permission) will need to be completed in accordance with the guidance notes and accompanied by the appropriate fee. **Please note each of your plans should have a least one significant measurement on them and a scale bar.** The 'local list' details the information required to ensure that your application is valid and can be registered.

In addition to the mandatory national requirements, the following will also be required:

- Application Form – as discussed earlier the LPA would recommend submitting a Full Application to ensure delivery in light of five year housing land supply
- Housing Delivery Statement, including affordable
- Heads of Terms
- Foul Drainage Assessment if not connecting to the mains system
- Flood Risk Assessment / Drainage Strategy Document
- Wildlife trigger list and Ecological Appraisal by a suitably qualified ecologist which must be no more than a year old which must be supported by a detailed Defra 2 Biodiversity Net Gain assessment
- A hedgerow survey may also be required
- Topographical Survey
- Applicable Drawings (layouts, plans, elevations, landscape etc) which should include existing levels on the site and proposed finished floor levels of the proposed dwellings and scales cross and long section drawings which show the proposed dwellings in relation to the road (existing and proposed) and to neighbouring properties

There are other legislative requirements outside of the planning process which need to be adhered to throughout the development process such as Building Regulations and The Party Wall Act. These are not a consideration in the planning process however you should make yourself familiar with the requirements as this may affect your proposal. Further information can be found at the following websites:

<https://www.nmdbuildingcontrol.co.uk/>

<https://www.gov.uk/party-walls-building-works>.

You should note that the above advice is an informal opinion given without the benefit of formal consultation and public advertisement and would not prejudice any decision which may be made by the Local Planning Authority in determining any subsequently submitted application, which can only be obtained by the submission of a formal application.

**Miss S. May**  
**Case Officer**