Hi Graham

Many thanks for your email. I am sorry for the time taken to come back on the points raised.

Beech Tree

Firstly, I need address the issue of the felling of the Beech Tree. Please note that I have passed your comments onto our client. I must admit I am shocked and surprised to hear there is a woodland TPO covering the site. This is not something we, or our tree consultant were aware of.

Our arboriculturalist undertook their own due diligence back in 2015 and were advised by EDDC there were no TPO’s covering the site. We have also reviewed all of the on-line correspondence relating to the previous application that we were involved in (reference 16/0239/OUT). The presence of a TPO was not raised by the case officer, there was no formal consultation response from the tree officer during the course of the last application, and no reference is made of this TPO within the committee report for that application. Therefore, I trust you can appreciate that this is an unfortunate error, rather than blatant disregard for a known TPO.

I have asked our Tree Consultant to confirm their understanding of the situation and attach their commentary for your information. I trust you’ll find this helpful. It sets out some helpful background context, and it is interesting to note that the only TPO covering the site is a Woodland TPO. This implies that the trees protected are within a “woodland”, or at least perhaps within a group of trees considered to be as such. Obviously, the felled Beech was in a hedge bank and nowhere near any apparent woodland.

In view of this, our tree consultant has suggested that any harm can be addressed via a tree planting requirement. We also note that there has been no objection to the removal of the tree from neighbours or the Parish Council, and we would suggest that it is not in the public interest for any further enforcement action to be taken.

Other matters

Site Visit

Turning to other issues raised, I note that you feel your visit to post the site notice in February 2017 gave you an understanding of existing context. Obviously it’s your call, but I genuinely believe it might help your assessment of the application and give a better understanding of local context if you were able to enter the site.

You also suggest that you haven’t come to a conclusion on the relationship of the development to the neighbouring dwellings to the south. Needless to say we are satisfied that the relationship is perfectly acceptable, but if you do have further questions, please let me know.

Shirley Heavey
concerns with this arrangement you can only truly assess this impact from entering the site. Do let me know if you change your mind and you would like me to arrange access for you.

BuAB for West Hill

I also note your concern that the application is outside of the previously adopted and emerging BuAB for West Hill. However, you need to make a decision based on the policy position as it is at the current time, and not on previous or emerging policy positions. I think it would be unreasonable of the LPA to take any other approach, and we have rehearsed this issue at length in our planning statement. We have also appended to our planning statement the recent appeal decision that was taken in West Hill which supports our position.

At the current time there is no adopted BuAB for West Hill. Bearing in mind the presumption in favour of sustainable development that is set out in the NPPF, the Development Plan will be “absent” in respect of any BuAB for West Hill until the Villages Plan document is formally adopted – therefore one would expect that the presumption would take effect.

Whilst the site might have been considered as part of the boundary setting process for the emerging Villages Plan DPD, we’re obviously entitled to disagree with this assessment and challenge it at any future hearing session which is held for the Villages Plan. Ultimately this document will carry no weight in law until it is formally adopted.

Hedgebank

In terms of the impact on the hedgebank, obviously a section of this hedge would need to be removed to provide access, but I fail to see how this is harmful? In accordance with the presumption in favour of sustainable development, we feel that any harm that would be caused by the visual breach in the hedgerow would be more than offset by providing additional housing in a highly sustainable location. Further landscaping details can be provided at reserved matters stage along with additional tree planting to respond appropriately to the character of West Hill.

CONCLUSION

In light of the above, we feel there are very good reasons why this application should be supported. The scheme is NPPF compliant, and has the following benefits:

- The site is clearly part of West Hill (a Strategy 27 village) which you will recognise as being a sustainable location with a wide range of services and facilities;
- The proposals are essentially infill development that would sit between dwellings to the north and south;
- The site is in an accessible location within 500m easy and safe walk of services and public transport links within the village;
- There are no landscape or heritage designations affecting the site
- When EDDC couldn’t demonstrate a 5 year housing land supply, a dwelling was approved immediately next door (under application reference 15/1486/FUL). In the conclusion of the committee report, the overall planning balance confirmed this is a sustainable location, and the dwelling was a sustainable form of development (despite the site being outside the settlement boundary at the time).

Obviously we note that we have the support of one of the Ward Cllr’s and would be interested to hear if you plan to take this application to committee in the near future. We’d also appreciate it if you could re-consider your position bearing in mind the benefits associated with the site and the guidance set out in national policy.

I look forward to hearing from you.

Yours sincerely
From: Planning Central [mailto:PlanningCentral@eastdevon.gov.uk]
Sent: 04 April 2017 16:29
To: Daniel Rogers <DRogers@bell-cornwell.co.uk>
Cc: Planning Central <PlanningCentral@eastdevon.gov.uk>
Subject: RE: 17/0523/OUT Outline application for up to two dwellings with associated access (details of layout, scale, appearance and landscaping reserved), Land At The Gap Lower Broad Oak Road West Hill

Hi Dan,

Thank you for your email and suggestion that officers visit the site to understand how the context has changed since the previous application. However, at this point in time it is not considered necessary to visit the site. It was visited in February 2016 in relation to the previous application, and the new dwelling to the north and its relationship with the site was evident from the visit to post the site notice in February 2017.

At this stage it is worth noting that the application continues to be unacceptable in principle, being outside of the previously adopted and emerging BuAB for West Hill and with no specific policy support or inclusion within a Neighbourhood Plan or other community initiative. The site was explicitly considered as part of the boundary setting process for the emerging Villages Plan DPD and excluded on the basis that it was contrary to criteria C1, C3 and C4 of the methodology. That being the case the application is likely heading towards refusal.

In terms of the relationship with the dwellings to the south (which was a reason for refusal on the previous application), the current scheme would appear to reduce this impact somewhat. However, whether this is to an acceptable level or not we have yet to come to a view on.

In terms of the impact on the hedgebank and Beech tree that were cited as a reason for refusal on the previous application, the impact upon the hedgebank would appear to be no different to before. However, the Beech tree would appear to have been felled. You should inform your clients that this may be an issue as there was a TPO Woodland
Order covering the site and permission was required to be sought before any felling could take place. Considering the inclusion as a reason for refusal on the previous application, this would likely have not been approved. This case is being passed on to our enforcement officer to progress.

In short, the current application would appear to not adequately address all of the reasons for refusal of the previous scheme and in particular the development of the site for housing remains unacceptable in principle. To this end the application is likely to be refused in the coming weeks.

Many thanks,

Graeme Thompson
Planning Central Team
East Devon District Council

📞 01395 571596
📧 Planningcentral@eastdevon.gov.uk
🌐 www.eastdevon.gov.uk
⚠️ Please consider the environment before printing this email

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From: Daniel Rogers [mailto:DRogers@bell-cornwell.co.uk]
Sent: 29 March 2017 08:52
To: Planning Central <PlanningCentral@eastdevon.gov.uk>
Subject: 17/0523/OUT Outline application for up to two dwellings with associated access (details of layout, scale, appearance and landscaping reserved), Land At The Gap Lower Broad Oak Road West Hill

Dear Central Team

I understand that the application we submitted on behalf of our client is nearing the end of its formal consultation period. I’d be grateful if you could confirm the team’s current positon with this application.

I also spoke to a member of your team yesterday, who advised that you were still considering whether it would be necessary to conduct a site visit given an application was submitted on this site last year.

Needless to say, I’d strongly suggest it is in your teams interest to visit and enter the site (not just view the proposals from the road) given the context in which the site is viewed has changed since the last application was submitted e.g. a new dwelling is now being constructed to the north of the site. We also note that issues have been raised by neighbours regarding amenity impacts, and these can only be assessed from entering the site.

I’d be more than happy to arrange a site visit, although due to current access arrangements (gates etc.) I would need to arrange an appointment. If you would like to view the site, please suggest some convenient dates/times and I will liaise with my client.

Yours sincerely

Daniel Rogers
BA(Hons) MTP MRTPI
Principal Planner
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Email disclaimer
Dear Dan,

I have reviewed the email from the Central Planning Team, and I have to say that I am surprised by the presence of the TPO (which has now been backed up by an email received from Penny Thompson of EDDC following an enquiry by my colleague, Graham Joyce). The reason I am surprised is that my involvement with this site dates back several years, and when (as part of a due diligence exercise) I contacted EDDC by telephone in June 2015 to query whether there were any TPOs on the site, I was advised that there were none – a fact noted in my report of 25th June 2015 (see our ref: TH/X1199/0515). A copy of this report is available to view online associated with planning application reference 15/1486/FUL. The consultee comments from the Tree Officer (actual officer unidentified) demonstrate that they have thoroughly reviewed this document, and yet no mention is made within their comments suggesting that the report contains an inaccuracy in section 2.4 on page 7, nor, in fact, do their comments make any reference to the presence of a TPO at all, even though it would appear that the 1973 Woodland TPO also covers all of the trees associated with the 2015 planning application.

It is obvious that the 1973 TPO was in existence at the time of my June 2015 enquiry, and it would therefore seem that an administrative error has occurred at that time, resulting in the TPO not being identified and communicated. Given that your clients have not had a TPO served on them since my checks in June 2015, it would be reasonable for them to assume that they could rely on the information stated within my report, and proceed with the felling of this relatively small tree.

A further point of note is that the use of the Woodland designation implies that the trees protected are within a "woodland", or at least perhaps within a group of trees which might ordinarily be considered (albeit tenuously) a woodland. The felled Beech was on a hedgerow and nowhere near any apparent woodland, nor was it connected by any other contiguous line of trees to any other apparent woodland feature. Reference to old mapping suggests that while the field which comprises the development plot for application 17/0523/OUT may have had partial or complete tree cover in 1938 (see http://maps.nls.uk/view/101444404), by 1961 it was apparently clear of trees (see http://maps.nls.uk/view/95752811). The tree in question was far younger than 44 years old, and while this technically makes no difference in the case of a Woodland TPO, it is apparent that the TPO isn’t fit for purpose, in so far as it is being used to protect individual trees rather than woodland.

EDDC may refer this matter to its Enforcement Officers, however, given that the felling was undertaken without any intent to destroy a formally protected tree, it is unlikely to be in the public interest for enforcement action to be pursued. Whilst I am unaware as to whether any complaints were made by the public regarding the felling of this tree, I consider this to be unlikely, as I would have expected immediate enforcement action had this been the case. I would therefore suggest that it would be reasonable for EDDC’s planning officers to judge any application on its merits, rather than seeking any retribution as alluded to within their email. I note that the proposals offer significant new plantings, and these should therefore fully
mitigate the loss of a single relatively small Beech tree. I would also suggest that EDDC may wish to review this TPO to ensure that it is fit for purpose and accurately reflects those trees and/or woodlands on the site which are worthy of formal protection.

If your client would like me to attend a meeting on site with EDDC’s Planning Officers or Enforcement Officers then I’d be delighted to do so in order to fully resolve this matter.

Kind regards

Tom

Tom Hurley
BSc(For)Hons MArbA
Senior Consultant

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From: Daniel Rogers  
Sent: Thursday, April 6, 2017 1:18 PM  
To: Tom Hurley  
Subject: FW: 17/0523/OUT Outline application for up to two dwellings with associated access (details of layout, scale, appearance and landscaping reserved), Land At The Gap Lower Broad Oak Road West Hill

Dear Tom,

I have received the email below from the Central Planning Team at East Devon District Council regarding our client’s current application at The Gap (LPA reference 17/0523/OUT).

Could I ask you to consider the arboricultural comments provided at the end of the email? A Beech Tree has been removed from the site, and you’ll see that the LPA are suggesting this may be an issue as there is a TPO Woodland Order covering the site and permission would have been required to remove this tree. The Planning Officer is also suggesting this will be passed to the enforcement officer for further consideration.

Needless to say, this is news to us and we had no idea that there was a TPO covering this site which I believe you checked before the submission of our previous application? Could you clarify the position and provide your professional opinion on the points raised?

Many thanks,

Dan

Daniel Rogers  
BA(Hons) MTP MRTP  
Principal Planner

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Bell Cornwell LLP, Sowton Business Centre, Capital Court, Bittern Road, Exeter, EX2 7FW Also at Amersham, Hook and London

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From: Planning Central [mailto:PlanningCentral@eastdevon.gov.uk]
Sent: 04 April 2017 16:29
To: Daniel Rogers <DRogers@bell-cornwell.co.uk>
Cc: Planning Central <PlanningCentral@eastdevon.gov.uk>
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Yours sincerely

Daniel Rogers
BA(Hons) MTP MRTPI
Principal Planner

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