



## Public Document Pack

North Devon Council  
Brynsworthy Environment Centre  
Barnstaple  
North Devon EX31 3NP

K. Miles  
Chief Executive.

### **PLANNING COMMITTEE**

A meeting of the Planning Committee will be held in the Barnstaple Rugby Club on **WEDNESDAY, 5TH JUNE, 2024 at 10.00 am.**

**(NOTE: A location plan for the Rugby Club is attached to the agenda front pages)**

**NOTE:** Please note that copies of letters of representation have been placed on North Devon Council's website and are also available in the Planning Department.

**ALSO:** A break at lunchtime may be taken at the discretion of the Committee dependent upon the speed of progress of determining the planning applications on the agenda.

**PARKING:** Please note that the Rugby Club is a pay and display car park (£1.70 all day). Other nearby car parks are located at Mill Road Car Park (adjacent to the Rugby Club – 40p per hour, maximum stay 3 hours), Fairview (£1.70 all day) or Rolle Quay (£1.10 per hour for 1 – 4 hours. 5 hours - £5.60, 6 hours - £6.80, 7 hours - £8.00, 8 hours - £9.20).

Members of the Planning Committee

Councillor Davies (Chair)

Councillors Bishop, Bulled, Crabb, Denton, Haworth-Booth, R Knight, Lane, C Leaver, Maddocks, Prowse, L. Spear, Walker, Whitehead and Williams

### **AGENDA**

1. Apologies for absence
2. To approve as a correct record the minutes of the meeting held on 1st May 2024 (Pages 9 - 16)
3. Items brought forward which in the opinion of the Chair should be considered by the meeting as a matter of urgency
4. Declaration of Interests

Please telephone the Corporate and Community Services team to prepare a form for your signature before the meeting. Interests must be re-declared when the item is called. A declaration of interest under the Code of Conduct will be a Disclosable Pecuniary Interest, an Other Registrable Interest or a Non-Registrable Interest. If the item directly relates to your interest you must declare the interest and leave

the room for the item, save in the case of Other Registrable Interests or Non-Registrable Interests where you may first speak on the item as a member of the public if provision has been made for the public to speak. If the matter does not directly relate to your interest but still affects it then you must consider whether you are affected to a greater extent than most people and whether a reasonable person would consider your judgement to be clouded, if you are then you must leave the room for the item (although you may speak as a member of the public if provision has been made for the public to speak) or, if you are not, then you can declare the interest but still take part).

5. To agree the agenda between Part 'A' and Part 'B' (Confidential Restricted Information)

## **PART A**

6. **77028: Castle Inn, Blakes Hill Road, Landkey** (Pages 17 - 48)  
Retrospective application for erection of two timber structures. Report by Planning Officer (attached).
7. **78375: Land at South View, Bratton Fleming** (Pages 49 - 64)  
Variation of condition 2 (approved plans) linked to planning permission 64032 (Erection of dwelling with associated parking) to allow for changes made to the design and amendments to associated parking. Report by Senior Planning Officer (attached).
8. **78488: Runnymede Gardens Wilder Road Ilfracombe Devon** (Pages 65 - 76)  
Application under Regulation 3 of the T & C P General Regulations 1992 notification by NDC for removal of existing stone retaining wall & reconstruct new cavity retaining wall with stone facing to match existing. Report by the Planning Officer (attached).
9. **Appeal report**  
No appeals have been received since the date of the previous committee.
10. **To consider if any Planning Site Inspections are required and to agree the reason(s) and date(s) for those inspections to be held.**

## **PART B (CONFIDENTIAL RESTRICTED INFORMATION)**

Nil.

**If you have any enquiries about this agenda, please contact Corporate and Community Services, telephone 01271 388253**

**NOTE: Pursuant to Part 3, Annexe 1, paragraph 3 of the Constitution, Members should note that:**

*"If a Member:*

- (a) Arrives at a meeting during the consideration of an item; or*
- (b) Leaves a meeting at any time during the consideration of an item;*

*They shall not:*

- (i) propose or second any motion or amendment; or*
- (ii) cast a vote*

**REGISTERING TO SPEAK**

- If you wish to address the Planning Committee you should contact the Committee Administrator in advance of the Committee on 01271 388253 or speak to them just before the meeting commences.

**WHAT HAPPENS AT COMMITTEE?**

- The Chairman will introduce himself/herself
- The Planning Officer will present his/her report
- The Chairman will call out the names of individuals who have registered to speak
- Speakers will be **restricted to 3 minutes each** (which is timed and beeped). **A maximum of six supporters and six objectors of the application may speak at committee.** The applicant or agent and representative of the parish council may also speak at committee.
- ***Once public participation has finished, the Planning Officer will be given the opportunity to respond or to clarify any points that have arisen from the public participation exercise***
- The Members of the Committee shall then debate the application (**at this point the public shall take no further part in the debate**)

**WHEN SPEAKING**

- State clearly your name, who you are representing and whether you are supporting or objecting to the application
- Speak slowly, clearly and loud enough for everyone to hear you, and direct your comments to the Chairman and the Committee
- Try to be brief, avoid being repetitive, and try to prepare what you want to say beforehand.

**WHAT HAPPENS NEXT?**

- ***A record of the decisions taken at the meeting is produced (known as the "minutes of the meeting")***
- The minutes of the meeting are published on the Council's Website:  
[www.northdevon.gov.uk](http://www.northdevon.gov.uk)



**APPOINTMENT OF SUBSTITUTE MEMBERS  
AT MEETINGS OF THE PLANNING COMMITTEE**

In accordance with the North Devon Council Constitution, a Member or Leader or Deputy Leader of a Political Group, appointing a substitute shall notify the Proper Officer of the name of his/her substitute. **Notification by a Member purporting to be a substitute Member will not be accepted.**

In the case of a substitution to the Planning Committee, the substitute Member shall sign and lodge this certificate with the Corporate and Community Support Manager confirming the acceptance of the appointment and that they have completed all Planning training modules provided to Members.

**DATE OF PLANNING COMMITTEE: ..... [Insert date]**

For completion by Member of the Planning Committee requiring a substitute

I, Councillor..... [print name], hereby declare that I appoint  
Councillor ..... [insert name of substitute Member] to substitute for  
me at the above mentioned meeting of the Planning Committee:

[signature]..... [date].....  
**OR**

For completion by Leader/Deputy Leader of a political group nominating a substitute

I, Councillor..... [print name of group Leader/Deputy Leader],  
hereby declare that I appoint Councillor ..... [insert name of  
substitute Member of same political Group] to substitute for Councillor  
.....[insert name] at the above mentioned meeting of the Planning  
Committee.

[signature]..... [date].....  
**AND**

For completion by substitute Member accepting appointment of substitute

I, Councillor ..... [print name], hereby confirm that I  
accept the appointment of Substitute for the above mentioned Planning Committee and  
hereby confirm that I have undertaken all appropriate Planning training modules in  
relation to the same.

[signature]..... [date].....

**NOTE: FORM TO BE COMPLETED AND RECEIVED BY CORPORATE AND COMMUNITY SUPPORT  
PRIOR TO THE COMMENCEMENT OF THE MEETING**

## **North Devon Council protocol on recording/filming at Council meetings**

The Council is committed to openness and transparency in its decision-making. Recording is permitted at Council meetings that are open to the public. Members of the public that attend meetings must be aware that these meetings are open to the public and so therefore both individuals and the Council itself have the right to record the meeting. The Council understands that some members of the public attending its meetings may not wish to be filmed. The Chair of the meeting will make sure any request not to be filmed is respected.

The rules that the Council will apply are:

1. The recording must be overt (clearly visible to anyone at the meeting) and must not disrupt proceedings. The Council will put signs up at any meeting where we know recording is taking place.
2. The Chair of the meeting has absolute discretion to stop or suspend recording if, in their opinion, continuing to do so would prejudice proceedings at the meeting or if the person recording is in breach of these rules.
3. We will ask for recording to stop if the meeting goes into 'part B' where the public is excluded for confidentiality reasons. In such a case, the person recording should leave the room ensuring all recording equipment is switched off.
4. Any member of the public has the right not to be filmed. We ensure that agendas for, and signage at, Council meetings make it clear that recording can take place – anyone not wishing to be filmed must advise the Chair at the earliest opportunity to allow them to be directed to an area in the room where they will not be caught on camera. Subject to paragraphs 1, 2 and 3 above, audio recordings shall be permitted at all times during public meetings.
5. The recording should not be edited in a way that could lead to misinterpretation or misrepresentation of the proceedings or in a way that ridicules or shows a lack of respect for those in the recording. The Council would expect any recording in breach of these rules to be removed from public view.

### **Notes for guidance:**

Please contact either our Corporate and Community Services team or our Communications team in advance of the meeting you wish to record at so we can make all the necessary arrangements for you on the day.

For more information contact the Corporate and Community Services team on **01271 388253** or email [memberservices@northdevon.gov.uk](mailto:memberservices@northdevon.gov.uk) or the Communications Team on **01271 388278**, email [communications@northdevon.gov.uk](mailto:communications@northdevon.gov.uk).

The Barnstaple Rugby Club full address is: Barnstaple RFC, Pottington Road, Barnstaple, EX31 1JH.

At the traffic lights at the end of Rolle Street on the B3149 turn either left or right onto Mill Road according to the direction that you are travelling from. Follow the road along and turn right onto Pottington Road.

The Rugby Club is located on your left. Please note that the Rugby Club is a pay and display car park (£1.70 all day). Other nearby car parks are located at Fairview (£1.70 all day) or Rolle Quay (£1.10 per hour for 1 – 4 hours. 5 hours - £5.60, 6 hours - £6.80, 7 hours - £8.00, 8 hours - £9.20).



28.05.24

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**NORTH DEVON COUNCIL**

Minutes of a meeting of Planning Committee held at Barnstaple Rugby Club on Wednesday, 1st May, 2024 at 10.00 am

PRESENT: Members:

Councillor Davies (Chair)

Councillors Bishop, Crabb, Denton, Haworth-Booth, R Knight, Lane, Maddocks, Norman (substitute for Councillor C. Leaver), Prowse, L. Spear, Walker, Whitehead and Williams

Officers:

Service Manager (Development Management), Lead Planning Officer (Major Applications), Senior Planning Officer (SE), Legal Advisor, Planning Officer (BC), Chief Executive and Sustainability Officer

Also Present:

Councillors Bell and Cann

**10. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Bulled and C. Leaver.

The Senior Corporate and Community Services Officer advised the Committee that Councillor Norman had been appointed to substitute for Councillor C. Leaver at this meeting.

**11. TO APPROVE AS A CORRECT RECORD THE MINUTES OF THE MEETING HELD ON 3RD APRIL 2024**

RESOLVED that the minutes of the meeting held on 3 April 2024 (circulated previously) be approved as a correct record and signed by the Chair.

**12. ITEMS BROUGHT FORWARD WHICH IN THE OPINION OF THE CHAIR SHOULD BE CONSIDERED BY THE MEETING AS A MATTER OF URGENCY**

**(a) Order of Agenda**

The Chair advised that item 9, planning application 78083, would be considered before item 7 on the agenda.

**13. DECLARATION OF INTERESTS**

The following declarations of interest were announced:

Councillor Davies – Planning application 78424 disclosable pecuniary interest as the agent for the application.

Councillor Denton – Planning application 76293 non registerable interest as the applicant was known to him.

Councillor Lane – Planning application 76293 non registerable interest as the land owner was known to him.

**14. 76293: LAND SOUTH OF A39 BRYNSWORTHY BARNSTAPLE  
DEVON EX31 3QQ**

The Committee considered a report by the Lead Planning Officer – Major Applications (circulated previously) regarding planning application 76293.

Councillor Denton re-declared a non registerable interest in this application and left the meeting during the consideration thereof.

Councillor Lane declared a non registerable interest in this application as he knew the applicant and left the meeting during the consideration thereof.

The Senior Corporate and Community Services Officer read out statements received on behalf of Mike Tucker (Instow Parish Council - objecting), Sarah and Ryan Tucker (objecting) and Geoff Hall (objecting) to the Committee.

Martin Gimber (North Devon Homes – supporting), Mark Johnston (North Devon and Torridge Housing Crisis – supporting), James McKechnie (supporting), Councillor Bell, Adrian Tucker (objecting), Dennis Jenkins (objecting), Andrew Pegg (Wessex Investors – applicant) and Claire Alers-Hankey (Greenslade, Taylor and Hunt – agent) addressed the Committee.

Councillor Cann (Ward Member) addressed the Committee.

In response to issues raised by the speakers, the Service Manager (Development Management) advised the following:

- That reference made to policy ST19 was not applicable to this application as it was not a rural site. Policy ST18 was the applicable policy in this instance.

In response to issues raised by the speakers, the Lead Planning Officer – Major Applications advised that there had been a fatality on the A39 near to the proposed location of the footpath with a person crossing from Brynsworthy Lane.

In response to questions raised by the Committee, the Development Manager for Devon County Council Highways Authority advised the following:

- That the Highways Authority preference had been to secure a roundabout as opposed to a crossing. However, the applicant had been able to demonstrate that traffic signals would work and therefore the Highways Authority had not raised an objection. The Highways Authority could not dismiss a proposed junction if it could be demonstrated that an alternative solution could work.

In response to questions from the Committee, Andrew Pegg (applicant) advised that it had been decided to not proceed with the provision of a roundabout as part of the development as it would be a larger infrastructure and require more third party land. The provision of a pedestrian crossing had passed the appropriate tests, was more practical to deliver and would be less confusing for pedestrians and drivers.

In response to questions from the Committee, the Sustainability Officer advised that in relation to the comments made by Natural England regarding the estuary being a migration route for overwintering birds was a general statement. The applicant was responsible for ecology on the site and there was no suitable habitat on the site for overwintering birders therefore an overwintering survey was not required.

In response to questions from the Committee, the Lead Planning Officer – Major Applications advised the following:

- A Grampian condition could be imposed on an area outside of the application site to ensure the delivery of part of a development and that without a Grampian condition it would prevent the development taking place until it was secured.
- The Local Plan required 30% affordable housing/Social housing. The Supplementary Planning Document would require the tenure mix to be at least 75% for social rent and 25% intermediate housing. Some of the proposed tenure was intermediate which would enable the occupier to become a freeholder. The social rent would be provided by a registered provider such as North Devon Homes who would provide social housing to tenants with an identified need.
- That the site had been submitted as a call for site as part of the evidence base for the the Housing and Economic Land Availability Assesmmnt (HELAA).
- The NHS was a consultee for all major schemes. She reported on a recent meeting that she had attended whereby the NHS were requiring section 106 contributions for primary care and for acute care build projects.
- As detailed on page 123 of the report, although the location of the site had been identified by Natural England as having a potential impact, they had identified suitable mitigation through conditions.
- South West Water had been consulted and responded. From the comments made it had been taken that there was sufficient infrastructure in place to connect to the site.
- The wording in the policy stated that walking and pedestrian footways should be well designed and attractive.
- There had been no technical objections to the application in terms of the safety of the proposed crossing.

- In terms of sustainability of the site, if the link could not be delivered then the site would not be connected and therefore not sustainable. If the footway could be delivered, there were still concerns regarding the lengths of walking distances and the quality of the route.

In response to questions from the Committee, the Service Manager (Development Management) advised the following:

- Confirmed that the Joint Local Plan was still up-to-date and had been subject to the Planning Advisory Service process and was assessed as being sound for decision making processes.
- Meetings took place with South West Water every three months. South West Water were taking into account new developments to ensure that there was capacity and they had confirmed that there was capacity for this site. South West Water was a statutory consultee.
- The proposed pedestrian/cycling links was not a quality route and it was unlikely that it would be used by parents walking with their children or by older people.
- The application should be determined in accordance with the Local Plan unless there were material considerations. The starting point was Local Plan policy ST07 principle of development in the countryside. The site was outside of the development boundary and was contrary to this policy.
- The application was not considered to be a good form of development in terms of place making.
- The site could come forward in the future, however it needed to be a more comprehensive development with better integration with Barnstaple and sustainable transport modes.

Councillor Walker addressed the Committee in her capacity as Ward Member.

RESOLVED (9 for, 1 against and 1 abstained) that the application be REFUSED as recommended by the Lead Planning Officer – Major Applications.

**15.           ADJOURNMENT OF MEETING**

Councillor Denton left the meeting.

RESOLVED that it being 11.48 a.m. that the meeting be adjourned for a short comfort break.

RESOLVED that it being 11.58 am that the meeting be reconvened.

**16.           78083: FORMER BICCLESCOMBE NURSERIES, FURZE HILL ROAD, ILFRACOMBE, DEVON**

The Committee considered a report by the Senior Planning Officer (SE) (circulated previously) regarding planning application 78083.

The Senior Planning Officer (SE) advised the Committee of some typographical errors contained within the report which included the following:

- Condition 4 – be amended to also include reference to “Plots 3 and 4”.
- Condition 5 – be amended to also include reference to “Plots 3 and 4”.
- Conditions 13 to 18 (inclusive) – the reasons be amended to include reference to the relevant policies of the North Devon and Torridge Local Plan.
- Condition 16 – be amended to include reference to “condition 15” and not “condition 3”.

Mark Johnson (North Devon and Torridge Housing Crisis Group – supporting), Graham Parkhouse (objecting), Roger Derwas (objecting), Mark Read (applicant) and Matt Steart (agent) addressed the Committee.

The Senior Corporate and Community Services Officer read a statement received from Geoff Fowler (objecting) to the Committee.

In response to issues raised by the speakers, the Service Manager (Development Management) advised the following:

- That the issue regarding a parking regulation order being imposed had been discussed with the Development Manager for Devon County Council Highways Authority, who advised that the Highways Authority would not object to the application without this being requested. However, she advised that a section 106 contribution could be explored to ensure no parking along Furze Hill Road if it was considered to be a betterment. A Traffic Regulation Order would need to form part of a section 106 agreement.

In response to questions raised by the Committee, the Senior Planning Officer (SE) advised the following:

- The statement read on behalf of Geoff Fowler referred to no parking regulations on the blind bend, two corners and the pinch point along Furze Hill road and was not for the entire road.
- Reference to the “link has been excluded” within the penultimate paragraph of the Planning Policy Unit consultee response dated 3 January 2024, referred to land ownership to gain access to Chandlers Way.
- Biodiversity Net Gain could be met within the site, therefore there was no requirement to provide externally. The Landscape Ecological Management Plan would ensure that Biodiversity Net Gain could be achieved within the site boundaries.
- The Planning Obligations/Viability paragraph within the report set out contributions to be made through a section 106 agreement.
- The National Planning Policy Framework allowed Local Planning Authorities to make a planning balance. The delivery of 100% affordable housing provision through a Community Land Trust with the proposed mix was supported and therefore the principle was acceptable.

- The applicant had provided a viability appraisal which stated that the development could only be delivered with grant funding support to meet the significant shortfall in costs.
- The provision of bird and bat boxes would be provided as part of the Landscape Ecological Management Plan.

The Property Manager advised in relation to the consultee response of the Planning Policy Unit dated 3 January 2024, that the access gate to Kingsley Avenue would remain and it was a legal right of way. It was not clear why this had been excluded from this application, however it was planned that the access route would be re-established.

In response to questions raised by the Committee, the Service Manager (Development Management) advised the following:

- The Advanced Payment code was not out of date and a private road could accommodate 16 properties.
- The Viability Appraisal had been submitted as detailed on page 221 of the report and had been tested in accordance with paragraph 158 of the National Planning Policy Framework. It was recommended that 100% social rent be provided. It was unlikely that the site would come forward if section 106 contributions were required.
- The Local Plan policies did not currently include reference to developments being net zero. However it was anticipated that updated Building Regulations would be implemented in due course.
- The Highways Authority had not raised an objection to the application. Section 106 contributions could be sought towards a traffic regulation order to restrict parking on the blind bend, two corners and the pinch point along Furze Hill road.

RESOLVED that it being 1.00 pm that the meeting continue in order for the remaining business to be transacted.

RESOLVED (unanimous) that the application be APPROVED as recommended by the Senior Planning Officer (SE) subject to the following:

- (a) That prior to a section 106 agreement being signed, that a meeting be held between the Planning Officer, Ward Member(s) and developers regarding highway improvements;
- (b) That amendments be made to conditions as follows:
  - a. Condition 4 – be amended to also include reference to “Plots 3 and 4”.
  - b. Condition 5 – be amended to also include reference to “Plots 3 and 4”.
  - c. Condition 7 – be amended to include the following after the wording “hereby approved”, “(save such preliminary or minor works that the Local Planning Authority may agree in writing)”.
  - d. Conditions 13 to 18 (inclusive) – the reasons be amended to include reference to the relevant policies of the North Devon and Torridge Local Plan.

- e. Condition 16 – be amended to include reference to “condition 15” and not “condition 3”.
- (c) That an additional condition be included requiring the provision of bird and bat boxes.

**17. 78424: BEDPORT POULTRY FARM - PLOT 1 BURRINGTON  
UMBERLEIGH DEVON EX37 9LE**

Councillor Davies re-declared a disclosable pecuniary interest in this application and left the meeting during the consideration thereof.

Councillor Lane took the Chair.

Councillor Walker was not present during the consideration of this application.

The Committee considered a report by the Senior Planning Officer (SM) (circulated previously) regarding planning application 78424.

In response to a question from the Committee, the Service Manager (Development Manager) advised that an informal briefing would be provided to the Committee in the future regarding Class Q applications and criteria that could be taken into consideration in terms of betterment.

RESOLVED (unanimous) that the application be APPROVED as recommended by the Senior Planning Officer (SM).

**18. 78385: FORMER SHOPMOBILITY CENTRE, ALBERT LANE,  
BARNSTAPLE, DEVON EX32 8RL**

Councillors Davies and Walker returned to the meeting. Councillor Davies took the Chair.

The Committee considered a report by the Planning Officer (BC) (circulated previously) regarding planning application 78385.

RESOLVED (unanimous) that the application be APPROVED as recommended by the Planning Officer (BC).

**19. APPEAL REPORT**

The Committee considered and noted the appeal report by the Planning Support Officer (circulated previously).

The Service Manager (Development Manager) provided an update in relation to planning appeals 77333 and 77141. She advised that an update had been provided to the last Committee meeting in relation to planning appeal 76024.

**20. TO CONSIDER IF ANY PLANNING SITE INSPECTIONS ARE**

**REQUIRED AND TO AGREE THE REASON(S) AND DATE(S) FOR  
THOSE INSPECTIONS TO BE HELD.**

The Committee noted that a site inspection would be required for planning application 76809, outline application for residential development of 105 dwellings, land to North of Station Road, Woolacombe to view the impact of the development on the Area of Outstanding Natural Beauty (AONB). The application would be presented to the Committee at its meeting on 3 July 2024. It was agreed that the site inspection would take place on the afternoon of Wednesday 26 June 2024.

Chair

The meeting ended at 1.31 pm

NOTE: These minutes will be confirmed as a correct record at the next meeting of the Committee.



## **Application Report**

Planning, Housing and Health  
North Devon Council  
Lynton House, Commercial Road,  
Barnstaple, EX31 1DG

|   |  |
|---|--|
| <b>Application No:</b>  | 77028  |
| <b>Application Type:</b>  | Full Application   |
| <b>Application Expiry:</b>  | 14 November 2023   |
| <b>Extension of Time Expiry:</b>                                      | 14 November 2023   |
| <b>Publicity Expiry:</b>  | 19 February 2024   |
| <b>Parish/Ward:</b>   | /LANDKEY   |
| <b>Location:</b>  | Castle Inn<br>Blakes Hill Road<br>Landkey<br>Barnstaple<br>Devon<br>EX32 0NF   |
| <b>Proposal:</b>  | Retrospective application for erection of two timber structures  |
| <b>Agent:</b>   | Mr Lewis Andrews   |
| <b>Applicant:</b>   | Punch Taverns Ltd  |
| <b>Planning Case Officer:</b>   | Mr D. Jeffery  |
| <b>Departure:</b>   | N  |
| <b>EIA Development:</b>   |  |
| <b>EIA Conclusion:</b>  | Development is outside the scope of the Regulations.   |
| <b>Decision Level/Reason for Report to Committee (If Applicable):</b> | Committee - called in by Cllr Lane – ‘The reason for the call in - DMO1 amenity considerations.<br>To consider the impact on the neighbouring property's relating to noise, impact on lighting, also access to the raised area.’ |

## **Committee report addendum**

### **Reason and scope of addendum**

The application was originally heard at Planning Committee on Wednesday, 8th November, 2023 (Item 42.) It was resolved (12 for, 0 against, 0 abstained) that the application be APPROVED subject to the following conditions:

- a) That appropriate sound mitigation barriers be installed on the boundary to reduce sound to be approved in writing by the Local Planning Authority;
- b) The opening hours for the serving of food in the dining area of the structure be the same as those for the public house;
- c) That live music in the structure end at 10.30 pm;

- d) That a Noise Management Plan be submitted and approved by the Local Planning Authority.

A Noise Management Plan (NMP) by Soundguard Acoustics Ltd has since been submitted to the Local Planning Authority for consideration. This addendum provides a summary of the NMP and reports updated comments received from the Councils Environmental Health Officers. Given that there remains a divergence in the views of Committee members and Environmental Health Officers, it is considered necessary to return the application to committee for agreement of the proposed conditions.

### **Summary of the submitted Noise Management Plan**

The contents of the NMP are briefly summarised below.

Noise Management Approaches in section 5 propose that:

- **Restricting late evening use of the external dining space** - the designated premises supervisor will close the external garden spaces and the external dining space (The Stables) in the garden after 22:30hrs (except where an event is occurring) and encourage patrons away from residential dwellings.
- **Incidental music** - No incidental music, ambient music will be played in the dining spaces. Where daytime incidental music is present, for example low-level background music within the lower patio area then this will be at a suitably low-level to avoid offsite noise impact. At all times external incidental music will cease and will not be played after 22:30hrs.
- **Managing people using the external dining space** - The designated premises supervisor will challenge any inappropriate behaviours, language or rowdy patrons using the dining spaces.
- **Live music or events** - Conditioning of any potential events to meet this NMP to no more than 6 external live music events per annum.
- **Type of external live music events** - the selection of considered family friendly performances and the avoidance of DJ dance type performance, or karaoke type events which may give rise to greater disturbance.
- **Periods of live music** - Any external event held at The Castle Inn which includes live amplified or amplified recorded music will not commence prior to 12:00hrs midday and will aim to finish at 22:00hrs with strict and hard finish prior to 22:30hrs.
- **Encouraging soft finishes** - During any external music event the organisers will avoid hard finishes by finishing the band set at 22:00hrs and playing quieter recorded music up until 22.30hrs so that people are encouraged to leave the venue more slowly. This is also a useful technique to promote good stage management, avoid bands running over curfew times, and helps to enable a strict hard finish time of 22:30hrs.
- **Signage**: Signage will be displayed at key exits encouraging patrons to leave the premises quietly and to be respectful of nearby residents. These signs will be displayed in key areas of the external garden space, The Stables, and the lower patio areas.
- **Smoking area**: The Stables dining space will display no smoking signs. The Stables is a dining space and is not permitted, or used, as a smoking shelter and this is to avoid the congregation of smokers closer to residential dwellings.
- **Licensing hours**: The designated premises supervisor will strictly observe the licensing hours and the opening and closing times to reduce the potential for late night patron noise impact.

# Agenda Item 6

- **Bottles and waste:** Activities such as deliveries, collection of waste, tipping bottles and clearing up, etc will not be performed late at night or at other noise sensitive times.

Subjective noise monitoring in section 6 proposes that:

- **Advice in advance of bookings:** Bands and DJs are to be told prior to playing that the designated premises supervisor has ultimate say in levels that they play at.
- **Performance start and noise levels:** An initial check will be carried out by the designated premises supervisor at the start of the entertainment to ensure the levels are reasonable and communicated that those levels should be maintained for the performance.
- **Regular checks:** Whenever the garden is in use, regular checks will be undertaken by staff to monitor attendee's behaviour and these checks will be logged. Any change in entertainment, such as new band or change of DJ, will be supported with a further check.
- **Managing uncompliant acts:** Any artist not complying with instructions to turn down will be given an initial warning before being told to stop playing.
- **Staff responsibility:** Any member of staff responsible for any of the above duties will read and comply with the condition's duties set out in this document.

Working relationships and responsibilities in section 7 proposes that:

- **Premises license holder:** Punch Partnerships (PML) LTD has the ultimate responsibility for compliance with the noise operating schedule and ensuring that the event will be run in accordance with the Noise Management Plan.
- **Venue staff:** All staff will receive appropriate training in the operation of the venue and will be made fully aware of the importance of good noise management and ensure that the operational times of the venue are maintained and adhered to. staff will attend any further relevant training for effective venue management.
- **Sound engineers:** The final version of the NMP will be circulated to all visiting sound system controllers and other relevant personnel in advance of any event.
- **Musicians:** Musicians will be briefed regarding the site management requirements and timings.
- **North Devon Council:** NDC as the licensing authority will retain the function for checking that compliance with any conditions has been achieved to determine if there is a need for any enforcement action.
- **Local residents:** Punch Partnerships (PML) LTD is committed to maintaining a good rapport with any nearby residents and will follow this Noise Management Plan so that noise disturbance at any identified property is not unreasonable. Punch Partnerships (PML) LTD will take any complaint seriously and will respond to and follow up upon any complaint in a timely and correct manner.

Section 8 of the NMP also provides contact details for the Landlord should a complaint need to be lodged and sets out a noise complaint investigation procedure. Further to this Section 9 allows for annual review of the NMP.

## Consultation responses from Environmental Health

The Council's Environmental Health department has been consulted on the submitted NMP as have comments as follows:

Dave Morgan the Council's Environmental Health Consultant 18/4/2024

Lynton House, Commercial Road, Barnstaple EX31 1DG | www.northdevon.gov.uk

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*"In my email to you on 31 January I raised my concern that a NMP written to meet the requirements of the Planning Committee decision would be unlikely to adequately address the concerns I raised from an EH perspective. As such, it would be difficult for me to reach agreement on a NMP without undermining the EH position with regard to dealing with any future noise complaints from residents. Notwithstanding the above, the Soundguard NMP represents a significant improvement on the Applicant's original NMP. The document includes a number of specified restrictions and measures that were lacking in the previous NMP. If you are minded to approve the NMP on the basis that it addresses the decision of the Planning Committee then I suggest you include a Condition on any permission requiring its full implementation. I note section 9 of the NMP includes provision for annual review. You may wish to consider conditioning a time period on any LPA approval of the NMP such that an opportunity would arise to amend the plan should it be deemed necessary in future".*

Darren Hale the Council's Lead Environmental Health Officer 6/5/2024

*"Although I support Dave's earlier comments I am mindful of the planning committee's decision. The report is correct that there are no specific criteria for this use type, quantifying how loud a live music event would be are the nearest residential premises is not difficult to do. The main concern being that the more intense use of the beer garden is likely to occur when the residents are more likely to expect reasonable enjoyment of their own land. Given the close proximity live music event would be likely to material interfere in the use of that land but then again the term 'live music' encompasses a wide range of events from a rock band or a person playing an acoustic guitar. Therefore it is essential to limit the number and type of event. There should be no more than one per month throughout the summer –April – Oct. Any live music should cease by 22:00hrs.*

*I am mindful that complaints are likely due to concerns of neighbouring residents but regardless the NMP should be review on receipt of a justified complaint to the Council's Environmental Protection Team. Please note it would be for the EP team to decide if justified and not merely a complaint received. No incidental music should be permitted in the outside area.*

*I am mindful of the pressures on hospitality trade and particularly village public houses. In this case residents have gardens leading up to the open area and there is considerable opportunity for noise, odour and other nuisances to occur. I believe this approach is pragmatic but is not an agreed working practice to provide any 'best practicable means' defence if a Statutory Nuisance is found to exist in the future. In the absence of any noise measurements of background or predictions to nearest residential it I not possible to make any reasonable judgement on the impact of the changes to the previous noise levels".*

## **Conclusions**

Officers recognise that the views of the Planning Committee diverged from those of the Council's EH Officers during the original determination of the application. Although there continues to be differences in relation to details such as the cut off time for live music (22:00pm vs 22:30) the conclusions of the planning committee contained in the minutes (following lengthy debate) are considered to reasonable in the context of the updated NMP and the above comments received from the Council's Environmental Health Officers.

It is also emphasised that use of the entire beer garden is covered by a Premises Licence and that Environmental Health could use statutory nuisance provisions to tackle any complaints that might arise. Neighbours would therefore still benefit from a degree of protection, requiring compliance with the licensing objectives including 'the prevention of public nuisance'. Statutory nuisance provisions would also be applicable. It is recommended that this be included an informative attached to any permission.

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The inclusion of acoustic barriers along the boundary of the property are not considered to be practicable and would require a separate application for planning permission. This could give rise to amenity impacts in themselves and would also need to be considered in the context of the site being within the Conservation Area.

## **Proposed conditions**

1. Standard time condition
2. Approved plans
3. The use of the beer garden and dining structure hereby approved be carried out strictly in accordance with the submitted NMP.
4. The structures hereby approved shall not be used for live or recorded music of any kind beyond 22:30.
5. No more than 6 external live music events per annum.
6. No external lighting other than that approved under plan number (Ref: 2107 000\_GA A)

## **END OF ADDENDUM REPORT**

**PREVIOUS REPORT AS PRESENTED TO PLANNING COMMITTEE ON 8<sup>th</sup>  
November 2023 FOLLOWS**

## **Application Report**

**Planning, Housing and Health**  
**North Devon Council**  
**Lynton House, Commercial Road,**  
**Barnstaple, EX31 1DG**

**Application No:** 77028  
**Application Type:** Full Application  
**Application Expiry:** 14 November 2023  
**Extension of Time Expiry:** 14 November 2023  
**Publicity Expiry:** 19 February 2024  
**Parish/Ward:** /LANDKEY  
**Location:** Castle Inn  
Blakes Hill Road  
Landkey  
Barnstaple  
Devon  
EX32 0NF

**Proposal:** Retrospective application for erection of two timber structures

**Agent:** Mr Lewis Andrews  
**Applicant:** Punch Taverns Ltd  
**Planning Case Officer:** Mr D. Jeffery  
**Departure:** N  
**EIA Development:**  
**EIA Conclusion:** Development is outside the scope of the Regulations.  
**Decision Level/Reason for Report to Committee (If Applicable):** Committee

### **Site Description**

Landkey is a large village located to the south of the North Devon Link Road (A361), approximately 3 miles south-east of Barnstaple. It is a broadly linear settlement on either side of the old main road between Barnstaple and South Molton.

The application relates to the Castle Inn, a Public House on the north side of Blakes Hill Road. To the north of the Castle Inn is a beer garden, which is bound by homes on The Orchards to the north and a public car park to the east. The area is predominantly residential in character, although it is also strongly influenced by Blakes Hill Road itself, which provides a busy thoroughfare from the A361 towards Swimbridge.

The site is within the Landkey and Swimbridge Newland Conservation Area and is within the adopted Development Boundary: Landkey Development Boundary ST07.

### **Recommendation**

**Refused**

Legal Agreement Required: No

**Planning History**

| Reference Number | Proposal  | Decision               | Decision Date    |
|------------------|---|------------------------|------------------|
| 15361            | PROPOSED RETROSPECTIVE APPLICATION IN RESPECT OF UNAUTHORISED ILLUMINATED & NON-ILLUMINATED SIGNS. at CASTLE INN, , LANDKEY NEWLAND, BARNSTAPLE, EX32 0NF                                   | FULL PLANNING APPROVAL | 18 June 1992     |
| 26234            | PROPOSED DEMOLITION OF EXISTING PORCH PLUS RELOCATION OF REAR ENTRANCE AND FIRE ESCAPE STAIRS PLUS INTERNAL ALTERATIONS at THE CASTLE INN, , BLAKESHILL ROAD, LANDKEY, BARNSTAPLE, EX320NF  | FULL PLANNING APPROVAL | 27 November 1998 |
| 25942            | PROPOSED CHANGE OF USE OF AGRICULTURAL LAND TO FORM COMMUNITY USE/ PUBLIC OPEN SPACE (AMENDED CAR PARK LAYOUT) at LAND OFF OS 058324 0016 & 0420, ACLAND ROAD, LANDKEY, BARNSTAPLE, EX320LB | FULL PLANNING APPROVAL | 23 February 1999 |
| 43285            | EXTENSION TO KITCHEN & DINING AREA TOGETHER WITH ERECTION OF COVERED PERGOLA at THE CASTLE INN, BLAKESHILL ROAD, LANDKEY, BARNSTAPLE, DEVON, EX320NF  | FULL PLANNING APPROVAL | 21 December 2006 |
| 59148            | OUTLINE PLANNING APPLICATION (WITH ALL MATTERS RESERVED EXCEPT ACCESS) FOR ERECTION OF COMMUNITY BUILDING & ASSOCIATED CAR PARK at MILLENNIUM GREEN, , , LANDKEY, , DEVON, EX32 0JF         | WITHDRAWN              | 30 August 2016   |

**Constraints/Planning Policy**

| Constraint / Local Plan Policy   | Distance (Metres) |
|--|-------------------|
| Adjacent to Conservation Area: 36 Landkey and Swimbridge Newland Adopted 01/09/2012;   | Within constraint |
| Advert Control Area Area of Special Advert Control   | Within constraint |
| Burrington Radar Safeguard Area consultation required for: All buildings, structures, erections & works exceeding 45 metres in height. | Within constraint |

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| <b>Constraint / Local Plan Policy</b>   | <b>Distance (Metres)</b> |
|---|--------------------------|
| Chivenor Safeguard Zone Consultation Structure or works exceeding 91.4m   | Within constraint        |
| Class III Road  |                          |
| Conservation Area: 36 Landkey and Swimbridge Newland Adopted 01/09/2012;  | Within constraint        |
| Landscape Character is: 1D Estate Wooded Ridges & Hilltops  | Within constraint        |
| Unclassified Road   |                          |
| USRN: 27501332 Road Class:C Ownership: Highway Authority  | 7.23                     |
| USRN: 27504029 Road Class:Q Ownership: Private  | 1.46                     |
| USRN: 27507420 Road Class:R Ownership: Highway Authority  | 7.50                     |
| Within adopted Development Boundary: Landkey Development Boundary ST07  | Within constraint        |
| Within Adopted Unesco Biosphere Transition (ST14)   | Within constraint        |
| Within Surface Water 1 in 1000  | Within constraint        |
| Within:, SSSI 5KM Buffer in North Devon,consider need for AQIA if proposal is for anaerobic digester without combustion plant   | Within constraint        |
|   |                          |
| SSSI Impact Risk Consultation Area  | Within constraint        |
|   |                          |
| Conservation Area: LANDKEY & SWIMBRIDGE NEULAND   |                          |
| DM01 - Amenity Considerations<br>DM02 - Environmental Protection<br>DM04 - Design Principles<br>DM05 - Highways<br>DM06 - Parking Provision<br>DM07 - Historic Environment<br>DM08 - Biodiversity and Geodiversity<br>ST01 - Principles of Sustainable Development<br>ST04 - Improving the Quality of Development<br>ST07 - Spatial Development Strategy for Northern Devon's Rural Area<br>ST15 - Conserving Heritage Assets<br>ST22 - Community Services and Facilities |                          |

## Consultees

| <b>Name</b>                | <b>Comment</b>   |
|----------------------------|--|
| Councillor G Lane          | Would you please except this e/mail as my formal call in request for application no 77028.   |
| Reply Received 30 May 2023 | The reason for the call in are DMO1 amenity considerations, To consider the impact on the neighbouring property's relating to noise,impact on lighting,also access to the raised area, |



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| Name  | Comment  |
|---|--|
| Councillor V Nel  |  |
| Reply Received  |  |
| <p data-bbox="178 309 421 376">Environmental Health Manager</p> <p data-bbox="178 416 421 519">Reply Received<br/>27 September<br/>2023</p> | <p data-bbox="443 309 879 340">1 Residential Amenity - Noise</p> <p data-bbox="443 380 1390 667">The existing beer garden area is located in very close proximity to residential properties to the northwest. Use of the beer garden is likely to give rise to noise that could significantly impact the amenity of the closest residential neighbours. Significant impacts could arise in relation to any amplified music played for the benefit of customers using the beer garden or in connection with noise generated by customers themselves, if the beer garden is used at certain more sensitive times.</p> <p data-bbox="443 707 1406 855">I note a number of representations have been received that raise concerns about noise, including noise from live music events, noise emanating from the public house building and also in terms of customer noise more generally.</p> <p data-bbox="443 896 1398 999">The Council's Environmental Health records show that 6 complaints have been received since 2019 about loud music being played outside at the Castle Inn, Blakes Hill Road.</p> <p data-bbox="443 1039 1398 1254">In my opinion, the introduction of a sizeable "dining shed" structure in combination with an outside bar and BBQ structure is likely to lead to a significant increase in noise emissions from the beer garden area of the premises. This is due to the likelihood that such structures will lead to more intensive use of the beer garden, with associated increases of customer and related sources of noise.</p> <p data-bbox="443 1294 1390 1550">Given the very close proximity of existing residential neighbours, I believe the above intensification of use of the beer garden area is likely to have an adverse impact on residential neighbours, especially if use is intensified at more sensitive times such as later in the evening (after say 9pm) when the normal expectation is that environmental noise levels will reduce and residential outside amenity spaces will become quieter.</p> <p data-bbox="443 1590 1402 1769">Any use of the 'shelter' structure for holding loud music events, and also the playing of amplified music elsewhere on the premises for the benefit of customers in the beer garden, is likely to give rise to significant adverse amenity impacts at the closest residential properties.</p> <p data-bbox="443 1809 1402 1912">The application form states that hours of opening are not relevant. I believe the proposed hours of use are directly relevant to judgements of the acceptability of noise impacts.</p> <p data-bbox="443 1953 1342 2020">Given the above, I cannot support the application as it stands. I recommend the applicant be asked to review the proposals /</p> |

| Name | Comment   |
|------|---|
|      | <p>provide additional information with a view to addressing the above concerns.</p> <p>2 Outside Lighting</p> <p>Notwithstanding the above, I could not find mention of any proposals to provide outside lighting within the beer garden area. The provision of lighting in connection with use of the proposed structures could intensify use of the beer garden after dark, with associated implications for increasing noise impacts. I recommend any proposals to provide outside lighting to the beer garden area require the prior approval of the Local Planning Authority so that associated amenity impacts can be considered.</p> <p>Thanks for your emails regarding this matter and for providing the Applicant's proposed Lighting Plan.</p> <p>Further to my emailed comments of 26 May 2023 and 6 July 2023, I respond as follows:</p> <p>1 Residential Amenity - Noise</p> <p>1.1 - Change to Existing Noise Situation</p> <p>The Applicant's Agent states:</p> <p>"The public house could set up a band/live music quite lawfully directly in front of the structures for example under their licensing conditions. They would also be requesting people to vacate the dining structure at 9pm while they are eating meals – again they could sit just outside on tables so there is no difference to the proposal. The key is whether these structures impacts on the potential noise nuisance and I would argue that they do not, given the site's existing licence."</p> <p>Erection of the two structures is likely to intensify and alter use of the beer garden area and has the potential to introduce new sources of significant noise that may adversely impact residential neighbours. It will be important, therefore, that the potential for noise impacts associated with the proposals be carefully considered and that, where found to be necessary, any subsequent planning permission includes conditions with a view to providing reasonable and effective protection of residential amenity.</p> <p>I do not think it would be appropriate to grant permission for the structures on the basis that some previous situation without structures could cause significant noise problems.</p> <p>Where noise problems arise in connection with a Licensed premises they are subject to certain controls under Licensing and statutory nuisance legislation. I have previously commented that</p> |

| Name | Comment  |
|------|--|
|      | <p>the noise controls provided under these regimes are not the same as those provided via the planning system. In my opinion, the proposals are likely to give rise to significant adverse impacts on the amenity of residential neighbours. As such, approval should not be granted until such time as the LPA is confident that reasonable protections of neighbouring residents will be incorporated within the development.</p> <p>1.2 - Noise Complaints Received by Environmental Protection (EP)</p> <p>The following noise complaints have been recorded by Environmental Protection:</p> <p>July 2019 - 3 noise complaints received about loud music being played outside on 3rd, 15th and 30th July 2019.</p> <p>It appears these complaints were investigated by EP and contact was made with the Castle Inn.</p> <p>A further complaint was received in August 2022. The file note for 30 August 2022 states:</p> <p>"On going issue from 2019 (WK/201903917). Investigated and recorded noise from property. As a result the property was asked to make some improvements and adopt measures. After lockdown the noise has started again. They have erected 10ft from customers garden a bandstand for the musicians and is being used for outdoor events. It is the length of three sheds and the planning for this is currently being looked at. Most recently there has been two incidents of where they are playing loud music over loud speakers in the garden 10ft away from the customers garden."</p> <p>A further complaint about loud music noise was logged on 21 April 2023 from the same resident that complained previously.</p> <p>A further complaint was logged about loud music noise on 16 May 2023. The complaint was made by a different local resident and the file note includes the following record of the complainant's comments:</p> <p>"I have recorded evidence of very loud outdoor music occurring including ongoing outdoor fed speaker music, karaoke, open mic night and live music events. This is causing significant adverse impact on several neighbouring residents. Can you please advise what steps we can take to ensure that the pub trades responsibly and with due consideration to its residential neighbours."</p> <p>1.3 Relevance of Noise Complaints to Planning Concerns</p> <p>My concerns about noise impacts associated with erection of the two timber structures are as detailed in my previous comments.</p> |

| Name | Comment  |
|------|--|
|      | <p>I believe those concerns are reinforced by EP records of complaints received about loud music noise. The EP records confirm that problems arose in July of 2019, prior to erection of the structures. However, the file note for August 2022 refers to erection of a "bandstand" close to a residential garden and states that it is being used by musicians and in connection with 'outdoor events'. This statement reinforces my concern that use of the structures is likely to generate significant noise at times.</p> <p>The complaint records for April and May 2023 may also point to a degree of worsening in terms of when noisy outdoor events are viable following erection of the structures. Use of electrical equipment including lights and amplifiers outside is made safer and more convenient where rain cover is provided. It is also likely to make it easier to plan outside events, such that they will occur more often.</p> <p><b>1.4 Offer of a Noise Management Plan</b></p> <p>A noise management plan based on expert advice may be helpful in clarifying sources of potentially significant noise associated with the proposals and for setting out viable mitigation measures aimed at keeping noise impacts within acceptable limits. Where a potential exists for nearby residents to be adversely impacted, as appears to be the case here, mitigation measures will be needed.</p> <p>I have suggested possible mitigation relating to not playing amplified music outside for the benefit of customers using the structures and also the times when the structures can be used, with a view to safeguarding amenity at the closest sensitive receptor locations.</p> <p>I understand the Applicant is not willing to agree to such mitigation. As such, and unless the Applicant presents some alternative scheme of acceptable noise mitigation, I am unable to support the application as it stands.</p> <p><b>2 Proposed External Lighting</b></p> <p>The proposed lighting arrangements show "Heavy Duty Industrial Festoon Lighting" in several locations in the beer garden area in support of the proposed transformation of the beer garden. No details have been provided on the potential for the proposed lighting to give rise to problems of obtrusive light affecting sensitive receptors in the vicinity.</p> <p>I recommend the applicant be asked to provide a preliminary obtrusive light assessment relating to the potential for the proposed lighting to affect the amenity of nearby sensitive receptors. The aim of this preliminary assessment will be to establish whether any</p> |

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| Name  | Comment   |
|---|---|
|   | <p>lighting units are so located, designed and of sufficient lighting power to cause any potentially significant impacts to relevant receptors in the vicinity. The assessment should be undertaken by a suitably qualified person and have regard to relevant standards and guidance including that contained within the Institution of Lighting Professionals Guidance Note for the Reduction of Obtrusive Light 2020. The report should make recommendations for any further assessment required if relevant and also include a description of any mitigation measures proposed.</p> <p>3 Concluding Remarks</p> <p>The structures are intended to facilitate intensified and new uses of the beer garden that appear likely to introduce new and / or significantly changed sources of noise into the beer garden area. This intensification is to be further facilitated through the introduction of industrial festoon lighting in a number of beer garden locations including within the dining / event structure.</p> <p>I have suggested possible noise mitigation measures relating to not playing amplified music outside for the benefit of customers using the structures and also the times when the structures would be used, with a view to safeguarding amenity at the closest sensitive receptor locations.</p> <p>Unless the Applicant presents a suitable scheme of noise mitigation as part of the proposals, I will be unable to support the application. As things stand, I recommend the application be refused on grounds of the likelihood of unacceptable noise impacts and the absence of information in relation to the assessment and mitigation of noise</p> |
| <p>Environmental Health Manager</p> <p>Reply Received<br/>31 January<br/>2024</p> | <p>I refer to the email to you from Lewis Andrews sent on 30 June, regarding my emailed comments of 26 May 2023.</p> <p>Noise</p> <ul style="list-style-type: none"> <li>- New Sources of Noise</li> </ul> <p>Mr Andrews argues that the proposed structures will not alter the existing arrangements in terms of noise. I do not agree. The structures are intended to facilitate intensified and new uses of the beer garden, providing a covered dining area and an outside food preparation and bar service facility. As such, they will introduce new sources of noise into the garden area. Any use of the dining shed for playing amplified music under cover would also represent a new source of noise.</p> <ul style="list-style-type: none"> <li>- Using other Legislation</li> </ul>  |

| Name | Comment   |
|------|---|
|      | <p>Mr Andrews mentions that the beer garden is covered by an existing Premises Licence and that Environmental Health could use statutory nuisance provisions to tackle any statutory nuisances that might arise. Assuming that the beer garden area enjoys the benefit of being included in the Premises Licence for the licensed premises, it would be subject to compliance with the licensing objectives including 'the prevention of public nuisance' objective. Statutory nuisance provisions would also be applicable</p> <p>The noise controls provided under statutory nuisance and licensing provisions are not the same as those provided under the planning regime. My comments relate to the likely adverse impact of the proposals on the amenity of existing residential neighbours. This represents a different criteria to that of either statutory nuisance or public nuisance. This difference can be significant, such that a 'significant adverse noise impact' in planning terms (based on planning guidance) may not necessarily give rise to either a statutory nuisance or public nuisance. This substantial difference may be why planning guidance does not simply default to statutory nuisance and/or licensing provisions where they are applicable.</p> <p>- Protecting Residential Amenity</p> <p>In this case, I believe the current proposals are likely to lead to significant adverse noise impacts at the closest residential properties due to increased and intrusive levels of noise. This view appears to be supported by a number of the neighbour representations received by Planning and also in relation to complaints of loud music noise received by the Council's Environmental Health Department since 2019. One neighbour does mention the noise and privacy screening effects of the dining shed for their property, which is noted. This comment does not alter my overall judgement of potential noise impacts.</p> <p>I recommend consideration be given to amending the proposals such that the likelihood of significant adverse noise impacts is substantially reduced. If, for example, the proposals made clear that amplified music will at no time be played for the benefit of diners or other customers using the proposed structures then this would address one obvious source of significant adverse noise impacts for residential neighbours. I am mindful that Licensing regulations allow for playing of amplified music at licensed premises, including outside. However, they do not supersede planning restrictions so it will be important that any permission for structures in the garden addresses this point.</p> <p>Also, consideration should be given to the times when the proposed Bar / Smoker structure and dining area can be used. Use of both these open structures has the potential to generate significant noise - from customer and staff conversations, laughter etc, from clinking of plates, cutlery, etc., and noise associated with</p> |

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| Name   | Comment  |
|--|--|
|  | <p>accessing and leaving the facilities. Given the very close proximity of neighbouring residential gardens, I believe it would be reasonable to restrict use to before 9pm only.</p> <p>It will, of course, be for the Applicant to present proposals which provide suitable and adequate protection of neighbouring residential amenity. Any proposed restrictions and mitigation measures might helpfully be described within a Noise Management Plan.</p> <p>Given the above, my previous concerns and recommendations stand.</p> <p>I understand Dave Morgan's concerns and agree that the Noise Management Plan ( NMP ) is wholly unsatisfactory in terms of managing noise from the premises.</p> <p>I would suggest at this point that we await the details of the sound mitigation barriers and then review the NMP. However, I would advise that a suitably qualified noise consultant should be engaged by the premises to predict noise levels at the nearest properties and write a plan around these, rather than the unquantified measures in the current proposal.</p> |
| <p>Heritage &amp; Conservation Officer</p> <p>Reply Received<br/>31 May 2023</p> | <p>31/05/2023 12:49 - I do not consider that this proposal will cause harm to the significance of the heritage asset.</p>  |
| <p>Landkey Parish Council</p> <p>Reply Received<br/>18 May 2023</p>              | <p>18/05/2023 08:14 - Recommended REFUSAL. It is considered that following representations by residents that the Planning Statement in relation to Policy DMO1 is inaccurate. There are a number of properties that adjoin or are adjacent to the pub garden who have endured late evening noise from loud music which is attributed to the erection of the two unauthorised timber structures.</p> <p>The Council has requested that the District Council Members call the application in for consideration by the NDC Planning Committee</p>   |
| <p>Landkey Parish Council</p> <p>Reply Received</p>                              |  |

## Neighbours / Interested Parties

| Comments | No Objection | Object | Petition | No. Signatures |
|----------|--------------|--------|----------|----------------|
| 3        | 15           | 16     | 0.00     | 0.00           |

6 letters of objection have been received primarily relating to concerns over the use of the structures for live music and or general noise from drinkers and diners. All of these come from residents located in The Orchards to the north of the site.

8 letters of support have been received offering their support for the structures as assisting in the viability of the business. Two of these also take the view that the dining shelter provides greater screening and reduces noise for immediate neighbour. Two of these letters of support are from The Orchards including the nearest neighbour to the dining shelter.

The Parish Council has also objected on the basis that 'there are a number of properties that adjoin or are adjacent to the pub garden who have endured late evening noise and loud music, which is attributed to the erection of two unauthorised timber structures'.

## **Considerations**

### **Site Description**

Landkey is a large village located to the south of the North Devon Link Road (A361), approximately 3 miles south-east of Barnstaple. It is a broadly linear settlement on either side of the old main road between Barnstaple and South Molton.

The application relates to the Castle Inn, a Public House on the north side of Blakes Hill Road. To the north of the Castle Inn is a beer garden, which is bound by homes on The Orchards to the north and a public car park to the east. The area is predominantly residential in character, although it is also strongly influenced by Blakes Hill Road itself, which provides a busy thoroughfare from the A361 towards Swimbridge.

The site is within the Landkey and Swimbridge Newland Conservation Area and is within the adopted Development Boundary: Landkey Development Boundary ST07.

### **Proposal Description**

This application seeks retrospective permission for erection of two timber structures. These structure consist of:

- A smoke house located towards the centre of the beer garden. This has a footprint of 3x3 metres and has a flat roof 2.3m high. It is open to three sides and is planned to contain a sheltered smoker and BBQ space. The submitted planning statement notes: *'The smaller structure is a timber shed which is used to house a smoker for outdoor catering. The solid frame is open to all sides with a low bar for serving food made of shiplap boarding... The outside bar and Smoker BBQ – will only be used for dining purposes, though there is a facility to get a drink in this area when it is in use'*.
- An outdoor dining shed. This has a footprint of 9m x 3.75m with a shallow dual-pitched roof reaching approximately 2.3m high. This is positioned on the back edge of the beer garden adjacent to the boundary and garden of number 19 The Orchards. The dining shelter is illustrated as providing seating for approximately 18 persons. The submitted planning statement notes: *'The larger "stable" structure will be used for dining, but also having a drink and on odd occasions it is hoped to have live music playing in that area. It is acknowledged that there is no licence for playing*



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*live music – all licence conditions refer to inside at the pub and the applicants would have to apply for a TEN for any live music events outside’.*



Site Location Plan



The Dining Shelter



Rear of Dining Shelter and Boundary  
With no. 18 The Orchards



The Smoke House and BBQ Shelter



Site plan showing the location of the smoke house and dining shelter within the beer garden.

## Planning Considerations Summary

- Principle of development
- Design and impact on the historic environment
- Neighbour Amenity
- Ecology
- Flood Risk/Drainage
- Highways/access

## Planning Considerations

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 relevant Policies are detailed above.

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states a general duty of a Local Planning Authority as respects conservation areas in exercise of planning functions. In the exercise, with respect to any buildings or other land in a conservation area special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

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

## Planning Committee

The application has been called to planning committee for consideration by Cllr Lane to consider the impact on the neighbouring property's relating to noise, impact of lighting and also access to the raised area.

## **Principle of development**

Landkey is defined by North Devon and Torridge Local Plan 2011-2031 (NDTLP) Policy ST07 as a Schedule B Village where development will be enabled in accordance with the local spatial strategy to meet local needs and growth aspirations. It is also noted that the application relates to a long standing existing Public House and the development is clearly associated with this lawful use.

Policy LAN: Landkey Spatial Strategy outlines a vision for sustainable growth which maintains the special character and qualities of its conservation area and heritage alongside supporting for maintaining and developing village services and facilities.

Paragraph 93 of the NPPF states that *“To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should (d) (d) ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community.”*

The applicant has submitted the following justification for the two shelters: *‘The structures provide an outdoor dining space which was erected following the Covid-19 pandemic where internal space became less popular with clients. Furthermore the structures are considered to enhance the visual impact of the beer garden making it a more appealing space for customers to sit and enjoy’.*

Policy ST22: Community Services and Facilities states that (1) Development of new, or extensions or improvements to existing community facilities that meet the needs of local communities will be supported within or adjoining defined settlements.

In consideration of the above, there are no in principle objections to the retention of these shelters, the use of which is clearly commensurate with the existing operation of the premises as a Public House. The application will however need to be carefully considered with regard to its impact upon neighbouring properties and also in terms of whether it results any harm to the Landkey Conservation Area.

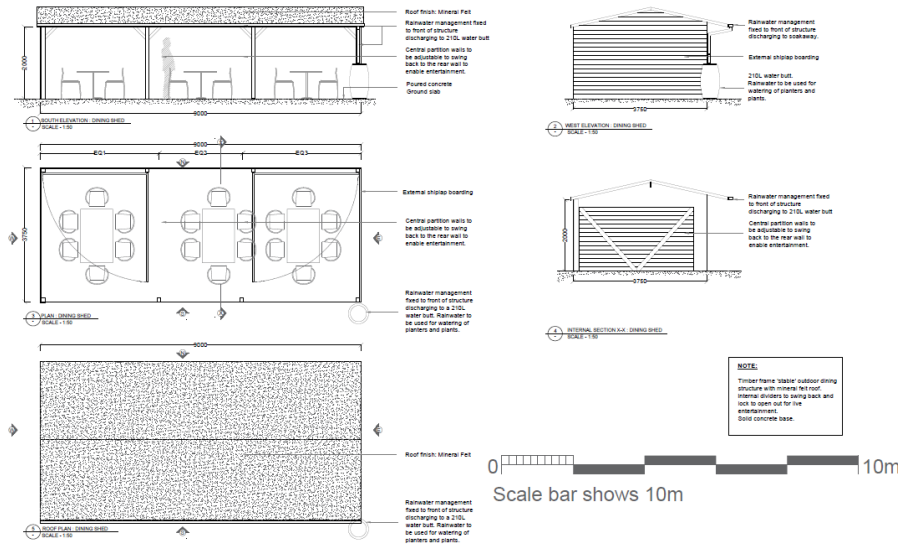
## **Design and impact on the historic environment**

Part 12 of the National Planning Policy Framework ‘Achieving Well Designed Places’ sets the national principles for good development to secure high quality design. Paragraph 130 requires that new development must be visually attractive, appropriately sited and sympathetic in terms of layout, appearance and relationship to existing buildings.

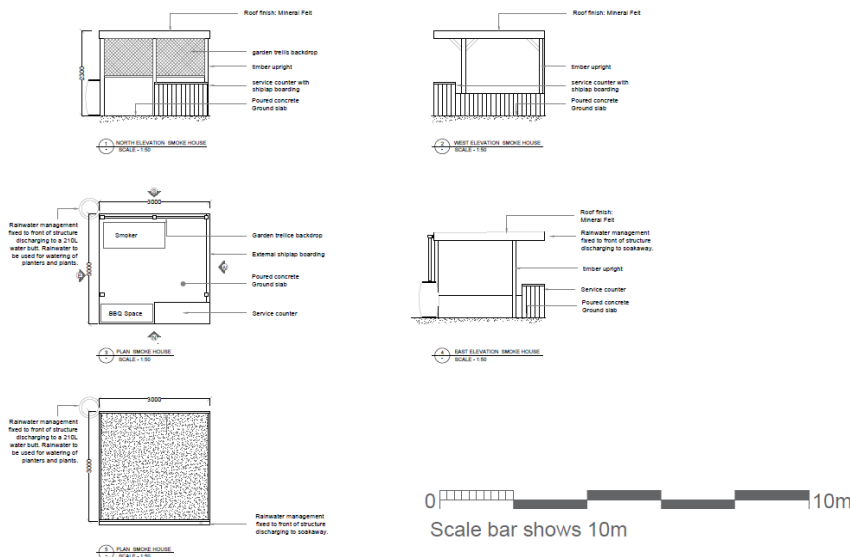
Policies ST04 and DM04 set out the key principles of design whereby development must respect its context, promote or reinforce local distinctiveness and take opportunities to improve the character and quality of an area.

# Agenda Item 6

As the site is located within the Landkey Conservation Area, Policy DM07 Historic Environment is also of relevance. This states that *'proposals which conserve and enhance heritage assets and their settings will be supported'*.



**The proposed dining shed**



**The Smoke House**

The above two structures are both relatively low-lying and partially open timber structures, which have been designed to be appropriate to their setting within a beer garden. As they are located to the rear of the pub they are not visible from the wider area other than from the public car park to the east. From here they are seen within the context of other surrounding development and are not considered to have any significant detrimental visual impacts on the character and appearance of the Conservation Area. This view has been confirmed by the Council's conservation Officer who has stated:

*'I do not consider that this proposal will cause harm to the significance of the heritage asset'*.

The proposals raise no concerns relating to their design and visual impacts and are considered to conserve that character and appearance of the Conservation Area. The proposals comply with NDTLP Policies ST04, DM04 and DM07 as well as Part 12 of the NPPF.

## **Neighbour amenity**

Policy DM01 of the NDTLP states development will be supported where it would not significantly harm the amenities of any neighbouring occupiers or uses and the intended occupants of the proposed development would not be harmed as a result of existing or allocated uses.

Policy DM04 (i) of the NDTLP set out that development must not result in significant harm to the amenities of neighbouring property.

Paragraph 13.1 of the NDTLP is clear that 'development must have regard to the importance of protecting residential and other amenities. People are entitled to enjoy their own homes or public places without undue disturbance or intrusion from neighbouring uses. Good neighbourliness and fairness are some of the yardsticks against which proposals can be measured'.

Policy ST22: Community Services and Facilities also requires that any development of community facilities (a) does not harm the character of the area and the amenities of the surrounding uses.

Paragraph 130 (f) of the NPPF requires that 'Planning policies and decisions should ensure that developments achieve a high standard of amenity for existing and future users'.

The Castle Inn's beer garden is located in a predominantly residential area. Officers must therefore carefully consider whether the structures are likely to give rise to any unreasonable impacts on neighbouring properties over and above the existing situation.

### Representations from neighbours

6 letters of objection have been received primarily relating to concerns over the use of the structures for live music and or general noise from drinkers and diners. All of these come from residents located in The Orchards to the north of the site.

8 letters of support have been received offering their support for the structures as assisting in the viability of the business. Two of these also take the view that the dining shelter provides greater screening and reduces noise for immediate neighbour. Two of these letters of support are from The Orchards including the nearest neighbour to the dining shelter.

The Parish Council has also objected on the basis that *'there are a number of properties that adjoin or are adjacent to the pub garden who have endured late evening noise and loud music, which is attributed to the erection of two unauthorised timber structures'*.

Environmental Health records show that 6 complaints have been received since 2019 about loud music being played outside at the Castle Inn. These are summarised as follows:



- July 2019 - 3 noise complaints received about loud music being played outside on 3rd, 15th and 30th July 2019.
- A further complaint was received in August 2022. The complaints stated:  
*"Investigated and recorded noise from property. As a result the property was asked to make some improvements and adopt measures. After lockdown the noise has started again. They have erected 10ft from customers garden a bandstand for the musicians and is being used for outdoor events. It is the length of three sheds and the planning for this is currently being looked at. Most recently there has been two incidents of where they are playing loud music over loud speakers in the garden 10ft away from the customers' garden".*
- Complaint about loud music noise was logged on 21 April 2023 from the same resident that complained previously.
- Further complaint was logged about loud music noise on 16 May 2023 stating: *"I have recorded evidence of very loud outdoor music occurring including ongoing outdoor fed speaker music, karaoke, open mic night and live music events. This is causing significant adverse impact on several neighbouring residents".*

Given that the introduction of this shelter has resulted in the above concerns for neighbour amenity the Council's environmental Health Officer has been consulted. Comments received from Environmental Health and responses from the Agent are presented below:

### Environmental Health Comments: 26/5/2023

*"The existing beer garden area is located in very close proximity to residential properties to the northwest. Use of the beer garden is likely to give rise to noise that could significantly impact the amenity of the closest residential neighbours. Significant impacts could arise in relation to any amplified music played for the benefit of customers using the beer garden or in connection with noise generated by customers themselves, if the beer garden is used at certain more sensitive times.*

*I note a number of representations have been received that raise concerns about noise, including noise from live music events, noise emanating from the public house building and also in terms of customer noise more generally.*

*The Council's Environmental Health records show that 6 complaints have been received since 2019 about loud music being played outside at the Castle Inn.*

*In my opinion, the introduction of a sizeable "dining shed" structure in combination with an outside bar and BBQ structure is likely to lead to a significant increase in noise emissions from the beer garden area of the premises. This is due to the likelihood that such structures will lead to more intensive use of the beer garden, with associated increases of customer and related sources of noise.*

*Given the very close proximity of existing residential neighbours, I believe the above intensification of use of the beer garden area is likely to have an adverse impact on residential neighbours, especially if use is intensified at more sensitive times such as later in the evening (after say 9pm) when the normal expectation is that environmental noise levels will reduce and residential outside amenity spaces will become quieter.*

*Any use of the 'shelter' structure for holding loud music events, and also the playing of amplified music elsewhere on the premises for the benefit of customers in the beer garden, is likely to give rise to significant adverse amenity impacts at the closest residential properties.*

*The application form states that hours of opening are not relevant. I believe the proposed hours of use are directly relevant to judgements of the acceptability of noise impacts.*

# Agenda Item 6

*Given the above, I cannot support the application as it stands. I recommend the applicant be asked to review the proposals / provide additional information with a view to addressing the above concerns.*

*Notwithstanding the above, I could not find mention of any proposals to provide outside lighting within the beer garden area. The provision of lighting in connection with use of the proposed structures could intensify use of the beer garden after dark, with associated implications for increasing noise impacts. I recommend any proposals to provide outside lighting to the beer garden area require the prior approval of the Local Planning Authority so that associated amenity impacts can be considered”.*

## Agent comments: 30/6/2023

*Please note the outdoor beer garden is authorised and has been in use for many years. The licence from the Council for the public house allows the use of the outdoor beer garden until 11pm this includes live and recorded music. There will be no change to this arrangement and there is no intention to increase the use of the beer garden for outdoor events. When the public house stages its occasional outdoor events, it means there is the option of using one of the buildings as a location for an event, live band etc.*

## Environmental Health Comments: 6/7/2023

*“The Agent argues that the proposed structures will not alter the existing arrangements in terms of noise. I do not agree. The structures are intended to facilitate intensified and new uses of the beer garden, providing a covered dining area and an outside food preparation and bar service facility. As such, they will introduce new sources of noise into the garden area. Any use of the dining shed for playing amplified music under cover would also represent a new source of noise.*

*The Agent mentions that the beer garden is covered by an existing Premises Licence and that Environmental Health could use statutory nuisance provisions to tackle any statutory nuisances that might arise. Assuming that the beer garden area enjoys the benefit of being included in the Premises Licence for the licensed premises, it would be subject to compliance with the licensing objectives including 'the prevention of public nuisance' objective. Statutory nuisance provisions would also be applicable*

*The noise controls provided under statutory nuisance and licensing provisions are not the same as those provided under the planning regime. My comments relate to the likely adverse impact of the proposals on the amenity of existing residential neighbours. This represents a different criteria to that of either statutory nuisance or public nuisance. This difference can be significant, such that a 'significant adverse noise impact' in planning terms (based on planning guidance) may not necessarily give rise to either a statutory nuisance or public nuisance. This substantial difference may be why planning guidance does not simply default to statutory nuisance and/or licensing provisions where they are applicable.*

*In this case, I believe the current proposals are likely to lead to significant adverse noise impacts at the closest residential properties due to increased and intrusive levels of noise. This view appears to be supported by a number of the neighbour representations received by Planning and also in relation to complaints of loud music noise received by the Council's Environmental Health Department since 2019. One neighbour does mention the noise and privacy screening effects of the dining shed for their property, which is noted. This comment does not alter my overall judgement of potential noise impacts.*

*I recommend consideration be given to amending the proposals such that the likelihood of significant adverse noise impacts is substantially reduced. If, for example, the proposals made clear that amplified music will at no time be played for the benefit of diners or other customers using the proposed structures then this would address one obvious source of significant adverse noise impacts for residential neighbours. I am mindful that Licensing regulations allow for playing of amplified music at licensed premises, including outside. However, they do not supersede planning*

# Agenda Item 6

*restrictions so it will be important that any permission for structures in the garden addresses this point.*

*Also, consideration should be given to the times when the proposed Bar / Smoker structure and dining area can be used. Use of both these open structures has the potential to generate significant noise - from customer and staff conversations, laughter etc, from clinking of plates, cutlery, etc., and noise associated with accessing and leaving the facilities. Given the very close proximity of neighbouring residential gardens, I believe it would be reasonable to restrict use to before 9pm only.*

*It will, of course, be for the Applicant to present proposals which provide suitable and adequate protection of neighbouring residential amenity. Any proposed restrictions and mitigation measures might helpfully be described within a Noise Management Plan”.*

## Email from Agent: 7/9/2023

*“I have liaised with the applicants and they cannot accept points 1 & 2 in their current form – particularly for the fact that they are unworkable alongside their current licensing. The public house could set up a band/live music quite lawfully directly in front of the structures for example under their licensing conditions. They would also be requesting people to vacate the dining structure at 9pm while they are eating meals – again they could sit just outside on tables so there is no difference to the proposal. The key is whether these structures impacts on the potential noise nuisance and I would argue that they do not, given the site’s existing licence.*

*The applicants are happy to produce a noise management plan as requested and to engage a noise consultant to help them with this to get some objective evidence in how best to deal with any potential noise issues and suitable mitigation. I presume you will need this prior to determination”?*

## Environmental Health Comments: 27/9/2023 (summarised)

*In my opinion, the proposals are likely to give rise to significant adverse impacts on the amenity of residential neighbours. As such, approval should not be granted until such time as the LPA is confident that reasonable protections of neighbouring residents will be incorporated within the development.*

*A noise management plan based on expert advice may be helpful in clarifying sources of potentially significant noise associated with the proposals and for setting out viable mitigation measures aimed at keeping noise impacts within acceptable limits. Where a potential exists for nearby residents to be adversely impacted, as appears to be the case here, mitigation measures will be needed.*

*I have suggested possible mitigation relating to not playing amplified music outside for the benefit of customers using the structures and also the times when the structures can be used, with a view to safeguarding amenity at the closest sensitive receptor locations.*

*I understand the Applicant is not willing to agree to such mitigation. As such, and unless the Applicant presents some alternative scheme of acceptable noise mitigation, I am unable to support the application as it stands.*

*I have suggested possible noise mitigation measures relating to not playing amplified music outside for the benefit of customers using the structures and also the times when the structures would be used, with a view to safeguarding amenity at the closest sensitive receptor locations.*

*Unless the Applicant presents a suitable scheme of noise mitigation as part of the proposals, I will be unable to support the application. As things stand, I recommend the application be refused on grounds of the likelihood of unacceptable noise impacts and the absence of information in relation to the assessment and mitigation of noise*

The above difference of opinion between the Agent and Council’s Environmental Health Officer hinges upon whether the introduction of these structures are likely to make a



# Agenda Item 6

material difference to the level of activity and nature of use of the beer garden. It is the view of Officers that as the structures by their very nature provide shelter, they are intended to allow for greater enjoyment of the beer garden during a wider variety of conditions.

Of the two structures, the smoke house is located centrally within the beer garden and has three open sides. Although its use for BBQs and food preparation will likely increase the use of this space, given its position away from neighbouring properties and its open nature, Officers do not consider that the likely frequency of its use or its position centrally within the site is likely to give rise to unreasonable impacts.

The dining shelter is located to the rear of the site and abuts the boundary with residential properties on The Orchards. It is also enclosed on three sides and is shown as being able to accommodate up to 18 diners. As is the case for many structures of this nature, it could facilitate the use of outdoor heaters and lighting to accommodate diners when the weather would otherwise make it undesirable, or later into the night. Its location at the far end of the beer garden will also inevitably focus greater activity towards this area, closer proximity to residential neighbours and away from the pub.

The application also refers to its use to accommodate occasional live music within the beer garden. Use of electrical equipment including lights and amplifiers outside is made safer and more convenient where rain cover is provided. It is also likely to make it easier to plan outside events, such that they will occur more often.

Officers consider that the location, design and nature of this structure is likely to intensify the use of this part of the beer garden and give rise to additional impacts on neighbour amenity.

It is regrettable that the application is submitted in retrospect. Otherwise it may have been possible to discuss the size, location and use of the shelter before its construction. Now that the application is being considered in retrospect the suggested mitigation/conditions from Environmental Health would appear to provide a reasonable compromise. In summary, the following mitigation has been suggested by Environmental Health:

- 1) The structures will not be used for amplified music.
- 2) The structures will not be used after 9pm.
- 3) The submission of a noise management plan.
- 4) To clarify and condition details of proposed lighting.

It is noted that the Agent has agreed to the provision of a noise management plan. They have however not agreed to restricting the use of the shelters for amplified music or to restricting their use after 9pm. They have also maintained the position that the structures will not impact upon potential noise nuisance over and above the previous situation as the premises licence allows the use of the garden until 11pm.

The applicant has been invited to provide further information from a noise consultant prior to consideration of the application but thus far, this has not been forthcoming. Officers are in agreement with the view of the Council's Environmental Health department that additional noise is likely in terms of its frequency, duration and intensity due to the design and intended use of the shelters, particularly in light of the location close to the boundary with neighbouring residential properties.

## Licensing

On inspection of the premises licence (reference PLWA0607) details of allowances for the performance/playing of live/recorded music appear to relate to indoors only 11am – 00:00 Monday to Saturday and 12:00 – 23:00 on Sundays.

Notwithstanding the above licence details, the Live Music Act 2012 deregulates live and recorded music played at licensed premises between 08.00 to 23.00hrs. Essentially, this Act means that any licensed premise is able to have live and recorded music 7 days a week inside and outside from 08.00 to 23.00hrs as if the conditions on the licence did not apply. If noise impacts occur, it is left for any impacted residents and 'responsible authorities' like Environmental Health to call a licence in for review by the Licensing Authority for breach of a licensing objective ('prevention of public nuisance' re noise). The licence can then be amended to remove the deregulatory effects of the 2012 Act and reapply existing conditions or add new conditions as appropriate. As such, controls on noise caused by the effects of the 2012 Act are typically reactive and depend on proving a case of public nuisance to the Licensing Authority.

## Lighting

As covered in the above representations from Environmental Health, details of proposed lighting have also been requested. An additional 'dining Layout Plan' (Ref: 000\_GA RevA) has been submitted, this shows 'industrial festoon lighting' attached to the proposed shelters. If as suggested by the applicant, the structures are to be used beyond 9pm for dining, this could give rise to impacts on neighbouring properties.

In their response of the 27<sup>th</sup> September 2023 the Council's Environmental Health Officer has commented:

*"The proposed lighting arrangements show "Heavy Duty Industrial Festoon Lighting" in several locations in the beer garden area in support of the proposed transformation of the beer garden. No details have been provided on the potential for the proposed lighting to give rise to problems of obtrusive light affecting sensitive receptors in the vicinity. I recommend the applicant be asked to provide a preliminary obtrusive light assessment relating to the potential for the proposed lighting to affect the amenity of nearby sensitive receptors. The aim of this preliminary assessment will be to establish whether any lighting units are so located, designed and of sufficient lighting power to cause any potentially significant impacts to relevant receptors in the vicinity. The assessment should be undertaken by a suitably qualified person and have regard to relevant standards and guidance including that contained within the Institution of Lighting Professionals Guidance Note for the Reduction of Obtrusive Light 2020. The report should make recommendations for any further assessment required if relevant and also include a description of any mitigation measures proposed".*

As no details of this have been provided Officers do not consider that the application is accompanied by adequate information to determine the whether artificial lighting will also affect the amenity of neighbouring occupiers.

In the absence of any agreement to conditions restricting the use of the shelters as suggested above or adequate information regarding any proposed lighting, Officers consider that the application is contrary to NDTLP Policy DM01, DM04 (i), ST22 (a) and Paragraph 130 (f) of the NPPF.

## **Ecology**

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 (Amendment) (EU Exit) Regulations 2019 (Habitat Regulations 2019).

Policy DM08 (Biodiversity and Geodiversity) of the NDTLP requires development should conserve, protect and, where possible, enhance biodiversity and geodiversity interests and soils commensurate with their status and giving appropriate weight to their importance.

The application has been accompanied by a Wildlife Trigger List which confirms that the application does not trigger the need for an Ecology Survey. No concerns are raised regarding ecology impacts associated with the application. The proposals accord with NDTLP Policy DM08.

## **Flood Risk and Drainage**

The proposals detail that rainwater run-off from the structures is managed via discharge to 210L water butts. The site is located within a Flood Zone 1 and is not located within a Critical Drainage Area. Therefore, flooding and surface water drainage are not considered to be constraints. There are no conflicts with relevant NDTLP Policy DM02 with regard to drainage and flood risk.

## **Highways**

There are not considered to be any significant highways or access implications relating to this application. No conflict with NDTLP Policies DM05 and DM06.

## **Conclusion**

The structures are considered to result in additional impacts on the amenities of neighbouring properties in terms of noise and disturbance due to their location and design. In the absence of any agreement to mitigation restricting the use of the shelters or adequate information regarding any proposed lighting, Officers consider that the proposals will have a significant adverse impact upon the amenities of neighbouring residents contrary to North Devon and Torridge Local Plan 2011-2031 Policies DM01 and DM04 (i), ST22 (a) and Paragraph 130 (f) of the National Planning Policy Framework.

## **Human Rights Act 1998**

The provisions of the Human Rights Act and principles contained in the Convention on Human Rights have been taken into account in reaching the recommendation contained in this report. The articles/protocols identified below were considered of particular relevance:

- Article 8 – Right to Respect for Private and Family Life
- THE FIRST PROTOCOL – Article 1: Protection of Property

Section 149(1) of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it (the Public Sector Equality Duty or 'PSED'). There are no equality implications anticipated as a result of this decision.

## **Recommendation**

### **Refused**

Legal Agreement Required: No

## **Reason(s) For Refusal**

1. The structures are considered to result in additional impacts on the amenities of neighbouring properties in terms of noise and disturbance due to their location and design. In the absence of any agreement to mitigation restricting the use of the shelters or adequate information regarding any proposed lighting, Officers consider that the proposals will have a significant adverse impact upon the amenities of neighbouring residents contrary to North Devon and Torrington Local Plan 2011-2031 Policies DM01, DM04 (i), ST22 (a) and Paragraph 130 (f) of the National Planning Policy Framework.

## **Informatives**

1. INFORMATIVE NOTE: -  
POLICIES AND PROPOSALS RELEVANT TO THE DECISION

Development Plan

North Devon and Torrington Local Plan 2018: -

DM01 - Amenity Considerations

DM02 - Environmental Protection

DM04 - Design Principles

DM05 - Highways

DM06 - Parking Provision

DM07 - Historic Environment

DM08 - Biodiversity and Geodiversity

ST01 - Principles of Sustainable Development

ST04 - Improving the Quality of Development

ST07 - Spatial Development Strategy for Northern Devon's Rural Area

ST15 - Conserving Heritage Assets

ST22 - Community Services and Facilities

2. The following plans were considered during the determination of this application:-

NDC001A Location Plan and received on the 24/04/23,

204 F6A Elevation and Roof Dining Shed and received on the 03/05/23,

204 F7 Elevation and Floor Smoke Shed and received on the 20/04/23,

210 PREBP Previous Block Plan and received on the 20/04/23,

2107 000\_GAA Proposed Lighting Plan and received on the 07/09/23,

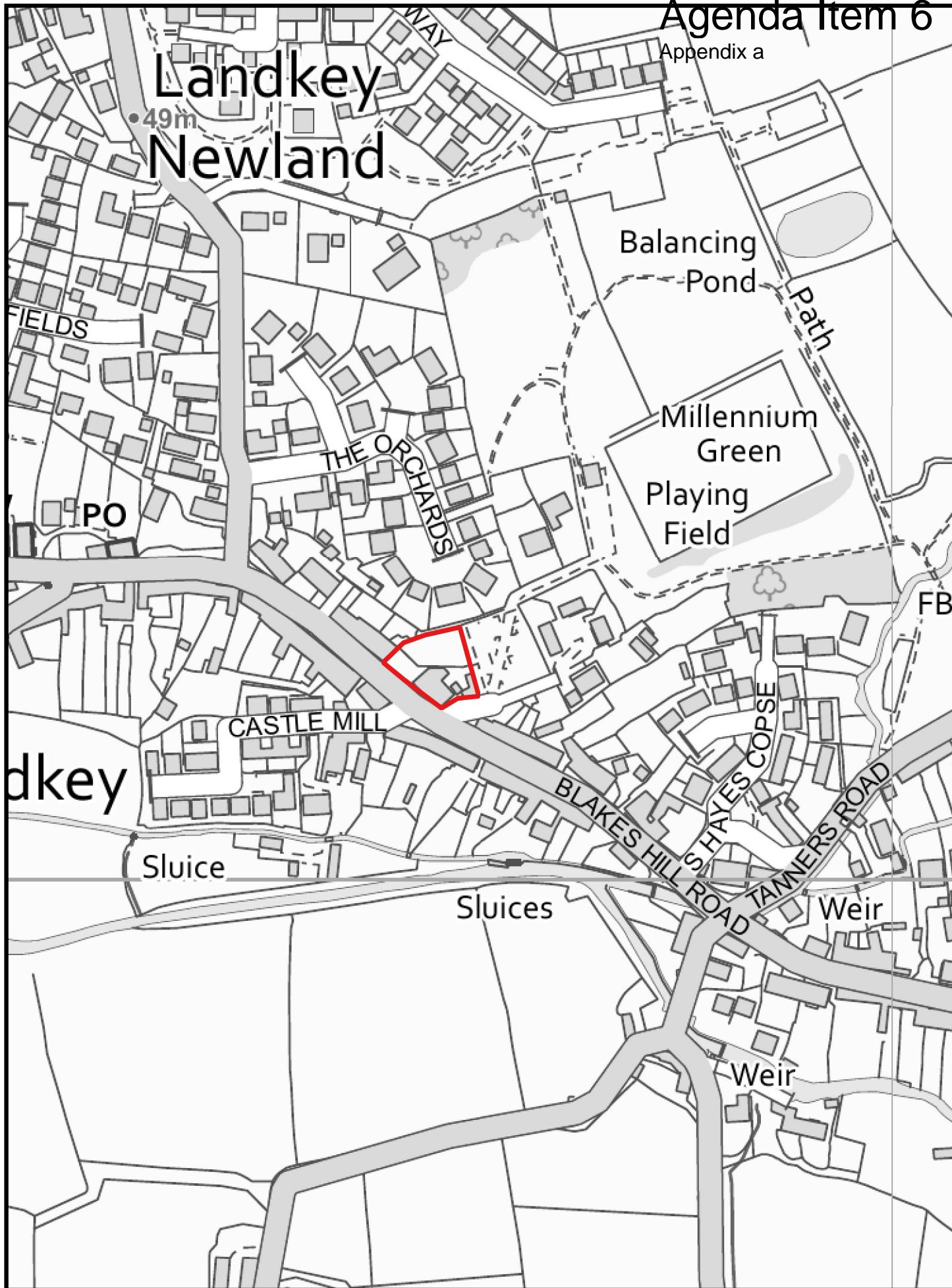
3. Statement of Engagement

In accordance with paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and pro-active way with the Applicant and has looked for solutions to enable the grant of planning permission. This has included the use. However the proposal remains contrary to the planning policies set out in the reasons for refusal and was not therefore considered to be sustainable development.

# Agenda Item 6

| <b>Recommendation Date</b> | <b>Case Officer</b> | <b>Lead Officer</b> | <b>Admin</b> | <b>Check</b> |
|----------------------------|---------------------|---------------------|--------------|--------------|
| <b>17 October 2023</b>     |                     |                     |              |              |

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## Committee Report

Planning, Housing and Health  
North Devon Council  
Lynton House, Commercial Road,  
Barnstaple, EX31 1DG

**Application No:** 78375  
**Application Type:** Variation of Condition(s)  
**Application Expiry:** 23 April 2024  
**Extension of Time Expiry:**  
**Publicity Expiry:** 27 March 2024  
**Parish/Ward:** BRATTON FLEMING/BRATTON FLEMING  
**Location:** Land at South View  
Bratton Fleming  
Devon

**Proposal:** Variation of condition 2 (approved plans) linked to planning permission 64032 (Erection of dwelling with associated parking) to allow for changes made to the design and amendments to associated parking

**Agent:** Woodward Smith Chartered Architects  
**Applicant:** PLB Developments Ltd  
**Planning Case Officer:** Mr J. Jackson  
**Departure:** N

**EIA Development:**  
**EIA Conclusion:** Development is outside the scope of the Regulations.  
**Decision Level/Reason for Report to Committee (If Applicable):** Committee – North Devon Council own part of the site

### Site Description

The application relates to a site within the developed area of Bratton Fleming. The site is located to the north eastern edge of the village.

The site benefits from an extant planning permission under reference 64032, for the erection of a dwelling with associated parking. The planning permission was granted on 19 December 2017. The development is now almost completed, and comprises a two storey, four bedroom dwelling.

Prior to the granting of the extant permission, outline planning permission for one dwelling at the site was granted on 25 January 2017 under reference 62139.

The site is located at the end of the South View cul-de-sac that provides access to a number of existing residential properties. Existing dwellings are arranged around an area of green space. A communal parking and turning area that is utilised by the occupiers of the existing dwellings is located to the south of the green space. It is noted that the area of green space and communal parking area is included within the red line boundary shown on the submitted site location plan.

The site is bounded by an agricultural field to the north and east, and by existing residential development to the south and west.

The site is located within flood zone 1.



Proposed Floor Plans and Elevations

Proposed Site Plan



As Built Dwelling

As Built Dwelling

## Recommendation

**Approved**

Legal Agreement Required: No

## Planning History

| Reference Number | Proposal   | Decision                       | Decision Date  |
|------------------|--|--------------------------------|----------------|
| <b>49970</b>     | DEMOLITION OF 2 DWELLINGS & ERECTION OF 4 DWELLINGS TOGETHER WITH ASSOCIATED PARKING & LANDSCAPING at Land at 3 & 4 South View Beara Lane Bratton Fleming Barnstaple Devon | FULL PLANNING + S106 APPROVAL  | 12 April 2012  |
| <b>56329</b>     | APPROVAL OF DETAILS IN RESPECT OF DISCHARGE OF CONDITION 4 (GROUND CONTAMINATION) ATTACHED TO PLANNING PERMISSION 49970 at 1 - 4 SOUTH                                     | DISCHARGE OF CONDITION APPROVE | 7 October 2013 |

# Agenda Item 7

| Reference Number | Proposal  | Decision               | Decision Date     |
|------------------|---|------------------------|-------------------|
|                  | VIEW, , BRATTON FLEMING, BARNSTAPLE, DEVON, EX31 4TQ  |                        |                   |
| 60222            | OUTLINE APPLICATION FOR ERECTION OF UP TO 40 DWELLINGS (ALL MATTERS RESERVED EXCEPT ACCESS) (AMENDED TRANSPORT STATEMENT) at BEARA DOWN FARM, GRANGE HILL, , BRATTON FLEMING, BARNSTAPLE, DEVON, EX31 4TL | WITHDRAWN              | 5 April 2016      |
| 61321            | OUTLINE APPLICATION FOR 2 OPEN MARKET DWELLINGS AND 1 AFFORDABLE DWELLING & PARKING (ALL MATTERS RESERVED) at 11 SOUTH VIEW, , BRATTON FLEMING, BARNSTAPLE, DEVON, EX31 4TQ                               | FULL PLANNING REFUSAL  | 12 September 2016 |
| 62139            | OUTLINE APPLICATION FOR THE ERECTION OF ONE DWELLING WITH ASSOCIATED PARKING (ALL MATTERS RESERVED) at 11 SOUTH VIEW, , BRATTON FLEMING, BARNSTAPLE, DEVON, EX31 4TQ                                      | OL APPROVAL            | 25 January 2017   |
| 64032            | ERECTION OF ONE DWELLING WITH ASSOCIATED PARKING at LAND ADJACENT, 11 SOUTH VIEW, , BRATTON FLEMING, BARNSTAPLE, DEVON, EX31 4TQ  | FULL PLANNING APPROVAL | 19 December 2017  |
| 72301            | Approval of details in respect of discharge of condition 6 (construction management plan) of planning permission 64032 at Land adj 11 South View<br>Bratton Fleming<br>Barnstaple<br>Devon<br>EX31 4TQ    | Approved               | 18 November 2020  |

## Constraints/Planning Policy

| Constraint / Local Plan Policy                                   | Distance (Metres) |
|--|-------------------|
| Advert Control Area Area of Special Advert Control               | Within constraint |
| Ancient Woodland: BUTTON WOOD Ancient & Semi-Natural Woodland    | 450.60            |
| Chivenor Safeguard Zone Consultation Any Development             | Within constraint |
| Landscape Character is: 2D Moorland edge slopes                  | Within constraint |
| Public Right of Way:Footpath 209FP13                             | Within constraint |
| Public Right of Way:Footpath 209FP23                             | Within constraint |
| USRN: 27501302 Road Class:R Ownership: Highway Authority/Private | Within constraint |
| USRN: 27504068 Road Class:Q Ownership: Private                   | Within constraint |
| USRN: 27505438 Road Class:YFP Ownership: Highway Authority       | Within constraint |

# Agenda Item 7

| <b>Constraint / Local Plan Policy</b>   | <b>Distance (Metres)</b> |
|---|--------------------------|
| USRN: 27505443 Road Class:YFP Ownership: Highway Authority  | Within constraint        |
| Within Adopted Unesco Biosphere Transition (ST14)   | Within constraint        |
| Within:, SSSI 5KM Buffer in North Devon (Exmoor NP),consider need for AQIA if proposal is for anaerobic digester without combustion plant   | Within constraint        |
| Within:, SSSI 5KM Buffer in NorthDevon,consider need for AQIA if proposal is for anaerobic digester without combustion plant  | Within constraint        |
| Within:Exmoor and Quantock Oakwoods, SAC 10KM Buffer if agricultural development consider need for AQIA   | Within constraint        |
| Within:Exmoor Heaths, SAC 10KM Buffer if agricultural development consider need for AQIA  | Within constraint        |
| SSSI Impact Risk Consultation Area  | Within constraint        |
| BRF - Bratton Fleming Spatial Strategy<br>DM01 - Amenity Considerations<br>DM02 - Environmental Protection<br>DM04 - Design Principles<br>DM05 - Highways<br>DM06 - Parking Provision<br>DM08 - Biodiversity and Geodiversity<br>DM08A - Landscape and Seascape Character<br>DM23 - Residential Development in defined Settlements without development boundaries<br>ST01 - Principles of Sustainable Development<br>ST03 - Adapting to Climate Change and Strengthening Resilience<br>ST04 - Improving the Quality of Development<br>ST07 - Spatial Development Strategy for Northern Devon's Rural Area<br>ST10 - Transport Strategy<br>ST14 - Enhancing Environmental Assets |                          |

## Consultees

| <b>Name</b>   | <b>Comment</b>   |
|---|--|
| Bratton Fleming Parish Council<br><br>Reply Received<br>21 March 2024 | Bratton Fleming Parish Council has no objection to this application, and recommends that it is approved. |
| Councillor M Prowse<br><br>Reply Received                             | No comments received   |
| DCC - Development Management Highways<br><br>Reply Received           | No comments received   |

# Agenda Item 7

| Name   | Comment   |
|--|---|
| DCC - Public Rights Of Way<br><br>Reply Received                 | No comments received  |
| Environmental Health Manager<br><br>Reply Received 14 March 2024 | I have reviewed this variation application in relation to Environmental Protection matters.<br><br>I have no objection to the proposed design and site layout changes.  |
| South West Water<br><br>Reply Received 18 March 2024             | <p>With reference to the planning application at the above address, the applicant/agent is advised to contact South West Water if they are unable to comply with our requirements as detailed below.</p> <p><b>Surface Water Services</b><br/>The applicant should demonstrate to your LPA that its prospective surface run-off will discharge as high up the hierarchy of drainage options as is reasonably practicable (with evidence that the Run-off Destination Hierarchy has been addressed, and reasoning as to why any preferred disposal route is not reasonably practicable):</p> <ol style="list-style-type: none"> <li>1. Water re-use (smart water butts, rainwater harvesting, grey flushing toilets)</li> <li>2. Discharge into the ground (infiltration); or where not reasonably practicable,</li> <li>3. Discharge to a surface waterbody; or where not reasonably practicable,</li> <li>4. Discharge to a surface water sewer, highway drain, or another drainage system; or where not reasonably practicable,</li> <li>5. Discharge to a combined sewer. (Subject to Sewerage Undertaker carrying out capacity evaluation)</li> </ol> <p>No surface water strategy details were provided with this planning application. Please note that a discharge into the ground (infiltration) is South West Water's favoured method and meets with the Run-off Destination Hierarchy. Should this method be unavailable, SWW will require clear evidence to demonstrate why the preferred methods listed within the Run-off Destination Hierarchy have been discounted by the applicant.</p> <p>For Highway run off please contact the Highway Authority to agree disposal method.<br/>I trust this provides confirmation of our requirements, however should you have any questions or queries, please contact the Planning Team on 01392 442836 or via email: <a href="mailto:DeveloperServicesPlanning@southwestwater.co.uk">DeveloperServicesPlanning@southwestwater.co.uk</a></p> |
| Sustainability Officer<br><br>Reply Received                     | No comments received  |

## **Neighbours / Interested Parties**

| <b>Comments</b> | <b>No Objection</b> | <b>Object</b> | <b>Petition</b> | <b>No. Signatures</b> |
|-----------------|---------------------|---------------|-----------------|-----------------------|
| 1               | 0.00                | 4             | 0.00            | 0.00                  |

Four objections and one general comment have been received. The following issues have been raised:

- Proposals could exacerbate parking issues
- Loss of green space
- Access for emergency vehicles
- Other residents should be able to have dedicated parking provision

The issues raised have been taken into account in the assessment of the application.

## **Considerations**

### **Proposal Description**

The application seeks full planning permission under Section 73 of the Town and Country Planning Act 1990, for the variation of condition 2 (approved plans) linked to planning permission 64032 (Erection of dwelling with associated parking) to allow for changes made to the design and amendments to associated parking.

The application proposes a four bedroom, two storey dwelling with a dual pitched roof and gable end to the south elevation. The principal entrance to the dwelling is also provided at the south elevation. A hipped gable is shown at the rear. The external walls are finished in white render, with slate used for the roof covering. A private garden and patio area is provided at the rear of the dwelling. Two parking spaces are provided to the front of the dwelling, and a driveway surfaced in compacted gravel would provide access to the South View highway. A Devon hedgebank would enclose the parking area at the front of the dwelling. Nine parking spaces would be provided within the communal parking area, which would be surfaced in gravel.

The alterations proposed to the extant permission are as follows:

1. Creation of driveway, parking provision for two vehicles and turning area. Parking area and part of driveway to be enclosed by Devon hedgebank.
2. Removal of previously approved dormer window to the front elevation of the dwelling.
3. Removal of previously approved rear gable end, sun room and balcony from the rear elevation of the dwelling.
4. Removal of previously approved cladding to external walls. External walls now proposed to be entirely rendered.
5. Provision of nine car parking spaces within the communal parking area, rather than 10 as previously permitted.

### **Planning Considerations Summary**

The material considerations pursuant to the application are:

- Principle of Development

- Design, Character and Appearance
- Highways
- Residential Amenity
- Ecology
- Foul and Surface Water Drainage

## Planning Considerations

### 1. Principle of Development

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 'NDTLP'). The relevant Policies are detailed above.

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

As noted earlier, the application has been submitted pursuant to Section 73 of the Town and Country Planning Act 1990. Section 73(1) states:

*This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.*

Section 73(2) states:

*On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—*

*(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and*

*(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application*

In 2023 the High Court considered the scope of Section 73, and held that there is no statutory limitation on the degree of change of a proposal that can be considered under Section 73, providing that the proposal does not conflict with the operative part of the permission (the description of development). The judgement establishes that it is not for the decision maker to determine whether the changes proposed by the application being considered are minor material amendments. Rather, the decision maker must assess the changes proposed and determine if they are acceptable in planning terms, having regard for the material considerations pursuant to the proposal.

Policy ST07 of the NDTLP sets out the spatial development strategy for northern Devon's rural area, and clarifies at part (1) of the policy that Local Centres will be the primary focus for development in the rural area. Development will be supported in accordance with the

local spatial strategies, to enhance the sustainability of the locally important service centres and to enable wider than local needs to be met. Schedule A of Policy ST07 identifies Bratton Fleming as a Local Centre.

Policy BRF of the NDTLP sets out the Bratton Fleming Spatial Strategy, and supports the growth of high quality development supported by necessary infrastructure to meet the needs of Bratton Fleming. The policy proceeds to list 10 mechanisms to deliver the spatial strategy, including the provision of a minimum of 44 new dwellings (including affordable homes) and the protection of the setting and character of the village.

It is noted that Bratton Fleming does not have a development boundary. Policy DM23 of the NDTLP is therefore of relevance. The policy establishes that residential development will be supported on sites within the principal built form of the settlement, where they are not protected for any other use. The site is located within the principal built form of the settlement.

As noted earlier, the site benefits from an extant planning permission for the erection of a four bedroom dwelling, with the result that such a dwelling can lawfully be constructed on the site.

It is your officers' view that the principle of a dwelling on the site is acceptable in planning terms. The site is in a location that benefits from policy support under Policies ST07, BRF and DM23. In addition, the extant planning permission is a material consideration that permits the erection of a four bedroom dwelling at the site. Accordingly, the principle of the development proposed is deemed acceptable by your officers.

## 2. Design, Character and Appearance

Policies ST04 and DM04 of the NDTLP both have a strong design focus and establish the need for development to be appropriate in, and have respect for, its context and setting. In addition, Policy DM08A requires development to respect landscape character of both designated and undesignated landscapes. Policy DM23(2)(a) requires that development should not harm the settlement's rural character, setting, form or the surrounding countryside.

The impact of the previously permitted dwelling on the character and appearance of the area was assessed by the Planning Officer at that time, and their delegated report notes the following:

*The proposed dwelling is set back from South View road and follows the existing contours and provides a natural extension to the existing roofscape of the adjacent dwellings. The differing roof pitches successful breaks up the detached house to ensure this does not appear as one mass adjacent to the row of terraced dwellinghouse. The rendered walls and slates roof are reflective of the materials within the surrounding locality. It is considered overall that the proposal is of an acceptable detailed design; scale and massing that will sit acceptably within the site and would be sympathetic to the setting of South View street scene.*

Your officers consider that the proposed alterations to the design of the previously permitted dwelling are modest in nature, and result in minor changes to the principal elevation of the dwelling. The use of render to the external walls is consistent with the treatment of other dwellings within the immediate locality, and the unbroken eaves line now proposed is also



sympathetic to the building forms of existing properties. In addition, the removal of the previously permitted gable end, sun room and balcony at the rear of the dwelling results in a dwelling with a smaller footprint and would reduce the massing at the rear of the site. Lastly, the submitted plans show that 580m<sup>2</sup> of green space would be retained to the immediate south of the dwelling, and the bank that separates the area of green space from the existing communal parking area would also be retained as part of the proposals now being considered.

A condition was attached to the extant permission requiring the retention and maintenance of the existing trees and hedgebank to the northern and eastern boundary of the application site. It is recommended that the same condition be attached to any further planning permission granted in respect of the current proposals.

Taking account of the above, subject to the recommended condition detailed above, it is your officers' view that the proposal would adequately safeguard the character and appearance of the area. It is therefore concluded that on balance the proposal accords with Policies ST04, DM04, DM08A and Policy DM23(2)(a).

### 3. Highways

Policies ST10 and DM05 of the NDTLP seek, inter alia, to ensure that development does not adversely affect the local or strategic highway network and that vehicular accesses are safe and well designed. Policy DM06 requires that an appropriate levels of parking are provided on site.

Paragraph 115 of the NPPF advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Further, paragraph 114 advises, inter alia, that development proposals should ensure that safe and suitable access to the site can be achieved for all users.

The proposals now under consideration include the provision of a driveway to the east of the existing area of green space and two parking spaces located to the immediate south of the dwelling proposed. The submitted plans show that the proposal would retain nine car parking spaces which would be located in the communal parking area. As approved, the dwelling has no dedicated parking spaces and would provide 10 car parking spaces within the communal parking area. The concerns expressed by local residents in relation to a perceived loss of parking are noted, however the proposal now being considered would result in a net gain of one parking space, and therefore represents a betterment when compared with the previously permitted development. A condition was attached to the extant planning permission to secure the improvements to the communal parking area. A similar condition is now recommended by your officers.

In respect of the impact of the proposal on the surrounding highway network, the current proposals would not have a materially greater impact than the development previously permitted.

Taking account of the above, it is your officers' view that the proposal accords with policies ST10, DM05 and DM06 of the NDTLP and the sections of the NPPF above.

### 4. Residential Amenity

# Agenda Item 7

Policy DM01 of the NDTLP confirms that development will be supported where it would not significantly harm the amenities of neighbouring occupiers or uses or result in harm to the future occupiers of the development from existing or allocated uses. Policy DM04(1)(i) follows a similar policy direction.

The dwelling now proposed would not have a materially greater impact on the amenities of the occupiers of surrounding properties than the previously permitted development.

The Council's Environmental Health Officer has been consulted in respect of the proposals and has confirmed that there is no objection to the proposed design and site layout alterations.

The extant permission includes conditions to limit construction hours (condition 5) and in respect of the provision of a Construction Management Plan (condition 6). The planning history shows that condition 6 was discharged under reference 72301 on 18 November 2020. A condition is therefore recommended to require the development to be carried out in accordance with the previously approved Construction Management Plan. A condition is also recommended to limit construction hours, as per the extant permission.

Taking account of the above, subject to the recommended conditions it is your officers' view that the proposals would not result in significant harm being caused to the amenities of the occupiers of existing properties within the locality, and the proposals are therefore considered to be in accordance with the requirements of Policies DM01 and DM04(1)(i) of the NDTLP.

## 5. Ecology

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 (Amendment) (EU Exit) Regulations 2019 (Habitat Regulations 2019). Policies ST14 and DM08 of the NDTLP require that development ensures the protection and enhancement of biodiversity.

The Sustainability Officer has been consulted, however no response has been received.

The application includes a statement from the agent advising that the need for an Ecology Report is triggered solely on the basis that the site is greater than 0.1ha. Your officers agree that an Ecology Report is not required, on the basis that much of the land within the red line boundary is the private highway and communal parking area. Due regard must also be given to the extant permission, and it is concluded that the proposals now being considered would not likely have a materially greater impact on the biodiversity value of the area compared to the development previously permitted.

In addition to the above, it is noted that the proposals include the provision of a Devon hedgebank to enclose the parking and turning area. A detailed planting specification has been provided. It is considered that this would provide biodiversity enhancement when compared with the previously permitted development.

It is your officers' view that the proposals are in accordance with the requirements of Policies DM08 and ST14 of the NDTLP.

## 6. Foul and Surface Water Drainage

Policy ST03 of the NDTLP seeks to mitigate the impacts of climate change and reduce flood risk. Policy DM02 aims to protect the receiving environment from unacceptable pollution in relation to pollution.

The site is within flood zone 1.

Foul water is proposed to be drained to the mains sewer, which is considered acceptable.

Surface water run off would be drained to a soakaway, as was proposed in respect of the extant permission. This is also considered acceptable.

It is your officers' view that the proposals accord with the provisions of policies ST03 and DM02.

## 7. Conclusion

The principle of development of a single dwelling at the site has been established by virtue of the extant planning permission reference 64032. In addition, the principle of a dwelling at the site is supported by the local planning policy context.

It is your officers' view that the proposed revisions to the previously permitted development are acceptable in planning terms and accord with the relevant planning policies set out above, subject to the conditions set out below.

Accordingly, your officers conclude that the application accords with the development plan and it is therefore recommended that planning permission be granted.

### **Human Rights Act 1998**

The provisions of the Human Rights Act and principles contained in the Convention on Human Rights have been taken into account in reaching the recommendation contained in this report. The articles/protocols identified below were considered of particular relevance:

- Article 8 – Right to Respect for Private and Family Life
- THE FIRST PROTOCOL – Article 1: Protection of Property

Section 149(1) of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it (the Public Sector Equality Duty or 'PSED'). There are no equality implications anticipated as a result of this decision.

### **Recommendation**

#### **Approved**

Legal Agreement Required: No

## Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans/details:  
P295 23 200B Location Plan received on the 27/02/24  
P395 23 202F Proposed Site Plan received on the 15/05/24  
P395 23 301A Proposed Floor Plans & Elevations received on the 27/02/24  
P395 23 205 Proposed Site Plan received on the 30/04/24  
(‘the approved plans’).

Reason:

To ensure the development is carried out in accordance with the approved plans in the interests of proper planning.

2. The development hereby approved shall be constructed in accordance with the following schedule of external finishing materials:

External walls: Painted render

Roof: Slate

Once installed, the approved materials shall be retained as such thereafter.

Reason:

In the interests of the appearance of the development and locality in accordance with Policy DM04 of the North Devon and Torridge Local Plan.

3. Prior to the occupation of the dwelling hereby permitted, the nine communal car parking spaces at South View and the two car parking spaces to serve the dwelling hereby permitted shall be provided and made available for use in accordance with drawing number P395 23 202 F and maintained as such thereafter.

Reason:

To ensure that adequate parking facilities are provided within the site for the traffic likely to be generated by the proposed development, in accordance with Policy DM06 of the North Devon and Torridge Local Plan.

4. Any activity on site associated with the construction phase shall only take place between the hours 08:00 to 18:00 Monday to Friday inclusive and between 09:00 and 13:00 on Saturday. There shall be no working on a Sunday or any Public Holiday.

Reason:

To protect the amenity of local residents during noise sensitive hours, in accordance with Policy DM01 of the North Devon and Torridge Local Plan.

5. The development hereby permitted shall be carried out in accordance with the Construction Management Plan dated 11 October 2020 and approved by Discharge of Condition decision reference 72301.

Reason:

To protect the amenity of local residents, in accordance with Policy DM01 of the North Devon and Torridge Local Plan.

# Agenda Item 7

6. The existing trees and hedgebank to the northern and eastern boundary of the application site shall be retained and maintained, and shall not be removed in whole or in part.

Reason:

To safeguard the appearance and character of the area, in accordance with Policy DM04 of the North Devon and Torridge Local Plan.

7. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation or the substantial completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variations. The Devon hedgebank to enclose the parking area shall be provided in accordance with the specification detailed on drawing reference P395 23 202 F.

Reason:

To assimilate the development into the landscape and to safeguard the appearance and character of the area in accordance with Policies ST04, ST14, DM04 and DM08A of the North Devon and Torridge Local Plan.

## **Informatives**

1. Statement of Engagement  
In accordance with paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and pro-active way and has imposed planning conditions to enable the grant of planning permission. This has included a condition relating to the improvements to the communal parking area.
2. The submitted drawings have been numbered as set out in condition 1. Please refer to the planning application tracker on the District Council's website to view the drawings and their allocated numbers, <http://planning.northdevon.gov.uk/search.asp>
3. The applicant is reminded of the provisions of the Wildlife and Countryside Act 1981 and the E.C. Conservation [Natural Habitats] Regulations 1994.
4. As the proposed works affect / are in close proximity to the boundary with a neighbouring property, this decision does not convey any other form of consent or agreement that may be necessary in conjunction with these works and does not override or supersede any civil rights, which the neighbour may have. The attention of the applicant is drawn to the information contained in the Guide to the Party Wall etc. Act 1996 booklet. Copies available from the Communities and Local Government website [www.communities.gov.uk/publications/planningandbuilding/partywall](http://www.communities.gov.uk/publications/planningandbuilding/partywall).

| <b>Recommendation Date</b> | <b>Case Officer</b> | <b>Lead Officer</b> | <b>Admin</b> | <b>Check</b> |
|----------------------------|---------------------|---------------------|--------------|--------------|
| <b>17 May 2024</b>         | <b>JJ</b>           | TB                  |              |              |

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## Application Report

Planning, Housing and Health  
North Devon Council  
Lynton House, Commercial Road,  
Barnstaple, EX31 1DG

|   |   |
|---|---|
| <b>Application No:</b>  | 78488   |
| <b>Application Type:</b>  | NDC Regulation 3  |
| <b>Application Expiry:</b>  | 5 June 2024   |
| <b>Extension of Time Expiry:</b>                                      |   |
| <b>Publicity Expiry:</b>  | 23 May 2024   |
| <b>Parish/Ward:</b>   | ILFRACOMBE/ILFRACOMBE EAST  |
| <b>Location:</b>  | Runnymede Gardens<br>Wilder Road<br>Ilfracombe<br>Devon   |
| <b>Proposal:</b>  | Application under Regulation 3 of the T & C P General Regulations 1992 notification by NDC for removal of existing stone retaining wall & reconstruct new cavity retaining wall with stone facing to match existing |
| <b>Agent:</b>   | Tara Jenkins  |
| <b>Applicant:</b>   | Tara Jenkins  |
| <b>Planning Case Officer:</b>   | Mr K. Webster   |
| <b>Departure:</b>   | N   |
| <b>EIA Development:</b>   |   |
| <b>EIA Conclusion:</b>  | Development is outside the scope of the Regulations.  |
| <b>Decision Level/Reason for Report to Committee (If Applicable):</b> | Committee<br>The application has been submitted by NDDC   |

### Site Description

Runnymede Gardens (or Jubilee Gardens) Car Park is a small area of North Devon Council-owned pay-and-display car parking near Ilfracombe Museum. The car park is to the north of Runnymede Gardens and the retaining wall is between Runnymede Gardens and the car park.

The car park is somewhat sunken into the topography, below the ground level of Runnymede Gardens. The retaining wall supports the ground above between the car park and Runnymede Gardens where there are trees, plants and other vegetation. It has been in need of structural support until it can be repaired. The wall is currently surrounded with temporary fencing and has wooden diagonal supports to prevent subsidence/collapse. This has reduced the size of the car park and its turning space.

The wall is of natural stone. It is within the Ilfracombe Conservation Area. Ilfracombe Museum, accessed via this car park area, is a Locally Important Building.

|   |  |
|---|--|
|    |    |
| Existing Retaining Wall   | Existing Car Park and Museum   |
|    |    |
| Existing Retaining Wall Fenced Off Throughout on Lower Side                         | North Edge of <u>Runnymede</u> Gardens also Fenced Off                               |
|  |  |
| Existing Retaining Wall and Car Park  | Existing Supports/Props  |

## Recommendation

**Approved**

Legal Agreement Required: No

## Planning History

| Reference Number | Proposal   | Decision               | Decision Date   |
|------------------|--|------------------------|-----------------|
| 20161            | APPLICATION UNDER REGULATION 3 OF THE T & C P GENERAL REGULATIONS 1992 PROPOSED ERECTION OF NEW PAVILION COMPRISING THEATRE, | FULL PLANNING APPROVAL | 24 October 1995 |

# Agenda Item 8

| Reference Number | Proposal  | Decision | Decision Date |
|------------------|---|----------|---------------|
|                  | WINTERGARDEN, TOURIST FACILITIES & IMPROVEMENTS TO SURROUNDING PARK AND PARKING AREA (AMENDED PLANS) at LAND OFF, WILDER ROAD, ILFRACOMBE, EX34 9BZ |          |               |

## Constraints/Planning Policy

| Constraint / Local Plan Policy  | Distance (Metres) |
|---|-------------------|
| Adopted Tourist Area: Ilfracombe Harbour and Seafront<br>Policy Ref:ILF05   | Within constraint |
| Advert Control Area: Area of Special Advert Control   | Within constraint |
| Advert Control Area: Ilfracombe   | Within constraint |
| Chivenor Safeguard Zone Consultation Structure or works exceeding 91.4m   | Within constraint |
| Conservation Area: 18 Ilfracombe (Adopted 08/09/2009)   | Within constraint |
| Critical Drainage Area  | Within constraint |
| Landscape Character is: 7 Main cities and towns   | Within constraint |
| Risk of flooding from: Lower Slade, reservoir with risk level High-risk   | Within constraint |
| Risk of flooding from: Slade Upper, reservoir with risk level High-risk   | Within constraint |
| USRN: 27502155 Road Class: C Ownership: Highway Authority   | 3.41              |
| Within: 100m of Adopted Marine Conservation Zone (ST09 & ST14)  | 99                |
| Within: Adopted Coast and Estuary Zone  | Within constraint |
| Within: Adopted Unesco Biosphere Transition (ST14)  | Within constraint |
| Within: Flood Zone 2  | Within constraint |
| Within: Flood Zone 3  | Within constraint |
| Within: SSSI 5KM Buffer in North Devon, consider need for AQIA if proposal is for anaerobic digester without combustion plant   | Within constraint |
| Within: Exmoor Heaths, SAC 10KM Buffer if agricultural development consider need for AQIA   | Within constraint |
| SSSI Impact Risk Consultation Area  | Within constraint |
| Conservation Area: ILFRACOMBE   |                   |
| DM01 - Amenity Considerations<br>DM04 - Design Principles<br>DM05 - Highways<br>DM06 - Parking Provision<br>DM07 - Historic Environment<br>DM08 - Biodiversity and Geodiversity<br>ST04 - Improving the Quality of Development<br>ST09 - Coast and Estuary Strategy<br>ST14 - Enhancing Environmental Assets<br>ST15 - Conserving Heritage Assets |                   |

## Consultees

| Name  | Comment   |
|---|---|
| Heritage & Conservation Officer<br><br>Reply Received<br>2 May 2024 | <i>Provided that the rebuilt wall has an appearance similar to that of the existing, i.e. stone-faced with local stone, I do not consider that this proposal will cause harm to the significance of the heritage asset.</i> |
| Ilfracombe Town Council   | No comments received at the time of writing the report.   |
| Councillor D Turton   | No comments received.   |
| Councillor J Williams   | No comments received.   |
| Councillor P Crabb  | No comments received.   |

## Neighbours / Interested Parties

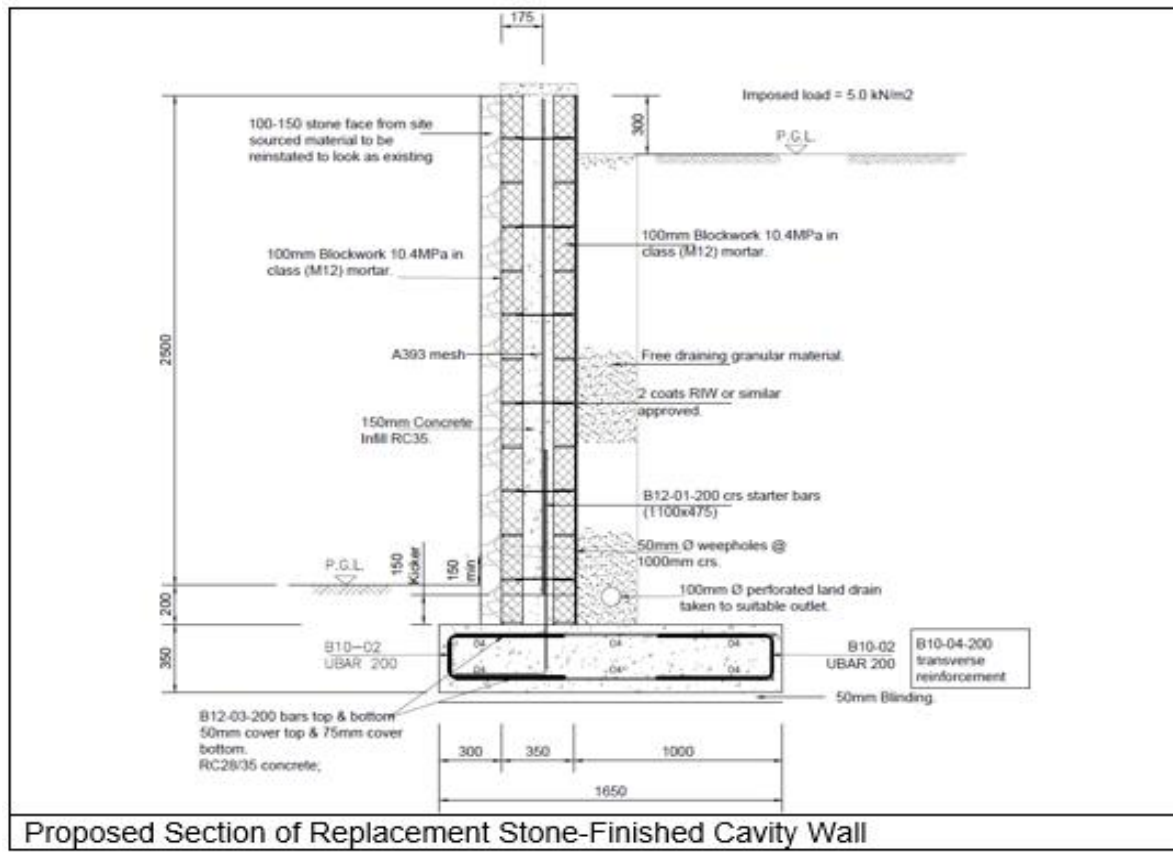
| Comments | No Objection | Object | Petition | No. Signatures |
|----------|--------------|--------|----------|----------------|
| 0.00     | 0.00         | 0.00   | 0.00     | 0.00           |

At this time of writing, the consultation period remains open. There have yet to be any objections from members of the public or Ilfracombe Town Council. Should there be any changes to this circumstance, members will be informed at committee.

## Proposal Description

This application seeks detailed Planning Permission (under Regulation 3 of The Town and Country Planning General Regulations 1992) for the removal of an existing stone retaining wall to be replaced with a new cavity retaining wall finished with stone to match the existing.





## **Planning Considerations Summary**

- Design and Impact on the Setting of heritage asset
- Amenity Considerations
- Impact on Ecology
- Highways Safety
- Drainage and Flood Risk

## **Planning Considerations**

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 relevant Policies are detailed above.

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states a general duty of a Local Planning Authority as respects conservation areas in exercise of planning functions. In the exercise, with respect to any buildings or other land in a conservation area special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

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

## **Design and Impact on the Setting**

Policy ST04 (Improving the Quality of Development) of the Local Plan states that development will achieve high quality inclusive and sustainable design to support the creation of successful, vibrant places. Design will be based on a clear process that analyses and responds to the characteristics of the site, its wider context and the surrounding area taking full account of the principles of design found in policy DM04.

Policy DM04 (Design Principles) of the Local Plan requires development to be appropriate and sympathetic to setting in terms of scale, density, massing, height, layout appearance, fenestration, materials and relationship to buildings and landscape features in the local neighbourhood.

Policies ST15 (Conserving Heritage Assets) and DM07 (Historic Environment) of the Local Plan require that development must follow design principles that will be appropriate and sympathetic to the setting and be carried out in order to preserve and enhance heritage assets and their landscapes.

Policy ST09 (Coast and Estuary Strategy) is a consideration as the site is located within the Coast and Estuary Zone and as such, any development in this area will need to ensure that it does not detract from the character, appearance and heritage of the area, while maintaining and enhancing the sustainability of the community.

The retaining wall between Runnymede Gardens and Jubilee Gardens Car Park by Ilfracombe Museum has become damaged, seemingly due to subsidence. A short section of the retaining wall has been closed off with fencing and propped/supported with joists for a number of years. However, at the time of writing, the entire site has been surrounded with temporary metal fencing, which is resulting in harm to the appearance of the Ilfracombe Conservation Area and the setting of the nearby Locally Important Buildings such as Ilfracombe Museum.

It is proposed for this retaining wall to be replaced with a new cavity wall that would be finished with natural stone that, according to the plans, would be site-sourced such that the replacement wall would match the existing in terms of appearance. It can be assumed that the replacement of this wall would allow for the site to have its fencing and temporary supports removed to improve the appearance of the area.

The Council's Heritage and Conservation Officer was part of the design process and left the following consultation comment:

*Provided that the rebuilt wall has an appearance similar to that of the existing, i.e. stone-faced with local stone, I do not consider that this proposal will cause harm to the significance of the heritage asset.*

It is considered that the replacement of the retaining wall would result in an improvement to the wall itself and the wider setting of the Conservation Area. As such, the proposed development is, subject to condition, considered acceptable in terms of design and in accordance with policies ST04, DM04, ST15, DM07 and ST09 of the North Devon and Torridge Local Plan and the Duty above.

## **Amenity Considerations**



Policy DM01 (Amenity Considerations) of the Local Plan states development will be supported where it would not significantly harm the amenities of any neighbouring occupiers or uses; and the intended occupants of the proposed development would not be harmed as a result of existing or allocated uses.

The existing wall raises concern with regard to the public safety, hence why the site has been surrounded with temporary fencing. It is considered that the replacement of this wall would result in a betterment in terms of safety and the amenities of the users of the adjacent car park, Runnymede Garden and Ilfracombe Museum.

As such, the proposed development is considered acceptable and in accordance with policy DM01 of the Local Plan.

## **Impact on Ecology**

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 (Amendment) (EU Exit) Regulations 2019 (Habitat Regulations 2019).

Policy ST14 (Enhancing Environmental Assets) of the Local Plan aims to protect and enhance northern Devon's natural environment by ensuring that development contributes to providing a net gain in biodiversity where possible.

Policy DM08 (Biodiversity and Geodiversity) of the Local Plan requires development should conserve, protect and, where possible, enhance biodiversity and geodiversity interests and soils commensurate with their status and giving appropriate weight to their importance.

With regards to ecology, the red line boundary only covers the replacement of the wall itself and not a wider area for planting or landscaping to be provided in order to secure a biodiversity net gain. As a result, it is considered that securing a biodiversity net gain to be achievable or appropriate with this application.

Despite the above, it is noted that the provision of a new, more secure, retaining wall here would allow for the above soils, trees and planting to be conserved. Furthermore, going forward, the area would have the potential to be used to provide further planting for the benefit of biodiversity and the setting alike.

Given the information received in this case, provided there is no harm to the existing ecology, the proposal would be considered acceptable and in compliance with policies ST14 and DM08 along with relevant policies of the NPPF.

## **Highways Safety**

Policy DM05 (Highways) of the Local Plan states 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.

Policy DM06 (Parking Provision) of the Local Plan requires development proposals to provide an appropriate scale and range of parking provision to meet anticipated needs.

The existing car park is limited in space due to the safety barriers and fencing by the existing retaining wall. The provision of a replacement retaining wall should allow for this temporary fencing to be removed. This would improve the space provided in Jubilee Car Park, improving highways safety, accessibility and parking provision.

As such, the proposed development is considered acceptable and in accordance with policies DM05 and DM06 of the Local Plan.

## **Drainage and Flood Risk**

Policy ST03 (Adapting to Climate Change and Strengthening Resilience) of the Local Plan states development will be supported where it would take account of impacts of climate change and minimise the risk to and vulnerability of people, land, infrastructure and property by (among other things) minimising runoff in Flood Zones and Critical Drainage Areas.

The site is within Flood Zones 2 and 3 and is with a Critical Drainage Area. The proposed development would have a layer of granular permeable material behind the retaining wall that would allow water to access a land drain at the base of the retaining wall. This would contribute towards the management of ground water and slowing of runoff for the land above the replacement retaining wall.

As such, the proposal is, subject to condition, considered acceptable and in accordance with policy ST03 of the Local Plan.

## **Conclusion**

The application is considered to accord with the adopted development plan and Duty detailed above. Approval of the application is therefore recommended subject to the imposition of planning conditions.

## **Human Rights Act 1998**

The provisions of the Human Rights Act and principles contained in the Convention on Human Rights have been taken into account in reaching the recommendation contained in this report. The articles/protocols identified below were considered of particular relevance:

- Article 8 – Right to Respect for Private and Family Life
- THE FIRST PROTOCOL – Article 1: Protection of Property

Section 149(1) of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it (the Public Sector Equality Duty or 'PSED'). There are no equality implications anticipated as a result of this decision.



## **Recommendation**

### **Approved**

Legal Agreement Required: No

## **Conditions**

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.

Reason:

The time limit condition is imposed in order to comply with the requirements of Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in accordance with the following approved plans/details:

05720E\_SK01C Retaining Wall Runnymede Gdns Ilfracombe - 05720E

RW\_08\_03\_2024.pdf received on the 18/03/24

NDC001 Location Plan received on the 10/04/24

('the approved plans').

Reason:

To ensure the development is carried out in accordance with the approved plans in the interests of proper planning.

3. The exterior/exposed face of the retaining wall hereby approved shall replicate the existing retaining wall in colour, form and texture by using local natural stone, laid to replicate the existing.

Reason:

In the interests of the appearance of the development and locality in accordance with policies ST04, DM04, ST15, DM07 and ST09 of the North Devon and Torridge Local Plan.

## **Informatives**

1. The submitted drawings have been numbered as set out in condition 2. Please refer to the planning application tracker on the District Council's website to view the drawings and their allocated numbers, <http://planning.northdevon.gov.uk/search.asp>

2. Statement of Engagement

In accordance with paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and pro-active way and has imposed planning conditions to enable the grant of planning permission. This has included: Design and Impact on the Setting; Amenity Considerations; Impact on Ecology; Highways Safety; and, Drainage and Flood Risk.

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# Jubilee Gardens

Pond

Museum

Car Park

Runnymede Gardens

Bandstand

WILDER ROAD



Lynton House, Commercial Road,  
Barnstaple, EX31 1EA

## Title: Runnymede Gardens. Ilfracombe

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Scale: 1:500  
Date: 20 May 2024

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