



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:	2 June 2023
Parish/Ward:	LANDKEY/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 – called in by Cllr Lane – ‘The reason for the call in - DMO1 amenity considerations. To consider the impact on the neighbouring property's relating to noise, impact on lighting, also access to the raised area.’

Site Description

Landkey is a 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, EX32 0NF	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, EX32 0LB	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, EX32 0NF	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
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

Constraint / Local Plan Policy	Distance (Metres)
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 NEWLAND	
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	

Consultees

Name	Comment
Councillor G Lane Reply Received 30 May 2023	Would you please except this e/mail as my formal call in request for application no 77028. The reason for the call in - DMO1 amenity considerations, To consider the impact on the neighbouring property's relating to noise,impact on lighting,also access to the raised area,
Councillor V Nel Reply Received	No comment received.
Environmental Health Manager	1 Residential Amenity - Noise

Name	Comment
<p>Reply Received 27 September 2023</p>	<p>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>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>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>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>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>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>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>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.</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.</p>

Name	Comment
	<p>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 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>

Name	Comment
	<p data-bbox="443 197 1404 235">1.2 - Noise Complaints Received by Environmental Protection (EP)</p> <p data-bbox="443 268 1225 336">The following noise complaints have been recorded by Environmental Protection:</p> <p data-bbox="443 376 1353 448">July 2019 - 3 noise complaints received about loud music being played outside on 3rd, 15th and 30th July 2019.</p> <p data-bbox="443 488 1372 560">It appears these complaints were investigated by EP and contact was made with the Castle Inn.</p> <p data-bbox="443 600 1380 672">A further complaint was received in August 2022. The file note for 30 August 2022 states:</p> <p data-bbox="443 712 1404 1041">"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 data-bbox="443 1075 1388 1146">A further complaint about loud music noise was logged on 21 April 2023 from the same resident that complained previously.</p> <p data-bbox="443 1187 1404 1332">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 data-bbox="443 1366 1380 1585">"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 data-bbox="443 1624 1276 1662">1.3 Relevance of Noise Complaints to Planning Concerns</p> <p data-bbox="443 1697 1364 1769">My concerns about noise impacts associated with erection of the two timber structures are as detailed in my previous comments.</p> <p data-bbox="443 1809 1404 2094">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>

Name	Comment
	<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>1.4 Offer of a Noise Management Plan</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>2 Proposed External Lighting</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 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>

Name	Comment
	<p data-bbox="443 197 783 232">3 Concluding Remarks</p> <p data-bbox="443 268 1406 483">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 data-bbox="443 519 1406 703">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 data-bbox="443 739 1401 954">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 data-bbox="178 1041 416 1111">Environmental Health Manager</p> <p data-bbox="178 1146 408 1216">Reply Received 6 July 2023</p>	<p data-bbox="443 1041 1350 1111">I refer to the email to you from Lewis Andrews sent on 30 June, regarding my emailed comments of 26 May 2023.</p> <p data-bbox="443 1146 531 1182">Noise</p> <ul data-bbox="443 1218 796 1254" style="list-style-type: none"> - New Sources of Noise <p data-bbox="443 1290 1394 1583">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 data-bbox="443 1619 804 1655" style="list-style-type: none"> - Using other Legislation <p data-bbox="443 1691 1401 1984">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 data-bbox="443 2020 1401 2089">The noise controls provided under statutory nuisance and licensing provisions are not the same as those provided under the planning</p>

Name	Comment
	<p>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 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>

Name	Comment
Heritage & Conservation Officer Reply Received 31 May 2023	31/05/2023 12:49 - I do not consider that this proposal will cause harm to the significance of the heritage asset.
Landkey Parish Council Reply Received 18 May 2023	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. The Council has requested that the District Council Members call the application in for consideration by the NDC Planning Committee

Neighbours / Interested Parties

Comments	No Objection	Object	Petition	No. Signatures
0	8	6	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 an immediate neighbour. Two of these letters of support are from The Orchards including the nearest neighbour to the dining shelter.

Considerations

Proposal Description

This application seeks retrospective permission for erection of two timber structures.

These structures 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 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



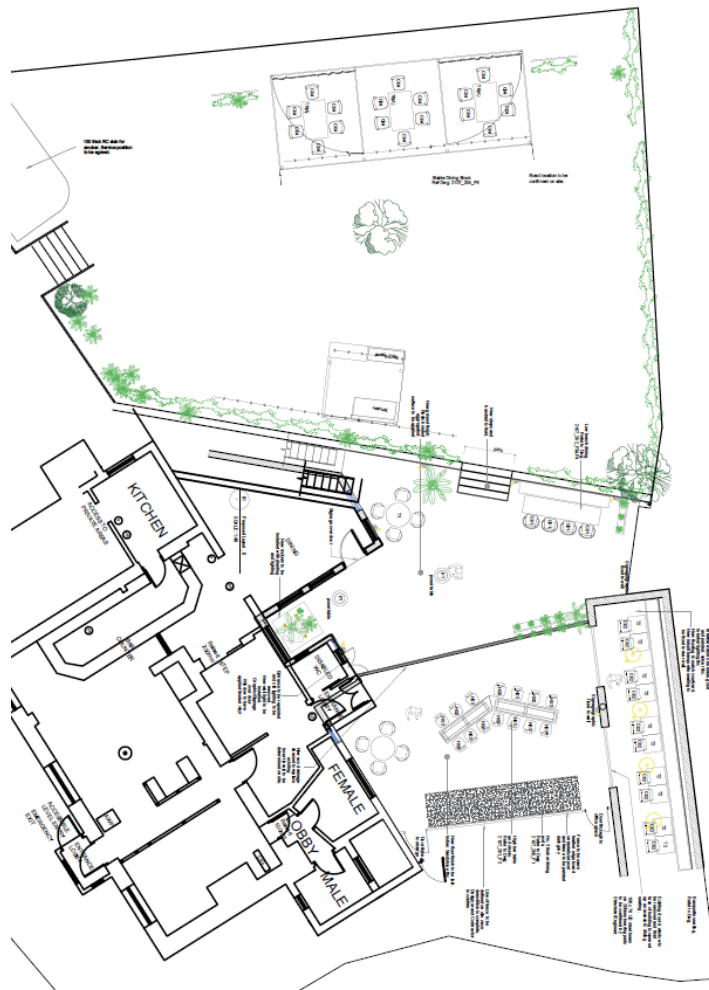
The dining shelter



Rear of dining shelter and boundary with number 18 The Orchards



The Smoke House/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
- Residential 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.

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

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.

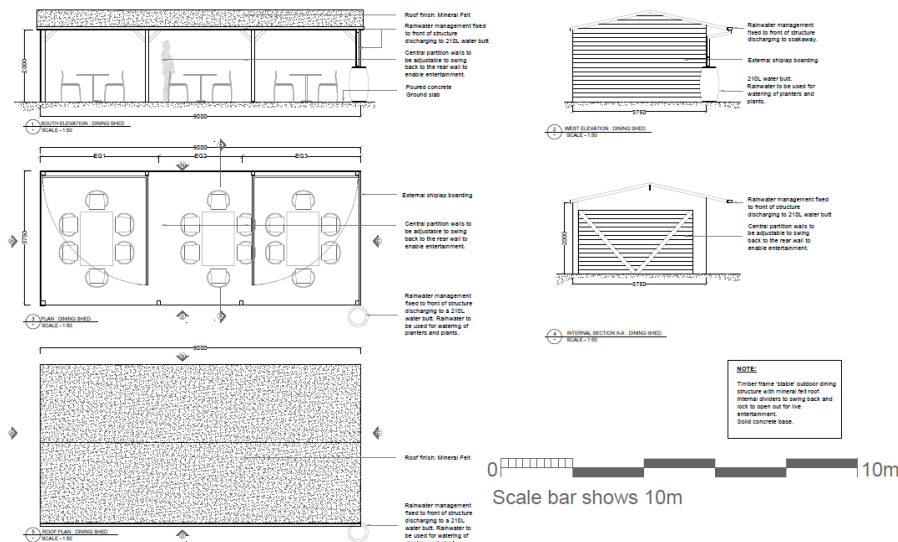
In consideration of the above, there are no in principle objections to the retention of these shelters, the use of which is clearly commensurate with the existing operation of the premises as a Public House. The application will however need to be carefully considered with regard to its impact upon neighbouring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

Design and impact on the historic environment

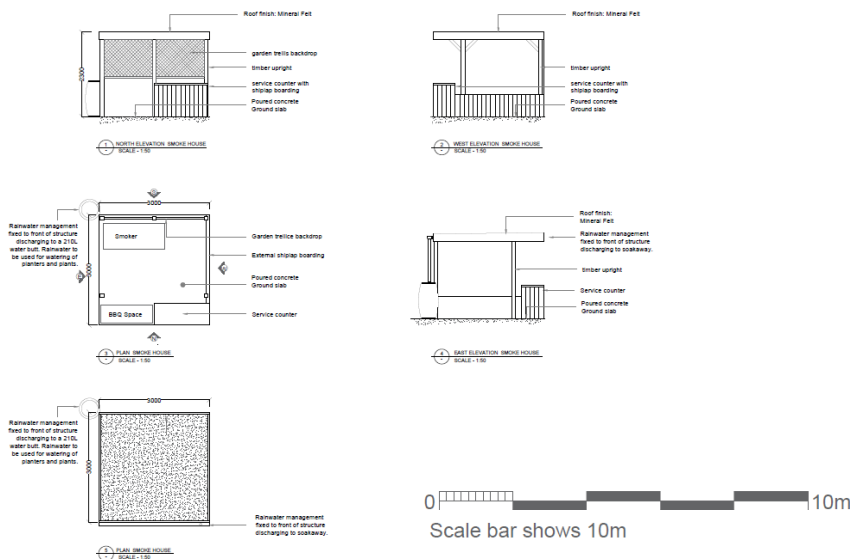
Part 12 of the National Planning Policy Framework ‘Achieving Well Designed Places’ sets the national principles for good development to secure high quality design. Paragraph 130 requires that new development must be visually attractive, appropriately sited and sympathetic in terms of layout, appearance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

Policies ST04 and DM04 of the NDTLP 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.

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.

Residential 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 in significantly harming the amenities of 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.

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 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 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 27th 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 whether artificial lighting will also affect the amenity of neighbouring occupiers.

In the absence of any agreement to planning 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. The Local Planning Authority 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, DM04 (i) and 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

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 of mitigation measures. 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.