

**Mr S Hearse**  
**Chief Executive**  
**Torrige District Council**  
Riverbank House  
Bideford  
Devon  
EX39 2QG



Tel : Bideford (01237) 428700

Date: 20 September 2024  
Quorum: 6

## **MEETING OF PLANS COMMITTEE**

**Town Hall - Bridge Street, Bideford, EX39 2HS**

**Thursday 3 October 2024 at 9.30 am**

### **NOTICE OF MEETING**

The meeting will be able to watch through the Council's YouTube Channel  
<https://tinyurl.com/TorrigeYouTube>

To: Councillor R Lock (Chair)  
Councillor C Leather (Vice-Chair)  
Councillors: P Hames, D Bushby, K Hepple, P Pennington, D Smith, C Wheatley  
and J Whittaker

**Members are requested to turn off their mobile phones for the duration of the Meeting**

### **AGENDA**

1.	<b>Apologies For Absence</b>
	To receive apologies of absence from the meeting.
2.	<b>Minutes</b> (Pages 5 - 15)
	To receive the Minutes from the meeting held on 12 <sup>th</sup> September 2024.
3.	<b>Declaration of Interest</b>
	Members with interests to declare should refer to the Agenda item and describe the nature of their interest when the item is being considered.  Elected Members of Devon County Council and Town/Parish Councils who have considered a planning application by virtue of their membership of that Council hold a personal interest and are deemed to have considered the application separately and the expressed views of that Council do not bind the Members concerned who consider the application afresh.

4.	<b>Agreement of Agenda between Parts I and II</b>
	That the Agenda as circulated be agreed.
5.	<b>Urgent Matters</b>
	Information to be brought forward with the permission of the Chair.
6.	<b>Public Participation</b>
	The Chair to advise the Committee of any prior requests to speak made by members of the public and to advise of the details of the Council's public participation scheme.
7.	<b>Planning Applications</b>
	The information, recommendations and advice contained in the reports are correct as at the date of preparation which is more than ten days in advance of the Committee meeting. Due to these time constraints any changes or necessary updates to the reports will be provided in writing or orally at the Committee meeting.
(a)	<b>Application No. 1/1179/2023/LA</b> (Pages 16 - 72)
	Erection of Clean Maritime Innovation Centre incorporating office space, workshop space and extension and repairs to quay wall - Middle Dock, New Quay Street, Appledore.
(b)	<b>Application No. 1/0277/2024/FUL</b> (Pages 73 - 102)
	Provision of a new agricultural livestock building - Buildings and Land At Grid Reference 266213 105908, Bondleigh, Devon.
(c)	<b>Application No. 1/0661/2024/FUL</b> (Pages 103 - 115)
	Construction of 1 no. dwelling (Self build) - Land at Higher Ashmansworthy, Woolsery, Bideford.
8.	<b>Appeal Decisions Summary</b> (Pages 116 - 139)
	Appeal Decision Summary and Reports of Planning Inspectorate  Summary  Appeal Decision – Application No. 1/0997/2023/FUL Appeal Decision - Application No. 1/0162/2022/FUL Appeal Decision - Application No. 1/0409/2023/FUL Appeal Decision - Application No. 1/0042/2024/FUL Appeal Decision - Application No. 1/0581/2023/FUL
9.	<b>Costs on Appeals</b>
	There are no costs on appeals.

10.	<b>Delegated Decisions - AGMB Applications</b> (Pages 140 - 141)
	The Committee noted the Delegated Decisions for the period 04.09.2024 – 25.09.2024.
11.	<b>Planning Decisions</b> (Pages 142 - 147)
	List of Delegated Planning Decisions, Consultee Abbreviations and Application Types enclosed 04.09.2024 to 25.09.2024.
12.	<b>Exclusion of Public</b>
	The Chair to move:-  That the public be excluded from the remainder of the meeting because of the likely disclosure of exempt information by virtue of Part 1 Schedule 12A of the Local Government Act 1972.
13.	<b>Part II - Closed Session</b>
	There are no Part II items.

The background papers are considered to comprise the following documents:

- The individual planning application file (reference number quoted in each case)
- North Devon and Torridge Local Plan 2011-2031 (Adopted October 2018)
- Current Government guidance contained in Circulars, the National Planning Policy Framework, Planning Policy for Traveller Sites and Ministerial Statements
- Any other documents specifically referred to in the report.

All background papers referred to are available for examination during normal office hours.

### **NOTE TO MEMBERS**

All letters of representations are readily available for inspection on the files or through the website and public access. If any Member requires assistance in using this facility, please contact the Development Enabling Manager directly.

Members of the Committee only will receive hard copies of representations received.

Meeting Organiser: Democratic Services

For those wishing to speak at Plans Committee please contact:

Planning Support -      Tel: 01237 428778 or 428711  
    Email: [speak.planning@torridge.gov.uk](mailto:speak.planning@torridge.gov.uk)  
    Website: [www.torridge.gov.uk/speakplanning](http://www.torridge.gov.uk/speakplanning)



Cllr H Thomas			X
Cllr C Wheatley	X		
Cllr J Whittaker	X		

(Vote: For - 8, Against – 0, Abstention - 1)

It was proposed by Councillor C Leather, seconded by Councillor J Whittaker and – Resolved:

The Minutes of the meeting held on 25<sup>th</sup> July 2024 were agreed and signed as a correct record.

A recorded vote was taken.

Councillor	For	Against	Abstain
Cllr D Bushby	X		
Cllr K Hames	X		
Cllr K Hepple	X		
Cllr C Leather	X		
Cllr R Lock	X		
Cllr D Smith	X		
Cllr H Thomas	X		
Cllr C Wheatley	X		
Cllr J Whittaker	X		

(Vote: For - unanimous)

13. DECLARATION OF INTEREST

**The Chair reminded Members to declare their interests when the relevant item was up for discussion. Declarations of interest were made as indicated below and in accordance with the previously agreed arrangements for “dual-hatted” Members.**

14. AGREEMENT OF AGENDA BETWEEN PARTS I AND II

There were no Part II items.

15. URGENT MATTERS

The Chair advised a training session would be organised for the changes to the NPPF.

The Planning Manager confirmed that a brief session took place at the recent Local Plan workshop and that the agenda for JPPC would include the draft response to the consultation.

16. PUBLIC PARTICIPATION

**The Chair advised the Committee and members of the public of the details in respect of the Council's public participation scheme.**

17. PLANNING APPLICATIONS

(a) Application No. 1/0380/2024/LA

The Councillors who attended the virtual online site visit are listed below:

Councillors: R Lock, P Hames, K Hepple, C Leather, J Whittaker, D Smith and C Wheatley.

Councillors D Bushby and H Thomas were emailed a copy of the recording.

The Councillors who attended the in-person site visit are listed below:

Councillors: D Bushby, P Hames, C Leather and J Whittaker.

Application No. 1/0380/2024/LA - Erection of building for the provision of vehicle workshop, office & welfare and all ancillary facilities, access and cycle/pedestrian improvements - Land At Grid Reference 246891126041, Manteo Way, East The Water.

Interests: None

Officer recommendation – Grant

The application had been referred to Plans Committee as the applicant is Torridge District Council.

The Principal Planner presented the report and informed Members of the main planning considerations.

The Principal Planner advised Members of the following updates:

- To add a tree condition
- To add a Landscape Ecology Management Plan (LEMP) condition

A lengthy discussion took place where Members voiced their opinions against and in support of the application however acknowledged the need for new site.

Following comments made by Councillor H Thomas, the Chair and the Head of Legal & Governance (Monitoring Officer) advised to

concentrate, focus and comment on the application presented.

In response to concerns raised the following was advised:

- Horn testing of vehicles – the Principal Planner read an extract from the report advising of noise mitigating measures however the exact testing of horns would be an operational task and he could not confirm if this would be an audible test or if there was a mechanism to test them silently. The Planning Manager contributed that there is a draft condition for a noise management plan.
- The Planning Manager clarified there is a proposal for a construction operational traffic management plan condition which requires measures to regulate the routing of construction traffic.
- The Head of Legal & Governance informed Members that if they were minded to defer the application the Planning Inspectorate would make a determination and it would be exclusively based on the information in the application.
- In response to a question surrounding the trees that had allegedly been reduced, the Planning Manager advised the Local Planning Authority could not comment and there was sufficient information contained within the ecological surveys carried out.

Councillor H Thomas moved to refuse the application, there was no seconder for this proposal.

It was proposed by Councillor C Leather, seconded by Councillor D Bushby that the application be approved subject to the updates above.

A recorded vote was taken.

<b>Councillor</b>	<b>For</b>	<b>Against</b>	<b>Abstain</b>
Cllr D Bushby	X		
Cllr K Hames	X		
Cllr K Hepple			X
Cllr C Leather	X		
Cllr R Lock	X		
Cllr H Thomas		X	
Cllr D Smith	X		
Cllr C Wheatley	X		
Cllr J Whittaker	X		

(Vote: For - 7, Against – 1, Abstention - 1)

**RESOLVED:**

**That the application be Granted subjects to the conditions as stated in the report and the amendments and updates as stated above.**

Councillor J Gubb, Ward Member, addressed the Committee.

Mr J MacKenzie, member of the public, addressed the Committee to oppose the application.

(b) Application No. 1/0537/2024/FUL

The Councillors who attended the virtual online site visit are listed below:

Councillors: R Lock, P Hames, K Hepple, C Leather, J Whittaker, D Bushby and C Wheatley.

Councillors D Smith and H Thomas were emailed a copy of the recording.

Application No. 1/0537/2024/FUL - Retrospective application for retention of building as open market dwelling (noncompliance with condition 4 of 5 and planning permission 1/0651/2012/FUL) - The Old Tallet, Hallsannery, Bideford.

Interests: None

Officer recommendation: Grant

The planning application had been referred to Plans Committee as the applicant is the son of a TDC Councillor.

The Planning Officer presented the report and informed Members of the main planning considerations.

It was proposed by Councillor C Leather, seconded by Councillor K Hepple that the application be approved.

A recorded vote was taken.

Councillor	For	Against	Abstain
Cllr D Bushby	X		
Cllr K Hames	X		
Cllr K Hepple	X		
Cllr C Leather	X		

Cllr R Lock	X		
Cllr H Thomas	X		
Cllr D Smith	X		
Cllr C Wheatley	X		
Cllr J Whittaker	X		

(Vote: For - unanimous)

**RESOLVED:**

**That the application be Granted subject to the conditions as stated in the report.**

Mr J Pennington, the applicant, addressed the Committee in support of the application.

(c) Application No. 1/0573/2024/FUL

The Councillors who attended the virtual online site visit are listed below:

Councillors: R Lock, P Hames, K Hepple, C Leather, J Whittaker, D Bushby and C Wheatley.

Councillors D Smith and H Thomas were emailed a copy of the recording.

Application No. 1/0573/2024/FUL - Replacement of gas boiler with air source heat pump. - The Cottage, Quayside House, Irsha Street.

Interests: Councillor H Thomas advised he knew the applicant.

Councillors P Hames and J Whittaker declared a personal interest – dual hatted – Northam Town Council.

Offer recommendation – Refuse

The application has been called-in by Councillor Ford due to his belief that the Applicant has provided sufficient evidence regarding the specific heat pump. The Applicant is trying to use the most eco-friendly way of heating his and his wife's property.

The Planning Officer presented the report informing Members of the main planning considerations. It was also advised that due to the noise survey not being carried out a full determination could not be

made as the impact on amenity could not be assessed.

Following the presentation the Chair asked Members for comments and/or questions.

Councillor D Bushby recommended the application be approved.

In response to a request from Councillor P Hames, the Environmental Protection Officer, Tristan Babington-Taylor explained why a noise survey had been requested.

The Committee were reminded of the need for robust conditions and policy reasons to support approval.

The Planning Officer confirmed that air source heat pumps are normally allowed under permitted development, however due to the neighbouring property being a Grade II listed building the survey was required.

In response to a suggestion from Councillor P Hames, the Planning Officer advised the test had been requested from the applicant, but he had refused due to financial implications.

The Environmental Protection Officer confirmed that if the application were granted and, then subsequent complaints were received, an investigation would commence and proceeded to explain the procedure for an investigation.

The Planning Manager emphasised the listed building and character impacts are satisfactory, and it is solely amenity impact and noise that is of concern and clear reasons to approve the application were required.

As the discussion progressed different policies were suggested and debated for approval and the Planning Manager provided further information and guidance on the adequacy of these policies.

It was confirmed that the BS4142 test is site specific.

It became apparent that Members were in support of granting approval, however the Planning Manager urged Members to be cautious in their reasons for approval advising against reliance on future abatement measures as means of mitigation.

It was proposed by Councillor C Leather, seconded by Councillor C Leather that the application be approved.

A recorded vote was taken.

Councillor	For	Against	Abstain
Cllr D Bushby	X		
Cllr K Hames	X		
Cllr K Hepple	X		
Cllr C Leather	X		
Cllr R Lock	X		
Cllr H Thomas	X		
Cllr D Smith	X		
Cllr C Wheatley	X		
Cllr J Whittaker	X		

(Vote: For - unanimous)

**RESOLVED:**

**That the application be Granted subject to the wording of the conditions being delegated to Officers in consultation with the Chair and Vice Chair.**

Mr M Harris, the applicant, addressed the Committee in support of the application.

Councillor Ford, Ward Member, addressed the Committee.

(d) Application No. 1/0514/2024/FULM

The Councillors who attended the virtual online site visit are listed below:

Councillors: R Lock, P Hames, K Hepple, C Leather, J Whittaker, D Bushby and C Wheatley.

Councillors: D Smith and H Thomas were emailed a copy of the recording.

Application No. 1/0514/2024/FULM - Battery energy storage system (BESS) with associated infrastructure - Land At Grid Reference 230351 101882, Pyworthy, Devon.

Interests: Councillor K Hepple declared a pre-determination as Ward Member, he left the Committee and joined the public.

Officer recommendation: - Grant

Councillor Hepple called the application to Plans Committee as the Case Officer was minded to approve. His reasons were as follows:

- 1) Conflict with declared NDTC planning policy as the proposed development constitutes cumulative impact with nearby consented solar arrays
- 2) Application does not comply with NFFC guidance
- 3) Planning documents submitted are inadequate and in parts contradictory

The Principal Planner presented the report and informed Members of the main planning considerations and the following updates:

Six objections had been received since the publication of the Committee Report. These raise the following points:

- Lack of justification in terms of site selection/need
- Fire Safety
- Cumulative Impacts
- Consultation

The Highways Officer also referred to his previous comments/conditions.

A lengthy discussion took place where the following concerns were raised and addressed:

- Following a question regarding the amount of water required to extinguish a fire the Principal Planner went into great detail on the measures that would be put in place for this, further work that is required and the many conversations he had been part of with Devon & Somerset Fire Service. Reassurance was given that fire safety officer was satisfied with the application.
- Clarification was given that contaminated water would be captured, and this is detailed in the Fire Safety Management Plan.

Councillor D Smith moved to refuse the application, due to the concerns he raised and quoted policy DM14 and DM08a.

The discussion continued with further concerns were raised and addressed:

- Regarding the need for a secondary access, the Principal Planner highlighted the fact that the Fire Safety Officer had not raised any objections.
- An explanation was given why this was the most appropriate site.
- Condition 12 would address de-commissioning costs and the authority has the power to enforce.

- The site would be 3.7 hectares.
- The acoustics report submitted in support of the application used the adjacent Solar Farm as a comparison and it was deemed this application would be either the same or less harmful.

The Chair recommended approval of the application and gave her reasons for this. Councillor H Thomas seconded this proposal.

At 12.30pm and in accordance with the Constitution, it was proposed by Councillor R Lock, seconded by Councillor J Whittaker and -

Resolved:

That in view of the fact 3 hours had elapsed since the meeting had commenced, that the meeting should continue.

(Vote: For – unanimous)

The latter part of the discussion focused on the policies that would be suitable to refuse the application. The Planning Manager advised the Committee, should they refuse the application they would need to articulate justifiable reasons, as the Principal Planner and the report addresses concerns raised. The Planning Manager highlighted reasons why the decision could be appealed if Members were minded to refuse the application and advised strongly against refusing on ST07(4) solely as a matter of principal.

It was proposed by Councillor D Smith, seconded by Councillor C Leather that the application be refused due to conflict with policies DM08A and ST07(4).

A recorded vote was taken.

<b>Councillor</b>	<b>For</b>	<b>Against</b>	<b>Abstain</b>
Cllr D Bushby	X		
Cllr K Hames	X		
Cllr K Hepple			
Cllr C Leather	X		
Cllr R Lock		X	
Cllr H Thomas		X	
Cllr D Smith	X		
Cllr C Wheatley	X		
Cllr J Whittaker	X		

(Vote: For – 6, Against – 2, Abstentions – 0)

**RESOLVED:**

**That the application be refused due to conflict with policies DM08A and ST07(4) arising from landscape harm (including cumulative) and there being no benefits (including to the local community) to outweigh the identified harm.**

Ms J Folkard, applicant, spoke in support of the application.  
Councillor K Hepple, Ward Member, addressed the committee.

Councillor k Hepple re-joined the Committee following this application.

18. APPEAL DECISIONS SUMMARY

*The Committee noted the Appeal Decisions.*

19. COSTS ON APPEALS

The Committee noted the Costs on Appeals.

20. DELEGATED DECISIONS - AGMB APPLICATIONS

The Committee noted the Delegated Decisions.

21. PLANNING DECISIONS

Following a query on permission granted on another battery storage facility in Pyworthy, it was confirmed that it was determined under delegated powers.

**RESOLVED**

**That the Planning decisions for the period 17.07.2024 – 04.09.2024 be noted.**

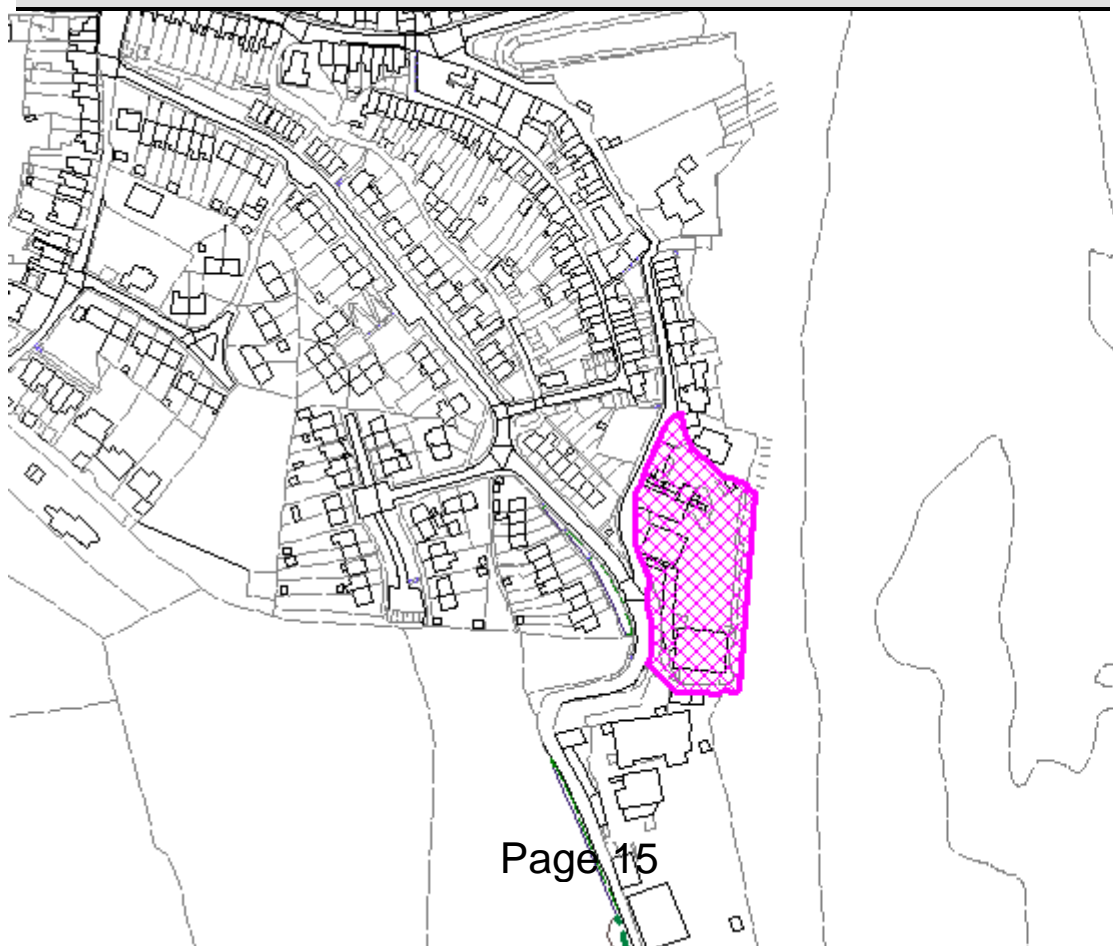
The meeting commenced at 9.30 am and closed at 1.11 pm

Chair:

Date:

## Committee Report – 03.10.2024

<b>Application Number:</b>	1/1179/2023/LA
<b>Registration date:</b>	5 December 2023
<b>Expiry date:</b>	5 March 2024
<b>Applicant:</b>	Torridge District Council
<b>Agent:</b>	Stride Treglown Limited
<b>Case Officer:</b>	Laura Davies
<b>Site Address:</b>	Middle Dock, New Quay Street, Appledore, Devon, EX39 1LU.
<b>Proposal:</b>	Erection of Clean Maritime Innovation Centre incorporating office space, workshop space and extension and repairs to quay wall
<b>Recommendation:</b>	GRANT



**Reason for referral:**

This application has been referred to Plans Committee for determination as the applicant is Torridge District Council and the development is located on Council owned land.

**Relevant History:**

<b>Application No.</b>	<b>Description</b>	<b>Status</b>	<b>Closed</b>
1/0206/1974	BULK FINISHED PRODUCE BINS MIDDLE DOCK, APPLIEDORE NORTHAM	PER	19.06.1974
1/1387/1976	BULK FAT STORAGE TANKS (2) & EXTENSION TO MESS BUILDING MIDDLE DOCK, APPLIEDORE	PER	31.01.1977
1/1852/1979	PORCH EXTENSION TO WEIGHBRIDGE OFFICE	PER	20.12.1979
1/0043/1983	EXTENSION TO EXISTING WEIGHBRIDGE OFFICE	PER	22.02.1983
1/1052/2023/SCR	EIA Screening Opinion for new Appledore Clean Maritime Innovation Centre	SCRP	24.11.2023
1/0051/1982	RE-ALIGNMENT AND EXTENSION OF FITTING OUT QUAY INCLUDING REPOSITIONING OF SEPTIC TANK	PER	06.04.1982
1/0472/1993	EXTENSION OF DOCK WALL	PER	24.05.1993
1/0812/2010/FULM	Mixed use redevelopment of site comprising the demolition of existing buildings, the erection of a community sea sports building, the erection of 23 dwellings, associated parking, the provision of a waterfront walkway and improvements to vehicular and pedestrian access including the provision of a new footway along New Quay Street	WDN	15.12.2010
1/0857/2011/FULM	Mixed use redevelopment of site comprising the demolition of existing buildings, the erection of a community sea sports building, the erection of 22 dwellings, associated parking, the provision of a waterfront walkway and	REF	09.12.2011

improvements to vehicular and pedestrian access including the provision of a new footway along New Quay Street

1/1239/2023/DEM

Removal of all remaining buildings & partial structures and boundary wall to New Quay Street

PER

19.01.2024

## Site Description & Proposal

### Site Description

The application site is located to the south-east of the village of Appledore and immediately to the west of the River Torridge. Hubbastone Road/New Quay Street extends along the western boundary of the site with residential properties further to the west. To the north are residential dwellings on New Quay Street and to the south a slipway and further industrial buildings. The application site is located within Flood Zones 2 and 3 and immediately adjacent to the Taw-Torridge Estuary SSSI. The application site is located within a mineral safeguarding area, in accordance with the Devon Minerals Plan.

The application site covers an area of 0.5ha and the previous commercial buildings on site have now been removed, further to the Prior Approval granted under application reference: 1/1239/2023/DEM.

### Proposed Development

This application seeks the redevelopment of the site to provide a Clean Maritime Innovation Centre to include office space and workshops to the eastern side of the site. Works are also proposed to repair and extend the quay wall approximately 1 metre out to the west.

The proposed development has been amended during the consideration of the application. As amended the proposals include the development of the site with a part single, part two storey building to the western side of the site, to include three distinct sections; a two-storey pitched roof element to the northern part of the site, a single storey flat roof element to the centre and a two storey flat roof part to the south of the building. The proposed development would include workshop areas to the ground floor along with entrance and circulation space. To the first floor, office space would be provided along with meeting facilities. A total of 60 parking spaces would be provided within the site and all would be accessed via the existing entrance to the northern end of the site, which would benefit from improved visibility from the re-siting of the existing boundary wall fronting onto New Quay Street/Hubbastone Road. A sub-station, refuse storage area and outdoor seating area with associated green space would be provided to the northern end of the proposed building.

The proposals also seek works to the existing quay wall with the construction of a new sea wall further to the east and the infill of land to the rear of this, resulting in the site being extended into the estuary by a distance of between 2.5 and 6 metres to form a more continuous quayside area.

The existing high stone boundary wall to part of the existing western boundary onto Hubbastone Road/New Quay Street and southern boundary with the slipway would be retained. The northern part of the existing boundary wall would be replaced by a new retaining wall to be constructed further to the east (within the site) to allow the provision of a new footway along the frontage of the site.

The design of the proposed building would include a mix of light and dark shade rainscreen cladding, cementitious panel system. Roller shutter doors would be used to the workshop entrances to the eastern elevation and aluminium framed windows and doors to the remainder of the building. The roofing materials would also include rainscreen cladding, to both pitched and flat roofed areas.

## Consultee representations:

### **Northam Town Council:**

#### Initial Comments received:

Northam Town Council recommended that the proposal be granted permission.

#### Further comments received 9<sup>th</sup> August 2024:

Northam Town Council noted the proposal and made no further comment at this stage.

### **Conservation Officer:**

#### Initial comments dated 24<sup>th</sup> January 2024:

##### Summary

There is no objection in principle to the redevelopment of the site. The justification for this scheme in terms of level of harm to the conservation area and the listed buildings it contains has not been demonstrated adequately at this time and has not been quantified in an appropriately detailed Heritage assessment or amended LVIA. There may need to be changes to the design as a result of the further report considered to be necessary.

##### Conservation comments.

The proposal seeks to redevelop a disused industrial site on the quayside on the south edge of Appledore. The site is outside the conservation area designated around New Quay and New Street area of the settlement. The development along New Quay Street includes Dock Cottage, a grade II listed building.

The current proposal is considered not to provide adequate assessment of the impact of the new scheme on the conservation areas and listed buildings within Appledore (paragraph 200 of the NPPF (2023)). The level of harm is not specified or evaluated in a heritage impact assessment that covers the wider area of the conservation areas and the listed building within them. Some assessment is needed so that the level of harm on the significance and to enable evaluation in terms of paragraph 205 - and if considered less than substantial paragraph 208 of the NPPF. (2023)

The site includes Bensons Building which has been identified together with the dock wall as a non-designated heritage asset. (English Heritage report November 2010). An extract is included below.

The western edge of New Quay Street is defined by the retaining wall of the western hill slope; the height of these opposing walls creates an enclosed approach to Appledore from the south, which is valued locally. However, this local interest is not of a nature that can be protected by statutory designation but might more appropriately be reflected by a local designation.

The warehouse, quay wall and boundary wall form a group which is of some interest in an area where traces of the former industrial heritage are relatively scarce. However, the structures do not form a group unified by date or style, through which a defined industrial process can be read, and are not of national historical interest, whilst the principal structure - the warehouse - does not possess the architectural interest which might otherwise justify a place on the statutory list.

These features will be removed to create an improved access to the site and a decked parking feature at the first floor which is accessed directly from New Quay Street. The lower area of parking accessed from the current site entrance and lower level, will be visible in views out of the conservation area south. This view will be altered with the removal of Bensons warehouse and its current height will be increased in the replacement building which together with the decked parking attached to the north elevation will change the views out of the conservation area and setting to Dock Cottage.

The site requires parking provision but the visual impact of the parking deck breaking the elevation of the 'warehouse' is not considered to preserve the views out of the conservation area.

The application also includes a landscape and visual impact assessment (LVIA) and while there are key viewpoints within the LVIA these are indicated with a red line on the photograph with no photomontage or quantification of harm of the visual impact caused by the proposal being provided.

There are two views which warrant closer consideration in my opinion, and these are set out below.

Viewpoint 12 from Tapeley is of interest as this has an impact on the setting of the historic park/garden and views into the conservation area at Appledore. This is not evaluated in the LVIA. Viewpoint 20 from the Quay in Appledore is included and indicates the scale of the new building as part of the backdrop to the views out of the conservation area and setting of the listed Dock Cottage but the level of harm needs to be quantified.

<https://historicengland.org.uk/images-books/publications/gpa3-setting-of-heritage-assets/heag180-gpa3-setting-heritage-assets/>

The opinion of the conservation officer is that the proposal does cause harm to the setting of the listed building (Dock Cottage) and while this is less than substantial there could be some mitigation in changes to the design to lessen the contrast in scale of the new buildings.

The previous industrial backdrop to the domestic buildings along New Quay Street and New Street was lesser in scale than now proposed.

The assessment of harm needs to be taken further to allow any mitigation to be included in the decision. To this end the palette of materials needs to be clearly stated and adhered to ensure the development provides an appropriate backdrop to the view out of the conservation area and views into the conservation and setting of the listed buildings (Heritage assets) within Appledore.

#### Further comments received

The historic structure on this site has been removed and so the comments can only relate to the setting of the conservation areas and heritage assets.

The paring back of the design and need to provide access to the site will remove the surviving boundary wall to the middle dock compound from the junction with South Road. This is not negotiable as access is required to the site by larger vehicles and the coast path route is to be accommodated adjacent the new boundary.

An updated heritage impact assessment has been provided and the findings of the evaluation are accepted.

The lesser scheme will have a lesser impact on the views into the conservation area and in views from the east.

The proposal is considered to be acceptable and within the guidance as set out in the guidance as set out in paragraphs 205-214 of the NPPF and section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The proposal causes less than substantial harm to the significance of the surrounding heritage assets and so it remains with the case officer to weigh the public benefits of the proposal.

#### **The Environment Agency:**

Initial comments received 22<sup>nd</sup> December 2023:

Thank you for consulting us on this planning application.

#### Environment Agency Position

We have no flood risk objection to the proposal subject to four conditions being applied to any permission granted.

The proposed development will still need to pass the Sequential Test (the site is a mixture of flood zone 3, 2 and 1).

The FRA has assessed the relevant tidal flood risks, and the proposed mitigation measures reduce the flood hazards to an acceptable level, if fully implemented over the lifetime of the development. A water compatible usage on the ground floor is a suitable vulnerability. The proposed less vulnerable usage on the ground and upper floor are appropriate as they tie in to higher ground at the rear.

#### Conditions Required

Before any works construction works start on site the four following issues need to be resolved, by either detailed design, legal/planning agreement or product of reports/drawings, which will need to be approved by the LPA:- The proposed lower ground floor level of 7mAOD, is only acceptable with four main mitigation measures:-

1. Flood resistant and resilience up to 8mAOD (1m above FFL) on all developments at quay level.
2. Flood evacuation plan – using the EA flood warning system (which offers a generalised flood alert for the area)
3. A future wave return wall to be added to the quay – an adaptive measure for climate change.
4. The lower ground floor can only be used for water compatible usage.

The above four measures need to be conditioned/legally agreed in any planning permission or S106 agreement.

#### 1. Flood Resistant and Resilience Measures

We are unable to find these (apart from the drainage channel) on any of the submitted planning drawing, but are discussed in the section 7.4 of Design & Access statement (page 61), and section 5.3 of the FRA and appendix 3 drawing. The individual flood mitigation measures need to be clearly shown on each buildings on a drawings that is part of the approved planning drawings. This needs to be at least 8mAOD, not 750mm above LGFL.

#### 2. Flood Evacuation Plan

This needs to be produced before any of the site is occupied, and should be based on the latest ADEPT guidance. The proposed Safe Access and Egress route to New Quay street is acceptable, but the action that need to be taken on the lower ground floor and quay should be considered.

#### 3. Adaptive Wave Return Wall

The design of the quay wall includes structural measures that permit the future construction of a wave return wall on edge of the quay. However, there is little explanation on when or what triggers the need to construct this flood mitigation measure. This measure and trigger point is essential in permitting the site to be safe in the future, otherwise the risk from wave overtopping is significant/extreme hazard - Danger to Some or Risk to Life. Please note, the expensive of this wave wall will fall entirely on the land owner, as contribution from government grant is not permit under current funding guidance rules.

#### 4. Lower Ground Floor Usage

There needs to be some planning mechanism to ensure that only water compatible usage are permitted on the lower ground floor. Water compatible usage, and the types of fittings/equipment will need to be defined in any rental agreement.

#### Technical Comments on the FRA:-

We do not agree with the statement that the site is predominantly in Flood Zone 1 or that the extend of flood zone 2 or 3 is not expected to increase over the lifetime. Our flood mapping, at this location has its limitation in terms of accurate existing site levels. It does not include wave action (which is nearby always present during storms) or include any sea level rise since the baseline date (2017). Based on the submitted site survey, over 50% is within flood zone 2 (still water), and flood zone 3 could be similar if you included wave action. Over the lifetime of the development (the next 75 years), the extent of flood risk/zones will increase significantly across the site. The current 'defence' only offers a 20% AEP (1in 5) in any year) standard, which support the actual flood risks on site being high.

The FRA's wave assessment supports this assessment on flood zone and show that there is risk to people and building currently and in the future, hence the required flood mitigation measures.

We agree that the site will only be affected for a few hours either side of high tide, which is just over 2hrs for current flooding, and 4hours in the year 2098. However in each case these are at rates which are a high risk to people and property. The proposed quay wall repairs are in line with the Shoreline Management Plan policy for this management units (Appledore). These repairs will need an MMO license, who will consult the EA for the Flood Risk Activities permit aspects.

**Environmental Protection Officer:**

Initial comments received 20<sup>th</sup> December 2023:

The following consultation response is provided by the Environmental Protection Team in relation to the above application.

It is acknowledged that the application site has a historic industrial or commercial use and noise would be typical. However, the proposed development is likely to introduce new external plant and equipment that has the potential to adversely impact neighbouring residential amenity. As such, any new plant and equipment introduced to the site must be appropriately assessed. The Noise Impact Assessment has been undertaken in accordance with relevant guidance and methodology. The Environmental Protection Team concurs with the background levels measured for the daytime and night time period. The Assessment proposes a limit that the rating level of noise from plant shall not exceed 30dB during both the day time and night time period. Having regard for the background levels, it is agreed that the proposed noise limit for plant noise will have a low impact when assessed under BS4142. Whilst it is agreed that a rating level of 30dB will have a low impact, ideally a lower level should be achieved for the night time period to avoid some potentially unwanted sound that may be experienced in neighbouring external areas. However, it is accepted that such a noise limit is considered very low and would not result in an adverse amenity impact. Subsequently, should planning consent be granted, the Environmental Protection Team recommends the imposition of the following condition:

The rating level of noise from external plant and equipment shall not exceed 30dB LAr, Tr (as defined in BS4142:2014+A1:2019) at any time when evaluated at the boundary of any noise sensitive receptors. Noise levels shall be measured and rated in accordance with British Standard BS4142:2014+A1:2019. Reason: To protect residential amenity

The proposed development has the potential to cause disturbance to neighbouring amenity on a temporary basis during the construction works. As a result, the Environmental Protection Team considers it necessary to ensure measures are in place to prevent or minimise such disturbance and recommends the imposition of the following condition:

Prior to the commencement of development, including any site clearance, groundworks or construction within each sub-phase (save such preliminary or minor works that the Local Planning Authority may agree in writing), a Construction Environmental Management Plan (CEMP) to manage the impacts of construction during the life of the works, shall be submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt, the CEMP shall include:

- a) measures to regulate the routing of construction traffic;
- b) the times within which traffic can enter and leave the site;
- c) the importation of spoil and soil on site;
- d) the removal /disposal of materials from site, including soil and vegetation;
- e) the location and covering of stockpiles;
- f) details of measures to prevent mud from vehicles leaving the site and must include wheel washing facilities;
- g) control of fugitive dust from demolition, earthworks and construction activities; dust suppression;
- h) mitigation measures in relation to noise, vibration, dust and lighting;
- i) details of any site construction office, compound and ancillary facility buildings;
- j) specified parking arrangements for vehicles associated with the construction works and the provision made for access thereto;
- k) a point of contact (such as a Construction Liaison Officer/site manager) and details of how complaints will be addressed

The details so approved and any subsequent amendments as shall be agreed in writing by the Local Planning Authority shall be complied with in full and monitored by the applicants to ensure continuing compliance during the construction of the development.

Reason: To ensure that a harmful impact on the amenities of neighbouring occupiers

In addition to the above, construction works including deliveries to site should be restricted to Monday to Friday 0700 to 1900 hours and Saturdays 0800 to 1300 hours with no works permitted on Sundays and Bank Holidays in order to protect residential amenity.

The Geo-environmental and Geotechnical Assessment has been undertaken in accordance with appropriate guidance. Whilst the application site has historic industrial use and some contamination has been identified, the Environmental Protection Team concurs with the findings in that the site does not pose a risk to human health given the proposed commercial end use. Whilst the Assessment reports no risk to human health, it is considered prudent to ensure measures are in place to address any potential contamination that may arise during construction. Therefore, the Environmental Protection Team recommends the imposition of the following condition:

Should any contamination of soil or groundwater be discovered during development of the site, the Local Planning Authority should be contacted immediately. Site activities within that phase or sub-phase or part thereof, should be temporarily suspended until such time as a procedure for addressing such contamination, within that phase or sub-phase or part thereof, is agreed upon with the Local Planning Authority or other regulating bodies.

Reason: To protect human health and the environment

It is not apparent whether asbestos containing materials are present on the application site, particularly within the existing buildings and structures to be removed. Asbestos can pose a significant risk to human health, especially if asbestos fibres become airborne when broken and careful consideration for its removal and disposal is essential. Should planning consent be granted, the Environmental Protection Team recommends the imposition of the following condition:

Prior to demolition of the existing building, the structure will be surveyed by a competent person for the presence of materials containing asbestos. Any such materials identified must be removed and disposed of in accordance with the Control of Asbestos Regulations 2012, HSG248 and other relevant guidance by a suitably qualified contractor with an appropriate waste carrier licence.

Reason: To protect human health and the environment

#### Further comments received 31<sup>st</sup> July 2024:

Further to the previous consultation response dated 20 December 2023, the Environmental Protection Team acknowledges the revised Noise Impact Assessment and Air Quality Assessment submissions. The Environmental Protection Team reiterates its comments and recommended conditions in the consultation response dated 20 December 2023 and in addition, recommends the imposition of a condition stipulating that construction works are carried out in accordance with the 'Construction Mitigation Measures' outlined in Appendix C of the Air Quality Assessment (Revision 1.1).

#### **Designing Out Crime Officer - DC&D Police:**

##### Initial Comments received:

Thank you for this application, having reviewed the application pack, whilst there is no specific Crime & Disorder Statement, the Design & Access Statement and relevant drawings do contain various references to Crime Prevention, I have no objections in principle from a designing out crime and anti-social behaviour perspective. Given the nature of the proposals and potential staff and visitors, I have further discussed the project with colleagues at Counter Terrorism Policing South West and can confirm that they have no additional advice or recommendations at this time.

Most crimes committed on commercial premises are property related because modern business uses an array of desirable and easily transportable goods with a ready market such as plant, raw materials, laptops and many other valuable assets. Among other crime types to be considered when designing commercial properties are vandalism, graffiti, robbery, assaults on staff members and cyber-crime, including the Internet of Things (IoT).

It is vital that the benefits of a secure commercial development is complemented with a clear management and maintenance programme together with a business continuity and resilience plan

which will further promote a safe working environment. More information about risk management in both new and existing commercial buildings can be obtained from the SBD partner initiative 'Secured Environments' at: [www.securedenvironments.com](http://www.securedenvironments.com)

Pre application crime and ASB prevention advice has been provided to and considered by the applicant for inclusion where practicable. The information below is provided to further inform and update.

External facilities & building exterior.

The building's reception area and car park should be clearly signposted from the entrances and throughout the site. People found wandering around the forecourts of industrial buildings will often use the excuse that they could not find their way to the reception and the presence of clear signs will go some way to dismiss this excuse and help staff establish the legitimacy of the claim. Likewise, signs that identify areas that are not open to public access can act as a reminder that unauthorised persons should be challenged.

The proposed boundary treatments are noted, the height and length of the site entrance gates should be consistent with the dimensions of the boundary fence into which they are set and there should be a minimal gap beneath them to ground level to prevent access.

Consideration must be given to the inclusion of dedicated emergency service access and parking onto the dockside.

To avoid the potential for conflict, electric vehicle charging points (EVCPs), provided for employee use only, should be located in parking bays that are subject to natural surveillance. A management process should ensure that charging bays are only used for their intended purpose and that steps are taken to prevent vehicles overstaying after a charge has been completed. Security could be compromised in circumstances where non-employees are allowed to use pay-as-you-go EVCPs within secured car parks and is therefore not advised.

Where there is a risk of motor vehicles being used to attack premises or an ATM etc, the following standards for secure bollards are:

Fixed bollards should have been successfully tested to PAS 68-1:2010 Performance specifications for vehicle security barriers – fixed bollards.

Rising Bollards should have been successfully tested to: PAS 68-2:2010 Performance Specification for vehicle security barriers – rise and fall bollards.

PAS 69:2013 provides guidance on the appropriate selection, installation and use of such bollards and should be referenced in the first instance.

External bicycle parking facilities will be designed for secure storage using bicycle lockers, hangers or dedicated storage devices and be certified to one of the following minimum standards:

Sold Secure – SS104 Silver,  
STS 501 Security Rating TR2,  
STS 503 Security Rating TR2,  
STS 205 Issue 6:2021 Security Rating BR2,  
STS 225 Issue 1:2021 Security Rating BR2 (S),  
LPS 1175 Issue 8:2018 Security Rating B (B3)

External bicycle parking facilities will be located as close to the primary entrance as possible, and in any case within 50m of it and be subject to natural surveillance by building occupants where feasible. Current video surveillance systems should be extended to ensure that the bicycle parking facility is within view of the cameras.

Waste and rubbish containers, particularly wheelie bins, can be re-positioned and used to aid climbing to vulnerable parts of buildings whilst their contents can be used as fuel for arson attacks. To combat these two risks the bins should be retained in a lockable roofed store set apart from the main buildings and the containers themselves fitted with lockable lids. Advice in respect of a safe stand-off distance,

fire and smoke detection devices and fire sprinkler systems should be sought from the appropriate fire authority. In general, combustible materials should not be stored within 10 metres of the building.

Utility access covers, protecting access to drains, sewers, telephone cables, electricity cables and other services, must be secured to prevent access and damage by unauthorised persons.

A lighting scheme should provide uniformed lighting levels with good colour rendition and be sufficient to cater for lawful after dark activity around the industrial or warehouse unit and site. It should not cause glare or light pollution and should support both formal and informal surveillance of the site. External illumination when the building is unoccupied is recommended for entrance gates and routes to the main entrance and doors, car parks (if occupied by vehicles) and observable building elevations.

Where a business manages large visitor numbers, the reception should be staffed at all times. Access beyond the reception area shall be controlled by staff preferably on a raised dais using automatic locking doors or barriers and/or by the use of proximity reader technology. All doors or barriers must allow emergency egress and be integrated into the fire/smoke alarm system for fail safe opening during the hours of occupation. When the building is not occupied, doors and barriers should be secured in accordance with the relevant fire authority's advice.

It is preferable that any reception areas should be designed so as to provide staff with a clear view of the entrance doors, the approaches to the entrances and the public waiting area within. Reception desks should be constructed so that they are of sufficient height and depth to afford protection for the receptionist against attack. Consideration should also be given to the inclusion of an escape route to a place of safety, such as a lockable office behind the reception area, where there is an increased risk of assaults on staff. This place of safety room must have a 'slam to lock' door with a facility to view the public area from within.

#### Access Control

I note the reference to access control within the application documents. Access control, most likely electronic, is required at the main entrance points and may also be required on some internal doorsets, such as those that lead from an entrance lobby or reception into offices and production and warehouse floors. The requirement for access control will for example, be influenced by some of the following factors:

- The need to protect a lone worker or vulnerable persons working in a reception area, office, lab or workshop.
- To prevent access into parts of the building beyond the reception to prevent crime and maintain health and safety.
- To prevent trespass onto the production or warehouse floors, especially where the offices and the reception are located on an upper floor.
- Where two or more businesses are served by a common entrance

In all such cases the doors must incorporate an electronic access control system, with an electronic lock release and (for the main entrance) an audio link to the individual businesses, offices or receptions. In some cases, visual verification by CCTV camera incorporated into the call panel or separately located may be required. Access control systems should have a data logging facility.

Doorsets and windows (including shutters & grilles) and their fitness for purpose.

BS 6375-2:2009 defines the resilience and operational characteristics of both doorsets and windows which, in simple terms, means to test a doorset or a window to ensure that it will withstand the demands of repeatedly being opened and closed over a significant period of time.

It is recommended External doorsets shall be certified to one of the following minimum police preferred standards:

PAS 24:2022,  
STS 201 Issue 12:2020,  
LPS 1175 Issue 7.2:2014 Security Rating 2+,  
LPS 1175 Issue 8:2018 Security Rating B3+,  
STS 202 Issue 10:2021 Burglary Resistance 2,  
LPS 2081 Issue 1.1:2016 Security Rating B,  
STS 222 Issue 1:2021

Recessed doorways should, where possible, be avoided as they provide venues where crimes such as graffiti, arson and burglary are committed. If recessed doorways are unavoidable, other mitigating measures will be required such as higher security rated doorsets, fire retardant surfaces or anti-graffiti treatments. In addition to the aforementioned measures, lighting and CCTV may also be added to make the recessed area safe.

All ground floor and easily accessible glazing must incorporate one pane of laminated glass or glass tested to BS EN 356:2000 Glass in building. Security glazing – resistance to manual attack to category P1A unless it is protected by a roller shutter or grille.

Grilles and shutters can provide additional protection to both internal and external doors and windows. The minimum standard for such products is certification to:

LPS 1175 Issue 7 Security Rating 1,  
LPS 1175 Issue 8 Security Rating A1,  
STS 202 Burglary Resistance 1

For roller shutters, the above minimum security ratings are generally sufficient where:

A shutter is required to prevent minor criminal damage and glass breakage the shutter is alarmed and the building is located within a secure development with access control and security patrols.

A shutter or grille is intended to prevent access into a recess the door or window to be protected is of a high security standard in its own right.

Security ratings higher than the minimum may be required and will be dictated by one or more of the following security considerations:

Type of crime risk  
Level of crime risk  
Location of the building  
Security level of the door or window being protected.

Roller shutter doors providing access for deliveries and other entrances where no other door is present must be certificated to a minimum of:

LPS 1175 Security Rating 2,  
STS 202 Burglary Resistance 2,  
Sold Secure – SS101 Gold

The security requirements for easily accessible roof lights and roof windows differ depending on the crime risk and potentially the goods equipment stored within the building below.

Low crime risks require the roof light and roof window apertures to be protected by roof lights certificated to:

LPS 1175 Security Rating 1,  
STS 202 Burglary Resistance 1, STS 222 Burglary Resistance 1 (S)  
LPS 2081 Security Rating A.

High crime risks require the roof light and roof window apertures to be protected by roof lights certificated to:

LPS 1175 Security Rating 2 or 3,  
STS 202 Burglary Resistance 2 or 3,  
STS 222 Burglary Resistance 2 (S),  
LPS 2081 Security Rating B.

Intruder alarm & CCTV

A suitably designed, fit for purpose, monitored intruder alarm system must be installed. For police response, the system must comply with the requirements of the NPCC Security Systems policy, which can be found at the following link: [www.policesecuritysystems.com/national-police1chiefs-council-security-systems-policy](http://www.policesecuritysystems.com/national-police1chiefs-council-security-systems-policy).

It should be noted that when places that the public are permitted access are well lit but lack effective surveillance this can create cover for criminal activity and/or inappropriate loitering and behaviour.

A monitored Closed Circuit Television system (CCTV), subject to an operational requirement and passport to compliance document, is recommended for this site, including any landing points/jetties on the quay wall.

A passport to compliance document puts responsibility for the system in the hands of the organisations that operate them and should be completed for new systems or where significant changes are made to an existing system.

The supporting documents will ensure that the surveillance system is fit for purposes and the needs of the end user are met.

#### Additional information & advice

Consideration must be given to the structure of the internal walls, floors and ceilings of computer server rooms to provide appropriate security and to prevent damage by fire, smoke or from firefighting (water) from other parts of the building. Due to varying construction methods and materials, it is not possible to be prescriptive, however combinations of different materials, such as high impact gypsum boards, expanded metal sheets, plywood, and masonry have proved to be effective.

All stores containing potentially hazardous materials, for example, gas cylinders shall be secure and access shall be restricted to authorised personnel. This may be achieved by securing the site with a boundary fence with lockable gates or by securing individual stores. Dependant on the site security requirements both conditions may be required.

Suitable security arrangements shall take into account the classification of the gases and the quantities being stored. The security arrangements shall include appropriate physical and management security controls to prevent unauthorised access, theft, tampering, arson, vandalism and to effectively monitor the usage of gases, as well as any specific local considerations.

Access to any flat roofs must be restricted to authorised personnel. For example, external ladders and stairs must be gated, pipework enclosed and furniture and bins located so as not to aid climbing.

#### Further comments received 12<sup>th</sup> August 2024:

Thank you for this application. Further to my previous consultation response dated 21st December 2023, much of which remains valid from a designing out crime and ASB perspective, having reviewed the revised drawings, I have no objections in principle to the proposed amendments.

However, I have concerns with the externally accessed unisex shower cubicle shown on the Ground Floor Plan. Whilst the need for privacy is understood, access being via the clear space escape/maintenance lane offers no real surveillance opportunities, potentially leaving both users and the shower room vulnerable. It is recommended the access is provided internally, forming a set of 3 showers or, with VAWG concerns (Violence Against Women & Girls) in mind, relocated to the first floor as part of the female WCs.

#### Final comments received 19<sup>th</sup> August 2024:

Many thanks for the attached updated plans, which I confirm address my concerns regarding the ground floor external shower room. Out of interest, has this 'space' been relocated elsewhere within the scheme or removed completely?

#### **Historic England - Southwest Casework:**

##### Initial Comments:

Thank you for your letter of 6 December 2023 regarding the above application for planning permission.

Historic England provides advice when our engagement can add most value. In this case we are not offering advice. This should not be interpreted as comment on the merits of the application.

We suggest that you seek the views of your specialist conservation and archaeological advisers. You may also find it helpful to refer to our published advice at <https://historicengland.org.uk/advice/find/> It is not necessary to consult us on this application again, unless there are material changes to the proposals. However, if you would like advice from us, please contact us to explain your request.

Further comments received 27<sup>th</sup> August 2024:

Thank you for your letter of 31 July 2024 regarding further information on the above application for planning permission. On the basis of this information, we do not wish to offer any comments. We suggest that you seek the views of your specialist conservation and archaeological advisers, as relevant.

It is not necessary for us to be consulted on this application again, unless there are material changes to the proposals. However, if you would like detailed advice from us, please contact us to explain your request.

**Natural England:**

Initial comments dated 12<sup>th</sup> January 2024:

Thank you for your consultation email dated and received on 06 December 2023 relating to the above proposal. Based on the information provided we have the following comment1.

SUMMARY OF NATURAL ENGLAND'S ADVICE

FURTHER CONSIDERATION REQUIRED TO DETERMINE IMPACTS ON DESIGNATED SITES

Further information and / or mitigation is required to determine / mitigate impacts on the Taw Torridge Estuary Site of Special Scientific Interest (SSSI).

Details are provided below. Without this information, Natural England may need to object to the proposal. Please re-consult Natural England once this information has been obtained.

Natural England's advice on other natural environment issues is also set out below.

Nationally Designated sites

Taw Torridge Estuary Site of Special Scientific Interest (SSSI)

The development site is adjacent to and within the Taw Torridge Estuary SSSI and has triggered Natural England's Impact Risk Zones2 (IRZ). The SSSI is notified for its overwintering bird interest and intertidal habitats which includes extensive mudflats, sandflats and saltmarsh.

Further information about the special interest features can be found at [www.magic.gov.uk](http://www.magic.gov.uk) The composition of the SSSI bird assemblage alters through time as species populations fluctuate. Therefore any native wetland bird species (in practice waders and wildfowl) will be a legitimate part of the bird assemblage.

Designated sites are material planning considerations. A proposal within or close to a SSSI needs to be consistent with maintaining and enhancing the special interest of the protected site. It must be demonstrated that harm will not accrue and that the development will not have an adverse impact on the interest features of the site or be contrary to local policy e.g. DM08 and national policy e.g. NPPF paras 180 and 186.

Further consideration therefore needs to be given to the potential impacts on the special interest of the designated sites so that the LPA is able to make a fully informed decision in line with their [NERC section 40](#) duty to have regard to conserving biodiversity as part of your decision making and the need to take reasonable steps to conserve and enhance the special features of [sites of special scientific interest](#).

The Environment Act 2021 included an amendment to the original NERC Act, reflecting government's ambitions to shift the focus from conserving to enhancements to nature and nature recovery. The changes to the act are intended on making this a stronger mechanism to strategically consider the natural environment and the actions public bodies can be taking towards recovery.

Our advice is that a sufficiently detailed method statement for the works (what, when, how) is required, to allow Natural England and your Authority to evaluate the potential impacts, during construction and operation. Mitigation should be agreed pre-determination rather than secured via conditions to ensure that it is appropriate and deliverable.

A formal licence application to the Marine Management Organisation (MMO) may also be required for works below mean high water.

The method statement should consider:

### Habitat loss

- Based on information provided, a new independent sheet piled quay wall is proposed immediately in front of the existing stonewall. The sheet piling will be installed via jack up barge located in the estuary.
- This will result in the loss of approximately 250m<sup>2</sup> of priority intertidal habitat/SSSI interest. Whilst not large in the context of the wider estuary, this does represent a net loss of SSSI intertidal habitat which is not in line with the conservation objectives (no change in extent) or national and local policies. No compensation is proposed.
- Vessels moored up alongside the seawall for long periods of time would also increase the footprint of mud habitat lost.
- The design and access statement refers to dredging a berth pocket as part of for future regular commercial marine use which would result in further habitat loss.
- Strategically, the LPA should consider identifying an area where they can satisfactorily compensate the small incremental losses taking place to development in the estuary (NPPF para 181).
- Alternatively, financial contributions could be made to projects creating new intertidal habitats

### Pollution

- No assessment of mobilisation of sediment/pollutants from dredging/piling and the potential impact on the SSSI has been done. The plans do not show any trial pit locations/contamination analyses of mud samples for the estuary.
- Based on the information provided it is not possible to avoid dredging and remobilisation of sediment.
- Consideration needs to be given to measures to protect the marine environment during the demolition of existing structures, the removal of materials, and during the construction phase.
- There is the potential for release of sediment and remobilisation of contaminants into the estuary particularly during piling and renovation of the seawall with the potential to reduce the availability of benthic food resources for wintering birds e.g. smothering of mussel beds.  
If concrete is to be sprayed, suitable protective sheeting must be provided to prevent rebound or windblown concrete from entering the water environment. Rebound material must be cleared away before the sheeting is removed'. The weather conditions in which it would be applied should also be a consideration.
- Materials that are not toxic to the marine environment and accelerants in concrete to ensure fast setting should be used.

### Access to the foreshore

- If access to the foreshore is required, tracking across and disturbance of the harbour bed should be minimised by marking out access routes across the foreshore and ensuring works are restricted to as small an area as possible;
- There should be no storage of equipment/materials on the foreshore at any point.

### Noise & Lighting

- It is known that noise and lighting can lead to both the displacement and disturbance of wildlife. The main concerns are to ensure that noise and light disturbance from any source is considered and that design measures to avoid and mitigate disturbance are incorporated into the proposal.
- There may already be a certain level of light spill onto the estuary.
- A lighting assessment has been proposed but not provided. We would seek a commitment to avoid illumination of the adjacent intertidal habitats which form part of the Tav/Torridge SSSI, during construction and operation.
- Ecological receptors were not considered in the noise assessment. Piling noise has been identified as an issue in the ecology report for wintering birds.
- Piling typically involves high amounts of vibration and noise, therefore a key consideration is visual and/or noise disturbance to sensitive species including overwintering birds and other sensitive mobile species such as spawning or migrating fish (shad, Atlantic salmon, river and sea lamprey).
- Noise abatement measures for machinery are proposed. The use of acoustic screening should also be considered and would also reduce visual disturbance to overwintering birds.
- Timing piling works to avoid the colder winter months (particularly November to February) would avoid/reduce disturbance to overwintering birds. As would timing work to spring low-tide when the maximum area of mudflat is available for birds to feed away from disturbance.

- Vibro piling rather than percussive piling is preferred in terms of noise impacts. The use of a soft start /slow introduction is considered best practice.

#### Surface water

- Principles outlined in the [Ciria SuDS Manual](#) and / or guidance presented in reputable sources such as the Susdrain website should be used to inform the SuDS design, ensuring that any anticipated contaminants will be sufficiently attenuated before they reach the SSSI. The design should be clearly presented and the mechanisms by which the SSSI will be protected should be clearly explained. This could include features such as permeable surfaces and rain gardens to take water at source and the use of hydrocarbon capturing membranes such as Permafilter in carpark areas.

#### Ecological enhancements

- The proposed repairs and maintenance of the seawall will result in the destruction of a number of ecological niches, such as gaps and crevices which may be occupied by aquatic invertebrates and colonised by brackish plants, such as seaweeds. The works are likely to result in the removal of some areas of seaweed in order to facilitate repointing and repairs.
- The sea wall renovations provide an opportunity for habitat enhancement / mitigation measures by maximising habitat diversity and complexity, surface roughness and texture.
- In order to ensure that there is no net loss in these habitats, the creation of ecological niches is proposed in the masonry of the repaired wall.
- Recommendations for further enhancement in the form of artificial mudflat and rockpool niches are made in the ecological report (Orbis 2023) and we recommend these are included in any final design.

#### Priority Habitats and Species

Priority habitats and species Priority habitats and Species are of particular importance for nature conservation and included in the England Biodiversity List published under section 41 of the Natural Environment and Rural Communities Act 2006. Consideration should be given to how any loss will be avoided, mitigated or compensated as advised above for the designated sites. Policy DM08 (6) of the Joint Torridge and North Devon Local Plan applies.

#### Landscape

This proposal does not appear to be either located within, or within the setting of, any nationally designated landscape. All proposals however should complement and enhance local distinctiveness and be guided by your Authority's landscape character assessment and the policies protecting landscape character in your local plan.

#### Rights of Way, Access land, Coastal access and National Trails

The proposal is adjacent to the Southwest Coast Path National Trail. We therefore advise you to seek the advice of the National Trail Officer and/or the Coast Path Officer for Northern Devon to ensure adequate mitigation is secured to avoid adverse effects on the Trail. Their knowledge of the location and wider landscape setting of the development should help to confirm whether it would impact significantly on the trail. The [National Trails website](#)<sup>1</sup> provides information including contact details for the National Trail Officers.

#### Protected Species

We have not assessed this application and associated documents for impacts on protected species. Natural England has produced [standing advice](#)<sup>3</sup> to help planning authorities understand the impact of particular developments on protected species and we refer you to this advice. Natural England will only provide bespoke advice on protected species where they form part of a SSSI or in exceptional circumstances.

It is the LPA's responsibility to ensure that protected species, as a material consideration, are fully considered and that ecological surveys have been carried out where appropriate and appropriate mitigation is secured. It is the applicant's and/or their ecologist's decision as to whether a licence is required for works proposed.

#### Biodiversity Net Gain

Development provides opportunities to secure a net gain for nature as outlined in the NPPF, the Defra 25 year Environment Plan and the Environment Act. Policy ST14 of the Joint Torridge and North Devon Local Plan also expects all development to provide a net gain in biodiversity

Whilst it is not Natural England's role to comment on metric calculations or to provide detailed advice on biodiversity net gain at the planning application stage, we do advise and encourage the LPA to determine the application in accordance with Local Plan policy, and to check the calculations and supporting information to ensure the applicant has provided a clear narrative, and accurate assessment of condition, that enables the LPA to understand what has been factored into the calculations and how gains have been determined, in accordance with the mitigation hierarchy (paragraph 186 NPPF). The LPA is advised to secure the details for the delivery, management and monitoring of the net gain through planning condition or obligation.

Opportunities for wildlife enhancements might include:

- Incorporating nest sites for swallow, house martin, house sparrow, [swift boxes](#) or bat boxes into the design of new buildings. The RSPB recommends one bird box per building as good practice.
- Using native plants in landscaping schemes for better nectar and seed sources for bees and birds.

Incorporating bee bricks into buildings <https://greenandblue.co.uk/product/bee-brick/>

- Designing lighting to avoid disturbing wildlife.
- Green/brown roofs - The use of alternative roofing (turf, aggregate, brown and green roofs) can make a significant contribution to biodiversity, attenuation of rainfall, and energy efficiency as they can provide a high degree of insulation. Green walls can provide insulation or shading and cooling.
- Street trees to help improve air quality and reduce flooding, provide wildlife habitat and an urban greening function, or a shading and cooling function in adapting to climate change.

Should the application change, or if the applicant submits further information relating to the impact of this proposal on designated sites, Natural England will be happy to consider it, and amend our position as appropriate.

Please do not hesitate to contact me via [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk) if you wish to discuss any of the advice in this letter further.

Interim Comments dated 26<sup>th</sup> February 2024:

Thank you for your emails of 15<sup>th</sup> and 20<sup>th</sup> February providing further information relating to the above project. We have the following observations and advice.

### **Fish data and literature review / Intertidal habitat survey and Sediment surveys.**

The submitted reports have considered impacts on fish species associated with the estuary and the impacts of sediment movement / pollution. Both reports have made recommendations to mitigate predicted impacts on ecological receptors including the timing of piling works at low tide, soft start as best practice, potential timing in the year to avoid more sensitive migration periods, use of bubble curtains during piling/noisy activities if avoiding working at higher tides is not possible.

Some of the proposed measures, such as working at low tide, align with the mitigation proposed for avoiding disturbance of overwintering birds.

Fish are not a notified feature of the SSSI but the rivers are important for several migratory fish species protected under other legislation. We recommend you also consult the Environment Agency as fish fall within their remit.

A construction environmental management plan should be secured, pulling together all the ecological recommendations/timings decided upon in one place.

The mitigation for sediment disturbance also involves working at low tide to allow sediment to settle again before the tide returns/avoids dispersing too far from where it is. The sediment sampling confirmed the presence of heavy metals etc. There doesn't appear to be mention of dredging large quantities of material but anything above 'Action Level 1' should not be dumped at sea.

The sediment survey acknowledges the loss of intertidal mud priority habitat to the new sea wall but does not address how this could be accounted for. Biodiversity net gain We don't have any additional advice regarding biodiversity net gain. There is advice for LPAs on gov.uk at Biodiversity net gain: what local planning authorities should do - GOV.UK ([www.gov.uk](http://www.gov.uk)).

Final Comments dated 11<sup>th</sup> September 2024:

Thank you for your consultation email dated and received on 31 July 2024 relating to the above proposal. We are providing advice because Natural England is a s Statutory consultee for protected sites. Natural England is not a statutory consultee for Biodiversity Net Gain (BNG) at the planning stage. Based on the information provided we have the following advice<sup>1</sup> .

SUMMARY OF NATURAL ENGLAND'S ADVICE DESIGNATED SITES – OBJECTION Natural England objects to this proposal. As submitted, we consider it will damage or destroy the interest features for which the Taw Torridge Estuary Site of Special Scientific Interest has been notified.

The outstanding issue is the direct loss of approx. 250m<sup>2</sup> intertidal mudflats within the SSSI.

Two separate issues have been confused in terms of impacts and mitigation:

- Potential impacts on designated sites.
- Biodiversity Net Gain (BNG)

The Local Authority, as decision maker, must address the protected sites impacts first, before considering the wider BNG requirements of the development. Natural England would expect SSSI compensatory measures to be secured, with BNG provided on top. Further advice is provided below. Please re-consult Natural England once this information has been obtained.

Designated sites

The Taw Torridge Estuary Site of Special Scientific Interest (SSSI) The development site is adjacent to and within the Taw Torridge Estuary SSSI and will result in the loss of 250m<sup>2</sup> of SSSI intertidal mudflat and Priority Habitat. A proposal within or close to a SSSI needs to be consistent with maintaining and enhancing the special interest of the protected site.

Paragraph 186(b) of the NPPF states *development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest.*

NPPF 186(a) states *if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.*

Policy DM08: Biodiversity and Geodiversity of the Joint North Devon and Torridge Local Plan states: National Sites (4) *Development proposals within or outside a Site of Special Scientific Interest or Marine Conservation Zone which would be likely to affect the designation adversely, either individually or in combination with other developments, will not be supported unless the benefits of the development at this site clearly outweigh both the adverse impacts on the site and any adverse impacts on the wider network of Sites of Special Scientific Interest and Marine Conservation Zones.*

Avoidance, Mitigation and Compensation for Biodiversity and Geodiversity Impacts (8)

*Development should avoid adverse impact on existing features as a first principle and enable net gains by designing in biodiversity features and enhancements and opportunities for geological conservation alongside new development. Where adverse impacts are unavoidable, they must be adequately and proportionately mitigated. If full mitigation cannot be provided, compensation will be required as a last resort.*

Public authorities who operate in England must consider what they can do to conserve and enhance biodiversity in England. The strengthened 'biodiversity duty' that the Environment Act 2021 introduces means that, as a public authority, you must:

- Consider what you can do to conserve and enhance biodiversity.
- Agree policies and specific objectives based on your consideration.
- Act to deliver your policies and achieve your objectives.

Natural England does not consider the proposed loss of intertidal mudflat as trivial or inconsequential. It will be a permanent loss of SSSI habitat and the site-specific target for favourable condition of the SSSI is no loss of extent.

There may be scope for amendments to the design of the proposal that could avoid or mitigate the environmental harm described above. This might include repairing the existing seawall to avoid the loss of SSSI habitats.

Accepting such small-scale losses, particularly if there are, or likely to be, similar proposals coming forward, in the face of climate change for example, would have an adverse cumulative impact over time. If the LPA determines that the loss cannot be avoided or mitigated, then compensation must be secured.

The Shoreline Management Plan (SMP) states that *there is likely to be a change in the composition and distribution of habitats within the Taw Torridge Estuary SSSI due to natural processes and coastal squeeze. Low lying areas of the Taw-Torridge under non active intervention managed realignment provide opportunities to create intertidal habitat and offset losses.*

Natural England's advice is that it is not appropriate to propose buying BNG off site units/statutory credits to compensate for the SSSI habitat loss (ecological method statement Table 2 first line of intertidal habitats section).

The applicant will need to put forward a bespoke compensation plan for negotiation with the Local Planning Authority which should be secured through suitably worded conditions.

Natural England deals with planning proposals on a case-by-case basis and we may recommend refusal to the LPA of any application that does not adequately mitigate or compensate for the impact of development on designated sites.

#### Wave return wall

The Environment Agency consultation response references an option for a proposed wave return wall. The LPA will also need to consider how this may further impact the SSSI by potential scour from wave reflection during extreme events.

#### Ecological Method Statement (EMS) and Construction Environment Management Plan (CEMP)

There seem to be 3 copies of the EMS online. I have used 1417632.

Based on the information provided:

- The Ecological Method Statement (EMS) (Orbis) Ecology does not sufficiently address the SSSI loss, as set out above.
- The EMS does appear to secure all the mitigation identified in the various ecological assessments for overwintering birds, migrating fish.
- However, much of the mitigation is proposed as 'where possible' which does not provide the LPA with enough certainty. The mitigation set out in the EMS is required and necessary to avoid or reduce adverse impacts on designated sites and the wider environment.
- The lighting technical design note says a lighting plan was not required for planning. The expectation is that a pre-commencement condition will secure lighting detail. The lighting detail does need to include mitigation to avoid light spill on to the estuary habitat as per the ecological method statement.
- The EMS includes all the measures Natural England would want to see when working on the foreshore.
- Vibro piling rather than percussive piling is preferred in terms of noise impacts.

- Piling will be avoided between November to February which covers the colder months. However, the overwintering birds are present between September and March inclusive.
- We understand that dredging is not proposed.
- We do not have any comment on the noise assessment as it does not consider ecological receptors. The EMS includes noise mitigation measures.
- The CEMP Section 6.2 Ecology refers to section 4 Ecology method statement which is the Orbis report. The summary Table of the EMS should be appended to the CEMP to avoid any confusion.

The proposed works may require access to the foreshore and therefore would be located within the intertidal (between Mean High Water and Mean Low Water) zone and we would recommend the applicant contacts the Marine Management Organisation to ascertain whether a marine licence is required for this development.

#### Biodiversity Net Gain (BNG)

BNG does not replace existing policy requirements for dealing with direct or indirect impacts on designated sites.

It is not appropriate to discuss BNG proposals where there are fundamental concerns with the proposal or if the mitigation hierarchy has not been applied. BNG should not be used as a justification for otherwise unacceptable development impacting on designated sites.

Any compensation that a development is delivering in meeting wider statutory protections may be able to be counted towards that development's BNG so long as it meets BNG criteria, for example, legally secured for at least 30 years. However, this would only count up to no net loss.

Please note that if your authority is minded to grant planning permission contrary to the advice in this letter, you are required under Section 28I (6) of the Wildlife and Countryside Act 1981 (as amended) to notify Natural England of the permission, the terms on which it is proposed to grant it and how, if at all, your authority has taken account of Natural England's advice. You must also allow a further period of 21 days before the operation can commence.

Please do not hesitate to contact me via [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk) if you wish to discuss any of the advice in this letter further.

#### **Marine Management Organisation:**

##### Initial comments received:

Please be aware that any works within the Marine area require a licence from the Marine Management Organisation. It is down to the applicant themselves to take the necessary steps to ascertain whether their works will fall below the Mean High Water Springs mark.

##### Response to your consultation

The Marine Management Organisation (MMO) is a non-departmental public body responsible for the management of England's marine area on behalf of the UK government. The MMO's delivery functions are; marine planning, marine licensing, wildlife licensing and enforcement, marine protected area management, marine emergencies, fisheries management and issuing European grants.

##### Marine Licensing

Works activities taking place below the mean high water mark may require a marine licence in accordance with the Marine and Coastal Access Act (MCAA) 2009.

Such activities include the construction, alteration or improvement of any works, dredging, or a deposit or removal of a substance or object below the mean high water springs mark or in any tidal river to the extent of the tidal influence.

Applicants should be directed to the MMO's online portal to register for an application for marine Licence <https://www.gov.uk/guidance/make-a-marine-licence-application>

You can also apply to the MMO for consent under the Electricity Act 1989 (as amended) for offshore generating stations between 1 and 100 megawatts in English waters.

The MMO is also the authority responsible for processing and determining Harbour Orders in England, together with granting consent under various local Acts and orders regarding harbours.

A wildlife licence is also required for activities that that would affect a UK or European protected marine species.

The MMO is a signatory to the [coastal concordat](#) and operates in accordance with its principles. Should the activities subject to planning permission meet the above criteria then the applicant should be directed to the follow pages: [check if you need a marine licence](#) and asked to quote the following information on any resultant marine licence application:

- local planning authority name,
- planning officer name and contact details,
- planning application reference.

Following submission of a marine licence application a case team will be in touch with the relevant planning officer to discuss next steps.

#### Environmental Impact Assessment

With respect to projects that require a marine licence the EIA Directive (codified in Directive 2011/92/EU) is transposed into UK law by the Marine Works (Environmental Impact Assessment) Regulations 2007 (the MWR), as amended. Before a marine licence can be granted for projects that require EIA, MMO must ensure that applications for a marine licence are compliant with the MWR.

In cases where a project requires both a marine licence and terrestrial planning permission, both the MWR and The Town and Country Planning (Environmental Impact Assessment) Regulations <http://www.legislation.gov.uk/ukxi/2017/571/contents/made> may be applicable.

If this consultation request relates to a project capable of falling within either set of EIA regulations, then it is advised that the applicant submit a request directly to the MMO to ensure any requirements under the MWR are considered adequately at the following link <https://www.gov.uk/guidance/make-a-marine-licence-application>

#### Marine Planning

Under the Marine and Coastal Access Act 2009 ch.4, 58, public authorities must make decisions in accordance with marine policy documents and if it takes a decision that is against these policies it must state its reasons. MMO as such are responsible for implementing the relevant Marine Plans for their area, through existing regulatory and decision-making processes.

Marine plans will inform and guide decision makers on development in marine and coastal areas. Proposals should conform with all relevant policies, taking account of economic, environmental and social considerations. Marine plans are a statutory consideration for public authorities with decision making functions.

At its landward extent, a marine plan will apply up to the mean high water springs mark, which includes the tidal extent of any rivers. As marine plan boundaries extend up to the level of the mean high water spring tides mark, there will be an overlap with terrestrial plans which generally extend to the mean low water springs mark.

A [map](#) showing how England's waters have been split into 6 marine plan areas is available on our website. For further information on how to apply the marine plans please visit our [Explore Marine Plans](#) service.

Planning documents for areas with a coastal influence may wish to make reference to the MMO's licensing requirements and any relevant marine plans to ensure that necessary regulations are adhered to. All public authorities taking authorisation or enforcement decisions that affect or might affect the UK

marine area must do so in accordance with the [Marine and Coastal Access Act](#) and the [UK Marine Policy Statement](#) unless relevant considerations indicate otherwise. Local authorities may also wish to refer to our [online guidance](#) and the [Planning Advisory Service soundness self-assessment checklist](#). If you wish to contact your local marine planning officer you can find their details on our [gov.uk page](#).

#### Minerals and waste plans and local aggregate assessments

If you are consulting on a mineral/waste plan or local aggregate assessment, the MMO recommend reference to marine aggregates is included and reference to be made to the documents below;

- The Marine Policy Statement (MPS), section 3.5 which highlights the importance of marine aggregates and its supply to England's (and the UK) construction industry.
- The National Planning Policy Framework (NPPF) which sets out policies for national (England) construction minerals supply.
- The Managed Aggregate Supply System (MASS) which includes specific references to the role of marine aggregates in the wider portfolio of supply.
- The National and regional guidelines for aggregates provision in England 2005-2020 predict likely aggregate demand over this period including marine supply.

The NPPF informed MASS guidance requires local mineral planning authorities to prepare Local Aggregate Assessments, these assessments have to consider the opportunities and constraints of all mineral supplies into their planning regions – including marine. This means that even landlocked counties, may have to consider the role that marine sourced supplies (delivered by rail or river) play – particularly where land based resources are becoming increasingly constrained.

If you require further guidance on the Marine Licencing process, please follow the link <https://www.gov.uk/topic/planning-development/marine-licences>

#### **DCC Archaeology Section:**

##### Initial Comments:

I refer to the above application and your recent consultation. The proposed development lies adjacent to the Appledore Conservation Area and with views eastward to the Instow Conservation Area and the grade II\* Tapeley House and Registered Park and Garden. As such, I would defer to the Torridge and North Devon Conservation Officers with regard to any comments they will have on the impact upon the setting of these designated and other designated heritage assets in the vicinity.

With regard to the built heritage and archaeological potential of Middle Dock I would advise that the impact of the proposed development is mitigated by a programme of historic building recording and archaeological monitoring and recording

The Historic Environment Team therefore recommends that this application should be supported by the submission of a Written Scheme of Investigation (WSI) setting out a programme of archaeological work to be undertaken in mitigation for the loss of heritage assets with archaeological interest. The WSI should be based on national standards and guidance and be approved by the Historic Environment Team.

If a Written Scheme of Investigation is not submitted prior to determination the Historic Environment Team would advise, for the above reasons and in accordance with Policy DM07 of the North Devon and Torridge Local Plan 2011 - 2031 and paragraph 205 of the National Planning Policy Framework (2023), that any consent your Authority may be minded to issue should carry the condition as worded below, based on model Condition 55 as set out in Appendix A of Circular 11/95, whereby:

'No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme as agreed in writing by the Local Planning Authority.'

Reason

'To ensure, in accordance with Policy DM07 of the North Devon and Torridge Local Plan 2011 - 2031 and paragraph 205 of the National Planning Policy Framework (2023), that an appropriate record is made of archaeological evidence that may be affected by the development.'

This pre-commencement condition is required to ensure that the archaeological works are agreed and implemented prior to any disturbance of archaeological deposits by the commencement of preparatory and/or construction works.

In addition, the Historic Environment Team would advise that the following condition is applied to ensure that the required post-excavation works are undertaken and completed to an agreed timeframe:

'The development shall not be brought into its intended use until (i) the post investigation assessment has been completed in accordance with the approved Written Scheme of Investigation and (ii) that the provision made for analysis, publication and dissemination of results, and archive deposition, has been confirmed in writing to, and approved by, the Local Planning Authority.'

Reason

'To comply with Paragraph 205 of the NPPF, which requires the developer to record and advance understanding of the significance of heritage assets, and to ensure that the information gathered becomes publicly accessible.'

I would envisage a suitable programme of work as taking the form of (i) historic building recording of the historic warehouse and other historic structures on the site - including the western roadside boundary wall. The methodology for recording the standing warehouse would need to be subject to health and safety constraints dictated by the stability of the extant building, which I understand to be somewhat unstable. This may necessitate the use of remote recording methods, such as a drone survey to create a 3D photogrammetric record of the standing building, and (ii) the archaeological supervision of all groundworks associated with the construction of the proposed development that have the potential to expose archaeological deposits - including any dredging undertaken or works in the foreshore - to allow for the identification, investigation and recording of any exposed archaeological or artefactual deposits. The results of the fieldwork and any post-excavation analysis undertaken would need to be presented in an appropriately detailed and illustrated report, and the finds and archive deposited in accordance with relevant national and local guidelines.

I will be happy to discuss this further with you, the applicant or their agent. The Historic Environment Team can also provide the applicant with advice on the scope of the works required, as well as contact details for archaeological contractors who would be able to undertake this work. Provision of detailed advice to nonhouseholder developers may incur a charge. For further information on the historic environment and planning, and our charging schedule please refer the applicant to:

<https://new.devon.gov.uk/historicenvironment/development-management/>.

With regard to the written scheme of investigation submitted in support of this planning application I would advise that this document is withdrawn and revised in the light of the comments above.

Further comments received 12<sup>th</sup> August 2024:

Please find set out below the Historic Environment Teams revised comments on this planning application after your recent re-consultation.

The proposed development lies adjacent to the Appledore Conservation Area and with views eastward to the Instow Conservation Area and the grade II\* Tapeley House and Registered Park and Garden. As such, I would defer to the Torridge and North Devon Conservation Officers with regard to any comments they will have on the impact upon the setting of these designated and other designated heritage assets in the vicinity.

With regard to the built heritage I understand that the historic building recording has already been undertaken prior to demolition. However, given the archaeological potential of Middle Dock I would reiterate the Historic Environments Teams previous advice that the impact of the proposed development is mitigated by a programme of historic building recording and archaeological monitoring and recording.

The Historic Environment Team therefore recommends that this application should be supported by the submission of a Written Scheme of Investigation (WSI) setting out a programme of archaeological work to be undertaken in mitigation for the loss of heritage assets with archaeological interest as well as setting out the post-excavation tasks still outstanding associated with the historic building recording already undertaken. The WSI should be based on national standards and guidance and be approved by the Historic Environment Team.

With regard to the written scheme of investigation submitted in support of this planning application I would advise that this document is not acceptable and should be withdrawn and revised to include the outstanding post-excavation tasks associated with the historic building recording already undertaken.

If a revised Written Scheme of Investigation is not submitted prior to determination the Historic Environment Team would advise, for the above reasons and in accordance with Policy DM07 of the North Devon and Torridge Local Plan 2011 - 2031 and paragraph 205 of the National Planning Policy Framework (2023), that any consent your Authority may be minded to issue should carry the condition as worded below, based on model Condition 55 as set out in Appendix A of Circular 11/95, whereby: No development shall take place until the developer has secured the implementation of a programme of archaeological work, including the outstanding post-excavation reporting tasks for the historic building recording already undertaken, in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme as agreed in writing by the Local Planning Authority.

Reason 'To ensure, in accordance with Policy DM07 of the North Devon and Torridge Local Plan 2011 - 2031 and paragraph 205 of the National Planning Policy Framework (2023), that an appropriate record is made of archaeological evidence that may be affected by the development.'

This pre-commencement condition is required to ensure that the heritage works are agreed and implemented prior to any disturbance of archaeological deposits by the commencement of preparatory and/or construction works. It is also a variation of the usually recommended archaeological condition.

In addition, the Historic Environment Team would advise that the following condition is applied to ensure that the required post-excavation works are undertaken and completed to an agreed timeframe:

The development shall not be brought into its intended use until (i) the post investigation assessment has been completed in accordance with the approved Written Scheme of Investigation and (ii) that the provision made for analysis, publication and dissemination of results, and archive deposition, has been confirmed in writing to, and approved by, the Local Planning Authority.

Reason To comply with Paragraph 205 of the NPPF, which requires the developer to record and advance understanding of the significance of heritage assets, and to ensure that the information gathered becomes publicly accessible.

I would envisage a suitable programme of work as taking the form of the archaeological supervision of all groundworks associated with the construction of the proposed development that have the potential to expose archaeological deposits - including any dredging undertaken or works in the foreshore - to allow for the identification, investigation and recording of any exposed archaeological or artefactual deposits. The results of the fieldwork, historic building recording and any post-excavation analysis undertaken would need to be presented in an appropriately detailed and illustrated report, and the finds and archive deposited in accordance with relevant national and local guidelines.

I will be happy to discuss this further with you, the applicant or their agent. The Historic Environment Team can also provide the applicant with advice on the scope of the works required, as well as contact details for archaeological contractors who would be able to undertake this work. Provision of detailed advice to non-householder developers may incur a charge. For further information on the historic environment and planning, and our charging schedule please refer the applicant to: <https://new.devon.gov.uk/historicenvironment/development-management/>.

Further comments received 27<sup>th</sup> August 2024:

Thanks for the email and the attached Written Scheme of Investigation (WSI) recently submitted in support of this application. This document sets out the scope of the archaeological work and historic building recording to be undertaken in mitigation for the impact of the proposed development upon these heritage assets and is acceptable to the Historic Environment Team.

In the light of the submission of the WSI in support of this planning application, I would like to withdraw the Historic Environment Team's previous comments and instead advise that any consent that may be granted by the Planning Authority should be conditional upon the following worded conditions:

*'The development shall proceed in accordance with the Written Scheme of Investigation prepared by Oakford Archaeology (OA Project No. 2119, V1.1 dated 8 October 2023) and submitted in support of this planning application. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.'*

**Reason**

*'To ensure, in accordance with Policy DM07 of the North Devon and Torridge Local Plan 2011 - 2031 and paragraph 211 of the National Planning Policy Framework (2023), that an appropriate record is made of archaeological evidence that may be affected by the development.'*

In addition, the Historic Environment Team would advise that the following condition is applied to ensure that the required post-excavation works are undertaken and completed to an agreed timeframe:

*'The development shall not be brought into its intended use until (i) the post investigation assessment has been completed in accordance with the approved Written Scheme of Investigation and (ii) that the provision made for analysis, publication and dissemination of results, and archive deposition, has been confirmed in writing to, and approved by, the Local Planning Authority.'*

**Reason**

*'To comply with Paragraph 211 of the NPPF (2023), which requires the developer to record and advance understanding of the significance of heritage assets, and to ensure that the information gathered becomes publicly accessible.'*

I will be happy to discuss this further with you, the applicant or their agent.

**North Devon Coast AONB:**

No response received.

**Minerals And Waste Planning:**

Initial comments dated 8<sup>th</sup> December 2023:

Thank you for consulting us on this application.

Paragraph 8 of the National Planning Policy for Waste and Policy W4 of the Devon Waste Plan requires major development proposals to be accompanied by a Waste Audit Statement. This ensures that waste generated by the development during both its construction and operational phases is managed in accordance with the waste hierarchy, with a clear focus on waste prevention in the first instance.

A key part of this will be to consider the potential for on-site reuse of inert material which reduces the generation of waste and subsequent need to export waste off-site for management. It is recommended that these principles are considered by the applicant when finalising the layout, design and levels.

Within the waste audit statement submitted, the applicant has addressed the predicted amount of waste and type of waste that will be generated when the development is occupied.

However, in order to meet the requirements of Policy W4 of the Devon Waste Plan, we would request that the following details are addressed:

- State, in tonnes, the amount of construction, demolition and excavation waste that is likely to arise, set out by the type of material, and identify targets for the reuse, recycling and recovery for each waste type along with the methodology for auditing this waste including a monitoring scheme and corrective measures if failure to meet targets occurs;
- For any waste materials that are unsuitable for reuse, recycling or recovery, confirmation of the location for their disposal; including the name and location of the waste disposal site;
- Identify measures taken to avoid all waste occurring; and
- Demonstrate the provisions made for the management of any waste generated to be in accordance with the waste hierarchy.

Further comments dated 7<sup>th</sup> March 2024:

We are happy for the information we requested on 8<sup>th</sup> December to be included as a pre-commencement condition. We recommend the following wording:

*Prior to the commencement of development, an updated waste audit statement shall be submitted to, and approved in writing by, the Local Planning Authority. This statement shall include all information outlined in the waste audit template provided in Devon County Council's Waste Management and Infrastructure Supplementary Planning Document. The following points shall be addressed in the statement:*

- *Demonstrate the provisions made for the management of any waste generated to be in accordance with the waste hierarchy.*
- *The amount of construction, demolition and excavation waste in tonnes, set out by the type of material.*
- *Identify targets for the re-use, recycling and recovery for each waste type from during construction, demolition and excavation, along with the methodology for auditing this waste including a monitoring scheme and corrective measures if failure to meet targets occurs.*
- *The details of the waste disposal methods likely to be used, including the name and location of the waste disposal site.*
- *Identify measures taken to avoid all waste occurring.*

*The development shall be carried out in accordance with the approved statement.*

*Reason: To minimise the amount of waste produced and promote sustainable methods of waste management in accordance with Policy W4 of the Devon Waste Plan and the Waste Management and Infrastructure Supplementary Planning Document. This information is required pre-commencement to ensure that all waste material is dealt with in a sustainable way from the outset of the development including any groundworks, demolition, construction and operation.*

Please do not hesitate to contact us should you have any queries.

Final comments received 6<sup>th</sup> August 2024:

Northam Town Council noted the proposal and made no further comment at this stage. We are satisfied with the amendments to the operational waste calculation. Our comments from 07/03/24 regarding other requirements still stand.

**Devon County Council - Flood Risk Management:**

Initial comments received 4<sup>th</sup> January 2024:

Recommendation:

We have no in-principle objections to the above planning application, from a surface water drainage perspective.

No development hereby permitted shall commence until the following information has been submitted to and approved in writing by the Local Planning Authority:

- (a) A detailed drainage design based upon the approved Middle Dock, Appledore Flood Risk Assessment and Drainage Strategy (Report Ref. E05856/001\_FRA, Rev. V1, dated 27th September 2023) with consideration of green roofs and living walls, re-using rainfall and SuDS planters or rain gardens
- (b) Detailed proposals for the management of surface water and silt runoff from the site during

construction of the development hereby permitted.

(c) Proposals for the adoption and maintenance of the permanent surface water drainage system.

(d) A plan indicating how exceedance flows will be safely managed at the site.

No building hereby permitted shall be occupied until the works have been approved and implemented in accordance with the details under (a) - (d) above.

Reason: The above conditions are required to ensure the proposed surface water drainage system will operate effectively and will not cause an increase in flood risk either on the site, adjacent land or downstream in line with SuDS for Devon Guidance (2017) and national policies, including NPPF and PPG.

The conditions should be pre-commencement since it is essential that the proposed surface water drainage system is shown to be feasible before works begin to avoid redesign / unnecessary delays during construction when site layout is fixed.

Observations:

The applicant have submitted Middle Dock, Appledore Flood Risk Assessment and Drainage Strategy (Report Ref. E05856/001\_FRA, Rev. V1, dated 27th September 2023) to support the development of a Clean Maritime technologies and Environment Innovation Centre with associated landscaping and infrastructure.

The applicant are proposing to discharge the surface water runoff unattenuated due the location of the site on the tidal portion of the River Torridge. The applicant, however make provision of a drainage trench to allow for additional storage in the event of tide locking of the flapped outfall discharging to the adjacent slipway will need to be demonstrated during detailed design stage.

We would like the applicant to consider implementing green roofs and living walls (these could be used in sections). The applicant might also be interested in re-using rainfall (such as for flushing toilets or washing down yard areas). Some SuDS planters or rain gardens shall also be considered due to the nature of the development.

Further comments received 19<sup>th</sup> August 2024:

Recommendation:

We have no in-principle objections to the above planning application, from a surface water drainage perspective.

Observations: The submitted Site Plan (Drawing No. 2398-KTA-A-(01)00, Rev. 7, dated 23rd July 2024) indicates that the layout of the proposed development is changed together with the introduction of 60 car parking area. It is unsure how the applicant will deal with the pollution and water quality issue from the proposed car parking area. The applicant will need to submit this information in the next stage of the planning.

**Devon County Council (Highways):**

Initial comments received 4<sup>th</sup> September 2024:

Observations:

Please note that my following comments are based on the latest submitted drawing number: 32522-HYD-XX-XX-DR-C-0011 Rev P03.

In the first instance, I note the updated details that have been submitted for this application. Visibility splays offered for the site access onto New Quay Street are acceptable. The previous question of the earlier layout having limited visibility splays for the secondary access has been answered courtesy of the fact that this element has now been removed. I offer a corresponding condition below.

With regards to the construction detail, there are three issues that have a particular bearing on the Highway Authority; these being:

1. The widening of the carriageway. I do not foresee this being an issue, albeit that further details such as cross sections, materials, procedure etc. will be required at Section 38/278 stage. However, I am satisfied that there are engineering solutions for this proposal.

Moreover, the overall widening to a minimum width of 5.6 metres (and up to 6.8 metres) is acceptable mitigation.

2. The new footway: This is also an acceptable proposal but will also be subject to the above requirements. I would also expect the Highway Authority to adopt this footway. Again, I believe that this footway offers suitable mitigation.

3. Retaining wall: Given the likely height of the proposed wall, this will be subject to an Approval in Principle (AIP). Further details must be submitted including cross sections, engineering drawings etc. However, the Highway Authority would not adopt this structure and private arrangements would be required for ongoing future maintenance.

In terms of trip generation, the Transport Statement highlights the use of the Trip Rate Information Computer System (TRICS) as an evidence base; this is the standard method for evidencing movements to and from a proposed development and I raise no issue with this as a methodology.

Of the information submitted in terms of the traffic impact, there would be a clear increase in overall movements, albeit the number of larger vehicles would still be relatively few. As has been outlined, these movements are tidal with the peak (AM & PM) flows going to and from the site, respectively, so whilst there would be opposing conflicts, these would be relatively limited. As mentioned above, I would also add that the increase in carriageway width and provision of footway also adds a degree of mitigation.

The greatest concern that I had with this application was the potential movements of Large Goods Vehicles - articulated lorries, rather than the 7.5 tonne vehicles ('rigid lorries'). In the case of the latter, I appreciate that a swept path analysis has been submitted, as well as for a refuse vehicle and a fire engine. These are acceptable.

However, in terms of articulated lorry movements, I understand that given the latest layout, turning for 15.5 metre lorries would not be feasible (for the finalised operational site rather than during the construction phase). As mitigation for this, I understand that the proposal is to ensure that such vehicles are precluded from accessing the proposed development once the construction phase is complete (effectively prior to 'occupation'). I further understand that this matter can be secured by way of a suitably worded condition, which would also make this issue enforceable. Having subsequently discussed this matter with the Planning Officer, I am satisfied that this is a viable solution. In which case, I offer no objections on this basis.

Therefore, subject to the below conditions, as well as the additional condition/s relating to the movements of LGVs, I am satisfied that the proposed development offers 'safe and suitable' access and that the cumulative impact would not be 'severe', as are the test of the National Planning Policy Framework (NPPF).

Recommendation:

THE DIRECTOR OF CLIMATE CHANGE, ENVIRONMENT AND TRANSPORT, ON BEHALF OF DEVON COUNTY COUNCIL, AS LOCAL HIGHWAY AUTHORITY, RECOMMENDS THAT THE FOLLOWING CONDITIONS SHALL BE INCORPORATED IN ANY GRANT OF PERMISSION

1. Visibility splays shall be provided, laid out and maintained for that purpose at the site access in accordance with the attached diagram 32522-HYD-XX-XX-DR-C-0011 Rev P03 where the visibility splays provide intervisibility between any points on the X and Y axes at a height of 1.05 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway (identified as X) shall be 2.4 metres and the visibility distances along the nearer edge of the carriageway of the public highway (identified as Y) shall be 40 metres in both directions.

REASON: To provide adequate visibility from and of emerging vehicles

2. Prior to commencement of any part of the site the Planning Authority shall have received and approved a Construction Management Plan (CMP) including:
  - (a) the timetable of the works;
  - (b) daily hours of construction;
  - (c) any road closure;
  - (d) hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8:00am and 6pm Mondays to Fridays inc.; 9.00am to 1.00pm Saturdays, and no such vehicular movements taking place on Sundays and Bank/Public Holidays unless agreed by the planning Authority in advance;
  - (e) the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;
  - (f) the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
  - (g) areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the County highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;
  - (h) hours during which no construction traffic will be present at the site;
  - (i) the means of enclosure of the site during construction works; and
  - (j) details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site
  - (k) details of wheel washing facilities and obligations
  - (l) The proposed route of all construction traffic exceeding 7.5 tonnes.
  - (m) Details of the amount and location of construction worker parking.
  - (n) Photographic evidence of the condition of adjacent public highway prior to commencement of any work;

REASON: To ensure the safety of all road users

3. Prior to the occupation of any dwelling on the site the footpath link across the site frontage shall be provided on North Road to the satisfaction of the Local Planning Authority in accordance with diagram 32522-HYD-XX-XX-DR-C-0011 Rev P03. REASON: To provide safe and suitable pedestrian access between the site and village centre.

4. Provision shall be made within the site for the disposal of surface water so that none drains on to any County Highway REASON: In the interest of public safety and to prevent damage to the highway

Further comments received 17<sup>th</sup> September 2024:

Observations:

Further to my recent recommendation, dated 4th September, I understand the applicant has considered the previously suggested option of a condition being included to restrict certain larger vehicle types. From these considerations, I further understand that the applicant would not see this as a suitable solution and would prefer all vehicle types being able to access the site. Therefore, I submit these latest comments giving my updated thoughts and recommendation keeping in mind the applicant's position on this matter, as well as giving further consideration to the additional information submitted.

At this point, I would further add that my thoughts also have regard to the previous use of the site, both the most recent use of the site by Torridge District Council, as well as the more historical uses. I also appreciate that some of these comments will repeat my previous recommendation; however, for the sake of completion, I believe it is necessary to contain these comments in this final recommendation.

As previously advised, the visibility splays offered for the site access onto New Quay Street are acceptable and I have no issue with these; a condition is offered below to secure them.

Likewise, the engineering works that have a direct bearing on the carriageway are acceptable. These will be subject to a Section 278/38 Agreement, which will need to include acceptable proposals for the construction details. Unlike the widened carriageway and footway, the retaining wall will not be considered for adoption and private arrangements will need to be made for the ongoing maintenance of this feature. Again, the retaining wall will be subject to an Agreement In Principle (AIP) so the applicant will need to liaise with the Devon County Council Structures Design Team to co-ordinate an acceptable proposal.

I appreciate that the amount of traffic attracted to and from the site is contentious and a cause of concern, particular the movement of larger vehicles. Indeed, to the last sentence I would also add that I appreciate any overall increases in traffic movements will add to any concerns. As I've previously outlined, to gauge the likely traffic movements, the Transport Statement has used the Trip Rate Information Computer System (TRICS). In such applications, this methodology is recognised as the standard process for establishing traffic movements to and from a proposed development and to form a suitable evidence base; I do not dispute the figures offered.

With regards to the increase in traffic movements identified in the Transport Statement, the comments I previously raised are still pertinent, these being:

"I raise no issue with this as a methodology. Of the information submitted in terms of the traffic impact, there would be a clear increase in overall movements, albeit the number of larger vehicles would still be relatively few. As has been outlined, these movements are tidal with the peak (AM & PM) flows going to and from the site, respectively, so whilst there would be opposing conflicts, these would be relatively limited. As mentioned above, I would also add that the increase in carriageway width and provision of footway also adds a degree of mitigation".

However, this leads onto the issue of the largest vehicle types that, notionally, could access the site, namely 15.5 metre and 16.5 metre Large Goods Vehicles (LGVs). In the first instance, I wouldn't expect such movements on a frequent basis; indeed, the likelihood is that relatively long periods of time could pass without such a vehicle accessing the site. However, I also appreciate that this comment would give scant comfort to those who live on the access route to the site, or, for example, those using the South West Coast Path. I would also like to make it unequivocally clear that the inclusion of a condition that was raised at an earlier stage (restricting such vehicle type movements altogether) would be my preferred option and the safest option.

That said, I have noted the tracking drawings submitted by the applicant, both within the site as well as along the access route. In the case of the former, the applicant has demonstrated that this manoeuvre is achievable for LGVs. Despite these manoeuvres areas being conducted off of the public highway and technically beyond my remit, I have offered the following comments:

1. It would be worth considering altering the internal parking bays so that these movements are conducted a reasonable distance from the quay.
2. The arrangement of the gates at the site access would need to be altered given the sweep of the cab's vehicle in the tracking.

Moving on to the swept path analysis for the wider access route, the tracking does demonstrate that these movements are achievable, albeit the safety margins are tight. Passing options for an LGV are limited, albeit the road widening on New Quay Street, which will be facilitated by the proposed development, will improve this situation and offer some degree of mitigation.

As mentioned at the start of this recommendation, I must give consideration to the extant and historical use of the site, the likely planning class that would be attributed to these uses and, consequently, the likely trip generation associated with these. I can confirm that I have had lengthy conversations with the Planning Officer regarding these matters. In short, the planning classes that are likely to be associated with those operations are equally likely to attract the similar types and numbers of vehicles as the proposed development that is in front of us. Therefore, not without concern, I do not believe that it would be appropriate to raise highway objections on this basis.

As a result of the above considerations, and along with the attached conditions, I accept that the proposed development offers 'safe and suitable' access and the cumulative impact would not be severe, as are the tests of the National Planning Policy Framework (NPPF).

Recommendation: THE DIRECTOR OF CLIMATE CHANGE, ENVIRONMENT AND TRANSPORT, ON BEHALF OF DEVON COUNTY COUNCIL, AS LOCAL HIGHWAY AUTHORITY, RECOMMENDS THAT THE FOLLOWING CONDITIONS SHALL BE INCORPORATED IN ANY GRANT OF PERMISSION

1. Visibility splays shall be provided, laid out and maintained for that purpose at the site access in accordance with the attached diagram 32522-HYD-XX-XX-DR-C-0011 Rev P03 where the visibility splays provide intervisibility between any points on the X and Y axes at a height of 1.05 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway (identified as X) shall be 2.4 metres and the visibility distances along the nearer edge of the carriageway of the public highway (identified as Y) shall be 40 metres in both directions.

REASON: To provide adequate visibility from and of emerging vehicles.

2. Prior to commencement of any part of the site the Planning Authority shall have received and approved a Construction Management Plan (CMP) including:
  - (a) the timetable of the works;
  - (b) daily hours of construction;
  - (c) any road closure;
  - (d) hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8:00am and 6pm Mondays to Fridays inc.; 9.00am to 1.00pm Saturdays, and no such vehicular movements taking place on Sundays and Bank/Public Holidays unless agreed by the planning Authority in advance;
  - (e) the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;
  - (f) the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
  - (g) areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the County highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;
  - (h) hours during which no construction traffic will be present at the site;
  - (i) the means of enclosure of the site during construction works; and
  - (j) details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site
  - (k) details of wheel washing facilities and obligations
  - (l) The proposed route of all construction traffic exceeding 7.5 tonnes.
  - (m) Details of the amount and location of construction worker parking.
  - (n) Photographic evidence of the condition of adjacent public highway prior to commencement of any work;

REASON: To ensure the safety of all road users

3. Prior to the occupation of any dwelling on the site the footpath link across the site frontage shall be provided on North Road to the satisfaction of the Local Planning Authority in accordance with diagram 32522-HYD-XX-XX-DR-C-0011 Rev P03.

REASON: To provide safe and suitable pedestrian access between the site and village

4. Provision shall be made within the site for the disposal of surface water so that none drains on to any County Highway

REASON: In the interest of public safety and to prevent damage to the highway

**North Devon Council:**

Initial Comments:

Thank you for your enquiry which was received on the 6 December 2023.

North Devon District Council have no comments in respect of this proposal.

Further comments received 14<sup>th</sup> August 2024:

Thank you for your enquiry which was received on the 31 July 2024 The North Devon Planning Authority does not wish to make comment on this application.

**DCC Rights Of Way:**

No response received.

**Pilot/Port & Harbour Master:**

No response received.

**South West Water:**

Initial Comments received:

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.

**Asset Protection**

Please find attached a plan showing the approximate location of a public 100mm combined sewer in the vicinity. South West Water will need to know about any building work over or within 3 metres of a public sewer or lateral drain.

We will discuss with you whether your proposals will be affected by the presence of our apparatus and the best way of dealing with any issues as you will need permission from South West Water to proceed. Further information regarding South West Water's build over of sewers process can be found on our website via the following link:

[www.southwestwater.co.uk/buildover](http://www.southwestwater.co.uk/buildover)

Should you require any further information, please contact our Asset Protection Team via email:

[DeveloperServicesAssetProtection@southwestwater.co.uk](mailto:DeveloperServicesAssetProtection@southwestwater.co.uk).

**Surface Water Services**

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):

1. Water re-use (smart water butts, rainwater harvesting, grey flushing toilets)
  2. Discharge into the ground (infiltration); or where not reasonably practicable,
  3. Discharge to a surface waterbody; or where not reasonably practicable,
  4. Discharge to a surface water sewer, highway drain, or another drainage system; or where not reasonably practicable,
  5. Discharge to a combined sewer. (Subject to Sewerage Undertaker carrying out capacity evaluation)
- Having reviewed the applicant's current information as to proposed surface water disposal for its development, please note that method proposed to discharge into a surface water body is acceptable and meets with the Run-off Destination Hierarchy.

For Highway run off please contact the Highway Authority to agree disposal method

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: [DeveloperServicesPlanning@southwestwater.co.uk](mailto:DeveloperServicesPlanning@southwestwater.co.uk).

Further comments received 31<sup>st</sup> July 2024:

South West Water have no additional comments to add

**TDC Coastal Engineer:**

No comment.

**Economic Regeneration Officer:**

Initial Comments

The Appledore Clean Maritime Innovation Centre at Middle Dock will establish northern Devon as a global-leading R&D innovation destination for clean maritime. Bringing a university research centre to northern Devon for the first time, proposals have significant community, industry and government support and will address issues around deprivation, low educational achievement and a lack of community pride in place, delivering on seven Levelling Up missions and strengthening the existing regional strengths which have recently been recognised as part of the Innovate UK Launchpad for the South West's maritime sector.

Torridge District Council secured £15.6million in January 2023 from the Levelling Up Fund, the largest single government funding award to the region, as part of a project to create 93 direct FTE jobs with a Benefit to Cost Ratio of 2.8:1 and total direct benefits of £62million whilst also acting as a major catalyst to regional economic, social and environmental growth. The collection of academia, industry and customers within the Innovation Centre is unique on a waterfront site in the South West and will in itself open up further opportunities, such as export and international collaborations.

That the Innovation Centre will feature cutting-edge research and industry partnerships from the Centre for Future Clean Mobility (CFCM, University of Exeter) and the University of Plymouth, will create a major economic and psychological impact whilst putting the region firmly on the regional, national and international map within the maritime innovation world. This has already had an impact on businesses interested in relocating to take up future space within the Innovation Centre and to create wider employment, for example through high value manufacturing, and also to generate associated projects within the close vicinity, such as through green hydrogen production locally.

The project has the support of the University of Exeter, University of Plymouth, Royal Navy, National Shipbuilding Office, Department for Business and Trade, South West Business Council and is also working closely with regional and national partners such as Celtic Sea Power to ensure that Torridge can play its role in delivering collective benefits for the region.

Working with the universities and Petroc College it will also take the lead in producing new skills for clean maritime, including Zero Emissions propulsion. Petroc will strengthen the regional skills pipeline through an expanded range of level 3-6 maritime and engineering courses co-developed with the University of Plymouth under the SW Institute of Technology umbrella. Without the Innovation Centre these growth areas will not be able to develop at the same intensity or to create as many wider jobs. The Innovation Centre will also provide a local focus for activity to support The Crown Estate's proposed 4.5GW of Celtic Sea Floating Offshore Wind (FLOW), a physical space to channel activity and to attract investment for the area. The leasing round for that is due to begin in 2024, and the Innovation Centre provides a clear route to support developers to invest within Torridge, supporting the required elements around social value, decarbonisation and environmental innovation which in turn will not only create local, skilled jobs, but also significantly protect and enhance the local environment, including through partnerships with the North Devon UNESCO Biosphere.

Significant clustering opportunities across clean propulsion, aquaculture, environmental intelligence and FLOW, all coupled with increases in regional productivity and salaries, will generate private investment into Torridge, including into town centres and into aspects such as culture, generating further economic and community growth.

In 2021 the district had the 8th lowest median gross weekly earnings for full-time employees in the UK, where 41% of jobs pay under the living wage, and only 26.2% (national average = 33.9%, Devon average = 32.9%) of the Torridge population are qualified to NVQ Level 4 or above, the centre will spark opportunity and aspiration for all ages. It is therefore of pivotal importance for this once-in-a-generation opportunity to be supported and progressed in line with the funding timeline, delivering an inspiring facility to create jobs, address aspiration and social mobility challenges and be at the heart of local efforts to address long-standing deprivation.

Further comments dated 15<sup>th</sup> August 2024:

The North Devon and Torridge Economic Strategy (2024 2029) states that; From becoming a National Centre of Excellence for clean-propulsion vessels through to green hydrogen, maritime cyber security to robotics, and seaweed bi-products to smart environmental intelligence, the Appledore Clean Maritime Innovation Centre will directly contribute to the Offshore Wind Industrial Growth Plans ambition to double research and development investment and output. With a focus on collaborating to innovate between industry, academia and also the public sector there will also be a clear goal- to achieve not just IP but also commercialisation with target markets on the doorstep.

The North Devon and Torridge region has an enormously proud maritime heritage. Now is the time for that to underpin a new phase of positive local impact and pride both at the heart of the green energy revolution and also aquaculture, clean propulsion, smart environmental monitoring, and also future opportunities around Floating Offshore Wind and green hydrogen. The Appledore Clean Maritime Innovation Centre is the critical piece of physical infrastructure to support the development of these employment opportunities and to act as a catalyst for wider growth across the wider region, with supply chain and local investment benefits to be felt from Barnstaple to Holsworthy through the inter-connected growth potential illustrated in the North Devon and Torridge Clean Maritime Growth Vision.

The revisions for the centre in this Planning submission enable access to the neighbouring slipway which are of incredible value to the maritime sector- there is not an equivalent in the entire region, enabling a smoother process of product development and testing. The improved interaction between the workshops and the office / collaborative spaces will also strengthen the desire to bring different businesses and support agencies together to create future consortia and shared gains across different fields. The workshops themselves now also reflect industry feedback, strengthening the appeal to innovative businesses to locate within the facility. It is also pleasing that the building height is lower- it is hugely important to ensure that the building sits positively within the local community to drive pride in its presence at its heart of that community.

**Representations:**

Representations received in relation to the amended scheme:

Number of neighbours consulted:	74	Number of letters of support:	0
Number of representations received:	7	Number of neutral representations:	1
Number of objection letters:	6		

Objections received can be summarised as follows:

- Concerns regarding height relative to previous buildings;
- Overlooking of neighbouring properties;
- Roofline should be pitched and tiled in slate;
- Development still too bulky and out of keeping with local context;
- Concerns regarding the quality and nature of materials;
- Loss of existing historic wall;
- Steep drop behind boundary wall and safety concerns;
- Need for detailed landscaping proposals;
- Need for condition in relation to noise levels;
- More scrutiny needed of the Heritage Report in relation to Tapeley Park;

- Inadequate parking provision resulting in on-street overflow parking;
- Need to consult with SW Footpath Group;
- Plans inaccurate;
- Concerns regarding highway impacts;
- Landscape concerns;
- Design concerns;
- Impacts of construction works and road closures on neighbouring residents;
- Concerns regarding scale of development;
- Query retained access to slipway during construction works;
- Development out of character;
- Relocation of 'Benson Building' replacement;
- No direct launching facility proposed;
- Nothing proposed to take advantage of natural deep water mooring.

Comments received can be summarised as follows:

- Loss of EV charging and cycle storage from amended plans;
- Plans appear less complete and developed compared to previous;
- Need amended vehicle tracking drawings.

### Representations received in relation to the previous scheme:

Number of neighbours consulted:	74	Number of letters of support:	10
Number of representations received:	30	Number of neutral representations:	2
Number of objection letters:	18		

Objections received can be summarised as follows:

- Conflict between vehicular access in relation to existing foul drainage pumping station;
- Lack detail of facilities required for proposed users of the site;
- Query material choices;
- Concerns regarding design;
- Lack detail in relation to fire resistance;
- Queries regarding design of proposed quay wall;
- Development does not enhance the setting of the Conservation Area;
- Loss of historic warehouse;
- Query nature of proposed use;
- Scale of development out of keeping with neighbouring properties;
- Overlooking to neighbouring properties;
- Potential for construction workers to park on highway resulting in congestion and access issues;
- Development out of keeping with context;
- Need restriction on size of vehicles entering the site;
- Need greater consideration of biodiversity and wildlife;
- Height of proposed buildings should not exceed previous buildings;
- Adverse impact of break-out area location on neighbouring occupiers;
- Concerns relating to glare and light pollution;
- Noise pollution from plant and traffic;
- Removal of existing asbestos if hazardous;
- Highway congestion and safety concerns;
- Increased activity will result in adverse impact on local residents using slipway;
- Inadequate consideration of bats in local area;
- Lack of employment opportunities of local residents;
- Adverse impacts of quay wall works and extension;
- Query land ownership of land between The Launches and application site;
- No need for atrium and tower;
- Nuisance from gulls exacerbated;
- Adverse impacts of construction works;
- Covenant on land restricting use for ship building or repairs;
- Insufficient public transport in area to assist with potential parking needs;

- Previous planning history inaccurately stated in submission;
- Insufficient car parking;
- Use as hydrogen plant – explosion risk close to neighbouring properties.

Letters of comment can be summarised as follows:

- Restricted road width to surrounding network;
- Additional information needed in relation to the access arrangements;
- Lighting assessment should be carried out;
- Condition to restrict the times of construction works should be considered.

Letters of support can be summarised as follows:

- Support for aquaculture in the South-West;
- Employment generation from development;
- Additional potential benefits to near shore water quality from aquaculture development;
- Economic benefits;
- Focus on decarbonisation;
- Catalyst for further development;
- Design carefully considered taking account of resident's and traffic concerns;
- Educational advancement and research opportunities for area.

## Policy Context:

### North Devon and Torridge Local Plan 2011-2031:

ST01 (Principles of Sustainable Development); ST02 (Mitigating Climate Change); ST03 (Adapting to Climate Change and Strengthening Resilience); ST04 (Improving the Quality of Development); ST05 (Sustainable Construction and Buildings); ST06 (Spatial Development Strategy for Northern Devon's Strategic and Main Centres); ST09 (Coast and Estuary Strategy); ST10 (Transport Strategy); ST11 (Delivering Employment and Economic Development); ST14 (Enhancing Environmental Assets); ST15 (Conserving Heritage Assets); ST16 (Delivering Renewable Energy); NOR (Northam Spatial Vision and Development Strategy); DM01 (Amenity Considerations); DM02 (Environmental Protection); DM04 (Design Principles); DM05 (Highways); DM06 (Parking Provision); DM07 (Historic Environment); DM08 (Biodiversity and Geodiversity); DM08A (Landscape and Seascape Character); ST23 (Infrastructure); DM10 (Green Infrastructure Provision); DM12 (Employment Development at Towns, Local Centres and Villages);

### Government Guidance:

NPPF (National Planning Policy Framework); NPPG (National Planning Practice Guidance); NERC (Natural Environment & Rural Communities); WACA (Wildlife & Countryside Act 1981);

## Planning Considerations

### Material Planning Considerations:

1. Principle of Development
2. Impact on Heritage Assets
3. Impact on Character and Appearance
4. Impact on Residential Amenities
5. Access and Parking
6. Drainage and Flood Risk
7. Ecology
8. Biodiversity Net Gain
9. Infrastructure.

#### 1. Principle of Development

Paragraph 2 of the National Planning Policy Framework (NPPF) states that planning law (namely Section 38(6) of the Planning Compulsory Purchase Act 2004 and Section 70(2) of the Town & Country Planning Act 1990) requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF

must be taken into account in the preparation of local and neighbourhood plans and is a material consideration in planning decisions.

The application site is located within the development boundary for Appledore, within the wider settlement of Northam, Appledore and Westward Ho! which is identified as a Main Centre within the North Devon and Torridge Local Plan (Local Plan). Policy ST06 sets out the spatial strategy for the District noting that development will be supported within the development boundaries of the Main Centres noting that these will support appropriate levels of growth that will increase the towns' capacities to increase self-containment, to meet their own needs and those of surrounding communities.

Policy NOR sets out the spatial strategy for Northam, Appledore and Westward Ho! noting that Appledore will develop further as a centre for maritime activities with the development of marine based industries and a quality tourism offer across the wider Main Centre contributing to re-balancing Northam's community and add economic value to the area. Policy NOR further notes that in meeting the future growth needs of the area, development will be delivered without prejudice to valued environment and historic assets having due regard to the importance of the areas setting and landscape quality. The spatial strategy for Northam, Appledore and Westward Ho! also specifically notes: *'(d) employment will be supported by safeguarding and developing upon important economic resources, significantly in relation to Appledore Shipyard, port facilities and tourism assets;'*

Policy ST09 of the Local Plan relates to the Coast and Estuary Zone within which the application site is located. Section (2) of Policy ST09 states: *'(2) Priority will be given to employment uses and waterside infrastructure requiring a coastal location. Such uses will be directed to previously developed sites around the coastline and the Taw-Torridge estuary with existing jetties and wharves. These sites should be safeguarded for employment uses requiring a waterside location. Facilities at Appledore and Yelland Quay will be protected for their value as landing stages for marine aggregates and for other marine employment uses. Loss of traditional boating facilities that are part of the fabric of coastal communities will be discouraged.'*

Section (10) also states: *'Delivery of onshore facilities for operational servicing of offshore renewable energy proposals will be facilitated in existing ports and at existing jetties and wharves where they: (a) do not harm identified environmental and heritage assets; and (b) do no prejudice the current operational effectiveness of the port'*.

The application site has an established commercial use with a historic use for the storage and movement of agricultural feeds, aggregates and more recently as a depot for the Council's refuse truck fleet. The site is therefore an established employment site.

Policy ST11 of the Local Plan relates to the delivery of employment and economic development in the District noting that employment growth will be supported to deliver quantitative and qualitative improvements in job opportunities throughout northern Devon. Specifically, Policy ST11 emphasises the importance of working in partnership with local business and communities to maintain a diverse economy and the safeguarding of the high environmental qualities of the area to attract further investment and forging of links between the economy and environment. Section (5) states: *'Within northern Devon, high-value jobs in business, education and research, those supporting a low carbon economy and other key growth sectors will be encouraged in sustainable location. These jobs will retain and enhance local skills; and developers will need to demonstrate how they will work with local economic partnerships in maximising opportunities for employing local people and developing skills in northern Devon.'*

Policy DM12 relates to employment development within designated settlements and seeks to support additional job creation. Policy DM12 states:

*'...economic development will be supported on:*

- (a) Existing and allocated employment land and other suitable sites within development boundaries and the principal built form of Local Centres and Villages without development boundaries;'*

The policy goes on to list two further criteria in relation to residential amenity and the provision of a safe and adequate access. These matters will be considered in later sections.

In terms of the principle of the development, the proposal would make use of an existing employment site within the development boundary of Appledore. The application form indicates that the proposal would result in the creation of high quality and progressive employment opportunities as well as bolstering the position of the region at the forefront of clean propulsion technology. The intention is for the development to provide a focus for the future Floating Offshore Wind Developments in the Celtic Sea as well as supporting local business growth and stimulating opportunities for local manufacturing activities relating to marine employment industries.

As the former use of the site as a Council depot has been relocated, there would be no net loss of employment. The site is currently vacant.

An updated Economic Appraisal has been submitted which confirms that the key benefits of the scheme would include an increase in human capital/labour supply generated by graduates, employment in high skills jobs within the local area, the benefits to the surrounding local economy from *grow-on* space and employment or businesses starting within the development.

Within the initial Economic Appraisal, the economic benefits of the scheme have also been emphasised and confirmed as part of the successful UK Government Levelling Up Fund bid. The focus of the proposed development on maritime technology employment uses and the protection/improvement of the existing working quayside is considered to be in keeping with the provisions of Policy ST09 as set out above. A condition is recommended to restrict the use of the development to falling within Use Class E (g I, ii, iii) and limited to marine related industries.

The proposed development would also be intrinsically linked to the forthcoming floating offshore wind developments in the Celtic Sea including involvement in supply chains and long-term operations and management activities. This would be in specific accordance with the provisions of Section (10) of Policy ST09 and provisions of Policy ST16 in relation to renewable energy.

The application site is located within a Minerals Safeguarding area and therefore the provisions of Policy M2 of the Devon Minerals Plan is relevant. The County Council have commented on the application confirming that the wharf is no longer operational and there is no prospect of this reopening. On this basis, the Mineral Planning Authority has raised no objections to the application in principle.

The principle of the proposed development is considered to be supported by Policies ST06, ST09, ST11, ST16 and DM12 of the Local Plan.

## **2. Impact on Heritage Assets**

Paragraph 205 of the NPPF sets out how Local Planning Authorities should consider the potential impacts of development on the historic environment, noting that great weight should be given to the asset's conservation with greater weight to be applied to more important assets. This assessment is noted to be required irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Policy ST15 of the Local Plan emphasises that great weight will be given to the desirability of preserving and enhancing northern Devon's historic environment. Policy DM07 more specifically notes that proposals which conserve and enhance heritage assets and their setting will be supported. Where there is unavoidable harm to heritage assets and their settings, proposals will only be supported where the harm is minimised as far as possible, and an acceptable balance between harm and benefit can be achieved, giving great weight to the conservation of heritage assets.

The application site is located adjacent to the boundary of the Appledore Conservation Area and within close proximity to the listed building at Dock Cottage to the north.

A Heritage Impact Assessment (HIA) has been submitted in support of the proposals which sets out the historic uses of the site noting that the site and its former buildings were largely abandoned and deteriorating at the time of the assessment, with the intention to make use of this brownfield site for regeneration given its heritage importance and riverside location. The HIA assesses the former

warehouse on the site (also known as the 'Benson Building') noting that it was not deemed significant enough to be listed in 2010 however is considered to be a non-designated heritage asset with the boundary walls of the site and the adjacent slipway also contributing to the setting of the nearby Conservation Area. The HIA notes that the replacement structure has been designed to honour the site and Appledore's heritage, especially in relation to the 'Benson Building'. Whilst this conclusion was related to the previous scheme on the site, the now amended scheme would include a similarly designed two storey, pitched roof element to the northern end of the site, as a reflection of the former warehouse building.

The HIA concludes that the addition of modern structures to the remainder of the site will be largely screened from views within the Conservation Area, however views will be more altered from the riverside and from the Instow Conservation Area as well as Tapeley Park. The HIA concludes that the overall direct impact of the development is considered to cause moderate harm, with the range of benefits and mitigation measures likely to reduce this level of harm. Whilst these conclusions were reached in relation to the originally submitted scheme, it should be noted that the amended scheme which is now under consideration is significantly smaller in scale and height.

The submitted HIA further recommends that full building recording takes place of the 'Benson Building' warehouse prior to the commencement of any works to this building, along with a programme of archaeological monitoring and recording. The demolition works have now been completed on site and corresponding building recording has been undertaken.

The County Council's Archaeologist has commented on the submitted scheme and notes that a Written Scheme of Investigation has been submitted in support of the application which sets out the scope of the archaeological work and historic building recording to be undertaken in mitigation for the impact of the proposed development upon these heritage assets and confirms that this is acceptable. As a result of this information, the County Council's Archaeologist has recommended the inclusion of conditions as part of any permission granted to ensure that the development is undertaken in accordance with the Written Scheme of Investigation submitted and a further condition to ensure that the post investigation assessment is undertaken.

Historic England have been consulted on the submission and have not raised any specific objections to the scheme.

The Council's Conservation Officer has provided comments on the amended submission noting that the updated Heritage Impact Assessment has been provided and accepting its conclusions. The reduced scale of the scheme is noted by the Conservation Officer to result in a lesser impact on the views into the Conservation Area and in views from the east. On this basis, the Conservation Officer concludes that the proposed development would result in less than substantial harm to the significance of the surrounding heritage assets, taking account of the guidance set out in paragraphs 205-214 of the NPPF. As 'less than substantial' harm has been found, paragraph 208 of the NPPF requires that this harm should be weighed against the public benefits of the proposal. The public benefits are outlined elsewhere in this report but are wide ranging and significant. It is considered that the economic and regeneration benefits identified outweigh the identified less than substantial harm.

The proposed development is considered to result in less than substantial harmful impact to the setting of the adjacent Conservation Area and listed buildings so there is some conflict with Policies ST15 and DM07 of the Local Plan, as well as the relevant paragraphs of the NPPF.

### **3. Impact on Character and Appearance**

Policy DM08A relates to landscape character noting that development should be of an appropriate scale, mass and design that recognises and respects landscape character of both designated and undesignated landscapes and seascape. Section (k) of Policy NOR notes that development within the settlements of Northam, Westward Ho! and Appledore will be supported where they respect the landscape setting including the special landscape character and qualities of the adjoining Area of Outstanding Natural Beauty.

Policy ST04 of the Local Plan seeks to achieve high quality inclusive and sustainable design with developments responding to the characteristics of the site, its wider context and the surrounding area. This refers to Policy DM04 which sets out design principles for development proposals. These emphasise the need for design which is appropriate and sympathetic to the setting in terms of scale, density, massing, height, layout appearance, fenestration, materials and relationship to buildings and landscape features in the local neighbourhood.

The application site forms something of a transition site between the commercial uses to the south and the residential area to the north and west. The previous buildings on the site were of a commercial scale and, together with the high retaining wall running around the site along the edge of the highway, form key features within the surrounding street scenes and from neighbouring sites. As noted above, there are also key views of the site which can be gained from Instow, across the estuary which emphasise the industrial nature of the existing hard surfaced site within the context of residential properties extending north along the river's edge and to the west on higher ground.

An amended Landscape and Visual Impact Assessment (LVIA) which takes account of the altered design and massing of the scheme has been submitted in support of the application. This includes a number of viewpoints from the eastern side of the River Torridge and also includes a comparison between the previously proposed scheme and the amended proposals for four key viewpoints.

These all show the application site within the context of the surrounding development to this part of Appledore and, in the case of many viewpoints, within the context of the larger shipyard building which is located further south. Within this context, the proposed development will not appear out of scale or keeping with the mixed character of the surrounding area. The distant nature of many of these viewpoints is important in reaching this conclusion and this is confirmed within the visualisations included within the LVIA.

Concerns have been raised in representations received in relation to Viewpoint 17 taken from South Road from which the bulk and mass of the southern section of the building would be most apparent. The height of this section of the building would appear greater at some points than the previously approved scheme and lower at others. Views of the two-storey element of the building would be clearly visible when travelling south-east along South Road, due to the gradient of the road at this point and the relative relationship with the application site. Further to a full assessment of the submitted plans and elevations, as well as the LVIA, careful consideration of the impact of the height of this section of the development on the surrounding landscape character and appearance has been undertaken.

The amended LVIA document concludes that this viewpoint would result in a medium impact in terms of sensitivity and the magnitude of landscape impact. The conclusions of the amended LVIA indicate that from Viewpoint 17 the development would have a moderate beneficial impact noting this is partly due to the removal of damage caused by existing land uses. The conclusions also indicate that there would be a high impact on sensitive visual receptors, noting the proximity of neighbouring occupiers and a medium impact in terms of the magnitude of visual impacts.

Officers would largely concur with these conclusions, noting the visual prominence of the site when exiting South Road due to the change in gradient and the proximity to visual receptors, i.e. neighbouring residential properties.

A further set of viewpoints are set along Hubbastone Road/New Quay Street and further north giving views from the Conservation Area to the site. The LVIA concludes that the development would have a negligible impact overall.

Having reviewed the submitted viewpoints and LVIA, it is considered that within the longer distance views, the development would have a negligible impact on the surrounding landscape character. There would be a more significant impact from closer range, when viewed from South Road, New Quay Street and Hubbastone Road, however this must be considered within the context of the previous large scale industrial buildings on the site.

The design of the proposed buildings will take account of their proposed use, with the inclusion of workshops to the lower ground floor allowing access onto the quayside with an extended ground to ceiling height. The siting of these also makes use of the lower level of the site compared to the adjacent highway.

The overall modern design of the buildings would include areas of flat roof as well as a dual pitched roofline to the northernmost section which reflects the former warehouse building which occupied a similar location.

The elevations would include a mix of rainscreen cladding either in a dark or lighter shade along with cementitious panelling. No samples of the proposed materials have been submitted for consideration at this stage. No confirmation has also been received in relation to the proposed roofing materials to the pitched roof element of the proposed development. The submitted plans and elevations would indicate that this appears to be a similar cladding to that used to the elevations. Given the sensitive nature of the application site and the scale of the proposed development, it is considered reasonable to include a condition to require the submission of materials samples prior to their installation on site.

The amended and retained boundary walls are indicated on the submitted plans to be retained in natural stone. No detailed plans or elevations of the height of the proposed boundary wall have been provided for consideration at this stage. In addition, this element of the scheme would need to include an element of impact protection due to its proximity to the public highway and have a safety function due to the drop in levels immediately adjacent to the boundary, down to the main level of the site which is some 3 metres below the height of the carriageway at this point. In addition, the boundary wall forms a key feature within the street scene of Hubbastone Road/New Quay Street, with a similar boundary wall to the opposite side. Any significant variation in terms of the design or materials of the proposed wall may result in an adverse impact on the character and appearance of the surrounding street scene and the setting of this part of the Appledore Conservation Area.

Full details of the proposed boundary wall will be required prior to works commencing on site and a condition to secure these could be included as part of any recommendation.

A cross section has also been provided which indicated the change in levels between the proposed development and the nearest neighbouring dwellings.

The design and scale of the proposals is considered to take account of the transition between the commercial scale of buildings to the south and the domestic scale of those to the north of the site, whilst acknowledging the former industrial uses of the site. The design would include materials which reflect the proposed uses and the former/established industrial use of the site and would retain a strong boundary wall along Hubbastone Road/New Quay Street which is a key feature of the surrounding street scene. Whilst the height of parts of the proposed buildings would extend above the height of the former buildings on site, the overall bulk and mass of the structures would be reduced when compared to the scale of the previous industrial buildings on the site.

Taking account of the former buildings on the site and the reduced scale and height of the proposed development, a harmful impact on the character and appearance of the surrounding landscape and townscape is not considered to result. The proposed development is considered to be in keeping with the provisions of Local Plan Policies ST04, DM08A and DM04 in this regard.

Policy ST05 relates to sustainable construction noting that all new major development proposals will make a positive contribution towards the creation of resilient and cohesive communities and notes that non-domestic development of at least 1,000m<sup>2</sup> will be expected to achieve a BREEAM rating of 'Very Good'. All new major development is also encouraged to be built to a standard which minimises the consumption of resources during construction and occupation.

A Statement in relation to Policy ST05 has been provided along with an updated Sustainability Statement in support of the application. These confirm two potential options for the development, one to satisfy Part L of the Building Regulations which would provide an 8.1% reduction in carbon emissions compared to the baseline; and Option B which seeks a Net Zero scenario. The proposals detail the

window strategy for the development, along with details of the mechanical ventilation strategy, materials, water efficiency measures, flood risk considerations and the potential for water pollution within the development. Sustainable transport provisions and waste management considerations are also included as part of the assessment to reach either of these two scenarios.

Whilst it is appreciated that at this stage of the development it is not possible to confirm many of these details, the submitted information confirms that the proposed development can be constructed to a standard which minimises the consumption of resources during construction and operation. In addition, the consideration of the proposed works required to meet Part L of the Building Regulations, much of which crosses over with the BREEAM principles, is also noted. The measures set out in the updated Statement go beyond simply reducing carbon emissions relative to Part L and include the other elements of BREEAM including water consumption, transport, health & well-being, resources, pollution, materials and waste. A Construction Environmental Management Plan has also been provided which includes a resource management plan for the development and Waste Audit Statement which relates to both the operational and construction phases.

On this basis, the proposed development is considered to be in keeping with the provisions of Policy ST05 of the Local Plan.

Comments from DCC Waste and Minerals have made reference to the provisions of Policy W4 of the Devon Waste Plan requiring the submission of a Waste Audit Statement. A Waste Audit Statement has been submitted which sets out the waste arrangements for the office and workshop uses, along with the design of on-site waste provision. Initial comments received from the County Council confirmed that additional information would be required to satisfy all the criteria within Policy W4. The applicant has indicated that much of this information would not be available at this stage, rather would be able to be provided at a later stage in the development and secured via condition. The County Council have confirmed that this is acceptable and have provided wording of a suitable condition.

The Police Designing Out Crime Officer has commented on the submitted plans as amended noting that many of the comments raised in relation to the previous scheme remain valid in relation to the amended, reduced scheme. Much of the advice relates to the detailed design of the buildings in terms of specifications for windows, doors, locks etc which falls outside of the planning remit. The most recent comments recommend the reconsideration of the internal layout of the ground floor facilities. An amended ground floor plan layout has been submitted to address this and confirmation received from the Police that they are happy this matter has been addressed. No specific objections to the layout, design, use or access to the development have been raised by the Police Designing Out Crime Officer.

#### **4. Impact on Residential Amenities**

Local Plan Policy DM12 notes that proposed employment activities should be carried out without undue detriment to residential amenity and this is also set out in Policies DM04 and DM01. Policy DM01 specifically states that; *'Development will be supported where: (a) it would not significantly harm the amenities of any neighbouring occupiers or uses; and (b) the intended occupants of the proposed development would not be harmed as a result of existing or allocated uses'*.

The nature of the proposed development is intended to include uses which fall within Class E (g) (Commercial, Business and Service) of the Use Classes Order. This Use Class includes offices to carry out any operational or administrative function, research and development of products or processes or industrial processes. The key element of these uses being included within Class E is that they should be able to be carried out in a residential area without detriment to its amenity.

The proposed uses include office accommodation to the upper floors with workshops to the lower floor level. These uses are considered to be compatible with the predominantly surrounding residential area to the north and west, taking account of the former commercial uses of the site which are established along with the more industrial nature of the sites to the Shipyard located to the south of the application site.

The existing application site is set below the height of the adjacent highway along New Quay Street/Hubbastone Road, with neighbouring dwellings to the west set above the highway level (South

Road). The nearest neighbouring dwellings to the north at The Launches and Dockside are set at a similar height to the application site.

The information included within the updated Design and Access Statement (dated 24<sup>th</sup> July 2024) provides some comparisons between the initial submission and that now proposed, indicating a lower height to all parts of the site. This also includes cross section drawings which show the change in levels between the adjacent highway and application site, with the ground level of the site set some 3 metres below the level of the highway.

The proposed plans indicate the inclusion of two floors of accommodation to the southern section of the development and central atrium element, with a two storey pitched roof element to the northernmost part of the building to include a pitched roofline as a reflection of the previous warehouse building. The central section of the building would be single storey in height albeit with a 4.8m floor to ceiling height, with a flat roof above. The amended scheme would also include a reduced footprint when compared to the initially proposed scheme.

The proposed new buildings on the site would be set further to the east than the previous structures on the site, to accommodate footpath provision along the road frontage and improve the existing visibility splays from the access point. This would result in a greater distance to neighbouring properties to the west.

The proposed western elevation of the development would include first floor windows to the southern block, serving the office space, which would face towards neighbouring occupiers on South Road. These windows would be located over 31 metres from the nearest dwellinghouse on South Road (located to the southern side of this road) to the west which would be set significantly above the height of the highway at this point.

A distance of between 20 and 22 metres would be provided from the proposed single storey flat roof section of the building and the end flank wall of properties to the northern side of South Road (which are located closest to this part of the development). A cross-section of this relationship has been submitted by the applicants to demonstrate the change in levels between the two sites and the likely impacts of the development on neighbouring amenities from this side. The significant change in levels between the two sites together with the distance, is not considered to result in a harmful impact on the amenities of neighbouring occupiers. This takes account of the inclusion of a flat roof element to the building at this point.

The proposed development would be set approximately 15.8 metres from the front elevation of no. 53 New Street. This property is also set above the height of both the highway and application site, however it is noted that first floor windows are proposed to the western elevation of the two storey, pitched roof element. These windows are indicated on the submitted cross sections as serving a void for future development. Taking account of the likely later inclusion of a first floor level and noting the addition of windows to other elevations, it is considered reasonable to include a condition to ensure that these windows are obscure glazed to ensure that no overlooking of neighbouring properties would result.

The proposed buildings would be located at some distance to the northern elevation, closest to The Launches. No windows are proposed to the northern elevation of the proposed development and a harmful impact on the amenities of neighbouring occupiers to this dwelling is not considered to result.

A number of proposed break-out seating areas are proposed within the amended scheme, although these are now all set some distance from the northern boundary of the site adjacent to The Launches. A harmful impact on the amenities of neighbouring occupiers from the use of these areas is not considered to result.

The Council's Environmental Protection Officer has commented on the submitted plans noting the historic industrial/commercial uses of the site with an element of noise associated with these. Notwithstanding this, the potential for the new uses to add external plant and machinery is highlighted with the potential to adversely impact neighbouring residential amenity. The Environmental Protection Officer makes reference to the Noise Assessment submitted in support of the application and

recommends the inclusion of a condition which would ensure that external plant and machinery would not exceed a specified level at the boundaries of nearby noise sensitive receptors.

In addition, the Environmental Protection Officer has recommended the inclusion of a condition to secure a Construction Environmental Management Plan to ensure that an adverse impact on neighbouring occupiers would not result from the construction phase of the development. This would include measures to control dust, mud on surrounding highways and mitigation in relation to noise, vibration and lighting. A further condition is also recommended to secure construction working hours including deliveries. These are considered reasonable to ensure an adverse impact on the amenities of neighbouring residential occupiers would not result.

A contaminated land report has been submitted in support of the application and the Environmental Protection Officer has agreed with the findings of the report which do not pose a risk to human health given the proposed commercial use of the site. A condition is recommended to be included as part of any permission granted in relation to unexpected contamination.

The Environmental Protection Officer has also recommended a condition to be included in relation to asbestos and its appropriate handling and disposal during the demolition works. Given that a separate consent for the demolition of the buildings has already been granted and these works carried out this is not considered to be required. It is noted that the demolition application was subject to a method statement which included specific procedures for the removal of any suspected asbestos from the existing buildings.

In relation to the amended proposals the Environmental Protection Officer has reiterated the need for the conditions outlined above and further recommends a condition stipulating that the construction works should be carried out in accordance with the 'Construction Mitigation Measures' outlined in Appendix C of the Air Quality Assessment (Revision 1.1). These conditions could all be included as part of any recommendation.

It is not considered that the design and layout of the proposed buildings would result in an adverse impact on the amenities of neighbouring occupiers by virtue of overlooking or loss of privacy. The proposed development is considered to accord with the provisions of Policies DM01, DM04 and DM12 of the Local Plan in this regard. This assessment has taken account of letters of representation noting concerns about overlooking and a loss of views and privacy from neighbouring properties.

## **5. Access and Parking**

Policy DM12 emphasises that new employment development should include an adequate and safe access and not give rise to excessive or inappropriate traffic and should contribute to the general aim of reducing the need to travel by private car. Policies DM05 specifically relates to highways impacts noting:

*'(1) All development must ensure safe and well designed vehicular access and egress, adequate parking and layouts which consider the needs and accessibility of all highway users including cyclists and pedestrians.*

*'(2) All development shall protect and enhance existing public rights of way, footways, cycleways and bridleways and facilitate improvements to existing or provide new connections to those routes where practical to do so.'*

Policy DM06 relates to car parking provision stating that development proposals will be expected to provide an appropriate scale and range of parking provision to meet anticipated needs.

As amended, the proposed development would include the provision of 60 parking spaces within the site, of which three would be designated for disabled use. A number of these spaces would be provided immediately to the east of the building in close proximity to the workshops and the remainder would be located to the southern end of the site. The main access to the site would be retained with improved visibility splays. A further access would be created within the southern boundary which would provide direct access to the adjacent public slipway.

The proposed works to the existing boundary wall to the west of the site would result in an improved visibility splay to the south for vehicles exiting the site, making use of the newly formed footpath. A cycle parking area to the northern part of the site would be included for users of the site.

The County Council's Highways Officer has been in discussions with the applicant and their agent in relation to the access to the site. The initial comments received from the Highways Officer noted three elements of the developments specifically. These included the widening of the carriageway adjacent to the site and it is considered that there is a suitable engineering solution for the proposals subject to appropriate Section 38/278 provisions and the provision of a new footpath across the frontage of the site which would be suitable mitigation for the works to the highway. In relation to the retaining wall, it was noted that this will require an Approval In Principle from the Highways Department and will remain in private ownership.

The Highways Officer has noted the trip movements to and from the site which are related to the previous and established uses of the site and used this as a basis for the assessment of the proposed development. The Highways Officer confirms that the development would result in an increase in overall movements compared to the existing situation, that these would include AM and PM peaks and these should be seen in the context of the increased carriageway width and the provision of a footway as mitigation.

Consideration has also been given to the use of the site by refuse vehicles and emergency services with swept path analysis for both of these being provided for consideration.

The initial comments from the Highways Officer noted that the layout would not appear to permit the use of the site by Large Goods Vehicles (LGVs)/articulated lorries of up to 15.5 metres in length.

This was then clarified by the applicant who confirmed that the intention was for the use of the site (as required by the demands of eventual occupiers of the site) to include access by LGVs. A further swept path analysis was then provided to indicate how a vehicle of this scale could access the site, turn and exit in a forward gear.

The Highways Officer has subsequently provided updated comments (dated 17<sup>th</sup> September) which conclude that the swept path does demonstrate that the movement of LGVs within the site is achievable, albeit the safety margins are tight and whilst the passing options on the adjacent highway are limited, these will be facilitated by the proposed development, with the widening of the adjacent highway.

The Highways Officer concludes that subject to the inclusion of a number of conditions, it is considered that the proposed development offers 'safe and suitable' access, and the cumulative impact would not be severe, as is the test in the NPPF.

Taking account of the lengthy discussions which have taken place in relation to the access arrangements for the site and the additional information provided, the proposed development is not considered to result in a harmful impact on the adjacent highway and would include suitable parking provision taking account of the nature of the proposed use. Subject to the proposed conditions recommended by the Highways Officer, the proposed development is considered to be in keeping with the provisions of Local and National Policies in this regard.

## **6. Drainage and Flood Risk**

Local Plan Policy ST03 emphasises that development should be designed and constructed to take account of the impacts of climate change and minimise the risk to and vulnerability of people, land, infrastructure and property. Policy DM02 relates to environmental protection noting the developments will be supported where they do not result in unacceptable impacts to the pollution of surface or ground water.

Paragraph 173 of the NPPF notes that when determining planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. It further notes:

*'Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:*

- a) *Within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;*
- b) *The development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;*
- c) *It would incorporate sustainable drainage systems, unless there is clear evidence that this would be inappropriate;*
- d) *Any residual risk can be safely managed; and*
- e) *Safe access and escape routes are included where appropriate, as part of an agreed emergency plan.'*

An amended Flood Risk Assessment & Drainage Strategy (dated 25<sup>th</sup> July 2024) has been submitted in support of the proposal which confirms that much of the site is located within Flood Zone 1 and the lower lying areas closer to the Torridge estuary (eastern boundary of site) are within Flood Zones 2 and 3. It is noted that due to predicted rising sea levels, the extents of Flood Zones 2 and 3 will increase over time.

The quay wall is noted to provide flood defences to a 1 in 5 year standard. The proposed development is confirmed to include a first floor level which is approximately 6 metres above the 1 in 200 year still water tidal level and free from the impacts of a potential wave overtopping event. The ground floor level would include a raised finished floor level and proposes 'less vulnerable' uses. In addition, all doors, services (e.g. electricity and air conditioning) and the plant room will be set above the design flood level for resistance and resilience measures. Any entrance areas which include a finished floor level below the flood threshold should include flood defence measures to minimise the impact of a flood event. Provisions in terms of a flood emergency management plan are also proposed, to be developed in conjunction with future occupiers.

Confirmation has been provided that an appropriate emergency access would be included within the site outside of the likely flooded area.

The initial consultation response from the Environment Agency requested the provision of a sequential test in terms of the selection of the application site for the proposed development. This is included within the amended FRA and notes the development includes water compatible uses which require a quayside frontage, as a result a review of alternative sites has been undertaken and there are no suitable alternative sites. The applicant confirms that the relevant measures proposed to demonstrate the safety of the building should be sufficient to satisfy the Exception Test required by the NPPF and the Environment Agency.

No further comments have been received from the Environment Agency in response to the updated scheme however their comments in relation to the initial submission raised no flood risk objections to the proposals. These noted the inclusion of a water compatible use to the ground floor and the provision of a less vulnerable use to the upper floors. These uses remain unaltered within the revised scheme.

Recommendations were made by the Environment Agency for the inclusion of a condition as part of any recommendation. This condition includes four parts; flood resilience measures, flood evacuation plan, adaptive wave return wall and lower ground floor usage.

The Environment Agency do however disagree with the findings of the originally submitted FRA noting that over 50% of the site considered to be within Flood Zone 2 and also Flood Zone 3 when considering wave action. The comments further note that the conclusions of the FRA wave assessment show that there is a risk to people and buildings on site both currently and in the future, hence the required flood mitigation measures. The Environment Agency further agree with the conclusions of the FRA which notes that the site is only at risk for a few hours either side of high tide.

Given the no objection conclusion reached by the previous Environment Agency comments, based on a scheme with a larger footprint and the same proposed works to the quay wall, it is considered reasonable to include the previous condition within any recommendation.

The County Council's Flood Risk Engineer commented on the initial scheme raising no in principle objection from a surface water drainage perspective and recommended the inclusion of a condition to be included which secures the provision of a detailed drainage design prior to works commencing on site. The comments which accompany this recommendation note that the proposed surface water drainage would discharge to the River Torridge and would be unattenuated due to the location of the site within the tidal portion of the River. Notwithstanding this, it is noted that a drainage trench is proposed to allow for additional storage in the event of tide locking of the outfall. Further advice is also provided in relation to green roofs and living walls.

In relation to the amended scheme, a formal comment has been received from the County Council's Flood Risk Engineers confirming that they have no in principle objection from a surface water drainage perspective. No condition has been included as part of this recommendation however a query has been introduced in relation to detailing of how the development with water quality issues from the proposed parking area. Confirmation has been sought from the County Council's Flood Risk Engineers as to whether the previously advised condition is still required. Due to the absence of clarity on this matter, the condition has been included within this recommendation and a further section added in relation to the query relating to potential pollution of surface water run off from the parking area.

Informally queries have also been raised by the County Council's Flood Risk Engineers in relation to the proposed tidal locking design to be included within the development and the applicant has provided further details on this matter. No response has been received to date to this additional information. An additional criteria has been included within the recommended surface water drainage condition in order to secure the provision of further details in relation to this matter.

Any further comments received will be reported verbally to the Committee.

South West Water have been consulted on the proposals and raised no objections subject to advising the applicant to discuss directly with them in relation to connections to the public sewerage system.

On the basis of the information submitted and the consultation responses received to date, the proposed development is considered to be designed to take account of the impacts of climate change and would minimise the risk to people, land, infrastructure and property. The proposed development would further ensure environmental protection in terms of the foul and surface water drainage plans. On this basis, the proposed development would comply with the provisions of Policies ST03 and DM02 of the Local Plan and relevant paragraphs of the NPPF.

## **7. 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 Regulations 2010 (Habitats Regulations 2010). This is further reinforced within the Local Plan through Policy DM08 which requires new development to 'avoid adverse impacts on existing ecology features as a first principle and enable net gains by designing in biodiversity features'.

Paragraph 186 of the NPPF sets out the key natural environment principles which should be followed by Local Planning Authorities when determining applications, as below:

- a) *If significant harm to biodiversity resulting from a development cannot be avoided (thorough locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*
- b) *Development on land within or outside of a Site of Special Scientific Interest, and which is likely to have an adverse impact on it (either individually or in combination with other development), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;*

- c) *Development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists;*

As noted above, the application site is located immediately adjacent to the Taw-Torridge Estuary SSSI with the proposed quay wall addition extending into this area. This area was designated due to its major importance for overwintering birds and migratory populations of wading birds. The estuary is noted within its designation to include very large areas of mud flats and sandbanks at low tide, which together with the beaches and saltmarshes, provide a rich and varied source of food for many birds and other animals.

A Preliminary Ecological Appraisal (PEA) (dated November 2023) has been submitted in support of the proposed development. This identifies potential impacts on bats, winter wading birds, breeding birds and migratory fish from the proposed development. The Appraisal confirms that bat emergence surveys, a survey of wintering birds and a detailed survey of the seawall, slipway and ruderal vegetation on site to identify any potential resting sites for otters have been undertaken. No otters have been recorded on or in the vicinity of the site.

The bat emergence survey confirmed that the former stone building on the site was used as a day roost for low numbers of common pipistrelle bats and the single storey building immediately to the south of the entrance is used as an occasional night roost by lesser horseshoe and greater horseshoe bats. Appropriate mitigation for this was erected on site in advance of the demolition works taking place earlier this year.

In relation to birds, the PEA identified high numbers of house sparrows nesting in the loose stonework to the south-western elevation of the former stone building and no wading birds were considered likely to nest on or near to the area of mudflat adjacent to the quay wall due to the tidal nature and the lack of other vegetation or other forms of shelter present.

Over-wintering and migratory populations of wading birds were assessed within the PEA noting the importance of the Taw-Torridge Estuary SSSI. It is however noted that the area of mudflats adjacent to the site is close to existing sources of disturbance with the surrounding industrial and residential areas of Appledore. On this basis, the area adjacent to the site is unlikely to be used by significant numbers of rarer wading birds, particularly those associated with the SSSI (e.g. golden plover, curlew and lapwing). The existing areas of hardstanding to the main application site is also considered to be of negligible value to overwintering and wading birds.

The PEA includes an assessment of the impacts of the works to the seawall on the adjacent mudflats noting the limited area that this will cover, the potential risks from construction works on the SSSI and the impacts of dredging. Mitigation measures are proposed to address these, including the incorporation of features within the new quay wall to encourage biodiversity. With respect to the impact on bats, the PEA confirms that a European Protected Species licence is required for the works to demolish the existing buildings on the site, with the loss of the existing roosts – as indicated above, the application no longer includes demolition as this has already been carried out under permitted development. Mitigation is indicated within the submitted report to take the form of temporary replacement roost provision on the site during the construction phase with further provision of bat boxes to be incorporated into the completed development along with a permanent roost within the south-western elevation of the new build.

Mitigation is also detailed for nesting birds in the form of swift blocks along with a precautionary approach to be taken to the development in relation to nesting birds. In relation to wading birds, the timing of the proposed piling works is recommended, noting the low number of surveyed birds to this part of the mudflats.

These mitigation measures can be secured via an appropriate condition.

Additional information in relation to the likely impacts of the development on migratory fish has been provided in the form of a separate appraisal following initial comments from Natural England. This

concludes that there is the potential for adverse effects on fish behaviour and health although short lived. Mitigation is recommended in the form of timing of works to coincide with low tide, outside of the overwintering bird period and outside of the main May to August period. The applicant has also confirmed that no dredging works are proposed to be undertaken as part of the proposed development.

In relation to the amended proposals, an amended Ecological Method Statement (dated 24<sup>th</sup> July 2024) has been provided which sets out an amended Summary of Potential Impacts, Mitigation, Compensation and Control Measures resulting from the proposals. These are set out in brief below:

#### Intertidal Mudflat:

- Purchase of off-site biodiversity credits to compensate for the loss of intertidal habitats;
- No dredging to be undertaken, piling works restricted to when site is uncovered by the tide and a soft start to the piling works;
- Adherence to guidance in terms of pollution control.

#### Foreshore:

- Restrict disturbance to the smallest possible footprint;
- No storage of materials or plant in this area;
- Use of fast drying materials;
- Restriction of run-off to include petrol interceptors.

#### Overwintering/migratory birds and wading birds:

- Timing of piling works;
- Measures to reduce the noise of piling works and wider constructions works;
- Limitations on lighting during construction and operational phases.

#### Estuarine and Migratory Fish:

- Measures to reduce the noise of piling works;
- No dredging to be carried out;
- Limitations on lighting during construction and operations phases;
- Measures to control pollution from surface water runoff.

#### Intertidal Faunal Communities:

- New quay wall to be enhanced with features for intertidal communities;
- No dredging and limitation to area of construction activities.

Initial comments received from Natural England requested additional information to determine the impacts of the development on the designated site, the Taw-Torridge Estuary SSSI, and required additional mitigation including a detailed method statement for the proposed works, including details of habitat loss, pollution, access to the foreshore, noise & lighting, surface water and ecological enhancements. Advice was also provided in relation to biodiversity net gain.

Further comments were provided by Natural England (dated 26<sup>th</sup> February 2024) in relation to the additional information in relation to the likely impacts of the development on migratory fish and updated Extended Phase 1 Intertidal Habitat & Sediment Surveys. These comments note the recommendations made to mitigate predicted impacts on ecological receptors and the need for a construction environmental management plan to pull together all of the ecological recommendations/timings in one document. The comments further note the sediment survey acknowledges the loss of intertidal mud priority habitat to the new sea wall but does not address how this could be accounted for.

The most recent comments from Natural England outline their remaining objections with the proposed scheme, specifically the potential impacts on the designated site, noting that the development would result in the loss of approximately 250m<sup>2</sup> of intertidal mud flats which is identified as a Priority Habitat. This is confirmed by Natural England not to be trivial or inconsequential and contrary to the target for the Taw-Torridge Estuary SSSI which is 'no loss of extent'. The comments from Natural England query whether the repair of the quay wall is an option to avoid the loss of SSSI habitats and mitigate any environmental harm.

The Natural England comments state that if the Local Planning Authority determines that the loss of habitat cannot be avoided or mitigated then compensation must be secured. Consideration is also recommended in terms of the likely impact of a wave return wall on the SSSI (should this be required by the Environment Agency).

Queries have also been raised in relation to the submitted Ecological Method Statement and Construction Management Plan to ensure that these secure the required mitigation in relation to migratory fish and overwintering birds.

The applicant has provided further detail in an effort to overcome these outstanding objections (dated 20<sup>th</sup> September 2024). In brief this outlines the following:

- The existing quay wall requires works in the near future regardless of whether the site is developed due to the condition of the existing structure;
- Work has been undertaken to try to find a site for the mitigation of the lost inter tidal mudflats however none have been identified;
- A sequential test has been undertaken in relation to the flood risk and no alternative sites for the development have been found given the nature of the proposed development;
- The Appledore Clean Marine Innovation Centre, with its amended design to reflect changing market demands, is considered to bring significant economic benefits as well as working towards a low carbon future;
- The works to the quay wall will increase its height providing flood mitigation measures for the future.

Having reviewed the submitted information in the context of national and local policies, the likely impact on all habitats and protected species are considered to be adequately mitigated and compensated for within the submitted information and recommended conditions, in accordance with the requirements of national and local policies, with the exception of the loss of the inter tidal mud flats.

Specifically in relation to this habitat, the applicant has provided photographs of the structural state of the existing quay wall, and it is agreed that works will need to be undertaken to this structure irrespective of the current application. The photographs also demonstrate the angle of the current quay wall which would preclude its use as an active quayside to some degree without alteration or extension. The proposed development would bring the site back into an active use with significant economic benefits and could form a catalyst for the surrounding green economy.

The provisions of the first section of paragraph 186 of the NPPF are clear, that where significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or compensated for then planning permission should be refused. The loss of the inter tidal mudflat habitat would result in harm to biodiversity and the loss of Priority Habitat identified in Natural England's consultation response. Intertidal mudflats (Littoral Sediments) are identified on the list of Priority Habitats for England.

This loss cannot be avoided due to the works required to the quay wall. The proposals do include the inclusion of artificial features to the quay wall to provide mudflat and rockpool ecological niches. There are no details of the amount of this feature which could be included within the scheme, however the new quay wall would have a length of 99 metres where these could be included. Extensive efforts have been made to find alternative locations for the formation of compensatory intertidal mudflats within the surrounding area and no alternatives have been identified to which any financial contributions could be directed.

In relation to the second part of paragraph 186 of the NPPF, the proposals will result in an adverse impact on the SSSI and therefore should not normally be permitted. The exception to this is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the SSSI and any broader impacts on the national network of SSSIs.

The proposed development would result in significant economic benefits, specifically in relation to green energy and technologies which would have a wider benefit on climate change and renewable energy.

These need to be weighed against the adverse impacts on the Taw-Torridge Estuary SSSI and it is your officers view that the unique economic opportunities and benefits together with the support towards tackling climate change are of such significance as to outweigh the harm to the SSSI.

A condition in relation to a Construction Environmental Management Plan (CEMP) has also been recommended by other consultees from an amenity and highway safety point of view. This has been altered to include mitigation measures for ecological receptors as recommended.

One key element of mitigation noted within the comments received from Natural England relates to external lighting proposed as part of the development. A condition to secure the submission of these details has been included as part of this recommendation.

## **8. Biodiversity Net Gain**

In relation to Biodiversity Net Gain (BNG), it is noted that reference to this is included in the updated Ecological Method Statement and the submitted Biodiversity Net Gain Assessment Report. Notwithstanding this, the application was submitted prior to the introduction of the BNG Regulations in February 2024. On this basis, a formal BNG metric assessment is not required.

Policy DM08 of the Local Plan does however note at section (8) that development should avoid adverse impact on existing features as a first principle and enable net gains by designing in biodiversity features and enhancements alongside new development. The existing site includes a hard surfaced area which has previously been used for the parking of vehicles as well as the footprints of the former industrial buildings. The proposed development would include landscaped areas around the new buildings which would result in a biodiversity net gain being achieved from the development, in accordance with the provisions of Policy DM08 of the Local Plan.

## **9. Infrastructure**

Policy ST23 of the Local Plan relates to infrastructure and notes that developments will be expected to provide, or contribute towards the timely provision of physical, social and green infrastructure made necessary by the specific and/or cumulative impact of those developments. Policy NOR which sets out the spatial strategy for Northam, Appledore and Westward Ho! specifically notes at section (j): *'new development will meet their own infrastructure requirements and will contribute to sustainable movement, including improved routes and facilities for cycling and walking'*.

Policy DM10 of the Local Plan relates specifically to green infrastructure provision noting that development will provide new accessible green infrastructure, including public open space and built facilities, to meet at least the green infrastructure quantitative and accessibility standards.

The proposed development would increase the quantum of commercial space on the site and therefore would result in an increased demand for green infrastructure. The applicant has acknowledged within their updated Green Infrastructure Statement that the proposed development would not result in the loss of any existing green infrastructure provision and the site, now cleared, is characterised by hard surfacing.

The Statement outlines the proposed green infrastructure and community benefits which would be provided as part of the proposed development. These include the provision of a widening of New Quay Street around the site with the provision of a footpath adjacent to the highway which would improve the existing provision for pedestrians as well as this part of the South West Coast Path. In addition, work would be undertaken to upgrade and improve the existing quay wall along with the resurfacing the existing public slipway to the southern end of the site (outside of the red line). This would facilitate the ongoing use of the slipway for local residents and visitors for recreational purposes. Within the site itself, a number of open spaces and seating areas of around 100m<sup>2</sup> would be provided to be used by those working at the site.

The provision of these elements of the scheme, with the majority for public benefit, would seek to offset the provision of a financial contribution towards community facilities more generally within the Appledore area. It is considered that, on balance, the proposed infrastructure provisions would meet the requirements of Policies ST23 and DM10 of the Local Plan in this regard with the inclusion of

appropriate green infrastructure and would assist in the wider strategic aim of improving sustainable movement with improved routes and facilities for cycling and walking as highlighted in Policy NOR. A condition can be included within this recommendation to ensure that these works are all completed in parallel with the development of the site.

### **10. Other Matters**

In relation to concerns raised in representations received previously, the applicant has confirmed that they have no intention to use the application site for the production or generation of hydrogen.

### **Conclusion**

The proposed development is supported in principle in this location and is considered to be in keeping with the character and appearance of the surrounding context. Subject to the recommended conditions, a harmful impact on the amenities of neighbouring occupiers would not result. The proposed works to the access and parking arrangements would include improvements to the adjacent highway and pedestrian facilities. Subject to the recommended conditions, suitable drainage provision has been made as well as suitable biodiversity and infrastructure provision. On balance, when considering the development as a whole, the less than substantial harm to heritage assets and adverse impacts of the quay wall extension on the adjacent SSSI, which involve the loss of Priority Habitat, are considered to be outweighed by the economic benefits of the development, along with the wider benefits of facilitating further investment in green technologies seeking to tackle the impacts of climate change.

### **Human rights**

Consideration has been given to the Human Rights Act 1998.

### **Recommendation**

GRANT subject to the following conditions:

1. The development to which this permission relates must be begun no 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 time requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).

2. The development hereby permitted shall be carried out in accordance with the approved plans listed in the Plans Schedule.

Reason: To ensure the development is carried out in accordance with the approved plans.

3. Prior to the commencement of development hereby permitted, including any site clearance, groundworks or construction within each sub-phase (save such preliminary or minor works that the Local Planning Authority may agree in writing), a more detailed Construction Environmental Management Plan (CEMP) to manage the outstanding impacts of construction during the life of the works, shall be submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt, the additional CEMP shall include:
  - a) details of the importation, disposal and removal of spoil and soil on site, including vegetation;
  - b) the location and covering of stockpiles;
  - c) further details relating to the control of fugitive dust from demolition, earthworks and construction activities; dust suppression;
  - d) any road closures required;
  - e) the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
  - g) areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the County highway for

loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;

- h) the means of enclosure of the site during construction works; and
- i) details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site;
- j) The proposed route of all construction traffic exceeding 7.5 tonnes;
- k) Details of the amount and location of construction worker parking;
- l) Photographic evidence of the condition of adjacent public highway prior to commencement of any work;
- m) details of any site construction office, compound and ancillary facility buildings;

The details so approved and any subsequent amendments as shall be agreed in writing by the Local Planning Authority shall be complied with in full and monitored by the applicants to ensure continuing compliance during the construction of the development.

Reason: To ensure that a harmful impact on the amenities of neighbouring occupiers as well as protected species and their habitats. This is a pre-commencement condition which is imposed to ensure that the Local Planning Authority is satisfied of the construction management plan prior to works commencing on site. Failure to provide this information prior to works commencing on site could lead to the risk of an adverse impact on the amenities of surrounding occupiers and pollution of the environment as well as a detrimental impact on protected species and habitats.

4. Prior to the commencement of development hereby permitted shall commence until the following information has been submitted to and approved in writing by the Local Planning Authority:
- (a) A detailed drainage design based upon the approved Middle Dock, Appledore Flood Risk Assessment and Drainage Strategy (Report Ref. E05856/001\_FRA, Rev. V1, dated 27th September 2023) with consideration of green roofs and living walls, re-using rainfall and SuDS planters or rain gardens
  - (b) Detailed proposals for the management of surface water and silt runoff from the site during construction of the development hereby permitted.
  - (c) Proposals for the adoption and maintenance of the permanent surface water drainage system.
  - (d) A plan indicating how exceedance flows will be safely managed at the site.
  - (e) Detailed proposals for the management of pollution from the surface water drainage of the parking areas to ensure water quality.
  - (f) Details of surface water drainage provision in the event of tidal locking.

No building hereby permitted shall be occupied until the works have been approved and implemented in accordance with the details under (a) - (e) above.

Reason: The above conditions are required to ensure the proposed surface water drainage system will operate effectively and will not cause an increase in flood risk either on the site, adjacent land or downstream in line with SuDS for Devon Guidance (2017) and national policies, including NPPF and PPG. The conditions should be pre-commencement since it is essential that the proposed surface water drainage system is shown to be feasible before works begin to avoid redesign / unnecessary delays during construction when site layout is fixed.

5. Prior to the commencement of development hereby permitted, an updated waste audit statement shall be submitted to, and approved in writing by, the Local Planning Authority. This statement shall include all information outlined in the waste audit template provided in Devon County Council's Waste Management and Infrastructure Supplementary Planning Document. The following points shall be addressed in the statement:
- Demonstrate the provisions made for the management of any waste generated to be in accordance with the waste hierarchy.
  - The amount of construction, demolition and excavation waste in tonnes, set out by the type of material.

- Identify targets for the re-use, recycling and recovery for each waste type from during construction, demolition and excavation, along with the methodology for auditing this waste including a monitoring scheme and corrective measures if failure to meet targets occurs.
- The details of the waste disposal methods likely to be used, including the name and location of the waste disposal site.
- Identify measures taken to avoid all waste occurring.

The development shall be carried out in accordance with the approved statement.

Reason: To minimise the amount of waste produced and promote sustainable methods of waste management in accordance with Policy W4 of the Devon Waste Plan and the Waste Management and Infrastructure Supplementary Planning Document. This information is required pre-commencement to ensure that all waste material is dealt with in a sustainable way from the outset of the development including any groundworks, demolition, construction and operation.

6. Prior to the commencement of development hereby permitted, the four following issues need to be resolved, by either detailed design, legal/planning agreement or product of reports/drawings, which will need to be approved by the LPA:-

The proposed lower ground floor level of 7mAOD, is only acceptable with four main mitigation measures:-

1. Flood resistant and resilience up to 8mAOD (1m above FFL) on all developments at quay level.
2. Flood evacuation plan – using the EA flood warning system (which offers a generalised flood alert for the area)
3. A future wave return wall to be added to the quay – an adaptive measure for climate change.
4. The lower ground floor can only be used for water compatible usage. The above four measures need to be conditioned/legally agreed in any planning permission or S106 agreement.

1. Flood Resistant and Resilience Measures We are unable to find these (apart from the drainage channel) on any of the submitted planning drawings but are discussed in the section 7.4 of Design & Access statement (page 61), and section 5.3 of the FRA and appendix 3 drawing. The individual flood mitigation measures need to be clearly shown on each buildings on a drawings that is part of the approved planning drawings. This needs to be at least 8mAOD, not 750mm above LGFL.

2. Flood Evacuation Plan This needs to be produced before any of the site is occupied and should be based on the latest ADEPT guidance. The proposed Safe Access and Egress route to New Quay street is acceptable, but the action that need to be taken on the lower ground floor and quay should be considered.

3. Adaptive Wave Return Wall The design of the quay wall includes structural measures that permit the future construction of a wave return wall on edge of the quay. However, there is little explanation on when or what triggers the need to construct this flood mitigation measure. This measure and trigger point is essential in permitting the site to be safe in the future, otherwise the risk from wave overtopping is significant/extreme hazard - Danger to Some or Risk to Life. Please note, the expensive of this wave wall will fall entirely on the land owner, as contribution from government grant is not permit under current funding guidance rules.

4. Lower Ground Floor Usage There needs to be some planning mechanism to ensure that only water compatible usage are permitted on the lower ground floor. Water compatible usage, and the types of fittings/equipment will need to be defined in any rental agreement.

Reason: To protect future occupiers of the site from flood risk. This is a pre-commencement condition which is imposed to ensure that the Local Planning Authority is satisfied of the flood mitigation measures prior to works commencing on site. Failure to provide this information prior to works commencing on site could lead to increased flood risk to the site and surroundings.

7. Notwithstanding the details shown in the application hereby permitted, prior to the works proceeding above DPC level, details (and/or representative samples) of the colour and texture of the facing and roofing materials to be used in the construction of the proposed development shall

be submitted to and agreed in writing by the Local Planning Authority. The agreed details shall be implemented before the development hereby permitted is brought into use and shall thereafter be retained as such.

Reason: To enable the Local Planning Authority to consider the suitability of the materials to be used for the development. To ensure the development is in appropriate in the setting of the Appledore Conservation Area.

8. Notwithstanding the details shown in the application hereby permitted, prior to the commencement of the works hereby approved, details of the proposed materials, design and height of the boundary wall to the western boundary of the site (including representative samples) shall be submitted to and agreed in writing by the Local Planning Authority. The agreed details shall be implemented before the development hereby permitted is brought into use and shall thereafter be retained as such.

Reason: To enable the Local Planning Authority to consider the suitability of the materials to be used for the development. To ensure the development is in appropriate in the setting of the Appledore Conservation Area.

9. Prior to their installation, full details of the proposed gates to the entrance to the development (including design, siting and materials) shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be undertaken in accordance with such approved details and retained as such thereafter.

Reason: To ensure the development does not result in a harmful impact on the character and appearance of the surrounding area and setting of Appledore Conservation Area or nearby listed buildings.

10. Prior to the occupation of any building on the site, the footpath link across the site frontage shall be provided on Hubbastone Road/New Quay Street to the satisfaction of the Local Planning Authority in accordance with diagram 32522-HYD-XX-XX-DR-C-0011 Rev P03.

Reason: To provide safe and suitable pedestrian access.

11. The development shall proceed in accordance with the Written Scheme of Investigation prepared by Oakford Archaeology (OA Project No. 2119, V1.1 dated 8 October 2023) and submitted in support of this planning application. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.

Reason: To ensure, in accordance with Policy DM07 of the North Devon and Torridge Local Plan 2011 - 2031 and paragraph 211 of the National Planning Policy Framework (2023), that an appropriate record is made of archaeological evidence that may be affected by the development.

12. The development shall not be brought into its intended use until (i) the post investigation assessment has been completed in accordance with the approved Written Scheme of Investigation and (ii) that the provision made for analysis, publication and dissemination of results, and archive deposition, has been confirmed in writing to, and approved by, the Local Planning Authority.

Reason: To comply with Paragraph 211 of the NPPF (2023), which requires the developer to record and advance understanding of the significance of heritage assets, and to ensure that the information gathered becomes publicly accessible.'

13. The development hereby approved shall be carried out in accordance with the 'Construction Mitigation Measures' outlined in Appendix C of the Air Quality Assessment (Revision 1.1).

Reason: To ensure that the approved development does not result in a harmful impact on the amenities of neighbouring occupiers.

14. The rating level of noise from external plant and equipment shall not exceed 30dB LAr, Tr (as defined in BS4142:2014+A1:2019) at any time when evaluated at the boundary of any noise sensitive receptors. Noise levels shall be measured and rated in accordance with British Standard BS4142:2014+A1:2019.

Reason: To protect residential amenity.

15. Notwithstanding the outstanding details required by Condition 3, the development hereby permitted shall be undertaken in accordance with the submitted Construction Environmental Management Plan prepared by BAM dated 7<sup>th</sup> July 2024.

Reason: To ensure a harmful impact on the amenities of neighbouring occupiers and the safety of highway users does not result.

16. Notwithstanding the details contained in the submitted Construction Environmental Management Plan, construction works (including associated deliveries) shall not take place other than between 0700hrs and 1900hrs on Mondays to Fridays, Saturdays between 0800hrs and 1300hrs and at no time on Sundays and Bank Holidays.

Reason: To protect the amenities of neighbouring properties.

17. Deliveries made to the site by Heavy Goods Vehicles shall not take place other than between 0800hrs and 1800hrs on any day.

Reason: To protect the amenities of neighbouring properties.

18. Should any contamination of soil or groundwater be discovered during development of the site, the Local Planning Authority should be contacted immediately. Site activities within that phase or subphase or part thereof, should be temporarily suspended until such time as a procedure for addressing such contamination, within that phase or sub-phase or part thereof, is agreed upon with the Local Planning Authority or other regulating bodies.

Reason: To protect human health and the environment

19. The works to upgrade and resurface the public slipway to the south of the application site, the provision of the new footway to the western boundary of the site and the break-out areas for staff within the site shall be undertaken and completed within 3 months of the first occupation of the new development.

Reason: To meet the requirements of green infrastructure provision, in accordance with Policies ST23 and DM10 of the Local Plan.

20. The proposed development shall be undertaken in accordance with the recommendations set out in the recommendations and mitigation measures outlined in the *Extended Phase 1 Intertidal Habitat & Sediment Surveys* (dated 4<sup>th</sup> February 2024), *ACMIC* and *Environmental Implications for Fish Species Data and Literature Review* (dated 31<sup>st</sup> January 2024), *Ecological Impact Assessment* (dated 29<sup>th</sup> November 2023) and *Preliminary Ecological Appraisal* (dated January 2022).

Reason: To ensure that the proposed development does not result in a detrimental impact on protected species.

21. The use of the site shall be restricted to Class E(g) uses of the Town and Country Planning (Use Classes) Order 1987 (as amended), specifically limited to businesses and activities directly

associated with marine-related industries, including but not limited to renewable and low carbon technologies, shipbuilding, repair, marine engineering, marine research, and related support services.

No other uses, including those permitted under the remainder of Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended), shall take place unless otherwise agreed in writing by the Local Planning Authority.

Reason: To restrict the use of the premises to one which is compatible with the surrounding area and to comply with the provisions of Policies ST09, DM01 and DM13 of the Local Plan.

22. Prior to the first occupation of any part of the development, full details of the proposed external lighting to the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be operated and retained in accordance with such details. For the avoidance of doubt, such details should include the siting of lighting, its specification and any baffling proposed along with hours of usage.

Reason: To ensure that the proposed development does not result in a harmful impact on protected species or designated sites within close proximity to the application site.

23. The first floor windows to the western elevation of Workshop 6 shall be glazed with obscure glazing prior to the building being brought into use and retained as such thereafter. For the avoidance of doubt, the use of obscure film will not be sufficient.

Reason: To ensure that a harmful impact in terms of overlooking to neighbouring residential properties to the west would not result.

24. Visibility splays shall be provided, laid out and maintained for that purpose at the site access in accordance with the attached diagram 32522-HYD-XX-XX-DR-C-0011 Rev P03 where the visibility splays provide intervisibility between any points on the X and Y axes at a height of 1.05 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway (identified as X) shall be 2.4 metres and the visibility distances along the nearer edge of the carriageway of the public highway (identified as Y) shall be 40 metres in both directions.

Reason: To provide adequate visibility from and of emerging vehicles.

25. Provision shall be made within the site for the disposal of surface water so that none drains on to any County Highway

Reason: In the interest of public safety and to prevent damage to the highway

## Plans Schedule

Reference	Received
0700 P04	05.12.2023
0701 P04	05.12.2023
0702 P04	05.12.2023
0703 P02	05.12.2023
0710 P02	05.12.2023
0711 P02	05.12.2023
0712 P02	05.12.2023
32522-HYD-XX-XX-DR-C-0124 P01	14.08.2024
PL09001 PL_PL04	02.01.2024
2398-KTA-XX-XX-D-A (01)00 10	29.08.2024

2398-KTA-XX-XX-D-A-(02)00 10	16.08.2024
32522-HYD-XX-XX-DR-C-0123 P01	14.08.2024
32522-HYD-XX-XX-DR-C-0125 P01	14.08.2024
2398-KTA-XX-XX-D-A-(01)02 3	29.07.2024
2398-KTA-XX-XX-D-A-(02)02 6	29.07.2024
2398-KTA-XX-XX-D-A-(02)03 8	29.07.2024
2398-KTA-XX-XX-D-A-(03)00 6	29.07.2024
2398-KTA-XX-XX-D-A-(04)00 6	29.07.2024
2398-KTA-XX-XX-D-A-(04)01 7	29.07.2024
2398-KTA-XX-XX-D-A-(04)03 2	29.07.2024
2398-KTA-XX-XX-D-A-(03)12	03.09.2024
32522-HYD-XX-XX-DR-C-0011 - (P02)	20.09.2024

## Statement of Engagement

The National Planning Policy Framework (paragraphs 38) requires local planning authorities to work positively and proactively with applicants to achieve sustainable development. Throughout the application process guidance has been given to the applicants and all outstanding issues have been identified.

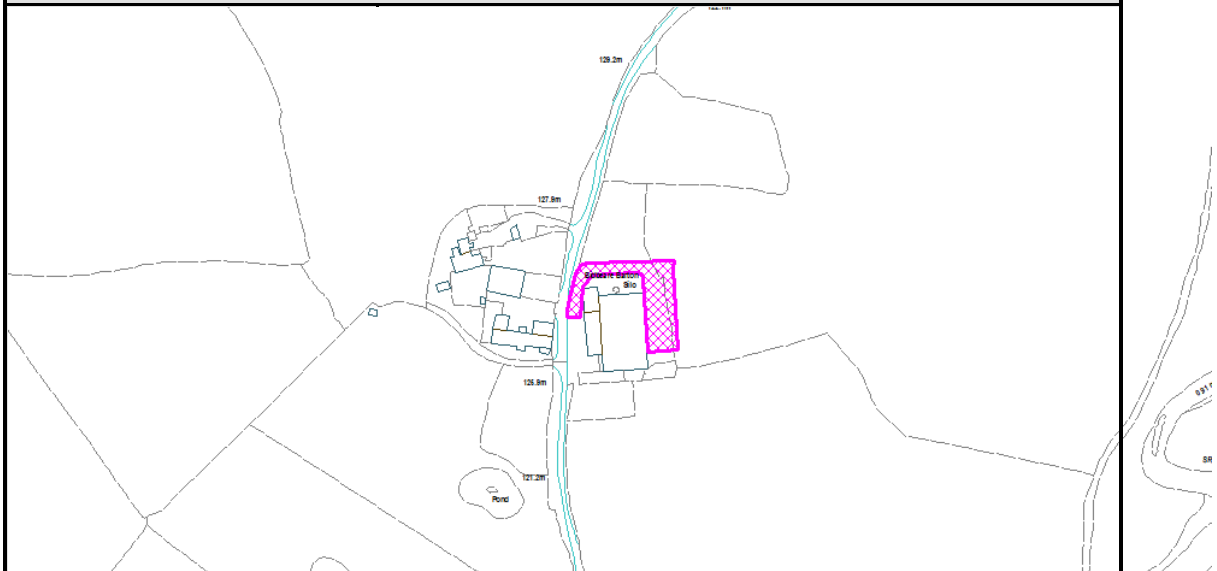
In this instance the Council required additional information following the consultation process. The need for additional information was addressed with the applicant and submitted for further consideration.

The Council has therefore demonstrated a positive and proactive manner in seeking solutions to problems arising in relation to the planning application.

# Agenda Item 7b

## Committee Report Addendum – 03.10.2024

<b>Application Number:</b>	1/0277/2024/FUL
<b>Registration date:</b>	25 March 2024
<b>Expiry date:</b>	20 May 2024
<b>Applicant:</b>	Mr and Mrs J Seabridge
<b>Agent:</b>	Acorus
<b>Case Officer:</b>	Mr Peter Stapley
<b>Site Address:</b>	Buildings And Land At Grid Reference 266213 105908, Bondleigh, Devon,
<b>Proposal:</b>	Provision of a new agricultural livestock building
<b>Recommendation:</b>	Grant



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## Background:

This Committee Addendum Report seeks to address a number of matters raised by neighbouring objectors, Mr and Mrs Ward, in the subsequent three written representations received since the publishing of the original Committee Report on the 25<sup>th</sup> of July 2024.

Mr and Mrs Ward object to the application, reference: 1/0277/2024/FUL. They are the owners and occupants of Berry Hill Barn, which neighbours the application site and is located approximately 19 metres from the existing barns and approximately 52 metres from the proposed building (building to building).

This report will address the following matters:

- Fall-back Position.
- Disbenefits.
- Impact on Residential Amenity and Environmental Management Plan (EMP).
- Impact on Site of Special Scientific Interest (SSSI).
- Other Matters.

This addendum should be read in conjunction with the original Committee Report, which is appended.

## Fall-back Position:

Mr and Mrs Ward have raised concerns about the Council's approach to existing development which your Officer considers would still take place if the application is refused.

A *fall-back* (i.e. development which an applicant could undertake without a further grant of planning permission) is capable of being a material consideration in favour of granting planning permission.

The key considerations for Members are: -

- i. Does the applicant have a lawful ability to undertake the fall-back development?
- ii. Can the applicant show that there is at least a *real prospect* that it will undertake the fall-back development if planning permission is refused? This does not have to be probable or likely: a possibility will suffice.
- iii. If a fall-back development should be treated as a material consideration, how much weight should be afforded to the consideration. This will involve an assessment of the *degree* of probability of the fall-back occurring and a comparison between the planning implications of the fall-back and the planning implications of the Proposed Development.

In the case of *R (Ward) v Torridge District Council* [2023] EWHC 2629 (KB), the Council's decision to grant planning permission to the applicants for development at the Site was successfully challenged by Mr and Mrs Ward by way of judicial review. The Judgment of Mr Justice Jay has been made available for Members to read.

One of the grounds of challenge in the case was that the Council unlawfully concluded that the applicants had a fall-back position of being able to operate the Site as a dairy farm without unauthorised development.

In paragraph 28 of the Judgment, Mr Justice Jay found that the officer "*was required to consider not merely what was achievable or "doable" as permitted development under overarching planning law principles, but also whether there was a real prospect in practice that without planning permission the Interested Party would act in this fashion. There is no indication that the planning officer proceeded beyond the Deputy High Court Judge's stage (a) to stage (b).*"

The Judge also found that the inferences “clearly pointed in the other direction: namely, that without planning permission on the main application the dairy operation could not be sustained.” These inferences included the following:

- i. *‘The first planning officer said that the unauthorised operations were “fundamental” to use as a dairy farm.*
- ii. *The Interested Party never sought to contradict that conclusion.*
- iii. *In the planning statement submitted in connection with all four applications, the Interested Party were inviting the Defendant to consider the proposal on a composite basis. I have said that this did not happen, for reasons which are not clear, but nowhere did the Interested Party say that without permission being granted on the main application, his dairy operation would or might continue.*
- iv. *Given the copious references to animal welfare standards in the planning statement, the obvious inference is that absent the unauthorised development these standards would not be achieved. The fact remains that the unauthorised development was carried out for a reason: to enable the dairy operation to take place.’*

The application being considered now is different from the application addressed in the Judicial Review proceedings. The application challenged concerned a wider application for retrospective permission and other development. It was also made at the same time as 2 other planning applications for development at the Site. The current application concerns the provision of a new agricultural livestock building, there is only one application before the Council and there have been a number of material changes since the Judicial Review which are addressed below.

Your Officer’s assessment is as follows:

***Does the applicant have a lawful ability to undertake the fall-back development?***

Following the Judicial Review, the Council considered whether it would be expedient to take enforcement action against the applicants in respect of development previously considered unlawful development including some development subject to the planning decision which was quashed by the High Court. These included engineering works to create a hardstanding and concrete pad, internal works to a barn and the adaptation of an open barn to a closed barn (the Dutch Barn). With the benefit of more detailed consideration and legal advice, the Council decided that some of the development concerned amounted to permitted development and did not require planning permission. The enforcement report (a copy of which is made available to Members to consider) explains:

*‘Internal works to barn:*

*The Council has consistently maintained that there has been no change of use at the site and that the use of the barns to accommodate a dairy herd is not a change of use. This position was supported within both legal judgements and the consideration of Ms Blackmore on the first planning application where she noted the introduction of cubicles and milking equipment is not considered to require planning permission nor is any internal works to remove internal walls, the grain dryer etc.*

*Mr Ward has cited the ‘400 metre rule’, referencing Part 6 of the General Permitted Development Order. As no change of use has taken place, most of the barn accommodation is not captured by this, except for the small section subject to external cladding (see below) as these works have on the face of it, enabled livestock to be accommodated. ...*

*S55 of the T&CP Act (2)(a) indicates that alterations / works to a building which affect only the interior do not involve development, however it further states if they are works for the alteration of a building by providing additional space in it underground then this would be development. It is not considered that development has occurred to create ‘space’ underground within the existing barns and the Enforcement Officer’s visit noted the use of a pre-existing pit area. The introduction of pipes within the existing ground area is not considered to be development in the context of S55.”*

Cladding / enclosure of open barn:

*These external works would be allowed via Class A (a) as they constitute works for the 'alteration of a building' that are reasonably necessary for the purposes of agriculture. However, Part A.1 (i) clarifies that such works are not permitted where the building would be used for the accommodation of livestock and within 400 metres of the curtilage of a protected building. Given the building is currently used to accommodate livestock, the works must be considered in breach and requiring planning permission. If the building were to be used for storage, then this would not be the case.*

External engineering operations:

*Part A (b) of Part 6 allows 'any engineering operations' which are reasonably necessary for the purposes of agriculture. There are no subsequent provisions in Part A.1 that would restrict or prevent these works, and the Council does consider them to be 'reasonably necessary for the purposes of agriculture'.*

Fences / enclosures

*Class A, Part 2 of the General Permitted Development Order enables the erection, construction, maintenance, improvement or alteration of a gate, fence, wall, or other means of enclosure to be permitted development subject to the conditions set out in Part A.1. The fences around the loafing area would be allowed under permitted development.*

Summary

*The above evaluation leads to a concluding position whereby the cladding of the building does constitute a breach of planning, but only because the building is currently being used to accommodate livestock. The engineering works are enabled through permitted development without the need for prior approval. The internal works to the building would not constitute development under S55.'*

In respect of the aspects of development which were unauthorised, the Council carefully considered all material considerations and decided that it would not be expedient to take enforcement action for the reasons set out within the enforcement report.

Mr and Mrs Ward's solicitors have stated that the unlawful development was substantially completed by 16<sup>th</sup> June 2020 and would therefore obtain statutory immunity by 16<sup>th</sup> June 2024.

The view of your Officer is that the unlawful development (identified within the enforcement report) was substantially completed by 15<sup>th</sup> June 2020, as attested by the applicant on the 17<sup>th</sup> February 2021, this is confirmed by the Councils Enforcement Case.

Section 171B of the Town and Country Planning Act 1990 provided that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

Section 171B has been amended by Section 115 of the Levelling-up and Regeneration Act 2023 and the period for immunity is now 10 years. However, those changes do not apply where operations were substantially completed before the day on which section 115 came into force (Reg. 5, The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024). Section 115 came into force on 25 April 2024 (Regulation 3, The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024).

This means that the unauthorised development is now immune from enforcement.

Section 191(2) of the Town and Country Planning Act 1990 provides that for the purposes of the Act, operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the

time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

As a result, your Officer's view is that the engineering works creating a hardstanding and concrete pad, the internal works to an internal barn and the adaptation of an open barn to a closed barn (the Dutch Barn), which are used as part of the applicant's dairy business, all now constitute lawful development.

As recognised in the High Court Judgment, the use of the barns for the housing and milking of a dairy herd did not amount to a change in use (para. 5 of the Judgment).

Therefore, the Officer considers that the applicant has the lawful ability to use the existing Dutch Barn for dairy operations, together with the operational development referred to above (and use of the hardstanding in the dairy operations), now including if permission for the new agricultural building is not granted. Further, such use would not be subject to any planning conditions and there is no limit on the number of cows which can be accommodated in the Dutch Barn.

***Can the applicant show that there is at least a real prospect that it will undertake the fall-back development if planning permission is refused?***

Your Officer considers that the existing Dutch Barn and the Site would continue to be used for dairy operations if permission for the new building is not granted:

- i. The Site and the existing barns are currently being used for dairy operations and have been operating in this manner for a number of years.
- ii. The dairy business appears to be the predominant use of the applicant's land and its main business venture, as confirmed by the Planning Statement and in further correspondence with the applicant, received 20<sup>th</sup> September 2024.
- iii. The applicants told the Council that they will continue to operate a dairy business and to use the Dutch Barn.
- iv. A report from Landsense Professional obtained after the High Court Judgment concludes:

*'With regard to the unauthorised works to the building, at that time and in those specific set of circumstances I see no reason why a reasonable person would not utilise the buildings as they were. None of these alterations would compromise the cow welfare to such a condition as to render the farm untenable and even if it was deemed untenable, the applicant had the option to rent buildings elsewhere (as he has subsequently done so) which we believe would allow the farm to continue to operate without it.'*

*With regard to the concreting and engineering works, we believe the works would have fallen within Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015 as amended and as such we can understand why the applicant honestly and genuinely believed that such work could be carried out under his permitted development rights.*

*Had the concrete loafing area not been available, we believe the unit could still operate, albeit the scale may have to be reduced to allow more space within the cubicle house as a loafing area etc.'*

In Magistrates' Court proceedings pursued by Mr and Mrs Ward against the applicants for statutory nuisance, the District Judge heard evidence and said (in the context of the earlier planning application): *"I accept the evidence of Mr Seabridge that irrespective of the planning decision he would still continue to house cattle in the barns and operate as a dairy."*

The applicant has informed the Case Officer, both formally in writing and informally during in-person meetings at the Council's offices and on-site, that the intention is to continually operate as a Dairy Business and that he would continue to use the Dutch Barn as livestock accommodation.

For these reasons, your Officer considers that it is highly likely that the applicant will continue to use the existing Dutch Barn for dairy operations, together with the operational development referred to above (and use of the hardstanding in the dairy operations), if permission for the new agricultural building is not granted.

Your Officer also considers that it is very likely that the Dutch Barn will be utilised to its full capacity. This was confirmed by the applicant, in that accommodating stock within the entirety of the Dutch Barn would improve the efficiency of the enterprise and the welfare of the young stock.

***If a fall-back development should be treated as a material consideration, how much weight should be afforded to the consideration?***

Your Officer's assessment is that the continued use of the Dutch Barn for dairy operations is highly probable. Your Officer also considers that the application provides an opportunity to apply planning conditions which do not currently exist and to impose a condition that the Dutch Barn cannot be used for the accommodation of livestock which will move dairy operations from the Dutch Barn further away from Berry Hill and other neighbours to the new building. These are considered to be positive benefits which support the grant of permission, and which carry significant weight.

### **Disbenefits**

It is necessary to consider the disbenefits of the application if granted against the planning implications of the existing use continuing if the application is not granted. These are addressed in the main report.

A matter raised by Mr and Mrs Ward is the potential for the dairy operations to increase as a result of the grant of permission for the new building.

The Applicant's Planning Statement states that the provision of the replacement building "*will not change livestock numbers on the unit*".

Your Officer considers that the potential increase in the scale of the operation as a result of the proposed development is limited for the reasons set out in the main report. It is considered that the negligible potential increase when considered with the relocation of activities on the Site would result in no significant harm to the amenities of Berry Hill beyond that existing already and that the benefits materially outweigh the disbenefits.

Mr and Mrs Ward have referred to the case of *R (Ashchurch Rural Parish Council) v Tewkesbury Borough Council* [2023] EWCA Civ 101. In *Frack Free Balcombe Residents Association v SoS for Levelling Up, Housing and Communities* [2023] EWHC 2548 (Admin), Lieven J said that the *Ashchurch* case "*was a somewhat odd case where the Local Planning Authority ("LPA") had granted permission for a road bridge over a railway, but with no connections to the wider road network. This was because funding existed for the bridge but at that time not for the connecting roads.*"

In *Ashchurch*, the planning committee was directed that they could not or must not take account of the harms of the proposed development that the bridge would facilitate. The local planning authority took into account the prospective benefits of the wider development as material factors but did not take into account any adverse impact that the wider development might have, to the extent that it was possible to do so.

For the avoidance of any doubt, when determining the application, Members are entitled to and should take into account the benefits and disbenefits of the proposed development.

The advice given by your Officers (as set out in the main report and this addendum), including in respect of the benefits, relates to the proposed development. The application concerns the limited development of the new building and does not refer to a wider scheme. There are no other

outstanding planning applications for the Site. No wider scheme is anticipated by the Council and any future application will be decided on its own merits and will take into account any lawful development already permitted to the extent that such matters are relevant planning considerations.

Your Officers consider that the words highlighted by Mr and Mrs Ward: “*The proposal is for the erection of an extension to the existing agricultural livestock building to be used in association with the wider agricultural enterprise*” refer to the current proposal in that it is a physical extension to existing buildings which would be used with parts of the Site for the applicant’s dairy business (albeit with the restrictions on the Dutch Barn which could be imposed). The Planning Statement in support of the application makes it clear that there will be no increase in stock numbers on the Site.

To confirm, the advice given by your Officers does take into account the disbenefits of the proposed development as set out in the main report and this addendum.

### **Impact on Residential Amenity and Environment Management Plan (EMP)**

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

Mr and Mrs Ward made a complaint against the applicants in North and East Devon Magistrates Court under Section 82 of the Environmental Protection Act 1990 to stop alleged statutory nuisances of odour, noise, flies, fumes and ammonia emanating from the applicant’s barns. After a hearing which lasted 3 days, evidence from 5 lay witnesses and 4 experts and consideration of more than 2000 pages, District Judge Smith found that no statutory nuisance exists. A copy of the decision is made available for Members.

It is important for Members to note that the decision addressed the wider operations on the Site and not the proposed development. Also, whereas the fact that the Magistrates’ Court has found that there is no statutory nuisance in respect of the current use of the Site is relevant, a development may significantly harm the amenities of a neighbouring occupier even if it does not amount to a statutory nuisance.

Mr and Mrs Ward say that an adequate environmental management plan should be provided in order to assess the impact of the development on their residential amenity.

The Environmental Protection Team (EPT) originally said that an EMP would be appropriate to demonstrate effective ongoing management of the application Site and wider premises and operations as well as the protection of neighbouring amenity. The EPT has since stated that the previous EMP relating to a previous application is inaccurate and irrelevant. It has also acknowledged the report from Landsense Professional. In the context of the application for the new building in isolation, the EPT recommends that an EMP be submitted and used in accordance with the wider farming operation but says that whether an EMP is appropriate for the application being considered is a matter for the planning department.

The EPT has also recommended a condition about the storage of manure waste. Your Officer recommends that such a condition is imposed if permission is granted in order to help address the impact on residential amenity.

Mr and Mrs Ward make the point that the Applicants have not provided an EMP for any of the development which has been permitted or which is lawful as a result of permitted development rights or immunity from enforcement. They ask for the Council to require an EMP to manage and mitigate the effects of the farming operation on neighbouring properties.

An EMP is one way of assessing the extent of impact and how a development will minimise negative environmental impacts. It is a matter of planning judgment whether there is enough information to assess the application against Policy DM01 and the impact on residential amenity in the absence of

an EMP. Your Officer's view is that, whereas an EMP would be of assistance, there is enough information to assess the impact of the development of the new building including in circumstances where the applicant is likely to use the existing buildings including the Dutch Barn, if permission is not granted without the need for an EMP for the following reasons.

The size of the new building provides for a limit on the number of animals which can be accommodated.

The size and footprint of the Dutch Barn and the new building are known (as addressed in the main report) and an assessment can be made about the extent to which the new building could accommodate any more cattle. The proposed new building will measure approximately 32 metres in length by 13.76 (440.3m<sup>2</sup>) metres in width. The Dutch Barn measures 36 metres in length and 9.1 metres in width (327.6m<sup>2</sup>).

The technical response has been provided by a surveyor (Landsense) which is set out in detail in the main report. It notes that by the nature of dairy farming fluctuations in livestock numbers are commonplace. It refers to evidence of use and space available. It carries out a detailed analysis and concludes: "*We therefore believe, with all other things equal, the potential increase in the scale of the operation as a result of the proposed development is limited. To be clear, there is already spare capacity with the existing buildings .... We therefore consider the purpose of proposed development, as stated will be to make the farm more efficient as it will enable the farm to be able to utilise space differently.*" And "... we believe, rather than having an adverse effect, the proposed plans 'would significantly mitigate the impact of the farm's operation on their (the neighbours') own amenity' by relocating the calve and dry cow housing further away from the neighbouring property."

Your Officer's view is that there is sufficient evidence including the technical response from Landsense on which to conclude that the new building will result in a negligible potential increase which means that there is unlikely to be any material increase in noise, odour or flies, or any material increase in slurry. There is however a clear benefit in the Dutch Barn not being used to accommodate livestock because this will result in protection for Berry Hill and neighbouring properties.

If the Dutch Barn and the new building were utilised at the same time, then the situation may be different. However, the proposed condition would mean that Dutch barn could not be used to accommodate livestock or to store slurry. This would mean that animals would be accommodated further away from Berry Hill and neighbouring properties thereby reducing the impact of farm operations on residential amenity.

Further, a new condition would require that all manure waste resulting from the proposed development must be stored at a minimum distance of 100 metres from the boundary of any neighbouring third-party dwelling in order to protect residential amenity.

Overall, it is considered as a matter of planning judgment, that there will be no significant harm to the amenities of occupants beyond that which already exists and that the proposed development will result in less harm than that which already exists. It is also considered that there is enough information on which to carry out this assessment. For these reasons, the application is supported by Policy DM01.

However, Members may reach a different view exercising their planning judgment and may require an EMP before permission is granted.

### Proposed condition 3

Mr and Mrs Ward suggest that a condition restricting the use of the Dutch Barn cannot be enforced. Your Officer respectfully disagrees with this statement for the reasons set out in the main report. A restriction on the use of a defined unit is the type of restriction which is often subject to a condition and can be monitored and enforced by the authority in the usual way.

## Impact on Site of Special Scientific Interest

In the High Court decision, Mr Justice Jay noted that Natural England had consulted on the application being challenged and had advised that a detailed air modelling assessment was necessary, and that the methodology of the Air Pollution Information System required that consideration be given to the baseline in 2019 which was before the dairy farm started and when there were no cows.

The current proposal concerns a smaller development in the context that the applicants can use the Site and existing operational development lawfully and are likely to continue to do so. Natural England has confirmed that the proposed development does not trigger the IRZ thresholds and does not require the Council to consult Natural England. This means that there is no request from Natural England for a detailed air modelling system of the type requested in respect of the earlier and more extensive application considered in the Judicial Review case.

As Natural England observed, it is for the planning authority to decide whether the development is in or likely to affect an SSSI. Your Officer's assessment is set out in the main report. Assessing the impact of the proposed development, your Officer's planning judgment is that the development would not result in any significant increase in the emissions of ammonia and would not impact the relevant SSSI sites. In reaching this view your Officer has had regard to all relevant matters including the DEFRA guidance, Policy DM02, Policy ST14, the Air Quality SPD, the Natural England response, the matters raised by Mr and Mrs Ward, the report from Landsense and has given great weight to the views of Natural England and the need to protect the SSSIs. However, your Officer concludes that there is not likely to be any material increase in ammonia as a result of the proposed development because it is likely to result in a relocation of cattle rather than an increase in the number of cattle which can be accommodated.

Your Officer considers that there is sufficient information to reach this view without a further assessment. Members are entitled to disagree with this view if they are minded to do so.

## Other Matters

### Notes provided by Mr and Mrs Ward

Mr and Mrs Ward have provided a "file note" from Michael Bull and Associates referring to "Ammonia and EMP issues". A copy of the note has been made available to Members to consider.

The document notes that excessive exposure to ammonia can result in damage to vegetation and is of particular concern to SSSIs. It recommends that a detailed assessment of ammonia levels is carried out including an in-combination assessment. The note refers to "*Existing housing – 100 dairy cattle – 365 days use*" and "*Proposed new housing – 74 dairy cattle – 365 days use*". This is predicated on the basis that the proposed development would result in an increase of 74 cattle. It is not accepted that this is correct. Your Officer places more weight on the response from Landsense which concludes that the potential increase of cattle will be limited. This view takes into account the condition recommended which would ensure that the Dutch Barn would not be used to accommodate livestock which would mean that the use of the existing barns would be reduced.

It is not disputed that the impact of a material increase in ammonia levels is often appropriately addressed in combination with existing levels from other local sources. However, in light of your Officer's assessment, it is not considered necessary to obtain a detailed assessment of the type referred to by Bull Associates because it is not considered that there will be any material increase in ammonia levels.

The document from Bull Associates also recommends that an EMP is obtained. This is addressed above and within the main report.

The applicants can continue to operate their dairy farm lawfully at the Site without providing an EMP. It is considered that the provision of an EMP is unnecessary where the impact is limited. However, Members may disagree.

It is also said that Dr Bull's view is that the moving of dry cows and calves to the new barn will not provide mitigation to odour levels because there are no internal changes to the building and odour will flow freely to the outside and the neighbouring property. Your Officer places more weight on the evidence of the surveyor (Landsense) and in the Officer's planning judgment, the relocation of cattle further away from Berry Hill and other neighbouring properties with a condition which prevents livestock from being accommodated at the Dutch Barn will result in a positive benefit by limiting and reducing the impact on Berry Hill compared to that which currently exists and which is very likely to continue including at an increased level where the Dutch Barn is used to its full capacity (which is likely albeit with fluctuating cattle numbers).

### **Conclusion**

Copies of the consultation responses from Mr and Mrs Ward and file note from Michael Bull and Associates have been made available to Members.

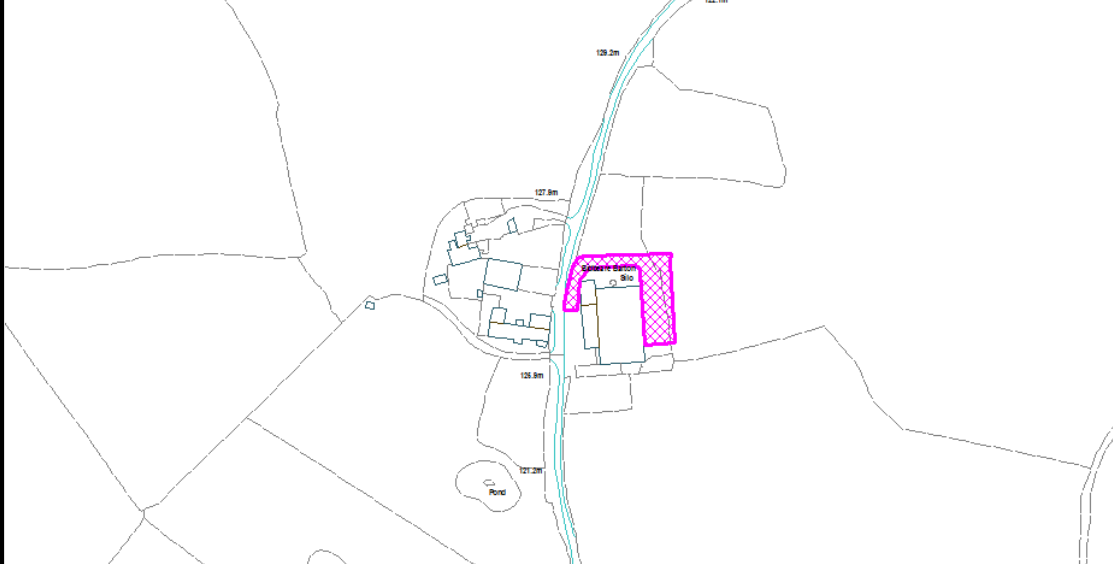
All matters raised by Mr and Mrs Ward have been considered, but none are considered to outweigh the positive benefits in support of the application.

### **Recommendation**

The Officer recommendation is as per that set out in the attached original Committee Report dated the 25<sup>th</sup> of July 2024.

## Committee Report – 25<sup>th</sup> July 2024

<b>Application Number:</b>	1/0277/2024/FUL
<b>Registration date:</b>	25 March 2024
<b>Expiry date:</b>	20 May 2024
<b>Applicant:</b>	Mr and Mrs J Seabridge
<b>Agent:</b>	Acorus
<b>Case Officer:</b>	Mr Peter Stapley
<b>Site Address:</b>	Buildings And Land At Grid Reference 266213 105908, Bondleigh, Devon,
<b>Proposal:</b>	Provision of a new agricultural livestock building
<b>Recommendation:</b>	Grant



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## Reason for referral:

The application has been requested for call-in by the Ward Member, Cllr Newton, for the following reason:

*‘The Constitution of Torridge District Council gives provisions whereby applications for planning permission can be determined by Plans Committee.*

*Paragraph 22 d) of the Constitution states:-*

*“Upon the Head of Communities and Place, Chief Executive or Leader of the Council exercising a discretion to refer the matter to the Plans Committee”*

*Could I please request that you exercise your discretion, on this occasion to refer the matter to Plans Committee for determination.*

*The reason for my request is that the application site has already been the subject of a Judicial Review against Torridge District Council.*

*For this reason alone, I believe that the matter should be reviewed, discussed and debated in a public forum by the Plans Committee, and not determined by an officer under delegated powers.’*

The Ward Member call-in was just outside of the required 28-day period. The Council’s Constitution allows for planning applications to be called-in ‘*upon the Head of Communities and Place, Chief Executive or Leader of the Council exercising a discretion to refer the matter to the Plans Committee*’ (Paragraph 22(d)), and there is no specified timescale for this type of call-in. The Head of Legal & Governance requested that this discretion be exercised due to the site previously having been subject to a Judicial Review and her view that the matter should be reviewed, discussed and debated in a public forum by the Plans Committee, and not determined by an officer under delegated powers.

The Council’s Chief Executive confirmed on the 10<sup>th</sup> of May 2024 that he was ‘*content that this application should be determined by Plans Committee in light of the reason provided.*’

## Relevant History:

<b>Application No.</b>	<b>Description</b>	<b>Status</b>	<b>Closed</b>
1/1439/1989	EXTENSION TO AGRICULTURAL BUILDING TO STORE HAY AND STRAW	PER	14.08.1989
1/0665/2020/FUL	Proposed fodder and multipurpose agricultural building	WDN	06.10.2020
1/1018/2020/FUL	Part retrospective application for raising of ground levels, formation of concrete yard and hardcore yard area. Installation of gas tank base, grain silo and fencing. (Amended Description)	REF	27.04.2021
1/0512/2021/FUL	Part retrospective application for raising of ground levels, formation of concrete yard	INVAL	20.09.2021

	and hardcore yard area. Installation of gas tank base, grain silo and fencing (Re- submission of 1/1018/2020/FUL)		
1/1131/2021/FUL	Part Retrospective alteration to external appearance of west elevation of barns and creation of concrete yard around agricultural buildings	WDN	06.11.2023
1/1132/2021/FUL	Provision of slurry store	WDN	06.11.2023
1/1183/2021/FUL	Extension to north and south elevations of existing livestock buildings	WDN	10.11.2022
1/1201/2021/FUL	Agricultural livestock building	WDN	10.11.2022
1/0837/2023/AGR	Erection of an agricultural building for housing of livestock	REF	15.11.2023

## Site Description & Proposal

### Site Description

The application site is located within the Countryside, approximately, 3.2km (as the crow flies) to the southeast of Winkleigh, the closest recognised settlement which is designated as a Local Centre in the adopted North Devon and Torridge Plan (NDTLP). In addition to this, the site falls within the designated area for the Winkleigh Neighbourhood Plan.

The site forms part of an agricultural enterprise measuring approximately 123 hectares consisting of both arable and grassland. The farm operates as a dairy, beef and arable farm, currently with a stock of approximately 290 cows, albeit only 80 are said to be present on the main farmstead.

The site does not fall within any other allocated land designation and the closest designated heritage asset is located approximately 100 metres to the west of the site, known as Bidbeare Farmhouse (Grade II). The site is located approximately 3.7 km to the northwest of Staddon Moor Site of Special Scientific Interest and 3.9 km to the southeast of Popehouse Moor Site of Special Scientific Interest.

The application site is neighboured by agricultural land to the north, east and south, with the existing farm buildings to the west. The site is accessed from the public, unclassified (Class U), highway along the western boundary of the wider site and the closest third part residential property is located approximately 50 metres from the application site.

The landscape character type for the application site is 'Upper Farmed & Wooded Valley Slopes' (3A) and Devon Character Area 32 (High Culm Ridges). The site falls within a Zone 1 Flood Risk and therefore it has a less than 1 in 1,000 annual probability of river flooding and is considered a low probability of flooding.

The existing agricultural buildings measure approximately 46 metres in length by 33 metres in width, with a maximum eaves height of 5.6 metres and a ridge height of 8 metres. The building has a floor area of approximately 1,336.8 square metres and consists of livestock accommodation; milking parlour; and agricultural feed and machinery storage.

### Proposed Development

The application seeks full planning permission for the erection of an extension to the existing agricultural livestock building to be used in association with the wider agricultural enterprise. The proposed building will measure approximately 32 metres in length by 13.76 metres in width, with an

eaves height of 5.3 metres and a ridge height of 7.4 metres, from finished floor level. The proposed building will have a floor area of approximately 440 square metres.

The proposed development will be constructed from the following materials: concrete panel lower elevations to a height of 1.8 metres with profiled metal sheeting above; profiled metal sheet roof; and five bar metal gates. The North and South elevations will be partially open fronted.

### **Consultee representations:**

#### **Winkleigh Parish Council:**

Objection: unless measures can be undertaken to mitigate smell from slurry/indoor housing. TDC should consider measures to control the subsequent use of the Dutch Barn and to limit livestock numbers so that the total number of cattle does not increase.

#### **Devon County Council (Highways):**

No representation received.

#### **Environmental Protection Officer:**

Initial Representation (Received: 09<sup>th</sup> April 2024)

The following consultation response is provided by the Environmental Protection Team in relation to the above application.

The existing agricultural building is located approximately 10 metres to the east of a third party residential property, Berry Hill Barn, where historic complaints of nuisance to this Authority have originated associated with the farming operations within the wider application site. Although there has been a change from arable farming to dairy farming in recent times, prompting the complaints of nuisance, it is acknowledged that the application site is an agricultural premises and subsequently, disturbance to nearby neighbouring dwellings may occur. It is pertinent to note that statutory nuisance has not been established both through the Authority's investigations and through a civil case.

In relation to the above application, it is noted that the proposed development applies to an extension of an existing agricultural building currently used for livestock accommodation, milking and agricultural storage. The proposed extension is intended to house livestock that currently reside in the 'Dutch Barn' section of the existing agricultural building. The Planning Statement (para 3.2) states that the number of livestock will not increase from the existing number housed however, this number does not appear to be specified and it must be assumed that numbers could potentially increase in the future. Furthermore, the Planning Statement (para 3.4) states that the 'Dutch Barn' will be used to store agricultural machinery and feed only and not be used for livestock accommodation. Having regard for the proposed use of the 'Dutch Barn' for agricultural storage only, this offers greater separation and a degree of screening between the livestock buildings and Berry Hill Farm, thereby minimising any potential disturbance, in particular noise, to the neighbouring dwelling. Although supportive of this proposal, as the 'Dutch Barn' falls outside the 'red line' area of the application site it is assumed that this could not be conditioned.

It is acknowledged that robotic milking has been or will be implemented within the existing agricultural building which does indicate a potential expansion or intensification of farming operations. Although the existing agricultural building is not the subject of this application, it is deemed appropriate to gain an understanding of operations and the ancillary use of the proposed development.

The Planning Statement (para 5.11) states that, as a result of livestock numbers not increasing, there is no requirement to provide details of slurry or manure storage provision. The Environmental Protection Team disagrees with this statement. Odour arising from slurry has been the subject of a previous nuisance complaint and a previous planning application has indicated the implementation of a slurry store and pump, resulting in noise emissions requiring mitigation to protect residential amenity. Therefore, detailed information on the storage and management of slurry and manure is considered relevant and is required in order to assess any potential amenity impact. In addition, no information has been provided on measures to control and manage flies which again, has been the

subject of previous complaints. The Environmental Protection Team requested the submission of an environmental management plan on previous planning applications to address issues such as fly control and manure waste management in line with good farming practice. Given the proximity of the neighbouring third party dwelling, the Environmental Protection Team considers the submission of an environmental management plan is appropriate to demonstrate effective ongoing management of the application site and wider premises and operations as well as the protection of neighbouring amenity.

The Environmental Protection Team will provide further comments upon receipt of the additional information mentioned above.

#### Second Representation (Received: 17/07/2024)

Further to the previous consultation response dated 9 April, it is noted that the applicant has submitted an Environmental Management Plan relating to a previous application. The EMP is inaccurate and irrelevant as it proposes measures that are not applicable to the application currently under consideration. For example, the Plan proposes storage of slurry in a tank which is not part of the current application or an existing installation.

Since providing the initial response on 9 April, the Environmental Protection Team acknowledges the submission of the Landsense Professional report and the findings indicating that the existing agricultural building can operate as a livestock building without additional planning permissions and subsequently, the baseline position is one of a dairy farm or operation. Whilst the Environmental Protection Team recommends an Environmental Management Plan to be applicable for the farming operations of the wider farmstead, it is acknowledged that the proposed development subject of this application, an extension to the existing agricultural building, is the focus and should be considered in isolation. Therefore, although recommended, the decision to stipulate that an Environmental Management Plan be submitted and used in accordance with the wider farming operation is one for the Planning department to determine whether appropriate for this application.

The proposed extension is to accommodate dry cow and calves only and the straw based method for manure will be utilised. Manure waste has the potential to adversely impact neighbouring amenity from the associated odour and fly nuisance associated. Subsequently, the Environmental Protection Team recommends that all manure waste resulting from the proposed development is stored a minimum distance of 100 metres from the boundary of any neighbouring third party dwelling in order to protect amenity.

#### **Conservation Officer:**

The additional bay to the building will be on the east elevation. The impact on the setting of the listed building is not altered over and above the existing situation.

There are no observations in heritage terms on the proposal.

#### **Natural England:**

Natural England has not been consulted on the above application, but concerns have been raised with us locally.

Natural England is a statutory consultee for planning applications which might affect designated nature conservation sites (Sites of Special Scientific Interest (SSSIs), Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and Ramsar sites); for development affecting significant areas of best and most versatile agricultural land; and for development requiring Environmental Impact Assessment.

The onus is upon the local planning authority to decide whether a development proposal is 'in or likely to affect a SSSI' and they make their assessment using Natural England's published set of mapped Impact Risk Zones (IRZs) for SSSI/SAC/SPA/Ramsar sites which are available for viewing on [www.magic.gov.uk](http://www.magic.gov.uk)

As you know, the nearest protected sites to Bidbeare Barton Farm, Staddon Moor SSSI and Popehouse Moor SSSI, are approx. 4km distant, and the IRZs for these SSSIs indicate that Natural

England should be consulted on applications where livestock and poultry sheds are greater than 500m2 and slurry stores are greater than 750m2 as anything above these thresholds poses a greater risk in terms of air quality impacts.

Based on this one application, the scale of the livestock shed development (1/0277/2024/FUL) at 440m2 does not trigger the IRZ thresholds and does not require the LPA to consult Natural England.

Where the SSSI IRZs indicate a risk is unlikely, this does not mean that there are no potential impacts on biodiversity or the wider natural environment for the LPA to consider, but the IRZs help Natural England to prioritise resources on cases with the highest risk to designated sites.

This farm has a complex history with several applications that have been submitted together and then withdrawn. We would therefore recommend that consideration is given to the cumulative impacts of any future planning applications submitted in terms of air quality impacts.

### **South West Water:**

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.

### Surface Water Services

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):

1. Water re-use (smart water butts, rainwater harvesting, grey flushing toilets)
2. Discharge into the ground (infiltration); or where not reasonably practicable,
3. Discharge to a surface waterbody; or where not reasonably practicable,
4. Discharge to a surface water sewer, highway drain, or another drainage system; or where not reasonably practicable,
5. Discharge to a combined sewer. (Subject to Sewerage Undertaker carrying out capacity evaluation)

Having reviewed the applicant's current information as to proposed surface water disposal for its development, please note that method proposed to discharge into the ground (infiltration) is acceptable and meets with the Run-off Destination Hierarchy.

### **Representations:**

Number of neighbours consulted:	1	Number of letters of support:	5
Number of representations received:	6	Number of neutral representations:	0
Number of objection letters:	1		

The public representations received over the lifetime of the application are summarised below:

### Objection Comment

- Impact on residential amenity;
  - Arising from noise generated from machinery;
  - Arising from noise generated from livestock;
  - Arising from odour from livestock accommodation;
  - Arising from fly nuisance;
- Impact on health arising from adverse living conditions;
- Lack of cooperation from the applicants;
- Inconsistencies with planning application;
- Proposed new access;
- Lack of Natural England consultation;
- Development sited on unlawful development;
- Potential increase in livestock numbers; and
- Validity of Call-in.

### Supportive Comment

- Business requirement and a benefit for the business, x 4; and
- Improvement on impact to amenity.

### **Policy Context:**

#### **North Devon and Torridge Local Plan 2011-2031:**

ST01 (Principles of Sustainable Development); ST03 (Adapting to Climate Change and Strengthening Resilience); ST04 (Improving the Quality of Development); ST07 (Spatial Development Strategy for Northern Devon's Rural Area); ST10 (Transport Strategy); ST14 (Enhancing Environmental Assets); ST15 (Conserving Heritage Assets); DM01 (Amenity Considerations); DM02 (Environmental Protection); DM04 (Design Principles); DM05 (Highways); DM07 (Historic Environment); DM08 (Biodiversity and Geodiversity); DM08A (Landscape and Seascape Character).

#### **Winkleigh Neighbourhood Plan 2018 – 2031:**

ENV1 (Natural Capital); ENV2 (The setting of new development in the Parish); ENV3 (The conservation area and traditional village core of Winkleigh); ENV4 (Appearance and style); EC2 (New economic development).

#### **North Devon and Torridge Supplementary Planning Document(s):**

Air Quality SPD

#### **Government Guidance:**

NPPF (National Planning Policy Framework); NPPG (National Planning Practice Guidance); NERC (Natural Environment & Rural Communities); WACA (Wildlife & Countryside Act 1981).

### **Planning Considerations**

The main planning considerations in the determination of this application are:

1. Principle of Development;
2. Air Quality and Environmental Protection;
3. Design and Visual Landscape Impact;
4. Impact on Heritage Assets;
5. Impact on Amenity;
6. Access and Highways;
7. Impact on Wildlife and Ecology;
  - a. Ecological Impact;
  - b. Biodiversity Net Gain; and
8. Conclusion.

#### **1. Principle of Development**

Section 38 (6) of the Planning and Compulsory Act 2004 states that key consideration in the determination of a planning application is the development plan. Applications should be determined in accordance with the development plan unless material planning considerations indicate otherwise. For the purpose of the development plan the statutory development plan is comprised of the North Devon & Torridge Local Plan 2011-2031 (NDTLP).

In planning terms, the site is located in the countryside; therefore, Policy ST07 of the NDTLP must be applied. Policy ST07 (4) sets out that development in the countryside should be limited to that *which is enabled to meet local economic and social needs, rural building reuse and development that is necessarily restricted to a countryside location.*

Policy DM14 of the NDTLP states “to support the rural economy, new small scale economic development at Rural Settlements and in the Countryside will be supported on the following basis:

- (a) change of use or conversion of a permanent and soundly constructed building; or

- (b) sites or buildings adjoining or well related to a defined settlement or a Rural Settlement; or
  - (c) the proposed employment use has a strong functional link to local agriculture, forestry or other existing rural activity;
- Provided that:*
- (d) there is no adverse impact on the living conditions of local residents;
  - (e) the scale of employment is appropriate to the accessibility of the site and the standard of the local highway network; and
  - (f) proposals respect the character and qualities of the landscape and the setting of any affected settlement or protected landscape or historic assets and their settings and include effective mitigation measures to avoid adverse effects or minimise them to acceptable levels.”

Policy EC2 of the Winkleigh Neighbourhood Plan broadly supports the development of new businesses and the expansion of existing businesses, subject to the policies of the North Devon and Torridge Local Plan and the Neighbourhood Plan.

Paragraph 88 of the NPPF states that *'planning decisions should enable:*

- (a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed, beautiful new buildings;*
- (b) the development and diversification of agricultural and other land-based rural businesses.'*

Paragraph 89 of the NPPF states that *'planning decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.'*

A number of public representations were received during the consultation of the application. More specifically, the application was supported by a number of representations stating that the proposed development would benefit the business operations of the agricultural enterprise.

The application submitted is for the erection of an extension to the existing agricultural livestock building and will have a footprint of approximately 440 square metres (32 metres by 13.8 metres). The building is of an appropriate scale in relation to its intended purpose and is commensurate to the operations of the wider farming enterprise.

The existing agricultural buildings measure approximately 1,336.8 square metres and consist of livestock accommodation; milking parlour; and agricultural feed and machinery storage, in association with the dairy and beef agricultural enterprise. The Dutch barn element of existing building measures approximately 37 metres in length by 9.2 metres in width and primarily consists of an agricultural storage use, albeit it is partially used for the accommodation of livestock. It was observed during the case officers site visit, that approximately 165 square metres (49%) of the building was used to house 'dry' cows and calves.

The location of the building is necessarily restricted to the agricultural enterprise in which it is related and therefore its countryside setting. On this basis, the building is deemed reasonably necessary for supporting the existing enterprise.

In light of the above, it is considered that the proposed development is considered to be justified for its countryside location and is in accordance with Policies ST07 and DM14 of the North Devon and Torridge Local Plan; Policy EC2 of the Winkleigh Neighbourhood Plan; and the National Planning Policy Framework.

## **2. Air Quality and Environmental Impact**

Policy DM02 (2) states, amongst other aspects, that developments will be supported where it does not result in unacceptable impacts to:

- (a) *Atmospheric pollution by gas or particulates, including smells, fumes, dust, grit, smoke and soot;*
- (b) *Pollution of surface or ground water including rivers, canals, other watercourses, water bodies, wetlands, water gathering grounds including catchment area, aquifers, groundwater protection areas, harbours, estuaries or the sea;*
- (c) *Noise or vibration; and*
- (d) *Light pollution.*

Paragraph 13.11 notes that proposals should not result in the deterioration of air quality to below national standards and air quality statements will be required to be submitted with planning applications in such circumstances.

Policy ST14 of the Local Plan seeks to enhance the District's environmental assets, noting at section (b) the need to protect the hierarchy of designated site in accordance with their status. Policy DM08 (4) relates to the protection of Nationally designated sites stating "*Development proposals within or outside a Site of Special Scientific Interest or Marine Conservation Zone which would be likely to affect the designation adversely, either individually or in combination with other developments, will not be supported unless the benefits of the development at this site clearly outweigh both the adverse impacts on the site and any adverse impacts on the wider network of Sites of Special Scientific Interest and Marine Conservation Zones.*"

The Air Quality SPD was adopted by Torridge District Council on the 5<sup>th</sup> October 2020. The SPD considers the potential for new developments to affect air quality adversely, which types and scales of planning applications require an air quality impact assessment, and, if so, what an air quality impact assessment should include. Chapter 7 of the SPD states that depending on the scale and proximity to either a European Protected Site or a Site of Special Scientific Interest, a planning application may need to be accompanied by an Air Quality Impact Assessment.

Paragraph 7.4 of the Air Quality SPD, illustrates the type of development that potentially would have an adverse impact on air quality and includes:

- (a) *An agricultural building to house livestock (primarily beef and dairy cattle, pigs or poultry); and/or*
- (b) *Any new or expanded pit, tank or lagoon for storing slurry; and/or*
- (c) *Any anaerobic digester with combustion plant; and/or*
- (d) *Any anaerobic digester without combustion plant.*

The site is located approximately 3.7 km to the northwest of Staddon Moor Site of Special Scientific Interest and 3.9 km to the southeast of Popehouse Moor Site of Special Scientific Interest. The proposed development is for the erection of an agricultural livestock building measuring approximately 440 square metres. The Air Pollution thresholds for proposals in this location, as set out by DEFRA, are "*Livestock and poultry units with a floorspace > 500m<sup>2</sup>, slurry lagoons and digestate stores > 750m<sup>2</sup>, manure stores > 3500t.*" The proposal falls below the threshold and therefore the Local Planning Authority are not obligated to consult Natural England.

A public representation was received during the consultation of the application, in relation to the Air Pollution consideration. More specifically, concerns were raised with the lack of formal consultation with Natural England.

Nonetheless, Natural England provided a formal representation, received 08<sup>th</sup> May 2024, stating "*Natural England has not been consulted on the above application, but concerns have been raised with us locally.*"

*Natural England is a statutory consultee for planning applications which might affect designated nature conservation sites (Sites of Special Scientific Interest (SSSIs), Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and Ramsar sites); for development affecting significant areas of best and most versatile agricultural land; and for development requiring Environmental Impact Assessment.*

*The onus is upon the local planning authority to decide whether a development proposal is 'in or likely to affect a SSSI' and they make their assessment using Natural England's published set of mapped Impact Risk Zones (IRZs) for SSSI/SAC/SPA/Ramsar sites which are available for viewing on [www.magic.gov.uk](http://www.magic.gov.uk)*

*As you know, the nearest protected sites to Bidbeare Barton Farm, Staddon Moor SSSI and Popehouse Moor SSSI, are approx. 4km distant, and the IRZs for these SSSIs indicate that Natural England should be consulted on applications where livestock and poultry sheds are greater than 500m<sup>2</sup> and slurry stores are greater than 750m<sup>2</sup> as anything above these thresholds poses a greater risk in terms of air quality impacts.*

*Based on this one application, the scale of the livestock shed development (1/0277/2024/FUL) at 440m<sup>2</sup> does not trigger the IRZ thresholds and does not require the LPA to consult Natural England.*

*Where the SSSI IRZs indicate a risk is unlikely, this does not mean that there are no potential impacts on biodiversity or the wider natural environment for the LPA to consider, but the IRZs help Natural England to prioritise resources on cases with the highest risk to designated sites.*

*This farm has a complex history with several applications that have been submitted together and then withdrawn. We would therefore recommend that consideration is given to the cumulative impacts of any future planning applications submitted in terms of air quality impacts."*

It is acknowledged that the representation refers to the planning history of the site and several applications which were withdrawn. It is evident from the Local Planning Authority's records that no planning permission has been granted on the agricultural enterprise for the erection of additional agricultural livestock buildings.

Consequently, the Case Officer has assessed the application on the current proposed development, specifically an agricultural extension which falls below the threshold (500 square metres) for further detailed assessment and has not taken into consideration any previously withdrawn application when exercising their planning judgement.

Furthermore, the Local Planning Authority has sought the advice from an independent professional consultant with regards to the slurry implications of the wider agricultural enterprise, as a result of the proposed development. The independent consultants commented "*with regard to slurry implications, the intention for the building is to enable the dry cows and calves to be housed on site in a purpose-built building. The slurry therefore is restricted largely to the milking herd in cubicles as dry cows ready for calving would not be housed in a cubicle house nor would you house a calf in a cubicle. Therefore, calving cows and calves by their nature would be housed on straw.*

*There are also a number of regulations and Environment Agency requirements in relation to slurry storage, which we believe would also act as a safeguard to the Council."*

Taking account of the above, the proposed development would not result in an agricultural building for livestock over 500 square metres; a new or expanded pit tank or lagoon for storing slurry; an anaerobic digester with combustion plant; or an anaerobic digester without combustion plant. Consequently, the Local Planning Authority are confident that the proposed development will not significantly increase the emissions of ammonia and would not impact the designated sites of Popehouse Moor SSSI and Staddon Moor SSSI. Nonetheless, any future application for livestock buildings would be subject to the tests of cumulative impact assessment and consultation with Natural England would be undertaken at that time. It would be unreasonable for the Local Planning Authority, to speculate on the likely impacts of any future development.

The proposed scheme is in accordance with Policies ST14(b), DM02 and DM08(4) of the North Devon and Torridge Local Plan; the Air Quality SPD; and the National Planning Policy Framework.

### **3. Design and Visual Landscape Impact**

The Local Plan policies on design are relevant - Policy ST04 (Improving the Quality of Development) and Policy DM04 (Design Principles), which both aim to achieve high quality, inclusive and sustainable design.

Policy ST04 supports development proposal that 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 supports developments with good design and the policy seeks to guide overall scale, density, massing, height, landscape, layout, materials, access and appearance of new developments. It seeks not just to manage land use but support the creation of successful places and respond to the challenges of climate change. The policy lists 13 design principles that proposals must meet in order to be supported by the policy.

Policy DM08A (1) states that *“development should be of an appropriate scale, mass and design that recognises and respects landscape character of both designated and undesignated landscapes and seascapes; it should avoid adverse landscape and seascape impacts and seek to enhance the landscape and seascape assets wherever possible. Development must take into account and respect the sensitivity and capacity of the landscape/seascape asset, considering cumulative impact and the objective to maintain dark skies and tranquillity in areas that are relatively undisturbed, using guidance from the Joint Landscape and Seascape Character Assessments for North Devon and Torridge.”*

The application site is not located within any special designated landscapes and falls, within Landscape Type 3A (Upper Farmed and Wooded Valley Slopes) as identified within the Joint Landscape Character Assessment for North Devon and Torridge Districts.

The landscape character types are noted as including: Strong pattern of medium-scale fields of medieval and post-medieval origin enclosed by species-rich Devon hedges with flower-rich banks; Dispersed historic villages and hamlets clustered on hilltops with farmsteads distributed throughout, linked by a network of winding rural roads and steep sunken lanes crossing watercourses over stone bridges; Strong local vernacular of whitewash and white/cream rendered cottages with painted window and door frames and slate roofs. Some buildings constructed of exposed stone with red brick detailing; and Square church towers form strong local landmark features peeping through the rolling hills, many of which are Grade II\* Listed.

Policy DM14 (f) supports the expansion of small-scale rural enterprises where *“proposals respect the character and qualities of the landscape and the setting of any affected settlement or protected landscape or historic assets and their settings and include effective mitigation measures to avoid adverse effects or minimise them to acceptable levels.”*

Policy ST14 of the Local Plan seeks to enhance the District's environmental assets, noting at section (g) the need to protect and enhance the local landscape character, taking into account the key characteristics, historical dimensions of the landscape and their sensitivity to change.

Policy ENV2 of the WNP states that development proposal are expected to respect and respond to the built and landscape character of the parish. Policy ENV4 of the WNP states that *“development in the Parish should generally be simple and plain in appearance; proposals should reflect the character and context of surrounding development. Preference will be given to the use of local materials or their equivalent, where this reflects the stone, colour washed rendering, Devon thatch and slate typical in Winkleigh Parish. In principle, the use of innovative and creative design is supported in appropriate locations, where it respects the scale, mass and distinctiveness of its location and the natural and built environment.”*

The NPPF also strongly emphasises the need for well-designed places, in which Part 12 of the Framework is solely dedicated to the achieving well-design places. Paragraph 131 of the NPPF notes

'the creation of high-quality buildings and places is fundamental to what the planning and development proves should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work, and helps make development acceptable to communities.' Part 12 of the framework lists 6 key design principles that are required to be met in order to demonstrate the design is of high quality.

The proposal is for the erection of an extension to the existing agricultural livestock building to be used in association with the wider agricultural enterprise. The proposed building will measure approximately 32 metres in length by 13.76 metres in width, with an eaves height of 5.3 metres and a ridge height of 7.4 metres, from finished floor level. The proposed building will have a floor area of approximately 440 square metres.

The proposed development will be constructed from the following materials: concrete panel lower elevations to a height of 1.8 metres with profiled metal sheeting above; profiled metal sheet roof; and five bar metal gates. The North and South elevation will be partially open fronted.

Whilst sizeable in scale, the proposed scale and design of the building is considered to be characteristic of an agricultural building and would be suitable for its intended purpose. The proposed extension will be seen in the context of the existing agricultural farmstead and therefore would result in negligible harm to the wider landscape. As such the proposed development is in accordance with policies ST04, ST14, DM04, DM08A, and DM14 of the North Devon and Torridge Local Plan; Policies ENV2 and ENV4 of the Winkleigh Neighbourhood Plan; and the National Planning Policy Framework.

#### **4. Impact on Heritage Assets**

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 state that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess.

Paragraph 205 of the NPPF relates to the historic environment and notes that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). Paragraph 201 of the NPPF makes clear the local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal, including by development affecting the setting of a heritage asset.

Paragraph 206 makes clear that any harm to, or loss of, the significance of a designated heritage asset, including from impact on its setting, should require clear and convincing justification. In particular, the substantial harm to or loss of assets of the highest significance (including grade II\* buildings) should be wholly exceptional.

Paragraph 208 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

Policy ST15 of the NDTLP, states that 'great weight will be given to the desirability of preserving and enhancing northern Devon's historic environment by:

- (a) Conserving the historic dimension of the landscape;*
- (b) Conserving the cultural, built, historic and archaeological features of national and local importance and their setting, including those that are not formally designated;*
- (c) Identifying and protecting locally important buildings that contribute to the area's local character and identity; and*
- (d) Increasing opportunities for access, education and appreciation of all aspects of northern Devon's historic environment, for all sections of the community.*

Policy DM07 of the NDTLP requires that all proposals affecting heritage assets should be accompanied by sufficient information, in the form of a Heritage Statement, to enable the impact of the proposal on the significance of the heritage asset and its setting to be properly assessed. The policy also outlines that proposals that conserve and positively enhance the heritage asset and their setting will be supported and where there is unavoidable harm to heritage assets and their settings, proposals will only be supported where the harm is minimised as far as possible.

The closest designated heritage asset is located approximately 100 metres to the west of the site, known as Bidbeare Farmhouse (Grade II). The Council's Conservation Officer was consulted on the proposed development and commented "*The additional bay to the building will be on the east elevation. The impact on the setting of the listed building is not altered over and above the existing situation.*"

*There are no observations in heritage terms on the proposal."*

Taking into account the scale and nature of the proposed development, the distance to the heritage asset, and the comments received from the Conservation Officer, the Local Planning Authority considers that there would be no harm to the setting of the designated heritage asset, known as Bidbeare Farmhouse. The proposed development is in accordance with Policies ST15 and DM07 of the NDTLP and the Section 16 [Conserving and enhancing the historic environment] of the NPPF.

### **5. Impact on Amenity**

Policy DM01 of the NDTLP relates to amenity considerations and notes, development will be supported where:

- (a) *It would not significantly harm the amenities of any neighbouring occupiers or uses; and*
- (b) *The intended occupants of the proposed development would not be harmed as a result of the existing or allocated uses.*

Policy DM04 also aims to ensure the amenities of existing and future neighbouring occupiers are safeguarded. Policy DM14 (d) supports the expansion of rural enterprises where *there is no adverse impact on the living conditions of local residents.*

In addition to this, one of the core principles of the NPPF is to secure high-quality design and a good standard of amenity for all existing and future occupants of land and buildings. Part H1 of the National Design Guide states that '*good design promotes quality of life for the occupant and users of buildings. This includes function [...] comfort, safety, security, amenity, privacy, accessibility and adaptability.*'

The Council's Environmental Protection Team were consulted on the proposed development and commented "*Further to the previous consultation response dated 9 April, it is noted that the applicant has submitted an Environmental Management Plan relating to a previous application. The EMP is inaccurate and irrelevant as it proposes measures that are not applicable to the application currently under consideration. For example, the Plan proposes storage of slurry in a tank which is not part of the current application or an existing installation.*"

*Since providing the initial response on 9 April, the Environmental Protection Team acknowledges the submission of the Landsense Professional report and the findings indicating that the existing agricultural building can operate as a livestock building without additional planning permissions and subsequently, the baseline position is one of a dairy farm or operation. Whilst the Environmental Protection Team recommends an Environmental Management Plan to be applicable for the farming operations of the wider farmstead, it is acknowledged that the proposed development subject of this application, an extension to the existing agricultural building, is the focus and should be considered in isolation. Therefore, although recommended, the decision to stipulate that an Environmental Management Plan be submitted and used in accordance with the wider farming operation is one for the Planning department to determine whether appropriate for this application.*

*The proposed extension is to accommodate dry cow and calves only and the straw based method for manure will be utilised. Manure waste has the potential to adversely impact neighbouring amenity from the associated odour and fly nuisance associated. Subsequently, the Environmental Protection*

*Team recommends that all manure waste resulting from the proposed development is stored a minimum distance of 100 metres from the boundary of any neighbouring third party dwelling in order to protect amenity.”*

A public representation was received during the consultation period of the application, which raised concerns in relation to the impact on the residential amenity of neighbouring property. More specifically, concerns were raised with regard to the potential impact on amenities from noise, odour, and flies from the existing agricultural operations and from the proposed development.

Given the complex planning history of the site and agricultural practices undertaken on the site, the Local Planning Authority instructed independent professional advice from Landsense Professional. The following points of consideration were assessed as part of the independent review, and helps inform the remainder of this section:

1. An assessment of the existing scale of the enterprise and establish a baseline for the lawful scale of operations and any harm to the neighbouring property.
2. An assessment of the potential increase in the scale of operation as a result of the proposed development.
3. An assessment of the slurry implications of the new extension as the applicant is considering the straw based method, but the Council is querying what control the council would have over any increase of slurry retrospectively as the implementation of internal slurry works may fall outside the definition of development. Therefore, does slurry need to be considered as a worst-case scenario.

In response to query one, as outlined above, the independent consultant commented “*With regard to the existing scale of the enterprise, within the submissions it is noted that the provision of the replacement building will not change the livestock numbers on the unit. However, it is not made clear within the current application what the current livestock numbers are. This issue is somewhat exacerbated by conflicting evidence in previous submissions which on the one hand suggests there are 82 cows and 30 calves on site, on another 120 dairy cows, 35 heifers, a number of dry cows and a number of calves, on another c125 cows with an average of 80% in milk at any one time as an all-year round calving herd and finally in Mr Seabridges’s Statement of witness dated 12.07.23 the BCMS online and Farm Metrics Herdwatch figures.*

*We accept that these submissions occurred over a period of time and by the nature of dairy farming fluctuations in livestock numbers is commonplace. As such we do not believe there is anything untoward in fluctuating figures, however for the purpose of establishing a baseline we need to arrive at a figure we can justify so for that purpose we have utilised the figures within the Witness Statement as they are stated as being the official figures from BCMS online.*

*We understand the cows have moved from a loose housing system, bedded on straw to a cubical based system on mattresses, and the applicants have implemented a robotic milking system. Furthermore, we understand the milking cows are housed full-time from around the beginning of October until April, dependant on weather. During the summer months the cows are let out to the fields on rotation, based on a Lely Grazeway system whereby 3 fields are utilised with 10 paddocks spread between the fields and 1 field is grazed every 10 days.*

*We are also told a number of cattle are housed offsite – in essence previously all youngstock from 6 – 24 months were housed offsite, with dry cows loose housed on site during the winter months then offsite from April to October, with the stock bull and any calves from 0-6 months onsite year-round. We assume that at some point replacement heifers will enter the cubicle system as preparation prior to entering the milking herd, however historically they appear to have all been housed offsite until entering the milking herd.*

*The offsite livestock accommodation is currently under two separate agreements, one a shed and 83 acres in Broadwoodkelly for youngstock grazing and winter housing and the second a further 176 acres with sheds less than a mile from the yard under a 5-year Farm Business Tenancy (FBT) taken out in 2023. The sheds under the FBT will allow in the future for all dry cows to be housed away from the yard until a few days before calving with calves to be housed away from weaning age (3 months).*

With regard to infrastructure, we understand the applicants utilise all of the buildings at Bidbeare Barton which we understand to be:

- 9 bay livestock building measuring 41.15m x 13.72m – 564.58m<sup>2</sup>
- 9 bay livestock building measuring 41.15 x 10.67m – 439.07m<sup>2</sup>
- 5 bay Dutch barn measuring 22.86 x 8.84m – 202.08m<sup>2</sup>
- 3 bay steel framed machinery store – 13.72 x 8.23 – 112.92m<sup>2</sup>
- Dairy/tank room – 8.97m x 1.95m – 17.49m<sup>2</sup>
- Grain bin (subject to retrospective planning application)

It should be noted that there are some further discrepancies within the documents with regards to measurements. It is also unclear from any of the floorplans which areas are used for which purposes so where necessary we have had to make certain assumptions.

Based on Red Tractor housing space allowances for dairy cows in a cubicle house, we calculate that for a maximum of 81 cows, (April 2023 BCMS figures) and on an assumption they are between 600-699kg liveweight the recommended minimal cubicle dimensions would be 2.5m x 1.20m. You would therefore need 3m<sup>2</sup> per cow, plus an additional 5% more cubicles than the number of cows as recommended so 85 cow cubicles equating to 255m<sup>2</sup> for the cubicles alone.

On the assumption, the eastern 9 bay building is the cubicle housing at 41m long, this would allow for 34 cubicles in a row, leaving an allowance for a 3m scraping passage, equating to 123.45m<sup>2</sup>, with 2 further back-to-back cubicle rows and a further scraping passage in between cubicles allows for 102 cubicles in that one house alone. This demonstrates that there is enough capacity and space within that one building to house the current livestock with some spare capacity.

As the floorplan suggests the cows can access the middle building internally, we have allowed for the loafing area, parlour and feed areas with the middle building plus some loose housing and/or cubicles. For clarity and as above the middle building extends to 439.07m<sup>2</sup>. If we allow for the loafing area to be at least 120% of the cubicle lying area in size as recommended, the required loafing area would equate to 81 cows x 3m<sup>2</sup> x 120% = 292m<sup>2</sup>. With feed area, milking parlour, loose housing etc in addition, this could feasibly be at least part housed within the 147m<sup>2</sup> of additional space (439m<sup>2</sup> – 292m<sup>2</sup> = 147m<sup>2</sup>) within the middle building with the balance housed within the further 202m<sup>2</sup> of space within the Dutch barn. It should also be noted that there is a currently un-regularised outdoor concrete loafing area to the south of the buildings which for the purposes of this exercise hasn't been taken into account. Should the external area be regularised, additional space would be created within the buildings for other uses.

Loose housing for the dry cows, based on the BCMA figures at their most recent maximum (13) and again based on Red Tractor figures would equate to 9m<sup>2</sup> per cow – (9m<sup>2</sup> x 13 cows = 117m<sup>2</sup>). With calves up to 6 months requiring at a maximum 2.4m<sup>2</sup> x 46 = 110m<sup>2</sup>.

With the existing livestock buildings at Bidbeare Barton totalling c1,205m<sup>2</sup> of livestock accommodation, the existing scale of operations is deemed less than capacity."

After carrying out a review of the potential increase in the scale of operations of the agricultural enterprise as a result of the proposed development, the Professional Consultants commented "We are told the maximum milking capacity of the 2 robotic astronaut milkers is 110 cows. In January, April and July 2023 the numbers of milking cows were 77, 81 and 76 respectively, with 10, 13 and 12 dry cows for the same period respectively.

Utilising the same methodology as above and if we theoretically take 110 cows as a maximum; based on Red Tractor housing space allowances for dairy cows in a cubicle house, we calculate that for a maximum of 110 cows with a recommended 5% additional allowance, equating to 116 cow cubicles, which would equate to a space allowance of 348m<sup>2</sup> for the cubicles alone. The required loafing area would equate to c418m<sup>2</sup> on the same premise.

*On site loose housing for the dry cows coming back to calve would equate to a maximum estimated 22 cows at 9m<sup>2</sup> per cow – (9m<sup>2</sup> x 22 cows = 198m<sup>2</sup>). With an estimated maximum of 63 calves up to 6 months old requiring, at an estimated maximum, 2.4m<sup>2</sup> x 63 = 151m<sup>2</sup>.*

*The total existing utilisable space for housing, loafing, feed, parlour, cubicles, loose housing and calf housing etc is calculated at 1,205m<sup>2</sup>. The total space required for housing the 110 milking cows, 22 dry cows and 63 calves pre feed space and parlour etc equates to 1,115m<sup>2</sup>.*

*We therefore believe, with all other things equal, the potential increase in the scale of the operation as a result of the proposed development is limited. To be clear, there is already spare capacity within the existing buildings so any increase in capacity cannot be attributed to the proposed development in that case. We therefore consider the purpose of proposed development, as stated will be to make the farm more efficient as it will enable the farm to be able to utilise space differently.*

*By building a purpose built shed (as opposed to utilising the Dutch barn), it should enable the applicants to improve their working environment and maximise animal welfare by having their most vulnerable livestock nearby. Cows due to calf need regular monitoring and potentially assistance, with very young calves being at their most vulnerable and susceptible to illness such as scour and pneumonia. Calves can go downhill very quickly leading to losses if assistance isn't readily available. Calves housed in a purpose-built building should enable them the best possible chance of survival.*

*Whilst there appears to be sufficient space within the existing buildings, following one of the wettest 18 months on records, we believe the proposed building will relieve pressures on the applicants by providing designated space for each enterprise and thus allowing the Dutch barn to be repurposed for the intended storage of machinery, straw, feed etc.*

*In terms of the harm to the neighbouring property, we would concur with the Judges' comments in the Statutory Nuisance case, in that we believe, rather than having an adverse effect, the proposed plans 'would significantly mitigate the impact of the farm's operation on their (the neighbours') own amenity' by relocating the calve and dry cow housing further away from the neighbouring property."*

The Local Planning Authority acknowledges the concerns raised by the neighbouring residents with regard to the impact on residential amenities. Nonetheless, the public representation relies heavily on the current agricultural practices and the resultant harm to residential amenity from the existing odour, flies and noise.

The existing farm buildings have no restrictive planning conditions preventing their use for agricultural livestock accommodation and the existing agricultural practices are ordinary and necessary activities for the operation of a dairy farm. Such risks to residential amenities are, to some degree, synonymous and typical to the countryside locations in which agricultural operations are strictly located. Consequently, in the assessment of harm to the amenities of the occupants of Berry Hill, the starting point is the existing scale of operations, where it has been found that the existing operations are deemed to be less than potential capacity, at a suggested stock number of 82 cows and 30 calves.

The proposal is for the erection of an extension to the existing agricultural livestock building to be used in association with the wider agricultural enterprise. The proposed building will measure approximately 32 metres in length by 13.76 metres in width, with an eaves height of 5.3 metres and a ridge height of 7.4 metres, from finished floor level. The proposed building will have a floor area of approximately 440 square metres. The applicant has accepted the restriction of the Dutch barn to the west of the site, and closest to the neighbouring property, to storage of agricultural machinery and fodder only, and not for the accommodation of livestock or slurry at any time and in perpetuity. Such a condition is acceptable under Section 72(1) of the Town and Country Planning Act 1990 given the Dutch Barn is under the control of the Applicant.

The Local Planning Authority concurs with the views of the independent consultant in that the potential increase in the scale of the operation as a result of the proposed development is limited. This negligible potential increase when weighed against the benefit of the relocation of livestock

accommodation, would result in no significant harm to the amenities of the occupants of the residential property known as, Berry Hill, beyond that already existing.

It is recognised that the Environmental Protection Officer has recommended that an Environmental Management Plan be provided. Taking into account the existing agricultural operations on the site and the anticipated operations resulting from the proposed development, it is the Local Planning Authority's opinion that the requirement for an Environmental Management Plan is onerous and would not be reasonable or necessary, in relation to the scale and nature of the proposed development and its impacts, including because, it is the Case Officers Planning Judgement that the proposed development would not result in a significant increase in stock number or any significant harm to the amenity of the neighbouring occupiers.

The Local Planning Authority is reasonably satisfied that the inclusions of the conditions restricting the Dutch barn to storage purposes only and restricting the location of all manure waste, sufficiently mitigates such amenity requirements so an Environmental Management Plan is not necessary.

Ground 3 of the Judicial Review (Case No: CO/4718/2022) relating to this site was that *'the Defendant (the Council) failed to obtain sufficient information in relation to odour impacts.'* In the Approved Judgment, Mr Justice Jay stated: *'My approach to Ground 3 is as follows. It is conceded that if Ground 1 succeeds (as it does), then so does Ground 3. But, on the alternative hypothesis that Ground 1 fails it seems to me that Ground 3 must struggle. This is because the relevant baseline is not no cows (as was the position, for example, in December 2020 when the first unsuccessful application was considered) but the Interested Party continuing their current dairy operation in the western barn. On that hypothesis, the sort of quantitative assessment which would ordinarily be required is simply not necessary – or, more precisely, the Defendant could reasonably conclude that it was not necessary. Indeed, on that hypothesis, what the Interested Party's EMP proposed, for all its failings, was better than the status quo. In my judgment, Ground 3 adds nothing to this case, and I need not consider it any further.'* Ground 1 indicated the *'Defendant unlawfully concluded that the Interested Party had a fall-back position of being able to operate the site as a dairy farm without the unauthorised development.'*

In its consideration of expediency, the Council has concluded that it would not be expedient to take action against the works that formed the application proposals considered in the Judicial Review. Given this, the baseline is as per the position set out by Landsense and it is your Officer's view that the impact arising from the proposed building (taking account of the proposed restrictions to be placed on the Dutch Barn), does not require an EMP in order to make this proposal acceptable.

Taking account all of the above, subject to the appropriate conditions, the proposed development would be in accordance with Policies DM01, DM04 and DM14 of the NDTLP and the NPPF.

## **6. Access and Highways**

Paragraph 115 of the NPPF advises that development should only be prevented or refused on transport grounds if there would be an unacceptable impact on highways safety, or the residual cumulative impacts on the road network would be severe. In addition, Paragraph 116 notes that development should minimise the scope for conflict between pedestrians, cyclists and vehicles, respond to local character and design standards, allow for the efficient delivery of goods, and access by service and emergency vehicles.

Policy ST10 of the NDTLP, sets out the transport strategy for Northern Devon. It aims to reduce the environmental and social impact of transport by ensuring that access to new developments is safe and appropriate.

Policy DM05 of the NDTLP relates to highways and states:

- (1) All development must ensure the safe and well-designed vehicular access and egress, adequate parking and layouts which consider the needs and accessibility of all highway users including cyclists and pedestrians.*

- (2) *All development shall protect and enhance public rights of way, footways, cycleways and bridleways and facilitate improvements to existing or provide new connections to these routes where practical to do so.*

Policy DM14(e) supports the expansion of rural enterprises where *the scale of employment is appropriate to the accessibility of the site and the standard of the local highway network.*

The proposed development is for the erection of an extension to the agricultural livestock building and will utilise the existing access from the public, unclassified highway to the west of the site. Devon County Council Highways, as the Local Highways Authority, were consulted on the proposed development; however, no formal representation was received.

A public representation was received during the consultation of the application, with regards to the access and highway consideration. More specifically, concerns were raised with the proposed access and the inconsistency within the application documents. It is acknowledged that the original scheme included a new proposed access without the submission of detailed drawings. Concerns were raised with the applicant and the scheme was amended to utilise the existing access. The Local Planning Authority accepted the amendments and are satisfied the documents in this regard are consistent.

The proposal does not alter the existing provision and will not significantly increase the volume of vehicular traffic attracted to the site. There is sufficient turning provision within the wider site to the north of the proposed building.

Taking account of the above, the proposal would not result in any 'severe' highway impact and is deemed in accordance with Policy ST10, DM05 and DM14 of the North Devon and Torridge Local Plan and the National Planning Policy Framework.

## **7. Impact on Wildlife and Ecology**

### **a. Ecological Impact**

Local Planning Authorities have a statutory duty to ensure that the impact of development on wildlife is fully considered during the determination of a planning application under the Wildlife and Countryside Act 1981 (as amended), Natural Environment and Rural Communities Act 2006, the Conservation of Habitats and Species Regulations 2010 (Habitats Regulations 2010). This is further reinforced within NDTLP through Policies DM08 and ST14 which state that all developments must ensure that the importance of habitats and designated sites are taken into account.

The local planning authority also has a duty under Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 to have regard to biodiversity in exercising its functions. This duty includes the requirement to have regard to protected species.

Development proposals should avoid adverse impacts on existing features as a first principle and enable net gains by designing biodiversity features and enhancements and opportunities for geological conservation alongside new developments, however where adverse impacts are unavoidable they must be adequately and proportionately mitigated.

The applicant has provided a wildlife trigger list which indicated the scheme will not have an impact on any protected species. The potential for impacts to the nearest SSSIs and the position of Natural England is set out above in an earlier Section. Consequently, the Council are confident that the proposal will have no harmful impact on wildlife and ecology and the proposal fulfils the above statutory duties and the provision of Policies DM08 and ST14 of the North Devon and Torridge Local Plan and the requirements of the National Planning Policy Framework.

### **b. Biodiversity Net Gain**

As of the 02<sup>nd</sup> April 2024, it is mandatory under the Schedule 7a of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021) that small-site developments (unless exempt) must deliver a Biodiversity Net Gain of 10%.

The application is not a major development, within the meaning of Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015) and was received by the Local Planning Authority on the 20<sup>th</sup> March 2024. Consequently, a 10% Biodiversity Net Gain is not required.

## **8. Conclusion**

For the avoidance of doubt, your Officer can conclude that the principle of an extension to the existing agricultural building, for the accommodation of livestock and cessation of the use of part of the existing building for livestock accommodation, is acceptable in principle and in accordance with the Policies of North Devon and Torridge Local Plan and the National Planning Policy Framework, subject to conditions as set out below.

In addition to this, the proposed development is considered to result in an acceptable impact on the character and appearance of the surrounding area and landscape; would not result in a harmful impact on the amenities of the neighbouring properties, subject to the appropriate conditions; provides suitable access; and would not result in a harmful impact on protected species.

The Local Planning Authority recommends approval of the application. Regard has been given to the third-party representations received from members of the public and statutory consultees.

## **Human rights**

Consideration has been given to the Human Rights Act 1998.

## **Recommendation**

GRANT, subject to the following conditions:

- 1 The development to which this permission relates must be begun no 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 time requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The development hereby permitted shall be carried out in accordance with the approved plans listed in the Plans Schedule.

Reason: To ensure the development is carried out in accordance with the approved plans.

- 3 Prior to the agricultural building hereby approved, being first brought into use, the use of the agricultural building labelled 'non-livestock building' on the Location and Block Plan (reference: 200\_01C, received: 14/06/2024), shall cease to be used for the accommodation of livestock or the storage of slurry, at any time and in perpetuity.

Reason: In the interest of protecting the cumulative air quality impact arising from agricultural activities on the wider application site; and in the interest of improving the residential amenities of the neighbouring property, known as Berry Hill, in accordance with Policies DM01, DM02, DM04 and DM14 of the North Devon and Torridge Local Plan, the Air Quality Supplementary Planning Document; and the National Planning Policy Framework.

- 4 All manure waste resulting from the proposed development must be stored at a minimum distance of 100 metres from the boundary of any neighbouring third-party dwelling in order to protect amenity, in perpetuity.

Reason: In the interest of protecting the residential amenities of the neighbouring property, known as Berry Hill, in accordance with Policies DM01, DM02, DM04 and DM14 of the North Devon and Torridge Local Plan and the National Planning Policy Framework.

## Plans Schedule

<u>Reference</u>	<u>Received</u>
200_05	20.03.2024
200_06 A	25.03.2024
200 01 C	14.06.2024

## Informatives

01. The effect of Paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for development of land in England is deemed to have been granted subject to the condition (biodiversity gain condition) that development may not begin unless:
- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
  - (b) the planning authority has approved the plan.

The Planning Authority, for the purposes of determining whether to approve a Biodiversity Gain Plan, if one is required in respect of this permission would be Torridge District Council.

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply.

Based on the information available this permission is considered to be one which will not require the approval of a biodiversity gain plan before development is begun because one or more of the statutory exemptions or transitional arrangements are considered to apply.

The Permission which has been granted is for development, which is exempt from the requirements set out within Paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 [Biodiversity Net Gain] being:

- Development which is not '*major development*' (within the meaning of Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015) where:
  - (i) The application for planning permission was made before 2<sup>nd</sup> April 2024;
  - (ii) Planning permission is granted which has effect before 2<sup>nd</sup> April 2024; or
  - (iii) Planning permission is granted on an application made under section 73 of the Town and Country Planning Act 1990 where the original permission to which the section 73 permission relates was exempt by virtue of (i) or (ii).

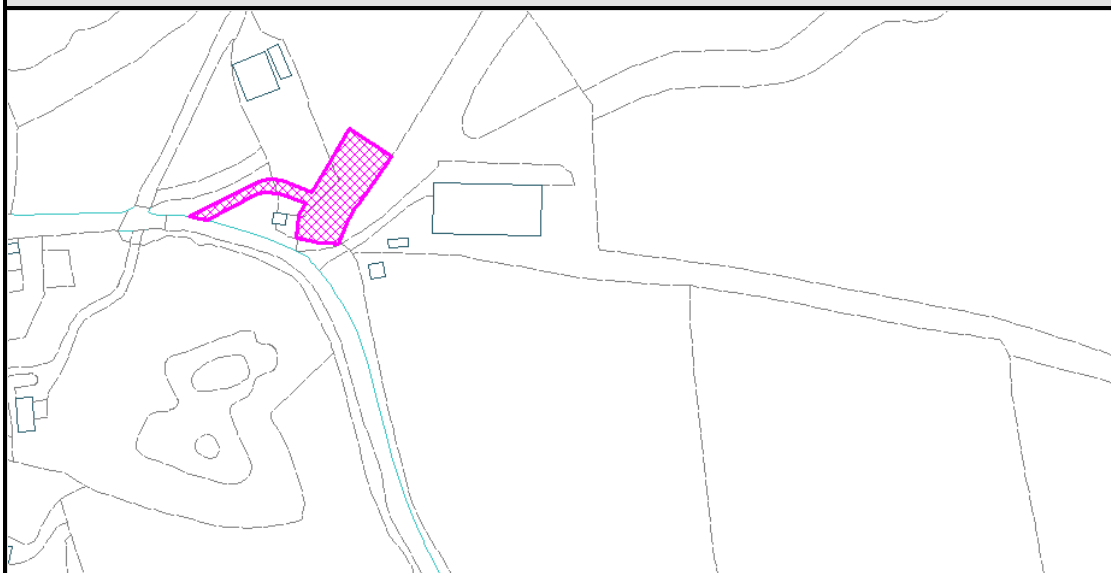
## Statement of Engagement

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF) in dealing with this application, the Council has worked with the applicant in the following and positive and proactive manner. We have made available detailed advice in the form of our statutory policies in the Development Plan, Supplementary Planning Documents, Planning Briefs and other informal written guidance, as well as offering a full pre-application advice service, in order to ensure that the applicant has been given every opportunity to submit an application which is likely to be considered favourably. In such ways the Council has demonstrated a positive and proactive manner in seeking solution to problems arising in relation to the planning application.

# Agenda Item 7c

## Committee Report – 03.10.2024

<b>Application Number:</b>	1/0661/2024/FUL
<b>Registration date:</b>	30 July 2024
<b>Expiry date:</b>	24 September 2024
<b>Applicant:</b>	Mr John Read
<b>Agent:</b>	Mr Ian Robertson
<b>Case Officer:</b>	Mr Peter Stapley
<b>Site Address:</b>	Land At Higher Ashmansworthy, Woolsery, Bideford, Devon, EX39 5RE.
<b>Proposal:</b>	Construction of 1 no. dwelling (Self build)
<b>Recommendation:</b>	Refuse



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## Reason for referral:

The application was called in to be heard at Plans Committee by Councillor James in his capacity as Leader if the application was to be Refused for the following reasons:

- Supporting the Local Economy, providing essential breakdown and maintenance services in the area.
- Retaining young people in the Rural Area providing that service.

## Relevant History:

Application No.	Description	Status	Closed
1/0666/2023/FUL	Construction of 1 no. dwelling	WDN	31.10.2023
1/1130/2023/CPE	Certificate of existing lawful use and building works for erection of building and use of land for storage, repair and servicing of agricultural vehicles and machinery	REF	17.01.2024
1/0281/2024/CPE	Certificate of existing lawful use and building works for erection of building and use of land for storage, repair and servicing of agricultural vehicles and machinery (Resubmission of 1/1130/2023/CPE)	PER	15.05.2024

## Site Description & Proposal

### Site Description

The application site is located in the countryside, approximately 100 metres to the northeast of the hamlet, known as Ashmansworthy, and 2.6km to the southeast of the development boundary of Woolfsardisworthy [Woolsery], which is designated as a 'Village' in the adopted North Devon and Torridge Local Plan (NDTLP).

The application site measures approximately 460 square metres within a wider 0.83 hectares. The supporting documentation states that the wider site currently is used as a workshop and yard, providing a transportation and repair service for agricultural machinery. The commercial use of the site and the erection of the workshop building, benefit from a Certificate of Existing Lawful Use and Development. However, a mobile home is situated to the north of the workshop building which currently does not benefit from any planning permission or lawful certificate, and therefore is unauthorised.

The site does not fall within any other allocated land designation; however, Ashmansworthy's Special Area of Conservation and Site of Special Scientific Interest is located approximately 200 metres to the south. Additionally, there are no designated heritage assets within close proximity.

The landscape character type for the application site is 1F (Farmed Lowland Moorland and Culm Grassland) and the site falls within a Zone 1 Flood Risk and therefore it has less than 1 in 1,000 annual probability of river flooding and is consider a low probability of flooding.

The application site is neighboured by agricultural land to the north; a forestry storage building to the east; the highway to the south; and the workshop and yard to the west. The closest neighbouring residential property to the site is located 106 metres to the northwest and the site is currently accessed from the public, unclassified highway via an existing access track to the southwest of the site.

### **Proposed Development**

The application seeks full planning permission for the erection of a single storey, three-bedroom, residential dwelling measuring approximately 138.5 square metres. The proposed dwelling will measure approximately 8.5 metres in width by 16.3 metres in length, with an eaves height of 3.4 metres and a ridge height of 5.1 metres. The dwelling is not being proposed to be restricted in terms of occupation, for example to a rural worker or local needs, and consequently it has been advertised as a departure from the North Devon and Torridge Local Plan (NDTLP).

The proposed building will be constructed with the following materials: natural stone plinth to a height of 600mm from finished ground floor level with rendered blockwork above; slate roof tiles; uPVC windows in Chartwell Green; and uPVC doors in Chartwell Green.

The wider site includes the provision of two vehicle parking spaces to the front of the property; private amenity space to the north of the dwelling; a proposed package treatment foul water drainage system; a surface water soakaway; and a rainwater harvesting tank.

### **Consultee representations:**

#### **Woolfardisworthy Parish Council:**

Woolfardisworthy Parish Council wishes to respond with no objections, with support to a local family living and working in the area.

#### **South West Water:**

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):

1. Water re-use (smart water butts, rainwater harvesting, grey flushing toilets)
2. Discharge into the ground (infiltration); or where not reasonably practicable,
3. Discharge to a surface waterbody; or where not reasonably practicable,
4. Discharge to a surface water sewer, highway drain, or another drainage system; or where not reasonably practicable,
5. Discharge to a combined sewer. (Subject to Sewerage Undertaker carrying out capacity evaluation)

Having reviewed the applicant's current information as to proposed surface water disposal for its development, please note that method proposed to discharge into the ground (infiltration) is acceptable and meets with the Run-off Destination Hierarchy.

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: [DeveloperServicesPlanning@southwestwater.co.uk](mailto:DeveloperServicesPlanning@southwestwater.co.uk).

#### **Environmental Protection Officer:**

Initial Representation (received: 31<sup>st</sup> July 2024)

The following consultation response is provided by the Environmental Protection Team in relation to the above application.

Having regard for the application site, the Environmental Protection Team considers there to be no conflicting neighbouring land use and as such, the proposed development accords with Policy DM01. Due to the presence and proximity of existing dwellings, there is the potential for residential amenity

to be adversely affected on a temporary basis from the construction works if control measures are not in place. Should planning consent be granted, the Environmental Protection Team recommends the imposition of the following condition:

Construction works and site deliveries shall be carried out Monday to Friday 0700 to 1900 hours and Saturdays 0800 to 1300 hours only with no works permitted on Sundays and Bank Holidays  
Reason: To protect neighbouring residential amenity

The application contains no detailed information on the historic use and subsequent land quality of the application site. Former use and activity can result in ground contamination and ground conditions that are potentially harmful to human health or unsuitable for occupation without remediation. Given the sensitive end use, it is essential that the application site is appropriately assessed for any potential contamination that may impact future occupants and, where identified, remediated accordingly. Should planning consent be granted, the Environmental Protection Team recommends the imposition of the Authority's full standard contaminated land condition.

The proposed dwelling is to be served by a new package treatment plant discharging to a drainage field. The percolation test results provided indicate that the ground has suitable permeability and sufficient land is available to accommodate the proposed foul drainage scheme.

#### Second Representation (received: 13<sup>th</sup> September 2024)

The Environmental Protection Team considered the dwelling to be ancillary to the existing business in its initial review. If this is not the case, then the Environmental Protection Team would raise concerns with regards the amenity impact arising from the adjacent business. Additional information regarding the business, in particular activities and operating times, would be required to assist in assessing any potential impact. Alternatively, if the proposed dwelling were to be ancillary to the business any concerns for amenity would be negated. Upon further review, it is noted that an agricultural building is located in close proximity to the east of the application site that appears to be outside the ownership of the applicant. Again, further information would be required on the building, such as ownership and use, as its presence has the potential to affect the residential amenity of the proposed dwelling.

#### **Devon County Council (Highways):**

Standing Advice.

#### **Representations:**

Number of neighbours consulted:	5	Number of letters of support:	2
Number of representations received:	2	Number of neutral representations:	0
Number of objection letters:	0		

The public representations received are summarised below:

#### Support Comment

- Business need; and
- Local need requirement.

#### **Policy Context:**

##### **North Devon and Torridge Local Plan 2011-2031:**

ST01 (Principles of Sustainable Development); ST03 (Adapting to Climate Change and Strengthening Resilience); ST04 (Improving the Quality of Development); ST06 (Spatial Development Strategy for Northern Devon's Strategic and Main Centres); ST07 (Spatial Development Strategy for Northern Devon's Rural Area); ST08 (Scale and Distribution of New Development in Northern Devon); ST10 (Transport Strategy); ST14 (Enhancing Environmental Assets); ST17 (A Balanced Local Housing Market); DM01 (Amenity Considerations); DM02 (Environmental Protection); DM04 (Design Principles); DM05 (Highways); DM06 (Parking Provision); DM08A (Landscape and Seascape Character); DM08 (Biodiversity and Geodiversity); DM24 (Residential Development in Rural Settlements).

## Government Guidance:

NPPF (National Planning Policy Framework); NPPG (National Planning Practice Guidance); NERC (Natural Environment & Rural Communities); WACA (Wildlife & Countryside Act 1981).

## Planning Considerations

### The material planning considerations in the determination of this application are:

1. Principle of Development;
2. Design and Impact on Character and Appearance;
3. Impact on Amenity;
4. Access, Parking and Highway Safety;
5. Foul and Surface Water Drainage;
6. Impact on Wildlife and Ecology;
  - a. Ecological Impact;
  - b. Biodiversity Net Gain; and
7. Conclusion

### **1. Principle of Development**

Section 38 (6) of the Planning and Compulsory Act 2004 states that key consideration in the determination of a planning application is the development plan. Applications should be determined in accordance with the development plan unless material planning considerations indicate otherwise. For the purpose of the development plan the statutory development plan is comprised of the North Devon & Torridge Local Plan 2011-2031 (NDTLP).

Paragraph 84 of the National Planning Policy Framework (NPPF) states that “*planning decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:*

- (a) *There is an essential need for a rural worker, including those taking majority control of farm business, to live permanently at or near their place of work in the countryside;*
- (b) *The development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;*
- (c) *The development would re-use redundant or disused buildings and enhance its immediate setting;*
- (d) *The development would involve the subdivision of an existing residential building; or*
- (e) *The design is of exceptional quality, in that it:*
  - *Is truly outstanding, reflecting the highest standards in architecture, and would help raise standards of design more generally in rural areas; and*
  - *Would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.”*

Policy ST01 of the NDTLP emphasises that development proposals will be considered with a presumption in favour of sustainable development, as contained in the NPPF.

The application site is located outside of the settlement boundary of Woolserly, as identified on the Proposals Maps to the NDTLP. The settlement boundary is located approximately 2.6 km to the northeast of the site and therefore in planning terms the site is considered to be located within countryside.

As a result of the application site being located outside of the settlement boundary, the provisions of section (4) of Policy ST07 of the NDTLP are relevant which states that in the countryside, beyond Local Centres, Villages and Rural Settlements, development will be limited to that which is enabled to meet local economic and social needs, rural building reuse and development which is necessarily restricted to a countryside location. The accompanying text to Policy ST07, in relation to section (4) notes that in the countryside, the NDTLP seeks to control dispersed development, guarding against development in unsustainable locations.

The NDTLP supports the provision of local occupancy dwellings within Rural Settlements. Policy DM24 states: "*in qualifying Rural Settlements, proposal for local occupancy dwellings to meet a locally identified housing need will be supported where:*

- (a) The development site forms part of a small closely grouped or contiguous built form of housing that is physically separate from the urban areas of other defined settlements;*
- (b) The scale is proportionate to the settlement's size, form and character;*
- (c) The site is within or directly adjoining the built form of the settlement;*
- (d) The size of the dwellings are no larger than can be justified by the established need;*
- (e) It would not harm the settlement's rural character and setting; and*
- (f) Secure arrangements are made to ensure the dwellings remain available to meet the locally identified housing needs of the local community both initially and in the long term provided the needs exists."*

Paragraph 13.133 of the NDTLP states: '*the primary purpose for allowing limited housing in Rural Settlements is to sustain their vitality and to meet the needs of the local community by identifying that a 'locally generated need' can be demonstrated. Speculative development will not be supported in the view of sustainability considerations. New dwellings will be allowed either as affordable housing or subject to secure arrangements to ensure occupancy is limited both initially and in the future to:-*

- (1) At least one adult in the household was resident continuously in the Rural Settlement for a minimum of five years immediately prior to the occupation; or*
- (2) At least one adult of the household was resident in the Rural Settlement for five years within the previous ten years immediately prior to occupation; or*
- (3) At least on parent, guardian, child or sibling, of at least one adult in the intended household, has been resident in the Rural Settlement for a minimum of 5 years immediately prior to occupation; or*
- (4) At least one adult in the household has been in continuous employment for at least 16 hours per week in the Rural Settlement for at least five years immediately prior to occupation; and in all cases*
- (5) At least one adult in the household needs a separate home or whose present accommodation is sub-standard or unsuitable to their present circumstances because of their age, an impairment, medical condition or to meet the needs of a growing family or there is no suitable accommodation available.'*

Taking account of the above, it is clear that the proposed development would be contrary to Policies ST01 and ST07 insofar that it does not relate to an extant planning permission; is located within the countryside and not within a qualifying rural settlement or within any identified development boundary; and is not proposed to be restricted as rural worker's accommodation.

Consequently, the proposed development conflicts with the development plan as a whole, which is the starting point for decision making. More specifically the proposed open market dwelling is contrary to Policies ST01, ST07 and DM24 of the NDTLP and the NPPF.

Notwithstanding the above, during the lifetime of the application, the applicant has provided further additional information to demonstrate an essential need. The essential need identified by the applicant is for a *rural worker dwelling* in association with the transportation and repair services for agricultural machinery enterprise located on the wider site.

It is your Officers view that, a Rural Workers Dwelling cannot be considered at this time, given the proposed development which was originally submitted for was an open market dwelling and a rural worker dwelling would be assessed against alternative policies, therefore a new application would be required. The applicant has been made aware that an alternative application would be required in order to consider a Rural Workers Dwelling.

In any case, it is your Officer view, based on the further information provided, that a rural worker dwelling would not be justified as a functional requirement for the site; nor would it meet the financial or design tests of a Rural Worker Dwelling. Consequently, the principle of development on the application site for rural workers dwelling, could not be supported and would be contrary to Policies ST01, ST06, ST07, ST08, DM24 and DM28 of the NDTLP and the NPPF.

## **2. Design and Impact on Character and Appearance**

The NDTLP policies on design are relevant - Policy ST04 (Improving the Quality of Development) and Policy DM04 (Design Principles), which both aim to achieve high quality, inclusive and sustainable design.

Policy ST04 supports development proposal that 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 supports developments with good design and the policy seeks to guide overall scale, density, massing, height, landscape, layout, materials, access and appearance of new developments. It seeks not just to manage land use but support the creation of successful places and respond to the challenges of climate change. The policy lists 13 design principles that proposals must meet in order to be supported by the policy.

Policy DM08A seeks to protect the landscape and seascape character stating 'developments should be of an appropriate scale, mass and design that recognises and respects landscape character of both designated and undesignated landscapes and seascapes; it should avoid adverse landscape and seascape impacts and seek to enhance the landscape and seascape assets wherever possible. Development must take into account and respect the sensitivity and capacity of the landscape/seascape asset, considering the cumulative impact and the objective to maintain dark skies and tranquillity in areas that are relatively undisturbed.'

The application site is not located within any special designated landscapes and falls, within Landscape Type 1F (Farmed Lowland Moorland and Culm Grassland) as identified within the Joint Landscape Character Assessment for North Devon and Torridge Districts.

The special qualities and characteristics of landscape type 1F, include, a gently undulating landform with open long views afforded at elevation over the landscape of contrasting green fields of surrounding farmland. The landscape character has a sense of remoteness with high levels of tranquillity and dark skies, particularly in the southern part of the area. Some of the forces for change within these landscape character types are:

- Urban fringe influences on the landscape in some areas, e.g. golf clubs, fisheries and pony paddocks as well as occasional fly-tipping near settlements;
- Renewable energy developments becoming more common in the landscape; and
- Tourism pressure in some parts of the landscape resulting in seasonally high levels of traffic on rural lanes.

Policy ST14 of the NDTLP seeks to enhance the District's environmental assets, noting within section (g), the need to protect and enhance the local landscape character, taking into account the key characteristics, historical dimensions of the landscape and their sensitivity to change.

The NPPF also strongly emphasises the need for well-designed places, in which Part 12 of the Framework is solely dedicated to the achieving well-design places. Paragraph 131 of the NPPF notes 'the creation of high-quality buildings and places is fundamental to what the planning and development proves should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work, and helps make development acceptable to communities'. Part 12 of the framework, lists 6 key design principles that are required to be met in order to demonstrate the design is of high quality

Paragraph 139 of the NPPF states that permission should be refused for the development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

The proposal is for the erection of a single storey, three-bedroom, residential dwelling measuring approximately 138.5 square metres. The proposed dwelling will measure approximately 8.5 metres in width by 16.3 metres in length, with an eaves height of 3.4 metres and a ridge height of 5.1 metres.

The proposed building will be constructed with the following materials: natural stone plinth to a height of 600mm from finished ground floor level with rendered blockwork above; slate roof tiles; uPVC windows in Chartwell Green; and uPVC doors in Chartwell Green.

It is clear the proposed dwelling would have a limited wider landscape impact, given its siting within close proximity to the existing workshop building and is well-screened from distant views by the well-established vegetated boundaries.

The design is relatively simple and would be appropriate for its countryside location and there would be limited wider landscape harm from the erection of a dwelling in this location. The proposed development for an open market dwelling would be in accordance with Policies ST04, DM04, and DM08A of the North Devon and Torridge Local Plan and the National Planning Policy Framework.

### **3. Impact on Amenity**

Policy DM01 of the NDTLP relates to amenity considerations and notes, development will be supported where:

- (a) *It would not significantly harm the amenities of any neighbouring occupiers or uses; and*
- (b) *The intended occupants of the proposed development would not be harmed as a result of existing or allocated uses.*

Policy DM02 of the NDTLP, states that development will only be supported where it does not result in unacceptable impacts to:

- (a) Atmospheric pollution by gas or particulates, including smell, fumes, dust, grit, smoke and soot;
- (b) Pollution of surface or ground water including rivers, canals, other watercourses, water bodies, wetlands, water gathering grounds including catchment areas, aquifers, groundwater protection areas, harbours, estuaries or the sea;
- (c) Noise or vibration; and
- (d) Light pollution where light overflows on to areas not intended to be lit.

Policy DM04 also aims to ensure the amenities of existing and future neighbouring occupiers are safeguarded. In addition to this, one of the core principles of the NPPF is to secure high-quality design and a good standard of amenity of all existing and future occupants of land and buildings.

Part H1 of the National Design Guide states that '*good design promotes quality of life for the occupant and users of buildings. This includes function [...] comfort, safety, security, amenity, privacy, accessibility and adaptability.*'

The application site is neighboured by agricultural land to the north; a forestry storage building to the east; the highway to the south; and the workshop and yard to the west. The closest neighbouring residential property to the site is located approximately 106 metres to the northwest.

The Environmental Protection Officer was consulted on the proposed development and commented "*Having regard for the application site, the Environmental Protection Team considers there to be no conflicting neighbouring land use and as such, the proposed development accords with Policy DM01. Due to the presence and proximity of existing dwellings, there is the potential for residential amenity to be adversely affected on a temporary basis from the construction works if control measures are not in place. Should planning consent be granted, the Environmental Protection Team recommends the imposition of the following condition:*

*Construction works and site deliveries shall be carried out Monday to Friday 0700 to 1900 hours and Saturdays 0800 to 1300 hours only with no works permitted on Sundays and Bank Holidays*  
*Reason: To protect neighbouring residential amenity*

*The application contains no detailed information on the historic use and subsequent land quality of the application site. Former use and activity can result in ground contamination and ground conditions that are potentially harmful to human health or unsuitable for occupation without remediation. Given the sensitive end use, it is essential that the application site is appropriately assessed for any potential contamination that may impact future occupants and, where identified, remediated accordingly. Should planning consent be granted, the Environmental Protection Team recommends the imposition of the Authority's full standard contaminated land condition."*

The Environmental Health Officer provided further comments and stated "*The Environmental Protection Team considered the dwelling to be ancillary to the existing business in its initial review. If this is not the case then the Environmental Protection Team would raise concerns with regards the amenity impact arising from the adjacent business. Additional information regarding the business, in particular activities and operating times, would be required to assist in assessing any potential impact. Alternatively, if the proposed dwelling were to be ancillary to the business any concerns for amenity would be negated. Upon further review, it is noted that an agricultural building is located in close proximity to the east of the application site that appears to be outside the ownership of the applicant. Again, further information would be required on the building, such as ownership and use, as its presence has the potential to affect the residential amenity of the proposed dwelling."*

The scale, design and nature of the proposed development are such that there would be no significant adverse impact on the amenities of occupiers of nearby dwellings in terms of overlooking, loss of privacy, dominance, overshadowing, and loss of daylight or sunlight. The building located to the east is a forestry implement storage building and therefore would have limited harm to the amenities of the occupants.

In the opinion of the LPA, the proposed development is for an open market dwelling and for a rural worker dwelling to be considered a further application would be required. Consequently, the LPA would raise serious concerns with regards to the impact on the amenities of the occupants of any unrestricted dwelling arising from the transportation and agricultural machinery repair enterprise located immediately to the west of the site. The proposed open market dwelling would conflict with Policies DM01, DM02 and DM04 of the North Devon and Torridge Local Plan and the National Planning Policy Framework.

#### **4. Access, Parking and Highway Safety**

Paragraph 115 of the NPPF advises that development should only be prevented or refused on transport grounds if there would be an unacceptable impact on highways safety, or the residual cumulative impacts on the road network would be severe. In addition, Paragraph 116 notes that development should minimise the scope for conflict between pedestrians, cyclists and vehicles, respond to local character and design standards, allow for the efficient delivery of goods, and access by service and emergency vehicles.

Policy ST10 of the NDTLP, sets out the transport strategy for Northern Devon. It aims to reduce the environmental and social impact of transport by ensuring that access to new developments is safe and appropriate.

Policy DM05 of the NDTLP relates to highways and states:

- (1) All development must ensure the safe and well-designed vehicular access and egress, adequate parking and layouts which consider the needs and accessibility of all highway users including cyclists and pedestrians.*
- (2) All development shall protect and enhance public rights of way, footways, cycleways and bridleways and facilitate improvements to existing or provide new connections to these routes where practical to do so.*

In addition to this, Policy DM06 of the NDTLP relates to parking provision and states:

- (1) Development proposals will be expected to provide an appropriate scale and range of parking provision to meet anticipated needs, having regard to:
  - (a) Accessibility and sustainability of the site;*
  - (b) Availability of public transport;**

- (c) Provisions of safe walking and cycle routes; and
  - (d) Specific sale, type and mix of development.
- (2) Proposals must encourage the use of sustainable modes of transport through careful design, layout and integration of the existing built form.

Devon County Council Highways, as the Local Highways Authority, were consulted and had no objections, subject to the standing advice being met.

The application site utilises an existing access, currently used by the business under the same ownership. There is currently no evidence to suggest that the existing access is unsuitable or unsafe and the proposed development would not significantly increase the traffic volume to the site. Additionally, the proposed site plan demonstrates that there is sufficient vehicle parking for the proposed dwelling.

Consequently, the Local Planning Authority is reasonably confident that the proposed development would not result in a severe cumulative impact on highway safety and is in accordance with policies ST10, DM05 and DM06 of the NDTLP and the NPPF.

### **5. Foul and Surface Water Drainage**

Policy ST03(f) (Adapting to Climate Change and Strengthening Resilience) states that future development should be designed and constructed to take account of the impacts of climate change and minimise the risk to and vulnerability of people, land and property by adopting effective water management including Sustainable Drainage Systems, water quality improvements, water efficiency measures and use of rainwater.

The supporting text of Policy ST03 states that 'all developments will seek to minimise flood risk through the use of Sustainable Drainage Systems and appropriate integration with green infrastructure. Controls to manage surface water runoff should be located as close as possible to where the rainwater drains, providing varying degrees of treatment for surface water through natural processes of sedimentation, filtration and biological degradation.

Policy DM02 of the Local Plan relates to pollution and at Section (2) states that development will be supported where it does not result in unacceptable impacts to:

*'(b) pollution of surface or ground water (fresh and salt) including rivers, canals, other watercourses, water bodies, wetlands, water gathering grounds including catchment areas, aquifers, groundwater protection areas, harbours, estuaries or the sea'*

In addition, part (n) of Policy DM04 notes that development proposals should provide effective water management including Sustainable Drainage Systems, water efficiency measures and the reuse of rainwater.

The NPPF and Planning Practice Guidance provide further advice on foul drainage, with a hierarchical approach being used. The Planning Practice Guidance notes that new development should aim to discharge foul water into the public sewer; however, if this not possible then a package treatment plant may be used. However, if a package treatment plant is not possible to use, then a septic tank will be considered. Justification for the use of alternative drainage systems other than mains drainage is required.

The application site is located within Flood Zone 1 (low probability) and therefore is considered to having a less than 1 in 1,000 annual probability of river or sea flooding. The proposed site plan demonstrates that the surface water is to be dealt with via soakaways and a rainwater harvesting tank and the foul drainage will be connected to a package treatment plant, discharging to a drainage field.

The Councils Environmental Protection Team were consulted on the proposed development and commented *"the proposed dwelling is to be served by a new package treatment plant discharging to a drainage field. The percolation test results provided indicate that the ground has suitable permeability and sufficient land is available to accommodate the proposed foul drainage scheme."*

Taking account the above, the proposed development is considered to be in accordance with Policies ST03, DM02 and DM04 of the NDTLP.

## **6. Impact on Wildlife and Ecology**

### **a. Ecological Impact**

Local Planning Authorities have a statutory duty to ensure that the impact of development on wildlife is fully considered during the determination of a planning application under the Wildlife and Countryside Act 1981 (as amended), Natural Environment and Rural Communities Act 2006, the Conservation of Habitats and Species Regulations 2010 (Habitats Regulations 2010). This is further reinforced within NDTLP through Policies DM08 and ST14 which state that all developments must ensure that the importance of habitats and designated sites are taken into account.

The local planning authority also has a duty under Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 to have regard to biodiversity in exercising its functions. This duty includes the requirement to have regard to protected species.

Development proposals should avoid adverse impacts on existing features as a first principle and enable net gains by designing biodiversity features and enhancements and opportunities for geological conservation alongside new developments, however where adverse impacts are unavoidable they must be adequately and proportionately mitigated.

Given the result of the Wildlife Trigger List, the Council are confident that the proposal will have no harmful impact on wildlife and ecology and the proposal fulfils the above statutory duties and the provision of policies DM08 and ST14 and the requirements of the NPPF.

### **b. Biodiversity Net Gain**

As of the 02<sup>nd</sup> April 2024, it is mandatory under the Schedule 7a of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021) that small-sites developments (unless exempt) must deliver a Biodiversity Net Gain of 10%.

The Permission which has been granted is for development, which is exempt from the requirements set out within Paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 [Biodiversity Net Gain] being a:

- Self and Custom Build Development, meaning development which:
  - (i) consists of no more than 9 dwellings;
  - (ii) is carried out on a site which has an area no larger than 0.5 hectares; and
  - (iii) consists exclusively of dwellings which are self-build or custom housebuilding (as defined in section 1(A1) of the Self-build and Custom Housebuilding Act 2015).

Section 1 (A1) of the Self-build and Custom Housebuilding Act 2015 defines self-build development as “*the building or completion by:*

- (a) individuals,*
- (b) associations of individuals, or*
- (c) persons working with or for individuals or associations of individuals,*

*of houses to be occupied as homes (an individual’s sole or main residence) by those individuals.”*

Government Planning Guidance also acknowledges that in order for a development to be considered a self-build there is an expectation that the individual must have a primary input into the final design and layout of the house.

The applicant has confirmed that they meet the definition of a self-build development. Consequently, the proposed development, in accordance with the recommended condition, is exempt from the so-called Biodiversity Net Gain requirement, as set out by Schedule 7a of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021).

## **7. Conclusion**

For the avoidance of doubt, your officer concludes that the proposed development would result in a form of unsustainable development involving unrestricted residential development within the countryside. The proposed development is contrary to Policies ST01 (Principles of Sustainable Development), ST06 (Spatial Development Strategy for Northern Devon's Sub-regional, Strategic and Main Centres), ST07 (Spatial Development Strategy for Northern Devon's Rural Area) of the North Devon and Torridge Local Plan and the principles of the National Planning Policy Framework.

Furthermore, in the opinion of the Local Planning Authority, the location of the proposed open market dwelling in close proximity to the transportation and agricultural machinery repair business could significantly harm the amenities of any future occupiers of the dwelling. The proposed development is contrary to Policies DM01 (Amenity Considerations), DM02 (Environmental Protection) and DM04 (Design Principles) of the North Devon and Torridge Local Plan and the National Planning Policy Framework.

The information submitted with regards to the Rural Worker Dwelling is acknowledged; however, at this time this cannot be considered as the application before the Council is advertised as an Open Market dwelling. Any future application will be considered on its own merits, albeit, the evidence presented to date would not demonstrate an essential need for a worker on site.

Notwithstanding the above, your Officer recognises that there could be an economic benefit from the increased output of the business and social benefits specifically to the Applicant from increasing their ability to work and reside on the same site, minimising their outgoings and time spent commuting.

It is therefore recommended the application is refused.

## **Human rights**

Consideration has been given to the Human Rights Act 1998.

## **Recommendation**

REFUSE, for the following reasons:

- 1 In the opinion of the Local Planning Authority, the proposed development would result in a form of unsustainable development involving unrestricted residential development within the countryside. The proposed development is contrary to Policy ST01 (Principles of Sustainable Development), ST06 (Spatial Development Strategy for Northern Devon's Sub-regional, Strategic and Main Centres), and ST07 (Spatial Development Strategy for Northern Devon's Rural Area) of the North Devon and Torridge Local Plan and the principles of the National Planning Policy Framework.
- 2 In the opinion of the Local Planning Authority, the location of the proposed open market dwelling in close proximity to the transportation and agricultural machinery repair business could significantly harm the amenities of any future occupiers of the dwelling. The proposed development is contrary to Policies DM01 (Amenity Considerations), DM02 (Environmental Protection) and DM04 (Design Principles) of the North Devon and Torridge Local Plan and the National Planning Policy Framework.

## **Plans Schedule**

<u>Reference</u>	<u>Received</u>
LOCATION PLAN	19.07.2024
PROPOSED ELEVATIONS	19.07.2024
PROPOSED FLOOR PLAN	19.07.2024
PROPOSED SECTIONS & SE	19.07.2024

ELEVATIONS	
PROPOSED SITE PLAN	19.07.2024
PROPOSED WASTE STORAGE	19.07.2024

### **Statement of Engagement**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF) in dealing with this application, the Council has worked with the applicant in the following and positive and proactive manner. We have made available detailed advice in the form of our statutory policies in the Development Plan, Supplementary Planning Documents, Planning Briefs and other informal written guidance, as well as offering a full pre-application advice service, in order to ensure that the applicant has been given every opportunity to submit an application which is likely to be considered favourably. In such ways the Council has demonstrated a positive and proactive manner in seeking solution to problems arising in relation to the planning application.

## APPEAL DECISIONS SUMMARY

Committee 3rd October 2024

### Appeal decisions for the period 04/09/2024 -25/09/2024

Application No.	Address/Proposal	Appeal Decision	Officer Recommendation	Committee/ Delegated	Costs
1/0997/2023/FUL	Land South Of 1 North Town Petrockstowe Devon  Construction of 1no. local occupancy dwelling with associated works	Dismissed	Refusal	Delegated	No
1/0162/2022/FUL	Northway Holiday Cottages Horns Cross Devon  Amendment to previously approved single storey reception building (1/0620/2017/FUL) addition of a second storey one bed flat	Dismissed	Refusal	Delegated	No
1/0409/2023/FUL	Land At Grid Reference 242202 120861 Orleigh Close Buckland Brewer Devon  Erection of 2no. dwellings and associated works	Allowed	Refusal	Delegated	No
1/0042/2024/FUL	Breakers View Park Avenue Westward Ho! Bideford Devon EX39 1LP  Outline application with all matters reserved for 1no. dwelling	Allowed	Refusal	Delegated	No
1/0581/2023/FUL	Outbuilding Clinton House North Street Sheepwash Devon  Conversion of outbuilding to 1no. holiday let	Dismissed	Refusal	Delegated	No



# Appeal Decision

Site visit made on 3 September 2024

**by J Hills MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10<sup>th</sup> September 2024**

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**Appeal Ref: APP/W1145/W/24/3343464**

**Land South of 1 North Town, Petrockstowe, Devon EX20 3HD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Grahame Phillips against the decision of Torridge District Council.
  - The application Ref is 1/0997/2023/FUL.
  - The development proposed is construction of dwelling with associated works for occupancy by local person.
- 

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The appellant queries whether or not the Council is able to demonstrate a 5 year supply of housing due to figures dating back to 2023. They say that unless additional land has been allocated for development, the figure would be likely to be closer to a 4 year supply. The Council's position is that a 5.17 year supply of housing was published in November 2023. Whilst this figure is of some age, in the absence of any compelling evidence to the contrary, I have determined this appeal on the basis that a 5 year supply is in place.

## Main Issue

3. The main issue is whether the site would be a suitable location for market housing having regard to local planning policies.

## Reasons

4. Policy ST07 of the North Devon and Torridge Local Plan 2011-2031 (LP) sets out the strategy for development in rural settlements where appropriately located development of a modest scale will be enabled to meet locally generated needs. In qualifying rural settlements, as is the case with Petrockstowe, Policy DM24 of the LP sets out relevant criteria for local occupancy dwellings to meet a locally identified housing need. Amongst other things, support is given subject to the site being within or directly adjoining the built form of the settlement and there being secure arrangements in place to ensure dwellings meet these needs in the immediate and longer term.

5. The appeal site is within the settlement and is surrounded by other residential development. The proposal would provide a small 2-bed detached property over 2 storeys. The Council is not concerned with the location or scale of the development proposed. However, it is the matter of a locally identified housing need that is at issue.
6. The appellant agrees with the requirements of policies ST07 and DM24 of the LP. They have submitted a draft S106 legal agreement that they say they are content to enter into. However, this document has not been signed or dated and includes an incorrect appeal reference number. This means it is not legally sound and does not carry any weight. In accordance with paragraph 18.2.1 of the appeals procedural guide<sup>1</sup>, there are no very exceptional circumstances that would justify delaying a decision until an executed obligation was submitted. The efficient operation of the appeals process necessitates that I determine this appeal on the evidence before me.
7. Setting that aside momentarily, it is said that small-scale properties such as this proposal are in shortage in the area. Additionally, the appellant claims its relatively low cost, compared with the majority of dwellings in the settlement, could justify the development without a S106 agreement. Moreover, it is agreed that the proposal would contribute towards the supply of housing in a relatively well served rural settlement that contains a number of local services. Despite this, there is no dispute that there would still be a reliance on motor vehicles for day-to-day needs.
8. I acknowledge the appellant's property letting experience. However, even if the property were to be initially sold at lower value, making it more affordable to local people, there would be no mechanism to control its future value or occupancy. In the absence of such restrictions, the proposal would fail to meet locally generated needs within this small rural community. This is an important part of the Council's housing strategy within its LP that must be given considerable weight.
9. For the above reasons, the site is not a suitable location for market housing having regard to local planning policies. As such, there would be conflict with policies ST07 and DM24 of the LP.

### **Other Matters**

10. My attention has been drawn to the planning history that includes a permission in principle that was allowed at appeal<sup>2</sup>. However, that decision was made at a time when the Council could not demonstrate a sufficient supply of housing. As such, the Inspector considered the housing policies to be out of date, which ultimately weighed in favour of permitting the first stage to the planning in principle. Importantly, the Inspector noted in their final paragraph, that should the housing supply position change, it is possible that a planning obligation could be secured at the second stage in the process for that application type.
11. This is a scenario that has evidently played out. Therefore, the previous permission in principle is not a material consideration that indicates that a

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<sup>1</sup> Procedural Guide: Planning appeals – England, Updated August 2024

<sup>2</sup> Appeal Ref: APP/W1145/W/21/3269210

decision otherwise than in accordance with the development plan should be made.

12. I have paid regard to the appellants comments in respect of highway safety. Whilst I acknowledge 3<sup>rd</sup> party representations in this regard, this not a matter in dispute between the main parties. In any case, as I am dismissing the appeal for other reasons, there is no need for me to consider this matter further.

13. There is a grade II listed building near the appeal site and consequently there is a statutory duty to pay special regard to the desirability of preserving its setting. The grade II listed Denford's significance derives from its 16<sup>th</sup> century origins as a farmhouse, with later 19<sup>th</sup> century additions and rendered walls. The appeal proposal would be visible from the listed building and would be in its setting. However, the proposal would be of a modest scale, and of a similar design to the properties it would be next to. It would also include rendered walls with a slate roof. Although closer to the listed building, it would be set at a lower level behind vegetation and an intervening road. For these reasons, harm to the setting and significance of the listed building would be avoided.

### **Conclusion**

14. For the reasons above, and taking into account all other matters raised, I conclude that the development would fail to accord with the development plan as a whole and there are no considerations individually or cumulatively that outweigh this. Therefore, the appeal is dismissed.

*J Hills*

INSPECTOR

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# Appeal Decision

Site visit made on 3 September 2024

**by J Hills MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12<sup>th</sup> September 2024**

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**Appeal Ref: APP/W1145/W/22/3303460**

**Northway Holiday Cottages, Horns Cross, Devon EX39 5EA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by HPB Assurance Limited against the decision of Torridge District Council.
  - The application Ref is 1/0162/2022/FUL.
  - The development proposed is amendment to previously approved single storey reception building (1/0620/2017/FUL) addition of a second storey one bed flat.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Since the determination of this application, a new National Planning Policy Framework (the Framework) has been adopted (December 2023). The refusal reason makes reference to paragraphs 110, 111, 112, and 177 of the Framework. The text of this is unchanged in paragraphs 114, 115, 116, and 183 of the new Framework. As such, further comments from the parties are not necessary in the interest of natural justice.

## Main Issues

3. The main issues are the effect of the proposed development on (i) the character and appearance of the area; and (ii) highway safety.

## Reasons

### *Character and appearance*

4. The appeal site is within a National Landscape (NL) where the Framework attaches great weight to conserving and enhancing landscape beauty. It is in an exposed open countryside location characterised by its rolling hills that provide reaching views of the north Devon coast. Being part of an existing tourism development, the appeal site forms part of its Developed Coast as set out within the North Devon and Torridge Local Plan 2011-2031 (LP).
5. The appeal building comprises a small, single storey and timber clad structure that had been completed at the time of my visit. It is positioned on the higher part of a wider field and forms a modest peripheral addition to a small cluster of other modern, timber clad buildings. Nevertheless, its siting on the edge of

this cluster and next to the less developed space around means that the eye is drawn to it as a feature in the landscape. Beyond it lies an attractive grouping of stone and rendered buildings. These are of traditional appearance and set down on a lower part of the wider complex. From here, and around the tennis court, the ridge of the appeal building appears to be at a similar height to that of the two storey building behind it.

6. It is acknowledged that wider public views of the proposal would be limited, though it would be noticeable from the site entrance. Despite the scale of the increase in height, the proposal would stand unusually proud. Consequently, it would be at odds with the layout appearance and height of development found in this cluster of buildings. It would also result in a prominent feature against the open landscape setting and coastal backdrop of the NL. I therefore do not agree with the appellant's assertion that it would integrate well as part of a visually coherent group.
7. The proposed additional storey would not increase the footprint of the existing building. It would be of a modern design, reflective of the cluster of buildings surrounding it. However, the broken eaves would introduce an unusual feature that would contrast with the simple lines and roof form seen on other nearby buildings. Although the visual effect of this would be tempered by the orientation towards the swimming pool building, it would not be a complementary feature. This, together with the large amount of first floor glazing would overly domesticate and complicate the existing more recessive built form. Collectively, the proposed alterations to the appeal building would fail to protect and enhance the setting and special qualities of the NL. This is a matter that must be given great weight.
8. Therefore, I conclude on this main issue that the proposal would harmfully affect the character and appearance of the area. As such, there would be conflict with policies ST04, ST09, ST14, DM04, DM08, and DM18 of the LP which, collectively in this respect, seek to ensure developments respond to site characteristics and preserve and enhance the special character and qualities of protected landscapes. Given the small scale of the development proposed, there is little to show any conflict with paragraph 183 of the Framework.

#### *Highway Safety*

9. It is acknowledged that the proposal would be likely to result in additional vehicle movements to and from the appeal site by the provision of a 2 person unit of accommodation. The Council cites its highway officer objection to the proposal, where it is identified that additional traffic caused by the development would lead to an increased risk of conflict with a junction on the A39. In addition, evidence has been provided of a single slight accident at this junction in December 2019. In that context, I have paid regard to the 3<sup>rd</sup> party representations, including the submitted traffic survey from January 2022.
10. In assessing the overall effect on traffic movements, it is however important to review the appeal site history. Much of this is set out in the evidence, which includes a previous appeal<sup>1</sup> at this site where highway safety was at issue.

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<sup>1</sup> APP/W1145/W/18/3210896

The Council is concerned that no evidence has been provided which could allay concerns in this regard. However, in respect of overall traffic movements, the evidence shows that if occupied to its full capacity, previous extant permissions have the potential to allow more traffic movements than could be generated by this scheme and the previous appeal. This is a matter that can be afforded significant weight in favour of the proposal.

11. Nevertheless, having entered and exited the appeal site and junction myself, I agree with the previous Inspector that visibility at the junction with the A39 is constrained. When turning off the A39, I was required to wait for passing traffic to clear. In doing so, cars stopped behind me. Given the relatively low speeds in this restricted speed area, this did not cause any noticeable conflict. When entering onto the A39 in an easterly direction, it was necessary to creep forward, though drivers of oncoming vehicles were aware of the presence of my vehicle. Whilst crossing the A39 in a westerly direction would be more constrained, the junction was safely navigable at the time of my lunchtime visit.
12. Additionally, there are a good number of passing places between the A39 junction and appeal site. Even though several of these had been informally blocked, it is unlikely that an additional unit of accommodation would generate an unacceptable impact on highway safety. For the reasons given, it is also unlikely that additional traffic movements caused by the development would result in severe cumulative impacts on the highway network. This would align with paragraph 115 of the Framework.
13. Therefore, for the reasons given, the development would not prejudice highway safety. As such, there would be no conflict with policies DM05 and DM18 of the LP which, in part, require that all development ensures safe and well-designed vehicular access and egress, that the safety of public highway users is maintained and that the local road network can accommodate the scale and type of traffic to be generated. There would also be no conflict with paragraphs 114 – 116 of the Framework, which require, amongst other things, that a safe and suitable access to the site can be achieved for all users.

### **Other Matters**

14. The appellant refers to compliance with paragraph 177 of the Framework. However, this is concerned with plan, rather than decision making. There is little evidence it is therefore relevant to this appeal.
15. In respect of character and appearance, my attention has been drawn to an extract of wording from a previous appeal<sup>2</sup> at this site. However, it is noted that scheme was for a different development. Additionally, character and appearance was not a matter in dispute, whereas it is central to this appeal. Whilst located in the NL, the two schemes are not comparable. In any case, I have assessed this proposal on its merits and the evidence before me.
16. The appellant highlights that there has been no objection to the proposal by the AONB partnership. However, this is not a reason to allow unacceptable development. This is a neutral matter. It is however acknowledged that the

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<sup>2</sup> APP/W1145/W/18/3210896

proposal would bring in some limited economic benefits to the continued business operation in this coastal spot and through spending in the local area/larger settlements. However, any such benefits would be modest given the very small scale of the proposal. In that context, I have paid regard to the identified organisational support for the visitor economy and that set out in the Framework.

17. The Council refers to an appeal<sup>3</sup> in the context of highway safety, though offers no specific comment on this. That appeal concerned a different proposal in a different location. Therefore, the effect on highway safety there is materially different to this appeal. I therefore give this matter no weight.

### **Planning Balance and Conclusion**

18. Bringing together my conclusions on the main issues, I have found that the proposal would not prejudice highway safety. However, this, along with any aforementioned economic benefits would not be sufficient to outweigh the great weight given to the harm I have identified to the character and appearance of the NL.
19. For the reasons above, and taking into account all other matters raised, I conclude that the proposed development fails to accord with the development plan as a whole and there are no considerations individually or cumulatively that outweigh this. Therefore, the appeal is dismissed.

*J Hills*

INSPECTOR

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<sup>3</sup> APP/W1145/W/22/3308069



## Appeal Decision

Site visit made on 3 September 2024

**by J Hills MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 September 2024.**

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**Appeal Ref: APP/W1145/W/24/3341617**

**Meadow Park, Orleigh Close, Buckland Brewer, Devon EX39 5NY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr and Mrs Rhodes against the decision of Torridge District Council.
  - The application Ref is 1/0409/2023/FUL.
  - The development proposed is described as "2 proposed single storey dwellings, and associated works to including new access to existing meadow park bungalow".
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### Decision

1. The appeal is allowed and planning permission is granted for 2 single storey dwellings, and associated works to including new access to existing meadow park bungalow at Meadow Park, Orleigh Close, Buckland Brewer, Devon EX39 5NY in accordance with the terms of the application, Ref 1/0409/2023/FUL, subject to the conditions in the attached schedule.

### Procedural Matter

2. The description of development in the banner heading above is taken from the application form. It does however contain language that is not an act of development. I have therefore removed the superfluous wording from the formal decision above.

### Main Issue

3. The main issue is whether the proposed development is in a suitable location for housing having regard to the local housing strategy and national policy; and if not whether there are any other considerations that justify a decision otherwise than in accordance with the development plan.

### Reasons

4. The appeal site comprises a former agricultural building and associated structures over a generous hardstanding area. It is understood that part of the large building suffered some storm damage and I saw that a central skeletal frame remains. Next to this and adjoining the tall frame is a large mono pitched part of the building that appeared to be in relatively good order. There is an existing bungalow to one side of the appeal site and new housing estate on its other. At the time of my visit, this estate was under construction, where a number of nearby houses were visible.

5. In that context and with reference to paragraph 84 of the National Planning Policy Framework (the Framework), the word "isolated" in the phrase "isolated homes in the countryside" simply connotes a dwelling that is physically separate or remote from a settlement. Despite a hedge boundary between the housing estate and appeal site, it is not physically from the settlement or "isolated". Therefore, the circumstances for allowing isolated homes in the countryside would not apply to this appeal.
6. Policy ST07 of the North Devon and Torrington Local Plan 2011-2031 (LP) sets out the strategy for development in the district. This establishes a hierarchy whereby local centres are the focus for development growth, followed by more modest growth in the defined villages. Thereafter, development in other rural settlements and the countryside is limited to meet local economic and social needs, and development necessarily restricted to a countryside location.
7. The scheme would provide future occupants with the opportunity to safely walk a short distance into the local centre with its modest range of services and facilities. However, it is located outside, but adjoining its settlement boundary. Therefore, the appeal site is defined in the LP as being in the countryside, where development is necessarily restricted. None of the aforementioned circumstances have been advanced in support of the 2 proposed dwellings. Consequently, the scheme would conflict with the housing strategy, which represents harm.
8. Therefore, I conclude that the site is not a suitable location for the proposed development, having regard to the local housing strategy. There would be conflict with Policy ST07 of the LP.

### **Other Considerations**

9. Both parties refer to the court judgement of *Mansell v Tonbridge & Malling BC* where it was found that a fallback position can be a material planning consideration provided there is a real prospect of a fallback development being implemented.
10. In this respect, it has been brought to my attention that there was a previous permission in 2014 at the appeal site to convert outbuildings into 3 dwellings. However, there is little show that this was implemented, which means it cannot be relied upon in its own right. The appellant has expressed a lack of enthusiasm for converting the storm damaged buildings and questions what might be realistically creatable from the remaining structure. They do however add that there is no reason to suppose another conversion scheme would not be successful.
11. The Council is concerned that no efforts have been made to demonstrate a conversion would be possible. It adds that information such as a structural report, plans showing the number units and layout would have aided this approach. I agree that such clarity and commitment on the part of the appellant would indeed have been useful. Despite this, there is no evidence that a conversion could not be granted again.
12. Additionally, from my visit, it was evident that a good proportion of the main building was clad or walled and appeared weather tight. Even if the storm damaged sections of the skeletal frame and other outbuildings beyond could

not be used in a conversion, it is conceivable that there could be sufficient remaining building to create 2 dwellings. Based on the evidence before me and my own observations, I am satisfied that there is a reasonable prospect of a conversion. However, in the absence of any extant permission or clarity over the potential conversion, the fallback can be given moderate weight.

13. Notwithstanding this, in its current form, the unattractive appeal building stands as an imposing feature between much smaller scaled residential development either side of it. The scheme would introduce 2, single storey buildings of simple design with a sympathetic use of external material. They would be well screened by tall hedgebanks, existing trees and planting. Consequently, their presence would not represent an incursion into the countryside. When compared with the existing appeal buildings, the proposal would be substantially smaller in height and significantly more compatible with its immediate setting. This would represent a notable benefit to the character and appearance of the area, to which I attribute substantial weight. It would also be reflective of *betterment*.
14. There is a grade II\* listed building nearby. Consequently, there is a statutory duty to pay special regard to the desirability of preserving its setting. The appeal site is located some distance from the Church of St. Mary and St. Benedict. The distance, together with intervening vegetation means that the appeal site would not be readily visible from this church, therefore avoiding harm to both its setting and significance. Although the proposal would reduce the overall height of built form here, this is neutral factor in favour of the development.
15. The proposal would make a positive but modest contribution to the overall supply of housing, given its small scale.

### **Other matters**

16. I have paid regard to 3<sup>rd</sup> party concerns over the potential for future development using the appeal site access. However, I have determined the appeal on its site-specific circumstances. As such, there is no reasonable prospect of such a development being repeated nearby.
17. Whilst other sites are currently under construction, this would not be a reason to prevent such a scheme from coming forward. Additionally, the Parish Council is concerned that the development is not included in the approved Parish Plan. I have however been provided with no substantive evidence in respect of the status of such a plan. In these circumstances, this matter cannot be given any weight.
18. The evidence shows that the proposal would not have an adverse effect on biodiversity. Bat and bird boxes are shown on the plans. I am therefore satisfied that the scheme would align with the thrust of policies ST14 and DM04 of the LP.

### **Conditions**

19. I have made some amendments and omissions to the Council's suggested conditions in the interests of clarity and to ensure compliance with the Planning Practice Guidance (PPG) and the Framework.

20. In the interests of clarity, standard conditions requiring the development to be carried out in accordance with the plans and within a time limit have been imposed. During the appeal it has been confirmed that plan 21154 07, dated 27.4.23 should have been in the list of plans. This shows a proposed garage for plot 1. I am satisfied that there would be no procedural unfairness by its inclusion within the approved plans.
21. I have not imposed the suggested landscaping condition as the development would be positioned between residential development and read in this context. Additionally, there is already a substantial amount of tree cover and natural vegetation, including tall hedgebanks surrounding the appeal site. For these reasons, the condition would not be necessary to make the development acceptable in respect of its effects on the character and appearance of the area.
22. The PPG says that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. This is reaffirmed in the Framework where it says in paragraph 54 that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. There is no substantive evidence to demonstrate that the blanket removal of freedoms to carry out small scale alterations is reasonable or necessary in this instance. I have therefore not imposed the Council's suggested condition for the removal of certain permitted development rights.
23. In the interests of the living conditions of nearby residents, I have imposed a condition to control construction hours. Additionally, to avoid adverse effects on environmental and human health, I have included a condition to address unexpected contamination during the development.

### **Planning Balance and Conclusion**

24. I have found that the development would conflict with the development plan in that it is contrary to the housing strategy within the LP.
25. However, Section 38(6) of the Planning and Compulsory Purchase Act 2004 says development should be in accordance with the development plan 'unless material considerations indicate otherwise', and this is reaffirmed in the Framework.
26. In the circumstances of this appeal, there is a reasonable prospect that a conversion could come forward. Additionally, the scheme would be located in close proximity to a local centre. As such, future occupants would be provided with an opportunity to walk or cycle, with close and easy access local services and facilities. The removal of incongruous built form, use of despoiled land, together with the visually attractive design and layout would ensure the development would function well and add to the overall quality of the area.
27. When considered cumulatively, there are material considerations in this case which indicate a decision should be made other than in accordance with the development plan. I therefore conclude that the appeal should succeed.

*J Hills*

INSPECTOR

## **Schedule of Conditions**

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 21154 – 01, dated 25.4.23; 21154 02 D, dated 31.3.23; 21154 03 B, dated 29.3.23; 21154 04 B, dated 29.3.23; 21154 05 A, dated 31.3.23; 21154 05 B, dated 31.3.23; 21154 07, dated 27.4.23; 21154 08 A, dated 27.4.23.
3. The development hereby permitted shall only be carried out, (including the delivery of construction materials), during Monday to Friday between the hours of 07:00 to 19:00 and Saturday between the hours of 08:00 to 13:00 with no works, (or the delivery of construction materials) being carried out on Sundays and Bank Holidays.
4. Should any contamination of soil or groundwater be discovered during development of the site, the local planning authority should be contacted immediately. Site activities within that phase or subphase or part thereof, should be temporarily suspended until such time as a procedure for addressing such contamination, within that phase or sub-phase or part thereof, is agreed upon with the local planning authority or other regulating bodies.

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# Appeal Decision

Site visit made on 3 September 2024

**by J Hills MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13<sup>th</sup> September 2024**

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**Appeal Ref: APP/W1145/W/24/3344771**

**Breakers View, Park Avenue, Westward Ho!, Devon EX39 1LP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
- The appeal is made by Mr Chris Barritt against the decision of Torridge District Council.
- The application Ref is 1/0042/2024/OUT.
- The development proposed is new dwelling on site west of Breakers View.

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## Decision

1. The appeal is allowed and planning permission is granted for new dwelling on site west of Breakers View at Breakers View, Park Avenue, Westward Ho!, Devon EX39 1LP in accordance with the terms of the application, Ref 1/0042/2024/OUT, subject to the conditions in the attached schedule.

## Preliminary Matters

2. I have taken the address from the Council's decision notice as the relevant part of the application form is incomplete. The address used is similar to that provided in the appellant's appeal form.
3. I note the appeal is made in outline with all matters reserved for later consideration. It is not essential for drawings to be marked as illustrative or indicative if they relate to matters that are reserved. I have therefore taken any indication of reserved matters shown on the submitted drawings to be illustrative. This includes a proposed dwelling shown on the location plan.

## Main Issues

4. The main issues are:
  - the effect of the proposed development on the character and appearance of the area;
  - the living conditions of nearby residents, with particular regard to outlook, daylight and privacy; and
  - whether the proposed development would provide acceptable living conditions for future occupants, with regard to external amenity space and privacy.

## Reasons

### *Character and appearance*

5. The appeal site comprises a relatively long area of garden space between two properties on a cul-de-sac. Properties along both sides of this street vary greatly in their design, scale, and appearance. They include larger, more imposing two storey properties, and small bungalows on narrow plots; a number of which have dormer extensions on their side elevation roof spaces. Not all properties have front doors facing the street. Whilst views of the coast and built-up area can be appreciated between gaps in properties, most tend to be fairly narrow. Some gaps are very limited, which creates a cheek by jowl arrangement in places. The appeal site forms a gap between properties that is uncharacteristically large.
6. The Council is concerned that the proposed dwelling would not be sympathetically sited, leading to a cramped form of development. However, the illustrative plans show how a modest sized property could be sensitively sited between those either side of it. This would not be an incongruous arrangement or dissimilar to some other properties along the street. Consequently, given the length of the plot, an appropriately designed property here could avoid a harmful relationship to buildings in the local neighbourhood.
7. Additionally, detailed matters of the proposal's layout, access, appearance, scale, and landscaping are not to be determined at this stage. Therefore, whilst the Council's concerns in respect of the submitted plans are noted, there may be alternative ways of developing the site than as shown.
8. For the reasons given, I therefore conclude on this main issue that the proposal would not cause harm to the character and appearance of the area. As such, there would be no conflict with policies ST04 and DM04 of the North Devon and Torridge Local Plan 2011-2031 (LP), which, amongst other things, support developments that are sympathetic in terms of density, relationship to buildings, and that respond to site characteristics. There would also be no conflict with paragraph 135 of the National Planning Policy Framework (the Framework), which says, in part, that decisions should ensure that developments maintain a strong sense of place.

### *Living conditions of nearby residents*

9. Concerns have been raised in respect of the potential for the property to have an overbearing effect on neighbouring residents. Although close to neighbouring properties, the illustrative plans show that it is conceivable a scheme could be designed so that it could avoid excessive massing or bulk. As such, it is likely that the outlook and amount of daylight of nearby neighbours could be maintained to an acceptable level.
10. Fenestration detail and arrangements are reserved for later consideration. Notwithstanding this, the illustrative plans show how harmful overlooking towards neighbouring properties could be avoided. As mentioned above, the plans do not necessarily represent the only way the scheme could be progressed. Neighbouring privacy could consequently be maintained.

11. I therefore conclude on this main issue that the proposal would be unlikely to have an unacceptable effect on the living conditions of nearby residents, with particular regard to outlook, daylight, and privacy. As such, there would be no conflict with policies DM01 and DM04 of the LP, which, in this respect, seek to protect the living conditions of neighbouring occupiers.

#### *Future occupants*

12. The Council is concerned that the balcony to the rear of one of the adjacent properties does not have any side screens, which, they say would allow overlooking of the appeal site. The appellant claims that a large part of this balcony is enclosed and that views of the garden would be oblique. Nevertheless, some views towards the private garden space would be likely to result. However, the plot is of sufficient length that it is conceivable a dwelling with adequate provision of private garden space could be provided. The illustrative patio area for example would be likely to remain private from the existing balcony.

13. The property to the west has dormer windows on its side elevation. Occupiers of this property would currently be able to look out on the neighbouring garden space. This situation would not be magnified by the development. Furthermore, the dormers would be more likely to face roofing than the private outdoor space. Additionally, they do not directly face all parts of the appeal site. Consequently, it is likely that usable external amenity space and satisfactory privacy could be achieved for future occupants.

14. I therefore conclude on this main issue that the proposed development would provide acceptable living conditions for future occupants, with regard to external amenity space and privacy. As such, there would be no conflict with policies DM01 and DM04 of the LP, which, in this respect, seek to protect the living conditions of future occupiers.

#### **Other Matters**

15. I have paid regard to the site history, including the reduced plot width since a previous outline permission. However, I have assessed the proposal in its present-day sense, based on my own observations and the evidence before me.

16. The Council has referred to conflict with Policy DM02 of the LP in its decision notice. This policy is concerned with environmental protection. However, there is little to show any conflict with this policy.

17. I have paid regard to representations concerning increased traffic, existing parking problems and emergency vehicle access. Access and layout arrangements are however matters reserved for later consideration. Furthermore, I have been provided with no substantive evidence to demonstrate that an additional dwelling would cause highway safety conflict, or that the living conditions of neighbours would be harmfully affected in respect of parking pressures.

18. Whilst I acknowledge comments in respect of the change of views, this is not regarded as a planning consideration.

## **Conditions**

19. I have made some amendments and omissions to the Council's suggested conditions in the interests of clarity and to ensure compliance with the Planning Practice Guidance (PPG) and the Framework.
20. I have imposed standard conditions relating to the submission and timing of reserved matters applications and the commencement of development. It is necessary to require compliance with the submitted plans, but only to define the site area. For the avoidance of doubt, it is also necessary to clarify that the dwelling shown on the location plan is not to be implemented.
21. The PPG says that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. This is reaffirmed in the Framework where it says in paragraph 54 that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. There is no substantive evidence to demonstrate that the removal of freedoms to carry out small scale alterations is reasonable or necessary in this instance. I have therefore not imposed the Council's suggested condition for the removal of certain permitted development rights.
22. I note the appellant's comments in respect of a 2022 permission to extend the adjacent house. However, the Council's Archaeology Section suggest the site lies in an area of archaeological potential. Therefore, it would be reasonable to require a Written Scheme of Investigation and a post excavation works condition in order to ensure appropriate recording.
23. I have not imposed the suggested material compliance condition as this relates to indicative plans that do not form part of the scheme.

## **Conclusion**

24. For the reasons given I conclude the appeal should succeed.

*J Hills*

INSPECTOR

## **Schedule of Conditions**

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan; Location Plan 05, dated January 2024 (excluding the proposed dwelling).
- 5) No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation (WSI) which has been submitted to and approved in writing by the local planning authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the local planning authority.
- 6) The development shall not be occupied until (i) the post investigation assessment has been completed in accordance with the approved Written Scheme of Investigation and (ii) that the provision made for analysis, publication and dissemination of results, and archive deposition, has been confirmed in writing to, and approved by, the local planning authority.



## Appeal Decision

Site visit made on 3 September 2024

**by J Hills MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13<sup>th</sup> September 2024**

**Appeal Ref: APP/W1145/W/24/3342744**

**Clinton House, North Street, Sheepwash, Devon EX21 5NQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Pedrick against the decision of Torridge District Council.
  - The application Ref is 1/0581/2023/FUL.
  - The development proposed is conversion of a redundant outbuilding to a holiday let unit.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. During the course of the appeal, the Council has corrected the erroneous reference made to the appeal site being located in the countryside within its officer report. There is no dispute between the main parties that the appeal site lies within a defined village as set out in the North Devon and Torridge Local Plan 2011-2031 (LP).

### Background and Main Issues

3. The application proposes the conversion of a redundant outbuilding to a holiday let unit. The submitted evidence identifies that this building has been subject to extensive works. New blockwork walls and roof have been added to an historic structure. This was likely to have been constructed from stone. Notwithstanding the stonework across the length of the west elevation, the building is likely to be longer and taller than its predecessor.
4. In that context, the existing drawings are based on a situation the Council considers to be unauthorised and not immune from enforcement action. This is not disputed. Nevertheless, it is not appropriate for me to determine the lawfulness or otherwise of the building. This can only be formally determined by a lawful certificate application. I shall return to this matter later.
5. The main issues are (i) the effect of the proposed development on the character or appearance of the Sheepwash Conservation Area (CA) and on the setting of a nearby listed building; (ii) whether the site is a suitable location for the proposed development, having regard to the local tourism strategy; and (iii) the effect of the proposed development on the living conditions of nearby neighbours with regard to privacy and parking arrangements.

## Reasons

### *Character and appearance*

6. The appeal site is within the CA where there is a statutory duty to pay special regard to the desirability of preserving or enhancing the character or appearance of the conservation area; and where great weight should be given to the asset's conservation. The CA is characterised by its tightly clustered and less than uniform layout of traditional small, but mixed scaled buildings. These are positioned along and amongst a winding road network that meets at a central square. Many of the buildings include stone or rendered walls with simple roof forms of thatch or slate, which collectively contribute to the attractive local vernacular.
7. Having paid regard to the site history, the proposal's overall scale and massing would not be excessive. Furthermore, the first-floor window on the north elevation would be of a proportionate scale and sympathetic design. The proposed low stone walling and shared access layout arrangements would retain much of the appeal site's historic plot arrangements.
8. The proposal would add rendering above the remaining stonework and newly purposed stone facings. Whilst render is commonplace within the CA, the proposed split of facing material would create an unusual finish, uncharacteristic of the CA and the likely finish of the previous barn. Furthermore, the proposed dormer window would be residential in its design. It would erode the simple detailing of an otherwise unassuming and traditional roof construction. These overtly domestic features would not make a positive contribution to the appearance of the local and historic environment.
9. Within the setting of the appeal site and next to it is a grade II listed building known as The Half Moon Inn. Consequently, there is a statutory duty to pay special regard to the desirability of preserving its setting. Its significance derives from its 17<sup>th</sup> century origins as a remarkably unspoilt house both inside and out. At my visit I saw that its most attractive features faced the central square rather than the rear courtyard. Here, a rooftop view of the appeal building could be appreciated. Even if taller than its predecessor, the presence of a building in this approximate location is likely to have been part of the setting of the listed building for some considerable time.
10. The proposed split material finish to the appeal building would not be noticeable from the listed building's rear setting. Furthermore, the orientation of the dormer would avoid looming over the listed building and its presence would be tempered by its relatively small scale. This means that the proposal would not visually compete with or distract from the listed building's key features. As such, it would have a neutral effect on its setting.
11. Drawing these matters together, even though the setting of the nearby listed building would be preserved, the proposal would nevertheless introduce an unsympathetic combination of materials and harmful dormer fenestration design. This would not make a positive contribution to the character or appearance of the CA as a whole.
12. Therefore, I conclude that the proposal would fail to preserve or enhance the character or appearance of the CA. There would be conflict with policies

DM04, DM07 and ST15 of the LP, which, collectively in this respect, seek to support proposals that are sympathetic in terms of fenestration and materials, and that conserve and enhance heritage assets.

### *Tourism strategy*

13. The Council's spatial strategy in policies ST06 and ST07 of the LP is to focus most development to the largest centres, with modest growth permitted in the smaller settlements. In respect of the rural areas strategy, the supporting text in 4.10 of the LP explains that allowing villages to grow is essential to sustain active and balanced communities that contribute to maintaining the rural area's viability. It does however add that the LP will seek to ensure any conflicts with the principles of sustainable development are minimised.
14. In that context, Policy ST13 of the LP is supportive of sustainable, high quality tourism development for a year-round industry that does not damage the natural or historic assets within the district. The supporting text notes that it is the quality of accommodation that is an important element in achieving sustainable development.
15. Amongst other things, parts (2)(b) and (c) of Policy DM18 of the LP are supportive of new tourism accommodation where it reuses or converts existing buildings or diversifies the range of existing tourism accommodation respectively. At face value the scheme would convert a building that physically exists. Therefore, it could be said to comply with part (b) of the policy. However, there are notable uncertainties over the appeal building's lawful status that bring into question the relevance of part (b) to this proposal.
16. In respect of DM18 part (2)(c), the appellant says that the proposal would diversify the range of largely single room tourist accommodation units in the village by providing self-contained accommodation. The Council refers to its informal Frequently Asked Questions (FAQ) document. Here it is claimed that 'existing tourism accommodation' in the policy relates to a tourism use that is already established in the planning unit subject to the proposal. However, the policy does not explicitly say that this is the case. Furthermore, the FAQ is not adopted policy and cannot be given much weight.
17. Even if I were to accept the appellant's views on parts (2)(b) and (c), the policy also requires in all cases that heritage assets are conserved or enhanced. Given my conclusions in the main issue above, there would still be conflict with Policy DM18 of the LP.
18. When taken as a whole, the tourism strategy and its aforementioned policies seek to achieve sustainable development through high-quality development without causing harm to the historic environment. Therefore, whilst the appellant has shown to some extent that the scheme would diversify tourist accommodation, the harm caused to the historic environment means that there would be conflict with the strategy.
19. For the above reasons, the site is not a suitable location for the proposed development, having regard to the local tourism strategy. As such, there would be conflict with policies DM18, ST07 and ST13 of the LP. There would also be conflict with paragraphs 88 and 89 of the National Planning Policy

Framework (the Framework) which say that decisions should enable sustainable growth and ensure that development is sensitive to its surroundings.

### *Living conditions*

20. The proposed first floor window on the north elevation would enable views of a small section of the garden area to Clinton House. There would be sufficient distance and intervening vegetation between this and the terrace of neighbouring properties to the north to avoid harmful overlooking. However, the proposed east elevation dormer windows would look directly down over the main private garden area of Clinton House. Despite current ownership, this would be likely to harmfully compromise existing levels of privacy.
21. The Council is concerned that existing garden space is substandard, though this is not relevant to the appeal proposal. That said, the proposed configuration of garden space afforded to the collection of residential units within the ownership of the appellant would be somewhat disjointed. Occupants of Clinton House would be likely to have to share some rear garden space with those using the holiday let and traverse a narrow gap to reach the bulk of their private garden. Despite this, the low stone walling and overall amount of garden space apportioned to each of the units would not result in a harmful layout arrangement or insufficient private garden space.
22. The parking pressures within the village are acknowledged. Furthermore, I have paid regard to comments in respect of the possible future growth of the village. However, I have assessed the scheme in its present-day sense. In that context, it would not deliver parking and turning within the appeal site. Additionally, the proposed street parking spaces cannot be relied upon as they are outside the appeal site. Moreover, it is likely that these are already used to serve existing arrangements.
23. Even so, at my mid-morning weekday visit I observed that there were numerous parking spaces available near the appeal site, the surrounding streets, and within the square. Parking provision would be adequate. Additionally, the appellant notes the available public transport options with connections to Bideford, Holsworthy and Okehampton. Furthermore, the large double red entrance door could potentially be fully opened to allow wider access into the appeal site if required in an emergency for example. If it could not, the appeal building is positioned very close to the road access point.
24. These factors, together with the very small scale of the development proposed would mean that parking and turning within the appeal site would not be necessary in this instance. Whilst my observations only represent a snapshot in time, recognising there will be busier periods, it is unlikely that additional pressures and inconvenience for nearby residents in respect of parking provision would ensue. There would, consequently, be no conflict with policies DM01, DM06 and DM07 of the LP in respect of this matter alone.
25. In summary of the above, despite my conclusions over parking provision and site layout, the scheme would nevertheless generate unacceptable overlooking. For the reasons given, it would harmfully affect the living conditions of nearby neighbours with regard to privacy. As such, there would be conflict with Policy DM01 of the LP which says, in part, that development

will be supported where it would not significantly harm the amenities of any neighbouring occupiers or uses. There would also be conflict with paragraph 130 of the Framework which says, amongst other things, that decisions should ensure that developments create places with a high standard of amenity for existing and future users.

### **Other Matters**

26. The Council has referred to another appeal where it says the application of Policy DM18 of the LP was considered. However, the reference number provided is not recognised. In any case, I have determined the appeal on the evidence before me.

### **Conclusion**

27. For the reasons above, and taking into account all other matters raised, I conclude that the proposed development would fail to accord with the development plan as a whole and there are no considerations individually or cumulatively that outweigh this. Therefore, the appeal is dismissed.

*J Hills*

INSPECTOR

<b>AGMB DECISIONS 04/09/2024 – 25/09/2024</b>
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<b>Application Number</b>	<b>Address/Proposal</b>	<b>Decision</b>
1/0647/2024/AGMB	<p>Barns At Grid Reference 235554 122624, Bucks Cross, Devon.</p> <p>Prior notification for the change of use of agricultural building to 3 no. dwellinghouses and associated building operations under Class Q (Barn 3, 4 and 5)</p>	Permitted
1/0648/2024/AGMB	<p>Barns At Grid Reference 235547 122590, Bucks Cross, Devon.</p> <p>Prior notification for the change of use of an agricultural building to 2 no. dwellinghouses and associated building operations under Class Q (Barns 1 and 6) -</p>	Permitted
1/0635/2024/AGMB	<p>Barn At Grid Reference 230995 112453, Bradworthy, Devon.</p> <p>Prior notification for the change of use of agricultural building to 1 no. dwellinghouse and associated building operations under Class Q, Jenns.</p>	Permitted



## Torridge District Council

### Planning Decisions

**Between 04/09 2024 and 25/09/2024**

#### List of Applications

Application No:	Officer	Proposal and Address	Applicant	Decision/Date
<b><u>Permitted</u></b>				
1/0939/2023/ REMM	Mr Peter Stapley	Reserved matters application for appearance, landscaping, layout and scale for 25 dwellings pursuant to outline planning permission 1/0701/2018/OUTM and associated engineering works - Land North Of Aller Road, Dolton, Devon.	Highfield Manor Ltd	<b>PER</b> 16.09.2024
1/1263/2023/ FUL	James Clements	Replacement of 3no. barns to 1no. dwelling and 2no. holiday cottages (in relation to 1/1032/2023/FUL) - amended description - Land And Buildings At Grid Reference 239279 095343, Ashwater, Devon.	Mr and Miss Williams and Moon	<b>PER</b> 20.09.2024
1/0340/2024/ FULM	James Clements	Erection of 40 lodges, indoor swimming pool building, outdoor swimming pool, outdoor water sliders, children's outdoor activity area, parking, associated access, drainage and landscaping - Clawford Lakes Resort And Spa, Clawton, Devon.	Mr D Hicks	<b>PER</b> 19.09.2024
1/0485/2024/ FUL	Mary- Ellen Whalley	Erection of a barn for storage - Buckland House, Buckland Brewer, Bideford.	Mr Robert Wilson	<b>PER</b> 05.09.2024
1/0499/2024/ FUL	Debbie Fuller	Retrospective application for extension to existing domestic garage - Eastwood Cottages, Peters Marland, Torrington.	Mr Mark Straton	<b>PER</b> 24.09.2024
1/0511/2024/ FUL	Debbie Fuller	Change of use of land to create access and off road parking - Land At Grid Reference 249342 113084, Peters Marland, Devon.	Mr Adam Scrivens	<b>PER</b> 12.09.2024

1/0537/2024/ FUL	Mary- Ellen Whalley	Retrospective application for retention of building as open market dwelling (non compliance with condition 4 of 5 and planning permission 1/0651/2012/FUL) - The Old Tallet, Hallsannery, Bideford.	Mr James Pennington	<b>PER</b> 12.09.2024
1/0554/2024/ FUL	Mrs Nicola McGill	Creation of 1 no. new gated access (right) - Land At Grid Reference 238566 112306, Milton Damerel, Devon.	Mr Stanley Satchell	<b>PER</b> 05.09.2024
1/0573/2024/ FUL	Mary- Ellen Whalley	Replacement of gas boiler with air source heat pump. - The Cottage, Quayside House, Irsha Street.	Mike Harries	<b>PER</b> 17.09.2024
1/0574/2024/ LBC	Mary- Ellen Whalley	Replacement of gas boiler with air source heat pump. - The Cottage, Quayside House, Irsha Street.	Mike Harries	<b>PER</b> 18.09.2024
1/0579/2024/ FUL	Debbie Fuller	Proposed alterations and extensions to dwelling - 16 Lenwood Park, Bideford, Devon.	Mrs S Benstead	<b>PER</b> 05.09.2024
1/0588/2024/ FUL	Ryan Steppel	Erection of agricultural building - Land At Grid Reference 235525 100232, Clawton, Devon.	Mr Tony Hinks	<b>PER</b> 13.09.2024
1/0613/2024/ FUL	Mary- Ellen Whalley	Erection of 2no. self-build dwellings in lieu of Class Q approvals 1/0951/2023/AGMB & 1/0952/2023/AGMB - Barns At Grid Reference 265898 115470, Umberleigh, Devon.	Mr Gary Buckingham & Mr Chris Roach	<b>PER</b> 11.09.2024
1/0614/2024/ FUL	Mary- Ellen Whalley	Retrospective application for erection of stables and change of use of land from agricultural to equestrian use - Stables At Grid Reference 241718 120683, Buckland Brewer, Devon.	Mr and Mrs R Wilson	<b>PER</b> 05.09.2024
1/0618/2024/ FUL	Mrs Nicola McGill	Erection of extensions and alterations (resubmission of 1/0182/2024/FUL) - The Bumbles, Natcott Lane, Hartland.	Mr & Mrs Jinks	<b>PER</b> 06.09.2024
1/0619/2024/ FUL	Mrs Nicola McGill	Creation of 1 no. new gated access (left) - Higher Woodford Farm, Milton Damerel, Holsworthy.	Mr Stanley Satchell	<b>PER</b> 05.09.2024
1/0623/2024/ FUL	Miss Jess Wellington	Erection of agricultural building to cover an existing dung store - Land At Grid Reference 232966 118021, Woolsery, Devon.	Heather Alford	<b>PER</b> 05.09.2024

1/0629/2024/ FUL	Mary- Ellen Whalley	Change of use of ground floor retail unit and store rooms to 2no. residential units - 5 Grenville Street, Bideford, Devon.	Mr Philip Milton	<b>PER</b> 19.09.2024
1/0630/2024/ LBC	Mary- Ellen Whalley	Change of use of ground floor retail unit and store rooms to 2no. residential units - 5 Grenville Street, Bideford, Devon.	Mr Philip Milton	<b>PER</b> 19.09.2024
1/0647/2024/ AGMB	James Clement s	Prior notification for the change of use of agricultural building to 3 no. dwellinghouses and associated building operations under Class Q (Barn 3, 4 and 5) - Barns At Grid Reference 235554 122624, Bucks Cross, Devon.	Mrs Eileen Worth	<b>PER</b> 10.09.2024
1/0648/2024/ AGMB	James Clement s	Prior notification for the change of use of an agricultural building to 2 no. dwellinghouses and associated building operations under Class Q (Barns 1 and 6) - Barns At Grid Reference 235547 122590, Bucks Cross, Devon.	Mrs Eileen Worth	<b>PER</b> 17.09.2024
1/0656/2024/ FUL	Angelo Massos	Covering of existing yard - Lower Collacott Farm, Langtree, Torrington.	Mr & Mrs Folland	<b>PER</b> 11.09.2024
1/0657/2024/ FUL	Angelo Massos	Covering of existing yard - Lower Collacott Farm, Langtree, Torrington.	Mr & Mrs Folland	<b>PER</b> 11.09.2024
1/0660/2024/ FUL	Angelo Massos	Change of use from an existing shop (Class E) to a bar (Sui Generis) - 32 Nelson Road, Westward Ho!, Bideford.	Poppy Rucki	<b>PER</b> 20.09.2024
1/0665/2024/ FUL	Debbie Fuller	Erection of agricultural grain drying building and associated works (affecting a public right of way) - Alfords Villavin, Roborough, Winkleigh.	Messers EJ Pincombe	<b>PER</b> 16.09.2024
1/0667/2024/ FUL	Angelo Massos	Variation to Condition 2 (plans schedule) of planning permission 1/0103/2017/FUL - Proposed new clubhouse and stand (Variation of condition 3 (opening hours) of planning approval 1/0091/2020/FUL) (Affecting a Public Right of Way) - Donnacroft Fields, Hatchmoor Road, Torrington.	Torridgeside AFC	<b>PER</b> 16.09.2024

1/0670/2024/ FUL	James Clements	Erection of replacement dwelling, annexe and associated outbuildings, conversion of barn into separate dwelling and construction of a replacement agricultural shed. (Variation to conditions 2 & 5 of planning approval 1/0672/2023/FUL) - Shilland Farm, Sutcombe, Holsworthy.	Mr & Mrs Sears	<b>PER</b> 17.09.2024
1/0671/2024/ FUL	Mrs Nicola McGill	Extension to existing shed to cover dung store (Affecting a Public Right of Way) - Hankford, East Putford, Holsworthy.	Mr D Cleverdon	<b>PER</b> 24.09.2024
1/0672/2024/ FUL	Mrs Nicola McGill	Covered dung store (Affecting a Public Right of Way) - Hankford, East Putford, Holsworthy.	Mr D Cleverdon	<b>PER</b> 24.09.2024
1/0673/2024/ FUL	Mrs Nicola McGill	Covering of existing cow yard (affecting a public right of way) - Hankford, East Putford, Holsworthy.	Mr D Cleverdon	<b>PER</b> 17.09.2024
1/0679/2024/ FUL	Mary- Ellen Whalley	Erection of replacement dwelling following approval 1/0103/2024/FUL (self build) - Barn At Grid Reference 242083 097839, Halwill, Devon.	Mr And Mr Hope-Davis	<b>PER</b> 19.09.2024
1/0680/2024/ FUL	Miss Jess Wellington	Erection of rear extension (Affecting a Public Right of Way) - West Stowford, Bradworthy, Holsworthy.	Mr & Mrs Bayley	<b>PER</b> 10.09.2024
1/0683/2024/ FUL	Miss Jess Wellington	Erection of agricultural storage building - Land At Grid Reference 229991 102953, Pyworthy, Devon.	Mr Paul Symons	<b>PER</b> 19.09.2024
1/0036/2024/ NMAT	James Clements	Non material amendment to planning application 1/1253/2018/FUL - Leisure Centre, Northway Holiday Cottages, Horns Cross.	Mr Oliver Peacock	<b>PER</b> 24.09.2024
1/0037/2024/ NMAT	James Clements	Non material amendment to planning permission 1/0620/2017/FUL - Northway Holiday Cottages, Horns Cross, Devon.	HPB Assurance Limited	<b>PER</b> 16.09.2024
1/0038/2024/ NMAT	James Clements	Non material amendment to planning permission 1/1257/2017/FUL - Northway Holiday Cottages, Horns Cross, Devon.	HPB Assurance Limited	<b>PER</b> 20.09.2024

1/0708/2024/ AGR	Debbie Fuller	Erection of cover over existing cow yard - Bryony Hill Farm, Iddesleigh, Winkleigh.	Martin Goddard	<b>PER</b> 12.09.2024
1/0714/2024/ AGR	Mrs Nicola McGill	Proposed roof over livestock handling area. - Land At Grid Reference 236704 113244, Milton Damerel, Devon.	Mr Mark Walter	<b>PER</b> 05.09.2024
1/0740/2024/ AGR	Miss Jess Wellington	Steel Framed Building - Oaklea Farm, Ashwater, Beaworthy.	Mr Anthony Wilkes	<b>PER</b> 10.09.2024
1/0044/2024/ NMAT	James Clements	Non material amendment to planning permission 1/0254/2024/FUL (Reduction in ground floor window height to kitchen) - Site Of 51, Atlantic Way, Westward Ho!.	Majic Property (Two) Limited	<b>PER</b> 24.09.2024
1/0756/2024/ AGR	Miss Jess Wellington	Roofing over an existing general purpose yard - Wedfield Farm, Putford, Holsworthy.	Mr Steven Pomeroy	<b>PER</b> 17.09.2024
1/0046/2024/ NMAT	Mary-Ellen Whalley	Non material amendment to planning permission 1/0293/2024/FUL (Amendments to the size and design of the workshop) - Furzedon, Merton, Okehampton.	Mr Reed	<b>PER</b> 20.09.2024
1/0768/2024/ AGR	Miss Jess Wellington	Erection of a steel frame storage barn - Land At Grid Reference 237445 91266, Virginstow, Devon.	Mr Rogers	<b>PER</b> 19.09.2024
<b><u>Refused</u></b>				
1/0135/2024/ FUL	Mrs Nicola McGill	Construction of 1no. dwelling in replacement of the previously approved permission (1/0413/2023/FUL) (Amended Plans and Red edge) - Land And Buildings At Grid Reference 238808 092900, Virginstow, Devon.	Ms Amy Lock	<b>REF</b> 17.09.2024
1/0458/2024/ FUL	Ryan Steppel	Change of use to holiday letting - The Paddock, Derriton, Holsworthy.	Mr Scott Ford	<b>REF</b> 10.09.2024
1/0514/2024/ FULM	Ryan Steppel	Battery energy storage system (BESS) with associated infrastructure - Land At Grid Reference 230351 101882, Pyworthy, Devon.	RES Ltd	<b>REF</b> 20.09.2024

1/0635/2024/ AGMB	Ryan Steppel	Prior notification for the change of use of agricultural building to 1 no. dwellinghouse and associated building operations under Class Q, Jenns. - Barn At Grid Reference 230995 112453, Bradworthy, Devon.	Mr Tim Whittle	<b>REF</b> 05.09.2024
1/0650/2024/ FUL	Angelo Massos	Part retrospective application for change of use of land to residential garden, demolition of single storey extension to be replaced with two storey extension and accommodation to the first floor. Detached garage and alterations to access. - Five Acre, Woodtown, East The Water.	Mr Andrew Hutton	<b>REF</b> 24.09.2024
1/0707/2024/ PIP	Mr Peter Stapley	Permission in Principle for residential development up to 5no. dwellings - Land At Grid Reference 247342 126074, Alverdiscott Road, East The Water.	Devonshire Homes Ltd	<b>REF</b> 13.09.2024

**Not Permitted Development**

1/0694/2024/ AGR	Mrs Nicola McGill	Proposed erection of agricultural shed - Land At Grid Reference 228740 101711, Bounds Cross, Pyworthy.	Mr Marsh	<b>NPD</b> 06.09.2024
1/0726/2024/ AGR	Angelo Massos	Erection of general purpose agricultural building - Land At Grid Reference 264162 113181, Ashreigney, Devon.	Mr Ken Greenland- Cambusmore Estates LTD	<b>NPD</b> 11.09.2024