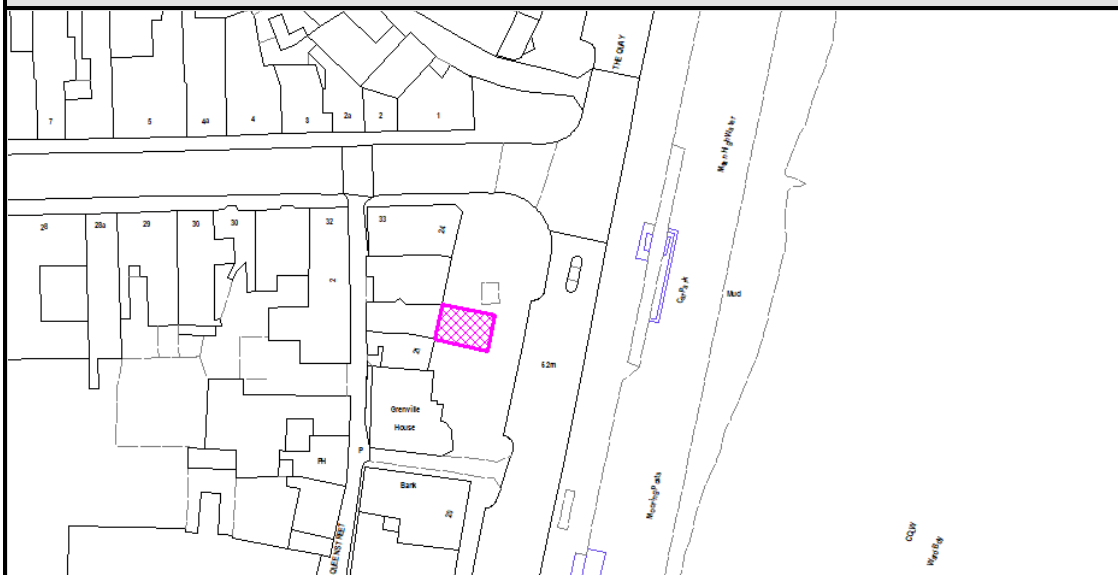


## Committee Report – 7th December 2023

<b>Application Number:</b>	1/0846/2023/FUL
<b>Registration date:</b>	24 August 2023
<b>Expiry date:</b>	19 October 2023
<b>Applicant:</b>	Quay 22
<b>Agent:</b>	Fearnley Lott Architects
<b>Case Officer:</b>	James Clements
<b>Site Address:</b>	Land Adjacent Quay 22, 22 The Quay, Bideford, Devon, EX39 2EZ,
<b>Proposal:</b>	Retention of covered seating canopy
<b>Recommendation:</b>	Refuse



**Reason for referral:**

This application is called before Plans Committee due to Torridge District Council retaining an interest in the land.

**Relevant History:**

<b>Application No.</b>	<b>Description</b>	<b>Status</b>	<b>Closed</b>
1/0987/2021/FUL	Retrospective application for temporary covered seating canopy	PER	11.11.2021
1/0865/1981	CHANGE FLOOR RETAIL SHOP TO LICENSED BETTING OFFICE	PER	07.07.1981
1/0866/1981	PROJECTING SIGN AND SHOP SIGN 22, THE QUAY, BIDEFORD	REF	18.08.1981
1/0730/1990	ALTERATIONS TO SHOP FRONT	PER	07.06.1990
1/0731/1990	ALTERATIONS TO SHOP FRONT	PER	07.06.1990
1/1386/1996	CHANGE OF USE OF GROUND FLOOR TO COFFEE/TEA SHOP	PER	21.10.1996
1/1387/1996	CHANGE OF ELEVATIONAL DETAILS TO FRONT OF PROPERTY BY THE PROVISION OF A FLAT BLIND & REPLACEMENT OF EXISTING FROSTED GLAZING OF DOOR TO CLEAR PLATE, IN CONNECTION WITH THE PROPOSED USE AS A COFFEE/ TEA SHOP	PER	21.10.1996
1/0225/1997	USE OF PART PEDESTRIAN AREA AS EXTERNAL SEATING AND TABLES FOR COFFEE/TEA SHOP	PER	04.04.1997
1/0017/1999	DEMOLITION OF REDUNDANT LEAN-TO SHED & ALTERATIONS TO GUTTER DETAIL OVER REAR ENTRANCE TO 'TREATS'	PER	05.03.1999
1/0768/2011/FUL	Alterations to rear elevations	PER	24.11.2011
1/0769/2011/LBC	Alterations to rear elevations	PER	24.11.2011
1/0022/2012/DIS	Discharge of condition 4 of listed building consent	PER	05.03.2012

	1/0769/2011/LBC		
1/0810/2012/LBC	Proposed alterations to kitchen & WC facilities	PER	06.12.2012
GE/0063/2018	Licensing	XPE	13.02.2018
1/0987/2021/FUL	Retrospective application for temporary covered seating canopy	PER	11.11.2021

## Site Description & Proposal

### Site Description

The application site is located within a prominent location on Bideford Quay. The building is a three-storey terraced building. The ground floor of the building is currently used as a restaurant/café (called Quay 22). The first floor and second floor are used for a commercial office and residential use.

The application site comprises of a hard surfaced paved area immediately to the frontage of 22 the Quay. A public footpath/pavement runs to the eastern boundary of the site.

The site is within Bideford Conservation Area and the building (22 The Quay) is Grade II listed. 22 The Quay is owned by the Bridge Trust, and forms part of a terrace of listed buildings.

The site is within the Bideford Critical Drainage Area and Flood Zone 3, as defined by the Environment Agency.

### Proposed Development

This application is seeking the permanent retention of a covered seating canopy area. This is to be used in association with the restaurant/café, Quay 22.

The canopy has been erected to the frontage of the building on the paved area (not physically attached to the building). The canopy structure measures 7.8 metres x 5.3 metres with a maximum height of 3.1 metres. The structure is formed of an open timber frame, with 9 timber column supports with steel shoes bolted to the ground. The roof is formed of Perspex roof panels.

The canopy cover for outside seating was erected to allow the applicants to continue to trade through the Covid-19 Pandemic. The indoor facilities are relatively modest which meant the applicant could not accommodate customers and adhere to social distancing within their premises. There is an associated pavement licence for outdoor seating, which was a temporary cover to allow the seating to continue for a 3-year period.

Retrospective planning permission was granted for the covered seating canopy by planning permission 1/0987/2021/FUL on 11<sup>th</sup> November 2021 for a temporary period of 24 months. The permission also restricted the use of the canopy and seating area to no.22 The Quay between the hours of 09:00 and 17:00 with all seating/tables to be removed after 17:00 hours. Now that the 2-year period has come to an end the applicant is seeking to retain the canopy structure and outdoor seating area.

## Consultee representations:

### **Bideford Town Council:**

RESOLVED: That the application is refused.

### **Environmental Protection Officer:**

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

There appears to be no information provided on the operating hours of the proposed development however, it is assumed that these will replicate the hours specified in the previous application, namely 1000 to 1700 hours. Having regard for the times of use, daytime only, the Environmental Protection Team does not consider that there would be significant harm to any nearby residential amenity. Furthermore, the Environmental Protection Team has received no complaints in relation to amenity impact since the introduction of the canopy.

The Environmental Protection Team has no objections in principle however, it is recommended that a condition is imposed restricting the hours of use between 1000 and 1700 hours in order to protect residential amenity.

#### **Devon County Highways:**

None received. The Highway Authority confirmed as part of the previous application that they have no objections

#### **Historic England:**

The significance of the heritage assets:

'Prospect Place' was originally a single house, probably built by the Bideford Bridge Trust in the 1690s. As well as its location next to the quay, internal features (in particular the first floor moulded plaster ceiling of no. 22) emphasise its high status at the time of its construction. The house was subsequently divided into separate units, and re-fronted in the 19th century to keep up with the architectural style of the times. The three buildings are listed, grade II.

Quay Street is a prominent and important street within Bideford's Conservation Area – an area defined as one that is desirable to 'preserve or enhance' (Planning (Listed Buildings and Conservation Areas) Act 1990). Quay Street has a wide frontage and this affords long views of the buildings on it, and collective views of the historic buildings together.

Your Council adopted a Conservation Area Appraisal (CAA) for Bideford in 2009 in which the key characteristics of the settlement are described. On page 13 the CAA states that: "Important views into and out of the Conservation Area are always dependent on the relationship between the river, the Quay and the buildings along the Quay".

The impact of the proposals on the heritage assets:

The retention of the timber and plastic structure would have a permanent and harmful impact on the significance of listed building. This harm would be caused by the interruption of key views to it, obscuring part of its frontage and diminishing the ability to appreciate the three parts of the listed building. The setting of various other listed buildings on Quay Street would also be harmed. In addition, the quality, character and appearance of the Conservation Area would be eroded, and a very poor planning precedent would be set that could lead to subsequent incremental harm being caused to Bideford.

Policy issues:

Great weight should be given to the conservation of heritage assets in decision making (National Planning Policy Framework (NPPF), paragraph 199). In this instance there are several heritage assets affected given the prominent position of the structure in front of the listed building, within the conservation area, and within the setting of various other listed buildings.

Where harm is the result of a proposal (no matter the level), this must have clear and convincing justification (NPPF, paragraph 200). In this instance, because there are other options for the provision of outdoor seating that would be considerably less harmful, we consider that the justification is not present. Where harm is the result of the proposal (and has been avoided or minimised as far as possible (NPPF, paragraph 195), and has been found to be justified (which in this case we do not consider it has), your authority should undertake a balancing exercise of harm versus public benefit (NPPF, paragraph 202). In our opinion any public benefits of the proposal are difficult to identify.

Historic England's position:

We consider that a permanent structure located in this position would be harmful to various heritage assets, and that the materials of the current structure compounds this harm. Whilst temporary measures were acceptable during the Coronavirus pandemic, these extenuating circumstances should not extend beyond that period where they generate unacceptable levels of harm.

Alternative ways of providing outside seating are possible that would be considerably less harmful, for example removable tables and chairs and parasols. We appreciate that this would not afford the same protection from all weather, but this could be a viable option that would extend the season for outdoor catering to an extent. The precedent that permitting this structure would set for other buildings alongside the Quay would be very unfortunate, in particular because of the Council's acknowledgement (through the designation of a Conservation Area) that this area is of particular historic interest.

We strongly recommend that the Council uses its planning powers to control inappropriate development with historic areas, where there is little or no justification and the harm to heritage assets is evident.

Recommendation:

Historic England has strong concerns regarding the application on heritage grounds. We recommend that the application is refused or withdrawn, and the Council takes appropriate action to ensure that the structure is removed. We consider that the issues and safeguards outlined in our advice need to be addressed in order for the application to meet the requirements of paragraphs 195, 199, 200 and 202 of the NPPF.

In determining this application you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to 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; and section 72(1) of the same Act to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.'

Your authority should take these representations into account and seek amendments, safeguards or further information as set out in our advice. If there are any material changes to the proposals, or you would like further advice, please contact us.

#### **Conservation Officer:**

The proposal now seeks to retain this canopy. The comments from the previous (retrospective) application remain relevant and as the proposal would retain this structure in perpetuity the comments raise concerns over erosion of the quality of the views within the conservation area and the setting of the listed buildings.

The opinion and advice received from Historic England is welcomed and confirms the Local Authority's concerns over this proposal.

Previous comment:

This terrace is part of the setting out of the new Quay and Bridgeland Street by Nathaniel Gascoyne after 1676. The Terrace is listed at Grade II and the buildings are sited in a visually prominent Quayside location within the Bideford Conservation Area.

The proposal seeks to retain a 'temporary' canopy structure to provide shelter to customers of 22 The Quay. This proposal has come about as a result of the COVID measures but the premises was previously served by umbrellas which could be removed as necessary.

The proposal states that it is not attached to the listed building frontage and so does not require listed building consent so this leaves the visual impact on the character and appearance of the listed building and the wider visual impact of the structure on the views along the Quay and its affect on the character of the Conservation area to be assessed.

The proposed canopy is considered to be overlarge in this location and visually dominates the terrace of buildings known as Prospect Place. The materials are modern and do not reflect the character of the terrace or the wider conservation area being out of scale with the smaller proportion of the buildings. The structure projects excessively forward of the building line beyond the proportions of a simple shelter. The Structure has a more industrial quality in this area which retains a domestic scale and proportion in the terrace behind.

The proposal is considered to harm the setting of the listed terrace and is also visually intrusive within the conservation area. It must be stated that the overall appearance is tempered by the presence of the trees and without them the shelter would appear more jarring in the streetscape.

The level of harm in terms of paragraph 202 is considered to be less than substantial for a temporary structure but this assessment is at the higher end of this scale. The impact on the conservation area and views along the quay are harmful and fail to preserve the character of the area. As such the proposal would be contrary to paragraph 72 of the Planning (listed Buildings and Conservation areas) Act 1990 where the consideration is set out clearly that the visual impact should be positive and this is not the case with the structure in situ.

While there has to be sympathy for café's at this time this challenge is the same in all historic towns and in considering how other places deal with the challenge it comes back to the use of gazebo structures which are visually lightweight and can be completely removed when necessary. This structure has such a degree of permanence that it reads as a visually intrusive feature.

The proposal should be resisted.

## Representations:

Number of neighbours consulted:	8	Number of letters of support:	231
Number of representations received:	246	Number of neutral representations:	0
Number of objection letters:	15		

A summary of the 246 representations in support of the application are as follows (full details can be found on the electronic file):

### Business/economic requirement:

The applicant employs local people, purchases local produce and support other local independent businesses in the town. There should be more cafes/restaurants that offer this space especially to encourage more holiday makers in the peak times to bring more revenue into the town and area.

### Beneficial to locality/environment and visual amenity:

Strongly disagree that the canopy has an adverse visual impact to the area and feel that the owners do a fantastic job with regards to its decoration with hanging baskets and Christmas decorations making it more of an attraction if anything. The canopy looks fabulous and is very well kept.

### Local needs requirement:

The canopy has been an absolute success for customers and the town and is a safe social space for all to enjoy.

There are still many people that prefer to have the choice of sitting outside because of the coronavirus and this has given the public the choice.

15 representations objecting to the proposal have been received which in summary have provided the following comments:

Harm to visual amenity and openness of the area;  
Harm to a local businesses;

Covid is now over and therefore the temporary structure should be removed; the business should return to using umbrellas/parasols and tables;  
Parking of vehicles under the canopy;  
The canopy, its design and materials are inappropriate in a Conservation Area and harm the setting of the nearby listed buildings.

## Policy Context:

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

ST01 (Principles of Sustainable Development); ST03 (Adapting to Climate Change and Strengthening Resilience); ST06 (Spatial Development Strategy for Northern Devon's Strategic and Main Centres); ST12 (Town and District Centres); ST14 (Enhancing Environmental Assets); DM01 (Amenity Considerations); DM04 (Design Principles); DM05 (Highways); DM06 (Parking Provision); DM07 (Historic Environment); DM08A (Landscape and Seascape Character); DM08 (Biodiversity and Geodiversity); DM19 (Town and District Centres); ST15 (Conserving Heritage Assets);

### Government Guidance:

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

## Planning Considerations

The main planning considerations with this application are:

1. Principle of Development
2. Impact on Heritage Assets
3. Impact on Amenity
4. Highways
5. Flood Risk & Drainage
6. Ecology
7. Economic benefits

### 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 (adopted 2018) (NDTLP). The NPPF must be taken into account and is a material planning considered in planning decisions.

Policy ST01 of the NDTLP requires when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF. The policy continues that planning applications that accord with policies in the Local Plan will be approved unless material considerations indicate otherwise. The three columns of sustainable development being economic, environmental and social cannot be undertaken in isolation because they are mutually dependent. To achieve sustainable development, economic, social and environmental gains will be sought jointly and consequently wherever possible.

The application site is located within the Town of Bideford, which is designated as a Strategic Centre in the NDTLP. As a result, the provision of Policy ST06 is relevant which states Bideford will provide a focus for housing and employment development. Significant levels of development will be accommodated in Bideford consistent with its scale and complementary role to Barnstaple. Sustainable development opportunities will be secured to increase self - containment and achieve balanced development to enable the town to meet its own needs and those of the surrounding area.

The site is within the Town Centre of Bideford therefore Policy DM19 (Town and District Centres) of the NDTLP is relevant, which states:

'To increase Town and District Centres viability and vitality, development proposals for retail, leisure, commercial, office, tourism, culture, community and residential development will be supported within defined Town and District Centre boundaries, subject to satisfactory regard to:

- a) The retention and enhancement of the Town and District Centre's historic character;
- b) The proposed development being readily accessible by sustainable transport modes; and
- c) The effective use of upper floors is maintained or secured.'

The Primary Frontage and Primary Shopping Area provides a retail focus, which the policy seeks to retain. Policy DM19 also facilitates diversification of use to maintain buoyant town centres. A mix of leisure, tourism, culture, community and residential development will be acceptable providing the viability of the commercial activities is not undermined.

The planning use of the building is not changing therefore there will be no loss of retail viability as a result of the proposal. The outdoor seating area is considered to improve economic viability of the business and facilities available in this town centre location. The proposal has the potential to generate additional income for the business and hence there would be economic and social benefits from the proposal. Consideration should also be given to the impact on heritage assets, amenity, highways, flood risk and drainage and ecology.

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

The proposal is within the Bideford Conservation Area where the presumption is to preserve and enhance the character of northern Devon's historic environment. As set out in this report, the café building is a grade II listed building, as part of the terrace listed buildings known as Prospect Place. Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990 states when considering whether to grant planning permission for development which affects a listed building or its setting, the decision maker 'must have special regards to the desirability of preserving the building or its setting, or any features of special architectural or historic interests which it possesses'.

Section 72 of the Listed Buildings Act imposes a duty when considering whether to grant planning permission for development which affect a conservation area to pay 'special attention' to the desirability of preserving or enhancing the character or appearance of that conservation area. In terms of determining planning application, paragraph 197 of the NPPF requires that Local Planning Authorities should take account of:-

- a) The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b) The positive contribution that conservation of heritage assets can make to sustainable communities including their economic viability; and
- c) The desirability of new development making a positive contribution to local character and distinctiveness.

Great weight should be given to the conservation of heritage assets in decision making (NPPF paragraph 199). Where harm is the result of a proposal (no matter the level), this must have clear and convincing justification (NPPF, paragraph 200). In this instance, because there are other options for the provision of outdoor seating that would be considerably less harmful, we consider that the justification is not present. Where harm is the result of the proposal (and has been avoided or minimised as far as possible (NPPF, paragraph 195), and has been found to be justified the local planning authority should undertake a balancing exercise of harm versus public benefit (NPPF, paragraph 202).

In terms of new development within Conservation Areas, paragraph 206 requires that 'Local Planning Authorities should look for opportunities for new development within Conservation Area and World Heritage Site, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourable.'

Policy ST15 (Conserving Heritage Assets) and Policy DM07 (Historic Environment) of the NDTLP also require that great weight be given to the desirability of preserving and enhancing northern



Devon's historic environment.

Historic England has strong concerns and has provided comment as set out above. They recommend that the application is refused or withdrawn, and the Council takes appropriate action to ensure that the structure is removed.

The Council's Conservation Officer has also been consulted and raises concern, reiterating the comments made in respect of the previous temporary application. The Conservation Officer indicates that the opinion and advice received from Historic England is welcomed and confirms the Local Authority's concerns over this proposal.

As 'less than substantial' harm has been found, paragraph 202 of the NPPF requires that this harm should be weighed against the public benefits of the proposal. Full details of public benefits are discussed elsewhere in this report, and as required by paragraph 202 of the NPPF and Policy DM07 of the NDTLP further consideration of the balancing exercise is to be undertaken as set out with the planning balance of this report.

### **3. Impact on Amenity**

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.

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.

As part of this application, the Environmental Protection Team provided the following comments:

'There appears to be no information provided on the operating hours of the proposed development however, it is assumed that these will replicate the hours specified in the previous application, namely 1000 to 1700 hours. Having regard for the times of use, daytime only, the Environmental Protection Team does not consider that there would be significant harm to any nearby residential amenity. Furthermore, the Environmental Protection Team has received no complaints in relation to amenity impact since the introduction of the canopy.'

It is considered that the proposal does not cause any significant harm to nearby neighbouring amenities.

Taking account of the above, it is considered that the proposal accords with Policy DM01 of the NDTLP and the requirements of the NPPF.

### **4. Highways**

Paragraph 111 of the NPPF advises that development should only be prevented or refused on highway grounds if there would be unacceptable impact on highway safety, or where the residual cumulative impact of development are severe.

Policy DM05 of the NDTLP requires development to have 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 and all development shall protect and enhance existing public rights of way, footways, cycleways and bridleways and facilitate improvements to existing or provide new connection to these routes where practical to do so. Policy DM06 states that proposal will be expected to provide an appropriate scale and range of parking provision to meet anticipated needs.

The Highway Authority have been consulted but no response has been received at the time of writing. The Highway Authority confirmed as part of the previous application that they have no objections; there are no material changes with regard to this application that would alter their recommendation.

Taking account of the above, it is considered that the proposal accords with Policy DM05 of the NDTLP and the requirements of the NPPF.

## **5. Flood Risk & Drainage**

The site is located within a Critical Drainage Area. Policy ST03 of the NDTLP states 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 by reducing existing rates of surface water runoff with Critical Drainage Areas.

The application is supported by a Critical Drainage Statement, which concludes that given that the building is located over an existing hard surface, the amount of water run off created by the roof is negligible. The roof has been designed at a pitch, to allow for water run-off, with guttering either side. In having regards to the above, it is reasonable to consider that the development will not materially result in an increase in surface water run-off within a critical drainage area.

The site is also located with Flood Zone 3. Policy ST03 of the NDTLP states 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 by (a) locating and designing development to minimise flood risk through (i) avoiding the development of land for vulnerable uses which is or will be at risk from flooding, and (ii) managing and reducing flood risk for development where that has wider sustainability or regeneration benefits to the community, or where there is no reasonable alternative site.

Paragraph 168 of the NPPF requires that the sequential and exception tests to be considered except for when determining some minor development (of less than 250 square metres in footprint) and change of use (this does not apply to caravan, camping or chalet sites, or to mobile homes or park home sites).

Given that the development is for an open-sided canopy over an existing outdoor paved seating area, it is unlikely that the development will impede the flow of flood waters or result in an increase in risk to the public.

It is noted that the proposal would appear to be supported by paragraph 167 (e) of the NPPF, which supports proposals that demonstrates safe access and escape routes.

Taking account of the above, it is considered that the proposal accords with Policy ST03 of the NDTLP and paragraphs 167 and 168 of the NPPF.

## **6. 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 by Policies ST14 and DM08 of the NDTLP.

Based on the plans submitted, it is considered that the proposed development will not have significant adverse impact on statutorily protected nature conservation sites. A Wildlife Trigger List was submitted as part of the planning application which concluded that there will be no effect on protected species as a result of this scheme.

As such the proposal is considered to fulfil the above statutory duties and the provision of policies DM08 and ST14 and the requirements of the NPPF.

## **7. Economic benefits**

The NPPF Chapter 6 'building a strong, competitive economy' (paras 81-85) relates to economic development. Paragraph 81 states that, 'Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on

the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development’.

Policy ST11 relates to employment and economic development and seeks to support proposals for economic growth and supports employment generating opportunities to meet identified needs and locally determined growth aspirations. Policy ST11 further notes that support will be given to existing sectors to ensure that they continue to flourish and grow in a sustainable manner and the modernisation of employment sites will be encouraged in order to meet current and future business needs.

Bideford is designated as a Strategic centre within Policy ST06 of the NDTLP. Policy BID sets out the Bideford Spatial Strategy for the plan period up to 2031. The policy states that:

‘Bideford will continue to be a focus for growth in northern Devon, which will be delivered without prejudice to valued environmental assets having due regard to the importance of the areas setting and landscape quality.

Bideford will provide an enhanced range of services and facilities to meet the needs of its residents and hinterland. The town will offer a choice of well-designed housing which meets lifetime needs with a network of greenspaces linking the surrounding countryside. There will be a diverse range of local employment supported by a skilled workforce with strong linkages to enhanced educational infrastructure... The town centre will be vibrant, attractive and safe for all users with a range of retail and leisure activities achieved through a programme of regeneration and public realm enhancements that encourages increased use and investment.’

The existing canopy structure provided justifiable economic benefits during the global pandemic when social distancing drastically affected the covers that could be carried out within the café. Ensuring that businesses and streets could retain their vitality and viability was encouraged at the national and local level and in this case was clearly successful. The canopy continues to provide some economic benefits, which will be weighed in the planning balance below. However, the pandemic justification for the structure is no longer a material consideration.

The supporting statement and D&S have not explicitly sought to justify the retention of the canopy on economic/viability grounds; and it is assumed that the amount of seating within the café has returned to pre-pandemic levels.

It should be noted that the strategic policy states that economic development will be delivered without prejudice to valued environmental assets (which include conservation areas and listed buildings) having due regard to the importance of the areas setting and landscape quality.

### **Planning Balance and Conclusion**

The Government gave support to pubs, cafes and restaurants during the current COVID-19 Pandemic and put in place a number of measures to help businesses thrive, in particular encouraging outdoor seating areas to serve food and drink. This included temporary changes to licensing laws. The Levelling-up and Regeneration Act has made the outdoor seating licensing permanent. However, these measures do not indicate that development should be allowed that is harmful to the character and appearance of an area.

Officers can appreciate why the applicant has opted for a more robust structure, resulting in this space being able to be used at all times, particular when there is inclement weather. There is no doubt that the use of this structure generates additional income for the business and the local economy, hence there would be economic benefits derived from this proposal. There were also some social benefits of the canopy particularly during the pandemic.

However, whilst there are some social and economic public benefits accruing for the outdoor seating area, these are considered to be very limited given the identified harm. The outdoor seating area could still function without the canopy with, for example, the use of tables and parasols.

The above identified benefits have to be weighed against the impact of the development upon the host building (grade II listed) as well as the wider designated Conservation Area. The proposal does not look like a canopy, instead it appears like a substantial and solid extension to the building. Owing to its thick wooden frame and Perspex roof, and more enclosed appearance, the proposal is considered to harm the setting of the listed terrace and is also visually intrusive within the Conservation Area.

Whilst there would be some economic benefits associated with the proposal, this is not of sufficient magnitude to outweigh the identified harm caused to the character and appearance of the Conservation Area and setting of the listed terrace. Whilst the harm to the heritage asset is less than substantial in the context of paragraph 202 of the Framework, the identified public benefits do not outweigh the less than substantial harm to the setting of the listed terrace and harm to the Conservation Area.

Officers are sympathetic to the disruption caused by the pandemic, but this is no longer relevant and the structure should be removed and a more modest approach, which is sensitive to visual amenity and does harm to the conservation area and setting of the listed buildings, should be sought.

The proposed development is therefore recommended for refusal.

### **Human rights**

Consideration has been given to the Human Rights Act 1998.

### **Recommendation**

REFUSE for the following reasons:

- 1 By reason of the less than substantial harm to the setting of the host listed building and listed terrace and the Bideford Conservation Area, with no demonstrable public benefit outweighing the identified harm, the proposed retention of the covered seating canopy is considered to be contrary to policies ST15 and DM07 of the North Devon and Torridge Local Plan 2011-2031 and guidance within the NPPF and NPPG.

### **Plans Schedule**

Reference	Received
21052 01	24.08.2023
21052 02	24.08.2023

### **Statement of Engagement**

In accordance with paragraphs 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. In this instance the applicant did not enter into pre-application discussions with the Council.