

PLANNING APPLICATION REPORT

Case Officer: Ian Lloyd

Parish: Newton and Noss **Ward:** Newton and Yealmpton

Application No: 2833/17/VAR

Agent/Applicant:

Mr Richard Boyt
South Hams Planning Ltd
7 Manor Park
Kingsbridge
TQ7 1BB

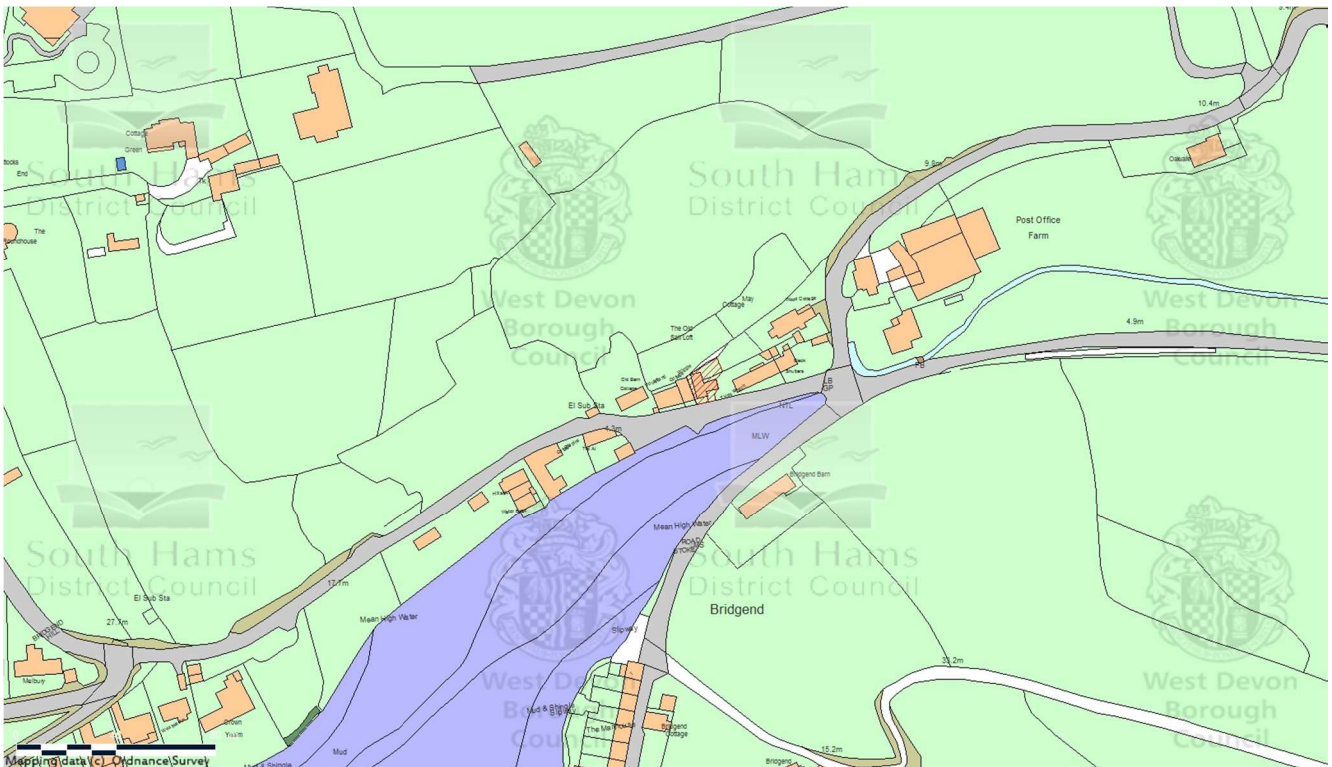
Applicant:

Mr Michael James
The Old Sail Loft
Bridgend
Newton Ferrers
PL8 1AW

Site Address: The Old Sail Loft, Road From Yealm View Road To W, Newton Ferrers, PL8 1AW

Development: Variation of condition numbers 2, 4 and 5 following grant of planning permission 2424/16/VAR

Reason item is being put before Committee: Referred by Local Member as it is a difficult and long-standing case and would like the Committee to see the site (and neighbouring land) for themselves and take the decision.



Recommendation: Refusal

Reasons for refusal:

1. In the absence of adequate screening measures, the proposal would result in overlooking and loss of privacy (direct and perceived) and is considered to be unneighbourly development, detrimental to the amenities and well-being of neighbouring occupiers contrary to Policy DP3 (1 and 2), Policy DP17 (1), paragraph 17 the NPPF, National Planning Practice Guidance on Design including paragraph 002 and emerging JLP Policy DEV 1(1).

Key issues for consideration:

The key issues are considered to be:

The principle of development/sustainability considerations surrounding further revisions sought to a householder development following approval, variation and implementation not in accordance with the previously approved plans.

Neighbour Amenity considerations, having regard to the impacts of the development on the amenities of neighbouring occupiers.

Design/Landscape considerations within the AONB.

Site Description:

The Old Sail Loft is a detached dwelling located on the north side of Bridgend Road, on the road from Yealm View Road to Widey Hill, Newton Ferrers. The detached dwelling sits back behind a small front garden and is elevated slightly above road level. From there the land rises sharply such that the main garden amenity area is in an elevated position to the rear north-east of the house. Gardens locally have been terraced to take account of the steeply changing levels and the application property is no exception in this regard.

Tides Reach, within which former garden the application property was built, lies to the east, with Wiggle Cottage to the west. The main aspect and orientation of the Old Sail Loft is south and east. The main aspect and orientation of Tides Reach is south and west.

The Old Sail Loft is white painted render under a natural slate roof. An integral garage is accessed via a sloping concrete apron. The remainder of the frontage is set behind an old natural stone wall.

Directly opposite the site across the road to the south is the upper reaches of Newton Creek. Across the creek fronting Stoke Road is the Grade II Listed dwelling Bridgend Barn

The Proposal:

The proposal is for a variation of condition numbers 2, 4 and 5 following the grant of planning permission 2424/16/VAR, itself a variation of earlier approval 0178/16/HHO.

The conditions sought to be varied are:

2. The development hereby approved shall in all respects accord strictly with the site location plan and SHDC 1, submitted as part of application number 0178/16/HHO, received by the Local Planning Authority on 16/02/16, and SHDC 2 received by the Local Planning Authority on 12/10/2016. Drawing number SHDC 1 shall only be read for the purposes of the location of the boundary fence.

Reason: To ensure that the proposed development is carried out in accordance with the drawings forming part of the application to which this approval relates.

4. Notwithstanding the details approved as part of the development, prior to the occupation of the property a 2 metre high solid fence shall be erected along the line coloured green on the approved plan SHDC 1 in accordance with details to be submitted to and approved in writing by the local planning authority. The fence shall thereafter be retained and maintained in accordance with the approved details.

Reason: To protect the amenity and privacy of residents of adjoining property.

5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting this Order), the windows, hatched in blue on the approved drawing SHDC 2, shall be glazed in obscure glass and maintained as such thereafter. The windows shall be fixed shut and maintained as such unless a suitable means of opening has previously been approved in writing by the local planning authority.

Reason: To protect the amenity and privacy of residents of adjoining property.

Works have been undertaken not in strict accordance with the terms of the approved 2424/16/VAR permission. The premises have been occupied for some time now (well over a year) in breach of the conditions.

The key issues relate to the boundary fence (conditions 2 and 4) and to the requirement for areas of obscured glazing (condition 5).

In evaluating the proposals, the following applications and details are considered relevant:

0178/16/HHO - The original application, based on existing Drwg. No. GA1, proposed plans & elevations Drwg. No. GA2, and allocated Drwg. No SHDC1 (Block Plan) included a Design & Access Statement (D&AS) which referenced changes to the front bay, and dropping the cill height, enabling a view out from seat height. This is reference to the window seat which had been present and was to be retained. There is no apparent change in the overall dimensions of the bay window from the pre-existing original bay. No objections were received and the application was approved subject to 3 conditions (time limit, strict accordance with approved plans and materials to match). 1 roof light is shown on the second floor plan, but not on the block plan or west elevation.

2424/16/VAR – The subsequent variation application sought changes, including to the front bay and the east-facing dormer. The front bay extends lower on the front elevation than previously, though three glazed panes remain in the east-facing bay. The east facing dormer is larger.

Drwg. No. GA3 was amended by the LPA (called SHDC 2 to reference the requirement for obscure glazing and re-named). Drwg. No. SHDC 1 is a Block Plan. In response to objections, the applicant responded, confirming an intention to apply obscure glazing to the existing window and to attach trellis above the existing fence if necessary. More roof lights are shown on the second floor plan, but not on the block plan or west elevation.

The LPA amended/re-named the submitted plan to reference windows to be obscured glazed, to be secured by planning condition.

The applicant advises these were not agreed in advance and were unexpected.

2833/17/VAR – the current application seeks permission to vary the conditions. The submitted plans, block plan Drwg. No. GA3 (a) & plans & west elevation Drwg No. GA2 Amendment B show a 4 pane roof light. Photographs and details of the type of trellis intended have been submitted, showing a 20mm gap.

In response to the current application, there are no objections from the LPA to the operational development for which retrospective consent is effectively sought, shown on the submitted plans, namely the roof lights over the stairwell on the west elevation.

In seeking to vary the terms of these conditions, the LPA must consider the reasons they were imposed and the implications if they were lifted. These issues are addressed in detail in the report below.

The applicant's agent has confirmed it has not been possible to reach common ground and a solution that the applicant can tolerate.

The application would allow for a bathroom window and side bay window at the front of the house to left non-obscured. The variation of conditions sought would also allow for 1.8m trellis panels (not 2m solid panels as required by condition) to be erected within the applicant's land, retaining the existing fence in situ. This could be supplemented by climbing plants. No measures are proposed to the boundary where it returns towards the dwelling (2m solid panels required by condition), to allow the maximum opportunity for the failing hedge screen to regenerate without any new fencing in this area. Supplemental planting has recently been undertaken in an attempt to bolster the failing hedge.

Having listened to the alternatives, the applicant is satisfied that this strongly protects the privacy of the neighbour and indeed considers the relationship is far more private than any that existed before between the two houses.

The applicant wishes the variation of condition application to be determined in its submitted form as shown in GA2 Amendment B and GA3 (a) with the detail of the privacy trellis provided as supplemented by photographs. Confirmation has been received that no trellis panels will be added on the neighbour's side of the fence and all of the works proposed are within the control of the applicant and red line of the planning unit.

The neighbouring occupier at Tides Reach continues to strongly oppose changes to the conditions on the grounds of continued loss of privacy and overlooking to an extent that affects their well-being in as much as they no longer feel able to use their garden and conservatory as they did previously.

The neighbours: object to the lack of obscured glazing in the high level bathroom window unless a 2m high solid fence resolves the potential for overlooking; are satisfied with obscure glazing to the lounge window on the east elevation; would compromise on the side bay if temporary screening were applied for two years but continue to object in the absence of obscured glazing; Do not support 'temporary' screening to the upper hedge, accept a 2m solid fence is unnecessary but insist a 1m fence to be necessary; Consider only a 2m solid fence between the upper gardens, not trellis will suffice; and feel aggrieved the dwelling has been occupied for over a year, in clear breach of conditions causing continued amenity issues they want resolved as soon as possible so they are able to enjoy their garden and conservatory in the coming spring and summer.

The report below will address the issues in detail.

Consultations:

- Newton & Noss Parish Council: No objection

Representations:

Representations from Residents

Comments have been received objecting from one neighbouring occupier and cover the following points:

- Strongly oppose any change to the conditions for reasons well documented in emails previously exchanged, regarding continued loss of privacy to their property immediately next door. To clarify the neighbour's position is summarised as:

- Always objected to the lack of obscured glazing in the high level bathroom window, clear glazing at all on the east elevation Tides Reach should never have been allowed; Agreed that a 2m high solid fence would resolve the issue;
- Satisfied obscure glazing to the lounge window on the east elevation has been adhered to;
- Would compromise on the side bay if temporary screening were applied for two years;
- Does not support 'temporary' screening to the upper hedge, which now allows views into the previously private terrace, but would compromise for a fence of lower height (1m);
- A 2m solid fence between the upper gardens is necessary, a trellis will not suffice;
- Property has been occupied for over a year, in clear breach of conditions;

Two comments have been received in support and cover the following points:

- Having visited the site, believe the conditions imposed are unnecessarily restrictive on the owners and confer insignificant extra privacy to the neighbours. Residents of dwellings at close proximity to each other are bound to be aware of their neighbour's presence;
- It appears that somehow, by degrees, extra conditions have been placed on this property under the guise of infringement of privacy. The neighbour does not appear to have lost any of the privacy enjoyed prior to development, therefore agree with the Parish Council and support the proposal.

Relevant Planning History

2424/16/VAR Application for removal or variation of condition No2 following grant of planning consent 0178/16/HHO. Design and use improvements over original with little difference in appearance. Conditional Approval 14.11.2016

0178/16/HHO Householder application for proposed alterations to construct dormers, porch and conservatory. Conditional Approval 7.4.2016.

ANALYSIS

Principle of Development/Sustainability: The starting point for consideration is the development plan and the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004 which require planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. At the heart of the National Planning Policy Framework (NPPF) is a presumption in favour of sustainable development which for decision making means approving development proposals that accord with the development plan.

The site lies outside the development boundary for Newton Ferrers. Policy DP17: Residential Extensions and Replacement Dwellings in the Countryside is therefore the most relevant Policy and advises proposals to extend existing dwellings in the countryside will be permitted provided that there will be no detrimental effect on the character, appearance and amenities of the site and surroundings.

Similar development has been approved previously, subject to conditions and there is therefore no objection in principle, subject to the detailed considerations of issues and impacts arising from the variation in plans and variation/removal of conditions sought, notably impacts on amenities and on the character and appearance of the surroundings, addressed in the report below.

Neighbour Amenity:

The development comprises of a number of extensions and alterations, already approved and implemented. Further change has been implemented, for which retrospective consent is now effectively sought. An additional roof light raises no amenity or other significant concerns.

The proposal has given rise to objections from neighbouring occupiers of Tides Reach to the east, and impacts on the well-being of neighbouring occupiers is a cause for concern.

There is no objection from the Parish Council and there are also two letters in support.

The applicants' position is that the scheme as revised has no undue impacts on the amenities of neighbouring occupiers which cannot be addressed by the addition of a section a 1.8m trellis fence which would extend above the height of the existing fence separating the upper gardens, and by obscured glazing to one window (already applied), but that the conditions imposed are excessive and unnecessary in other respects, including the requirements for further obscured glazing to two windows, and for any fence along the return between the upper and lower gardens of the respective properties. They advise the conditions were appended to the previous approval without their knowledge, not agreed in advance and not acceptable to them.

The neighbouring occupiers of Tides Reach to the east object on amenity grounds, considering the development undertaken to have increased overlooking and loss of privacy to an extent they consider has seriously impacted on their living conditions, well-being and private enjoyment of their property. They feel less inclined to use the conservatory and outdoor garden amenity areas as a result of feeling so overlooked.

Policy DP3: Residential Amenity advises development will be permitted provided it does not have an unacceptable impact on the living conditions of occupiers of nearby properties. Unacceptable impacts will be judged against the level of amenity generally accepted within the locality and could result from loss of privacy and overlooking, overbearing and dominant impact, loss of daylight or sunlight, noise or disturbance, odours or fumes.

Policy DP17: Residential Extensions and Replacement Dwellings in the Countryside seeks to ensure proposals to extend existing dwellings in the countryside will be permitted provided that there will be no detrimental effect on the character, appearance and amenities of the site and surroundings. Under the Policy, proposals to extend a dwelling in the countryside will be permitted provided the extension is subordinate in scale and proportion to the original dwelling.

Planning Practice Guidance on Design (Para. 002) advises good design should consider amongst other things the impact of development on well-being.

JLP Policy DEV1 Protecting amenity and the environment is the emerging policy has aims comparable with Policy DP3.

In attempting to reach a mutually acceptable solution to all parties, site visits to the respective properties have been undertaken and discussions taken place.

Having been implemented, it is possible to view and assess the implications of the development first hand, rather than to evaluate their potential perceived impacts based only on the plans. While such assessments are appreciably always subjective, nevertheless impacts can be more accurately gauged.

Condition 5 requires four windows to be obscure glazed. The north-facing window is not in dispute.

A site visit revealed a first floor east-facing window serving the lounge to have had an obscure glazing film already applied, to everyone's mutual satisfaction.

The site visit also revealed the bathroom window in the same elevation is sited such that overlooking from this window, a high level window, does not result in undue overlooking or loss of privacy. The neighbour considers obscure glazing is not necessary if the 2m solid fence is erected. Having seen the internal floor to ceiling height and the position of the window in relation to the WC, overlooking and loss of privacy is not considered by the LPA to be a problem and are of the view that the condition could be varied without undue amenity implications arising. This view is reached having regard to the neighbour's continuing objections.

With regard to the east-facing side bay window, the applicant's and the objector's positions have both changed during these discussions. The applicant is adamant no permanent obscure glazing will be applied. In these circumstances options explored included a temporary obscure glazing solution and initially understood to be mutually agreed. Two years would enable time for the neighbour to grow intervening screen planting, to limit views from the bay down into the lower garden and conservatory of Tides Reach. The applicant now does not want obscure glazing at all, even temporarily and has withdrawn from this possible solution. The neighbour feels that the screening should be the responsibility of the applicant, but is willing to compromise and undertake planting within the garden of Tides Reach, but it will take time to mature and temporary screening is necessary to allow for this eventuality, to enable then to use the garden and conservatory without being overlooked in the interim. The LPA agrees the responsibility should ordinarily lie with the applicants and considers this approach from the neighbour to be a reasonable and acceptable compromise position.

The position described above followed an assessment and discussions. An element of mutual overlooking, actual and perceived, does occur. This is demonstrated both by the objections and the objector's apparent reluctance to use the garden and conservatory due to privacy impacts and also by the applicant's actions. The applicant has bought a pleached tree in a large pot, which is sited in the front courtyard garden so that when the first floor south facing window (the window nearest Tides Reach, not the bay slightly further away) is open, the applicants can sit close to it and take in views (primarily south) without perceiving they are being overlooked by the occupiers of Tides Reach. This is considered to be perceived rather than actual overlooking, given the relative relationships between the properties involved. One possible solution discussed was to situate another such tree to screen views between the bay window and Tides Reach. The applicant was ultimately unwilling, due to cost and lack of space on the patio. It is accepted that there is limited scope for planting in this area (although some capacity does exist) and this subsequently gave rise to the possible temporary planting solution, to enable the same effect to be reached over time through planting within the garden of Tides Reach.

A reasonable assessment of amenity should reflect the levels of amenity generally in a local area. A bay window, while not commonplace, is not an unusual feature, nor normally one associated with giving rise to significant levels of overlooking. Impacts may increase from first floor level, with an opportunity to look both across and down. Impacts from bay windows are more usually to other neighbouring front gardens, but here it is to a side garden, one of two principal amenity areas for the property and where the neighbour's outdoor seating/dining area has long been located. The principal outlook of nearby properties is north-south, front to rear facing the water, not necessarily to the side/with the principal garden area of the application site raised above and overlooking a lower neighbouring amenity area, as is the case here. As such, while there are other instances where properties are elevated above other neighbours, the potential for overlooking is greater in the application circumstances than may be the average situation nearby.

The original first floor bay window had side glazing and a window seat and views were primarily south, though available eastwards if turning to face east on the seat. When this bay was originally permitted, it must have been deemed acceptable in amenity terms. It was not obscure glazed. The perception of the neighbour was that this did not previously cause undue problems. This was in part based on the neighbour's perception that the side bay was obscure glazed. From discussions with both parties, this apparent misconception may have arisen as a large number of panes in the bay had 'blown' and may have appeared to be obscure glazed.

The key concerns of the neighbour as related to the current form of the bay, is the change such that it is extended down slightly, there are now doors and a balcony and with no window seat, occupiers can more often and more visibly be seen standing in the bay to take in the river views, south and, importantly, east. While primarily these views are south and east to the water, the possibility exists to stand looking straight down into the Tides Reach lower garden and to the conservatory. The perception is this occurs more frequently than previously and results in loss of privacy.

Having seen the situation from both sides, when looking east from the first floor bay, while the main attraction is the view of the water, the garden of Tides Reach is clearly visible. The conservatory is also visible, but views directly into it are limited. This would likely change at night if the conservatory were lit. From Tides Reach, the bay and anyone in it are clearly visible from both the garden and parts of the conservatory.

The issue is therefore the level of overlooking, actual and perceived, whether the levels are beyond established levels locally, and whether harm to the neighbour's well-being arises as a result.

My view, having seen both situations, is that there is a level of mutual overlooking between the bay and the garden of Tides Reach. In the case of Tides Reach, overlooking and loss of privacy is both real and perceived.

The applicant has felt it necessary to screen a first floor south facing window close to the boundary with Tides Reach for perceived privacy reasons so that the window can be opened to take in views without feeling overlooked by Tides Reach. This has been achieved through siting the potted pleached tree to screen views. The level of possible overlooking up from the garden of Tides Reach into that window is limited, less than the level of overlooking possible down to the Tides Reach garden and conservatory from either this window or, more importantly, the first floor bay. Nevertheless, the applicant has felt it necessary to screen a view based on a perception of being overlooked. On this same basis, the occupier of Tides Reach perceives there to be an overlooking and privacy problem, which is affecting their well-being, for which a condition has been imposed in order to seek to address it. The applicant remains in breach of the condition. The condition is considered to be necessary and to meet the tests of conditions. While preferring a permanent solution, the neighbour is agreeable to this being a temporary condition to allow time for plants to be planted and to grow. The applicant is now unwilling to comply with any restrictive condition and wants the condition removed.

The applicant points out that changes to the bay were originally permitted without any condition requiring obscure glazing and that is the case. The property has also always had a side bay window. However, the subsequent elevational changes to the fenestration to introduce openable doors/ Juliette balcony, has given rise to increased concerns about overlooking, privacy and well-being.

The perception of loss of privacy and overlooking has been held to be a material planning consideration. It is clear there are mutual concerns in this regard. In relation to the bay, the concerns are those of the neighbour only.

In circumstances where, perhaps compounded by the apparent mutual animosity that now exists between the neighbours, the applicant feels it necessary to screen an existing view with planting, I have no doubt that the perception of overlooking is an issue for both parties. The reality is that there can be no significant overlooking into the applicant's first floor window, yet steps have been taken to screen perceived impacts. In circumstances where the level of overlooking of Tides Reach is greater, and the neighbour's well-being has suffered to an extent that they used the garden and conservatory less frequently last year than previously, as a result of feeling overlooked, I consider obscure glazing to be necessary in the circumstances, to address issues arising as a result of the planning application and to meet the tests of conditions.

I consider the neighbour at Tides Reach to have been reasonable in willing to compromise and accept temporary obscure glazing while plants could be planted and allowed time to grow and screen the views. Initially the applicant accepted this but has now withdrawn the offer. In the circumstances I consider it leaves the LPA little option but to refuse to remove the condition and to pursue enforcement against the breach of condition.

Turning now to the fence at the rear, successive applications have required details of fencing. The applicant continues to reside and has for well over a year, in breach of conditions. A solution is urgently required. There are two aspects to the fence: the fence which runs north-south separating the upper gardens in the north-east corner of the application site; and the section where it returns

running west-east separating the upper garden of the Old Sail Loft from the lower garden of Tides Reach.

Addressing the higher section of fencing first, the east-facing bedroom window formed as a result of the development faces east directly towards the upper level garden of Tides Reach. From within the bedroom and the upper level patio garden of the Old Sail Loft, no views of the ground level of the garden of Tides Reach are possible due to the prevailing levels. It would though be possible to see people using the upper garden. From Tides Reach, the new bedroom window is clearly visible from the upper garden and due to land level differences between the gardens, there is overlooking, actual and perceived.

In these circumstances the LPA is justified in seeking adequate screening to mitigate the impacts of overlooking. The neighbour, within whose grounds the Old Sail Loft was constructed, considers they own the fence and the applicant does not therefore have the right to attach trellis above it. They consider trellis does not necessarily resolve the problem and because there is visibility still possible through it, (20mm gaps), I concur. A solid 2m screen above existing ground level is considered to be required to address privacy issues. The existing fence appears to be nearing the end of its useful life. A replacement fence is preferable, either on land the applicant owns, or on the common boundary by agreement, or an independent fence set entirely within the applicant's land. The neighbour at Tides Reach has expressed a willingness to accept either solution by agreement, provided the fence is solid (not trellis/ capable of being seen through).

The applicant considers a trellis to be sufficient. A trellis detail and photographs of trellis panels in temporary situ have been provided. Screening is improved by the trellis, but inter-visibility still possible through the upper part where it extends above the existing fence. The increased overlooking has arisen as a direct result of the applicant's development and are not fully overcome by trellis, through which visibility is still possible. The condition requiring a solid fence is reasonable, necessary and meets the tests of conditions. In the circumstances the LPA has little option but to refuse permission to vary the condition and pursue enforcement action against the breach of condition.

However, this is only part of the fence.

Where the fence returns, a long-established low hedge set within a retaining wall exists running west-east separating the upper garden of the Old Sail Loft from the lower garden of Tides Reach. This hedge continues east into Tides Reach.

During the remodelling of the Old Sail Loft, though not indicated on the plans, steps up to the upper patio were amended and parts of the wall containing the hedge remodelled. This has damaged the hedge and its condition is such that there is now a greater level of visibility through it, down into the garden of Tides Reach.

The wall contains visible cement and little evidence of an adequate medium to sustain the renewal of the hedge. Some additional planting had recently taken place at the time of the site visit, but it is not known ultimately how successful either the regeneration of the original hedge or this new planting will be.

In the applicant's favour, the steps as remodelled, would appear to be lower at the point closest to this boundary than was previously the case. This reduces the capacity for overlooking at this point, nearest to the common boundary. However, the new bedroom exits onto the upper patio garden, and together with improved access afforded by the steps and the expansion of the property, increases the likelihood of a more intensive use of this area as the main garden amenity for the Old Sail Loft. There is now a greater level of overlooking and loss of privacy, actual and perceived, that existed previously.

Again, various alternatives were discussed with the parties.

Both parties agree a high (2 m) close boarded solid fence to be unnecessary. This would remove the long-standing river view for the applicant and be more prominent in public views (including from public vantage points within the AONB) and is not desirable. Nor is 2m necessary to prevent overlooking. It is visibility down into the lower garden of Tides Reach, through the failing hedge, which causes increased overlooking, and a low screen of 1m would suffice.

Various options were discussed, temporary and permanent, including a 1m screen fence, one side or other of the hedge.

The applicant does not want to attach any fence even a low one, even on a temporary basis, on either side of the hedge. It is accepted, as argued by the applicant, that this would reduce light to the hedge and delay its capacity to regenerate. This argument has validity and weight.

The neighbour wants permanent 1m screening so they feel able to use the lower garden and conservatory this year where they felt they could not last year, and having endured over a year, want a permanent solution now.

While both positions are understood and have validity, the applicant has carried out works which have had a perhaps unintended consequence, but nevertheless must be considered in relation to the requirement to satisfy the planning conditions.

It has already been over a year and the hedge is yet to re-establish properly. In these circumstances, there must be some doubt as to the capacity of the reconstructed wall to accommodate an effective hedge screen. The applicant has carried out supplemental planting, which may or may not be successful. Temporary screening measures would provide a short term solution, which could become a long term solution if the hedge fails completely.

The LPA considers there is a third way, for temporary 1m screening of the hedge.

This possible solution for a temporary screen, while reducing light to the hedge and delaying its possible regeneration, would both screen the garden temporarily in the interim (enabling the neighbour to feel at ease to use the garden this summer) and allow the progress on the regeneration of the hedge to be gauged.

It has already been over a year and the hedge is yet to re-establish properly. In these circumstances, there must be some doubt as to the capacity of the reconstructed wall to accommodate an effective hedge screen. The applicant has carried out supplemental planting, which may or may not be successful. Temporary screening measures would provide a short term and alternative possible long term solution.

However, neither party is willing to accept a compromise solution.

The reason for requiring the solid fence screening is to protect the amenity and privacy of residents of Tides Reach from the upper application land patio garden, looking down into the lower garden of Tides Reach. While the view is principally out to the water, because there is inter-visibility and people on the patio can be seen from the lower garden (and vice versa), even if their principal view is out over the garden, the perception is one of being overlooked. This would be negated by a reinvigorated hedge or a low screen.

The applicant is unwilling to consider any boundary screening here. In these circumstances, whereby the dwelling continues to be occupied in breach of condition and current circumstances give rise to adverse impacts on the privacy (real and perceived) and well-being of neighbours, the LPA has little option but to refuse permission and pursue enforcement against breach of condition.

Neighbourliness is a yardstick by which developments can reasonably and pragmatically be judged. Notwithstanding that the applicants consider they have addressed all amenity concerns, for the

reasons outlined above, the negative impacts this development has had and continues to have, in breach of conditions, on the amenities of neighbouring occupiers of Tides Reach by affecting privacy and overlooking and their right to the private and quiet enjoyment of their home and garden, are such that the proposed development is considered to be unacceptable, and in conflict with policies DP3, DP17, Guidance in the NPPF and planning Practice Guidance. This weighs significantly against the proposal in the planning balance.

Design/Landscape:

The site lies within the South Devon AONB, Heritage Coast and Undeveloped Coast. The application is assessed with regard to the potential impacts of the development on local character, including impacts on the AONB. The LPA has a duty under The Countryside & Rights of Way Act 2000 which provides a statutory framework for all policy, plan-making and decision-taking affecting the AONB by all public bodies, including local planning authorities and government agencies. Section 85(1) in particular is relevant to decision making in relation to the duty to have regard to the purpose of conserving and enhancing the natural beauty of the AONB.

The site lies within Devon Character Area (DCA) 49: Plymouth Sound Eastern Plateau
The site lies within Landscape Character Type (LCT) 4A Estuaries: "This LCT is found at intervals along South Devon coast where the major rivers become influenced by the marine environment. Dynamic landscapes which change often with tides and weather conditions. Strongly naturalistic and tranquil with semi-natural habitats that are highly important for biodiversity. Settlements are often associated with the estuaries and they form a popular destination for both land and water based activity".

Views and perceptual qualities include, general tranquillity and valued and visually attractive landscapes and visually dynamic landscape and seascape highly influenced by tides, weather conditions and seasons and with little light pollution.

Guidance in the NPPF requires great weight be afforded to conserving the landscape and scenic beauty of the AONB. Policies DP2 and CS9 address local character and visual amenity considerations. The LPA is required to take the necessary action to ensure that the natural beauty of the AONB is conserved and enhanced. The recently adopted South Devon AONB Partnership Planning Guidance for the South Devon AONB is a material consideration.

The development comprises of a number of extensions and alterations, already approved and implemented. Further changes have been implemented, for which retrospective consent is now effectively sought. An additional roof light raises no design or landscape considerations, not being visible in wider public views. No significant additional dark skies issues arise from the changes.

Having due regard to the weight to be afforded to conserving that character and natural beauty of the AONB, no significant issues are considered to arise.

Policies DP1 and CS7 require good design. Policy DP1 sets criteria for high quality design including the need to respect and respond to the South Hams character in terms of its settlements and landscape. Again no negative impacts arise.

Policy DP17: Residential Extensions and Replacement Dwellings in the Countryside seeks to ensure proposals to extend existing dwellings in the countryside will be permitted provided that there will be no detrimental effect on the character, appearance and amenities of the site and surroundings. Under the Policy, proposals to extend a dwelling in the countryside will be permitted provided the extension is subordinate in scale and proportion to the original dwelling. No negative impacts arise as a result of the design. Amenity issues are addressed above.

Heritage impacts are addressed below.

On balance no significant design or landscape concerns arise.

Other Matters:

Highways/Access: The application property lies on the north side of the road from Yealm View Road to Widey Hill, C classified road. The dwelling is set back from and elevated above the road.

No highway or access issues arise out of the proposed variation of conditions.

Heritage Considerations: As advised above, the site lies within Heritage Coast. The site is not within a Conservation Area (CA) or CA setting boundary. There are two Listed Buildings nearby to the east and opposite to the south. The setting of Bridgend Barn to the south is the only Listed Building whose setting is considered to be potentially affected by the proposals. The conclusion drawn is that no Listed Building setting impacts arise.

Ecology & Biodiversity: No significant ecology & biodiversity issues arise out of the proposed variation of conditions.

Flood Risk & Drainage: The dwelling and most of the garden lies within flood zone 1, at lowest risk of flooding, although flood zones 2 and 3 abut the southern boundary, including the road outside the site and which encroach slightly into the front garden. No significant flood risk or drainage issues arise out of the proposed variation of conditions.

This application has been considered in accordance with Section 38 of the Planning & Compulsory Purchase Act 2004 and with Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Planning Policy

Section 70 of the 1990 Town and Country Planning Act requires that regard be had to the development plan, any local finance and any other material considerations. Section 38(6) of the 2004 Planning and Compensation Act requires that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise.

The relevant development plan policies are set out below:

South Hams LDF Core Strategy

CS1 Location of Development
CS7 Design
CS9 Landscape and Historic Environment
CS10 Nature Conservation
CS11 Climate Change

Development Policies DPD

DP1 High Quality Design
DP2 Landscape Character
DP3 Residential Amenity
DP4 Sustainable Construction
DP5 Conservation and Wildlife
DP6 Historic Environment
DP7 Transport, Access & Parking
DP17 Residential Extensions and Replacement Dwellings in the Countryside

South Hams Local Plan (please delete as necessary)

SHDC 1 Development Boundaries
MP 12 Newton Ferrers and Noss Mayo

Emerging Joint Local Plan

The Plymouth and South West Devon Joint Local Plan (the JLP) will replace the above as the statutory development plan once it is formally adopted.

Annex 1 of the National Planning Policy Framework (the Framework) provides guidance on determining the weight in relation to existing and emerging development plan policies.

- For current development plan documents, due weight should be given to relevant policies according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
- For the JLP, which is an emerging development plan, the weight is to be determined by the stage of its preparation, the extent to which there are unresolved objections, and its degree of consistency with the Framework.

The JLP is at a relatively advanced stage of preparation. The precise weight to be given to policies within the JLP will need to be determined on a case by case basis, having regard to all of the material considerations as set out on the analysis above.

PLYMOUTH AND SOUTH WEST DEVON JOINT LOCAL PLAN -: PUBLICATION (as considered by the Full Councils end Feb/Early March 2017)

SPT1 Delivering sustainable development

TTV32 Residential extensions and replacement dwellings in the countryside

DEV1 Protecting amenity and the environment

DEV2 Air, water, soil, noise and land

DEV20 Place shaping and the quality of the built environment

DEV22 Development affecting the historic environment

DEV24 Landscape character

DEV25 Undeveloped coast

DEV27 Nationally protected landscapes

DEV28 Protecting and enhancing biodiversity and geological conservation

DEV30 Trees, woodlands and hedgerows

DEV37 Managing flood risk and Water Quality Impacts

NPPF

National Planning Practice Guidance

The recently adopted Planning for the South Devon AONB: Planning Guidance Version 1 is a relevant Supplementary Planning Document (SPD).

Light Pollution in the South Devon Area of Outstanding Natural Beauty Guidance

A Landscape Character Assessment for South Hams and West Devon Draft Report Prepared by LUC February 2017

Newton & Noss Draft Neighbourhood Plan

Summary/Conclusions/Planning Balance

Matters not in dispute - In summary, matters not in dispute are the additional roof lights, which do not cause amenity problems and the east-facing lounge window has already been obscure glazed. Variations for these would be acceptable, though the application cannot be split.

High level east-facing bathroom window - while the neighbour maintains an objection this window if not obscured (unless a 2m solid fence is erected) the LPA considers there to be no undue overlooking arising from this window as constructed and would not object to it remaining clear glazed.

Bay window - The LPA would support a 2 year temporary glazing solution, also accepted by the neighbour, but in circumstances where the applicant is unwilling and wants the condition removed, the

LPA has no option where overlooking, loss of privacy and impacts on well-being arise, but to refuse permission to remove the condition.

Upper fence - The LPA does not consider the trellis solution, through which inter-visibility, though reduced, is still possible, to fully address concerns about overlooking, loss of privacy and impacts on well-being and has no option but to refuse permission to remove or vary the condition on the basis sought.

Lower fence - The LPA does not consider removal of the condition to be acceptable in circumstances whereby there is no guarantee or likelihood that the hedge has the capacity to regenerate or mitigation measures succeed in achieving former or acceptable levels of screening. The LPA considers the neighbour's position, seeking permanent screening now, to be unnecessary as a third way could potentially achieve similar results: A temporary 1m screen would allow time to see whether the hedge will in the future be able to once again act as an effective screen (while protecting the amenities of neighbours the condition was designed to do in the interim) and allow for a permanent screening solution if it is unsuccessful. This would address concerns about overlooking, loss of privacy and impacts on well-being. Such a condition is considered necessary and would have been an acceptable compromise to the LPA, but is not acceptable to either party. In circumstances whereby the LPA's suggested alternative solution has been rejected, and the applicant is unwilling to screen in this area, the LPA has no option but to refuse permission to remove the condition as sought.

Every effort has been made and exhausted with all parties to reach a compromise solution.

On balance refusal is recommended and the matter should be passed through for considerations as to the expediency of enforcement action in circumstances whereby the application cannot be supported on neighbour amenity and well-being impact grounds and occupation continues in breach of conditions.

Considerations under Human Rights Act 1998 and Equalities Act 2010

The provisions of the Human Rights Act 1998 and Equalities Act 2010 have been taken into account in reaching the recommendation contained in this report.