

No use of flat roof areas for amenity purposes
Non-opening windows/doors to west elevation
No insertion of new windows, doors or openings restriction

Key issues for consideration:

Impact upon residential amenity and privacy, impact upon landscape, impact upon South Devon Area of Outstanding Natural Beauty, impact upon designated heritage assets.

Site Description:

No.36 comprises a mid-terrace residential property located on the western side of Above Town and approximately 80m to the south of the junction with Crowthers Hill. The site lies on the western edge of Dartmouth Conservation Area and within the South Devon Area of Outstanding Natural Beauty.

The Proposal:

The application proposes an additional roof level extension to the west (rear) elevation to that which has been previously approved under 0663/18/HHO along with the conversion of part of the property to provide an internal garage and other associated alterations to the internal layout of the property.

Consultations:

- County Highways Authority – no highway implications
- Dartmouth Town Council – recommend refusal on the grounds of being unneighbourly and an overdevelopment of the site.

Representations:

Representations from Residents

Eight letters of representation have been received (two from the same party) of which seven object to the proposal and one undecided. The representations cover the following points:

- Site being overdeveloped from what is essentially a row of small fisherman's cottages and is clearly designed for the rental market.
- Potential to open the upper doors of proposed dining room and further increase noise and loss of amenity.
- Overlooking will occur with direct views over to the part of our rear garden which we use the most from the extended gable and for which there are no such views at present.
- Impact upon conservation area: proposal makes no attempt to respect the scale, form and architectural detailing of the cottages.
- Scale and bulk visually dominates rear of terrace.

- Clearly aimed at holiday market.
- Proposed garage will necessitate reversing a car which will cause an obstruction to traffic flow and pedestrians.
- Concerned that the approved 'Garden Room' is now to offer extended living space to include bathroom & shower facilities and would therefore be adopted as a bedroom.

Representations from Internal Consultees

None

Representations from Statutory Consultees

Natural England – no objection

Relevant Planning History

0555/19/PRH - Pre-application enquiry for the proposed two storey rear extension and permitted development insertion of garage door to front of existing dwelling. Partial officer support given.

0663/18/HHO - READVERTISEMENT(Revised Plans) Householder application for restoration of front facade, including replacement dormer windows, new porch and new timber sash windows, additional first floor window, demolition and replacement of first floor rear extension including new rear dormer, proposed summerhouse for rear garden.
Conditional Approval 24 April 2018

ANALYSIS

Principle of Development/Sustainability:

The property is located within the defined boundary of the Thriving Towns and Villages Policy Area of Dartmouth where development, including the extension of residential properties, is considered acceptable in principle.

Design/Landscape:

In considering the landscape impact, and in particular the special landscape character of the South Devon Area of Outstanding Natural Beauty ('AONB') where proposals are required to conserve and enhance that special character, it is the case that the proposed rear extension will be read in conjunction with the extensions to the two adjoining properties due to their close relationship. In addition, and due to the significant change in land levels which rise up towards the west and the surrounding development, there is the effective creation of a cloistered valley of development that is largely screened from wider public view.

In that regard, and having due consideration of the nature and extent of the surrounding built form, it is considered that the proposal will not have such significant harm to the general landscape that would engender demonstrable and sustainable reasons for refusal. With specific reference to the AONB and having regard to what has already been permitted, it is concluded that the proposal would conserve the special landscape character of the AONB.

It is, of course, a matter of fine consideration as to whether new development within the AONB can ever ultimately enhance its quality, given that it may be argued that part of its intrinsic quality is derived from a lack of built form or development. In this instance, however, Officers consider that in the light of the locational topography and the surrounding development, no additional harm to the AONB that would be demonstrable and sustainable through reasons for refusal can be identified.

It is, therefore, concluded that the proposal would not impact harmfully upon the special landscape character of the South Devon Area of Outstanding Natural Beauty or the wider general landscape.

Neighbour Amenity:

In comparison to the grant of planning permission under reference 0663/18/HHO, this proposal seeks to extend the gable end projection on the southern boundary of the property so that, in effect, it aligns with the extension to No.38 South Town, with its width then extending across towards No.34 South Town but leaving an approximate separation distance of 1.2m between the proposed extension and the nearest point of the extension to No.34.

Overall, the glazed area, which is proposed to be recessed, would extend approximately a further 2.2m nearer to the rear gardens and the overall extension would be some 2.8m nearer compared with the approved scheme. A small area of flat roof would remain adjacent to the boundary with No.34.

When assessing the previous proposal, Officers had sought amendments to that scheme in order to ensure that the amenities and privacy of the adjoining properties were not adversely impacted, the result of this was the grant of permission under reference 0663/18/HHO. The Officer report for this application considers that the effective removal of the originally proposed roof terrace by virtue of a 'Juliet' style patio doors with no ability to access this area would ensure the protection of the neighbours amenities and privacy. However, no planning condition restricting the use of the flat roof area as a terrace, sitting out area, et al was imposed.

In practical terms this means that the applicant – although they have indicated this would not be their intention – could use the flat roofed area approved under 0663/18/HHO as a terrace or sitting out area and it would not represent a breach of planning control. Moreover, if the property were to change ownership any future occupier could do the same irrespective of the current owner's intention. In the light of this, and because works have commenced to implement that planning permission, it is considered that there exists a fallback position with a reasonable prospect of occurrence which would allow the entire flat roofed area to be used as a terrace or sitting out area and which, as was identified in the Officer's consideration of 0663/18/HHO, had resulted in objections being received originally. The report does not address whether there would have been unacceptable harm to residential amenity and privacy had the proposal not been revised, although the given the size of the flat roof and the proximity to both neighbouring boundaries that would seem probable.

If consideration of this proposal was taken in isolation and without the circumstances of the previous grant of permission, Officers are of the view that it would be unacceptable by virtue of harm arising from overlooking and the consequent loss of amenity and privacy caused by the depth of the rear extension, even allowing for the recessed element to the indicated dining room area.

However, given that there is likely to be even greater harm to privacy and amenity arising from the continuation of the unrestricted planning permission and the potential subsequent use of the flat roofed area as a terrace or sitting out area which, it is considered, represents a fallback position with a reasonable prospect of occurrence, particularly because a terrace was proposed originally albeit by a different applicant, then it is the conclusion of Officers that, on balance, a restricted and controlled permission under this scheme represents a material improvement in privacy and amenity terms to that under 0663/18/HHO.

Such restrictions would require that the smaller flat roofed elements could not be used as a terrace or sitting out area, that no windows, doors or other openings could be inserted in to the rear extension and that the glazed gable ends would not have any doors inserted in them.

Highways/Access:

Whilst the applicant has elected to include the provision of the integral garage as part of the scheme under consideration, Officers have previously advised as part of the pre-application process that this element would constitute permitted development. On that basis, and whilst noting the concerns raised with respect to vehicular access and manoeuvring of vehicles, this element falls outside of the ambit of the Council in determining this application.

Other Matters:

Concern has been raised in respect of the potentiality of the property being used as holiday let accommodation and/or the noise that may be generated from the property given its internal accommodation which would allow for the occupation of a number of persons at any one time. In this regard, whilst it may be probable that full time occupiers of non-holiday let accommodation may be more considerate of neighbours in terms of any noise generation compared to holiday let occupation, it is by no means certain that this would be the case.

In any event, even if it were to be the case that the property was used for holiday let occupation, this would not represent a change of use of the property and could not be controlled in planning terms. However, noise generation creating a statutory noise nuisance can be controlled through other legislative powers outside of the planning system.

With respect to heritage matters, and specifically the impact upon Dartmouth Conservation Area ('DCA'), the design and style of the proposal has already been considered acceptable under the previous grant of planning permission. That said, the overall form and size has changed in comparison to the previously permitted proposal and, in that context, further consideration is required as to the impact upon DCA as a designated heritage asset.

Paragraph 192 of the National Planning Policy Framework ('NPPF') (updated June 2019 states that,

'192. In determining applications, 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 vitality; and*
- c) *the desirability of new development making a positive contribution to local character and distinctiveness.'*

In this respect, and noting the previous grant of planning permission, the property is located on the western edge of the DCA, with the western boundary of the garden representing the delineation between the extent of the designated heritage asset and undesignated land beyond. Whilst its location does not diminish the importance of the DCA as a designated heritage asset, its transitional position does allow, it is considered, for the acceptance of a 'marrying' of designs and styles to reflect that transition.

In this context it is considered that the proposal does make a positive contribution to local character and distinctiveness through its design and form and is also broadly representative, in scale terms, with the extensions on the two neighbouring properties.

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Similarly, concern has also been raised in respect of ultimate use of the garden outbuilding. Given that this building has yet to be constructed and the concern appears to have chiefly risen from the wording on sales particulars, it is considered that it would be precipitous to speculate on the use of a building which has yet to be built. Notwithstanding, Officers have confirmed with the applicant directly that the building will not be used other than for purposes in connection with the property as the previous grant of planning permission allows. Should that position change in the future then it would be a matter of potential investigation for the Council at that time if it were drawn to its attention.

[This application has been considered in accordance with Section 38 of the Planning & Compulsory Purchase Act 2004.](#)

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. For the purposes of decision making, as of March 26th 2019, the development plan for Plymouth City Council, South Hams District Council and West Devon Borough Council (other than parts

South Hams and West Devon within Dartmoor National Park) comprises the Plymouth & South West Devon Joint Local Plan 2014 - 2034.

Following adoption of the Plymouth & South West Devon Joint Local Plan by all three of the component authorities, monitoring will be undertaken at a whole plan level. At the whole plan level, the combined authorities have a Housing Delivery Test percentage of 166%. This requires a 5% buffer to be applied for the purposes of calculating a 5 year land supply at a whole plan level. When applying the 5% buffer, the combined authorities can demonstrate a 5-year land supply of 6.5 years at the point of adoption.

Adopted policy names and numbers may have changed since the publication of the Main Modifications version of the JLP.

The relevant development plan policies are set out below:

The Plymouth & South West Devon Joint Local Plan was adopted by South Hams District Council on March 21st 2019 and West Devon Borough Council on March 26th 2019.

SPT1 Delivering sustainable development

SPT2 Sustainable linked neighbourhoods and sustainable rural communities

TTV2 Delivering sustainable development in the Thriving Towns and Villages Policy Area

DEV1 Protecting health and amenity

DEV2 Air, water, soil, noise, land and light

DEV20 Place shaping and the quality of the built environment

DEV21 Development affecting the historic environment

DEV23 Landscape character

DEV25 Nationally protected landscapes

Other material considerations include the policies of the National Planning Policy Framework (NPPF) and guidance in Planning Practice Guidance (PPG). Additionally, the following planning documents are also material considerations in the determination of the application:

South Devon AONB Management Plan (2019-2024)

Dartmouth Neighbourhood Plan

The site is within the area designated under the Dartmouth Neighbourhood Plan. However, this plan is not yet at an advanced enough stage that it can be given weight during the decision-making process.

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.

Conditions in Full:

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

Reason: To comply with Section 91 of the Town and Country Planning Act, 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby approved shall in all respects accord strictly with drawing numbers: 18070-P-101 Revision A – proposed plans and elevations and 18070-P-102 Revision A – block and location plan, both received by the Local Planning Authority on 4 May 2019

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.

3. Prior to their installation details / samples of facing materials, and of roofing materials to be used in the construction of the proposed development shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with those samples as approved.

Reason: In the interests of visual amenity.

4. The flat roof areas to the west (rear) elevation as shown on approved drawing 18070-P-101 Revision A (proposed plans and elevations) shall not be used as a balcony, roof garden or similar amenity area without the grant of further permission from the Local Planning Authority.

Reason: To safeguard the privacy and amenity of the adjoining residential properties.

5. The glazing/windows/doors shown to the west (rear) elevation at second floor level as identified on drawing number 18070-P-101 Revision A shall be fixed shut and non-opening unless otherwise agreed in writing with the Local Planning Authority.

Reason: To safeguard the privacy and amenity of the adjoining residential properties

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re enacting this Order) no openings other than those authorised by this permission (if any) shall be at any time be inserted to the second floor level extension hereby permitted, without the prior permission, in writing of the Local Planning Authority.

Reason: To protect the amenity of neighbours.