

## PLANNING APPLICATION REPORT

**Case Officer:** David Jeffery

**Parish:** Dartmouth **Ward:** Dartmouth and East Dart

**Application No:** 4318/21/FUL

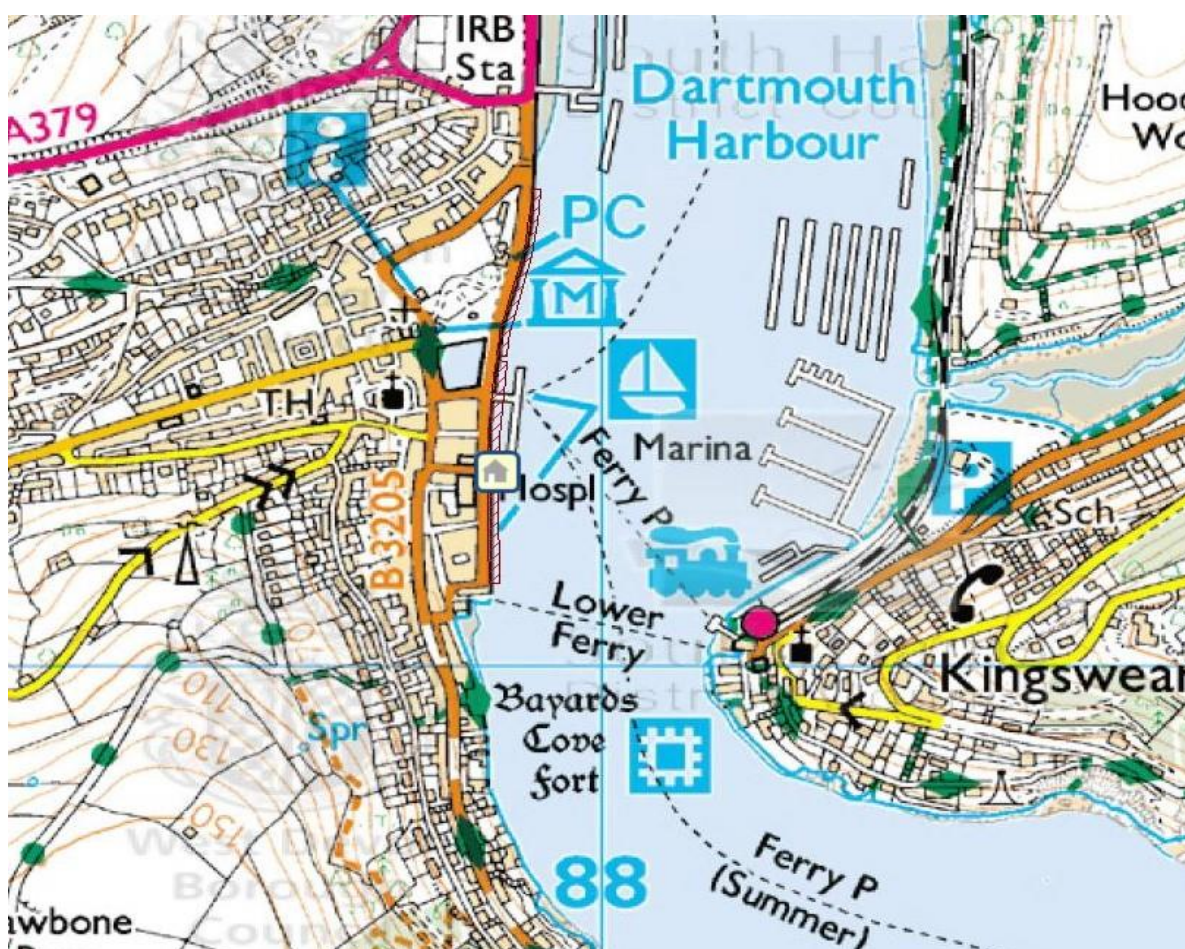
**Agent:**

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TQ12 4XX

**Applicant:**

South Hams District Council  
C/O Agent

**Site Address:** Shelter 21m From Station Restaurant, South Embankment, Dartmouth, TQ6 9BH



**Development:** Change the use of parts of the South Embankment Promenade to facilitate 9 discrete 'pitches' which can be used by hospitality businesses to provide outdoor seating.

**Reason item is being put before Committee**

South Hams District Council are the Applicant.

**Recommendation: Conditional Approval**

## Conditions

- Time limit (temporary 3 year consent)
- Accord with plan
- Use of 'banks person'
- Hours of operation 9am – 10pm

## Key issues for consideration

- Principle of development
  - Design/Landscape
  - Highways/Access
  - Neighbour Amenity
  - Flooding
- 

## Site Description

Dartmouth is a small coastal town, sited on a steep hillside on the west bank of the Dart Estuary. The overall site is directly adjacent to the sea/river wall and is bordered by the river to the east and the highway to the west. Parts of the site are used for a variety of purposes, from general circulation space/promenade for the public, to an operational fish quay.

## The Proposal

Change the use of parts of the South Embankment Promenade to facilitate 9 'pitches' which can be used by hospitality businesses to provide outdoor seating. It is proposed that the nine areas would be made available to hospitality businesses for the sale and consumption of hot and cold food and drinks, including the sale and consumption of alcohol. Each pitch would provide a space for to locate tables, chairs and awnings during opening hours, demarcated by small studs inserted into the ground.

The site is located within a Conservation Area and is a prominent area on Dartmouth's waterfront. There are several Grade II listed buildings along South Embankment. Being directly adjacent to the sea/river wall, the whole of the site is within Flood Zone 3, as is much of this part of the town centre. The site is also located within the South Devon AONB.

## Consultations

- County Highways Authority – Initial objection overcome by conditioning the proposal to a temporary consent and a condition businesses to provide a member of staff to supervise road crossings.
- Conservation Specialist – No objection
- Dartmouth Town Council – Support

## Representations

76 letters have been received in 'support' of the application, on the following grounds:

- Opportunity for locals and visitors to enjoy outdoor seating in a position with excellent views of Dartmouth.
- The temporary use of this area over the past two years has been successful.
- Benefit to local businesses.
- The improved atmosphere/vitality and continental feel is welcomed.
- Ample room is available to accommodate the businesses and walkers.
- The Embankment is a low speed area, which shouldn't give rise to unacceptable risks for users from road crossings.
- Full support but enforcement of how the areas are used is important to avoid additional structures being added.

6 'objections' have been received to the application, which raise the following issues/concerns:

- The marked sites impede pedestrian access including for those with disabilities to the Embankment, double steps and also for activity associated with boats.
- Concerns over the lack of toilet facilities, music, electrical generators and rubbish collection – the management of which should be conditioned.
- Requirements needed in relation to waste collection and a curfew on evening use so as not to disturb local residents.
- The plots are too wide and will restrict the width and access of the remaining promenade
- Greater control over the overall aesthetic is required.
- This represents the privatisation of public space and a loss of public realm.

1 further letter has been received, from a representative of Dartmouth Food Festival which is classified as 'undecided'. This raises the following issues/comments:

Dartmouth Food Festival (which attracts approximately 25,000 people over the weekend) requests reassurance that the seating will be cleared for the festival as the event will not be viable without full use of the Embankment.

The Dartmouth and Kingswear Society have submitted two letters of representation but remain 'Undecided'. Although it declares support for the principle the provision of outside seating to support hospitality businesses along the South Embankment it makes the following comments:

- There should be avoidance of any structures that inhibit views of the river from seated and passing pedestrians.
- There should be a design protocol for the type of seating enclosure, outdoor furniture and parasols to provide a consistent appearance and approach to these outside areas.
- There should be a refuse strategy to ensure the embankment remains clean and tidy, commensurate with the increase of trade.
- The seating should be contained and managed to ensure the free movement of pedestrians along both the riverside and roadside during busy periods.
- We believe the pitches provided should be let on the basis of an annual licence.
- Share concerns of the Dartmouth Food Festival and support their request to ensure provision is made to accommodate the festival in this location during the month of October.

## **Relevant Planning History**

Although there is no relevant planning history associated with the application, it is worth noting that the temporary seating areas have already been in place during the 2020/2021 seasons. This has been enabled through a temporary relaxation in Permitted Development rules in response to COVID19. The temporary relaxation of these rules is due to end later this year and as such this application has been submitted to allow for continued use of this outdoors seating. Officers are not aware of any nuisance complaints arising from the use of the outdoor seating to date.

## **ANALYSIS**

### **Principle of Development/Sustainability**

The site is within the centre of Dartmouth, one of the Main Towns identified within policy TTV1 of the Joint Local Plan (JLP), which seeks to prioritise growth in sustainable locations. The Main Towns area, within which the site is located, is the top tier of the settlement hierarchy, identified as the most suitable locations for growth and development.

JLP Policy TTV1 states that *'The Main Towns will be prioritised for growth to enable them to continue to thrive, achieve strong levels of self-containment, and provide a broad range of services for the wider area'*.

To guide development in Dartmouth, the JLP includes 'Spatial Priority SP1: Spatial priorities for development in Dartmouth', which states that: *"The plan seeks to enhance the vibrancy and sustainability of Dartmouth"*.

JLP Policy DEV 16 'Providing retail and town centre uses in appropriate locations' states that: *'Proposals will be assessed in relation to their support for the spatial strategy of the local plan and the sequential hierarchy of centres. Proposals within identified centres should be of a scale appropriate to the role of the centre'*. DEV 17 'Promoting competitive town centres' states that *'In the town centres of the Thriving Towns and Villages Policy Area' the LPAs will enable and where appropriate support measures to enhance the economy'*.

In considering this application, it is also noted that the expanded seating areas for use by existing hospitality businesses have been in temporary use for the past two years. Their scale and use is considered appropriate for the centre of a Main Town and has supported the local economy as it has had to adapt to COVID19 and the increased preference for outdoors seating. As can be seen from the high degree of support received for this application, the move towards greater use of outdoors seating in public spaces has for the most part been welcomed and subject to the consideration of other key issues, including highways safety, is considered to be an appropriate town centre activity for Dartmouth that aligns with Dartmouth's role as a Main Town within the TTV Policy Area.

The principle of the continued use of Embankment Quay for local traders to provide additional outdoors seating is supported, subject to the considerations below.

### **Design/Heritage/Landscape**

JLP Policy DEV20 'Place shaping and the quality of the built environment' states that *'Development proposals will be required to meet good standards of design, contributing positively to both townscape and landscape, and protect and improve the quality of the built environment'*. As the proposals are located within the Dartmouth Conservation Area Policy

As the site is within the Dartmouth Conservation Area, JLP DEV21 'Development affecting the historic environment' is of relevance. This requires all development proposals to '*sustain the local character and distinctiveness of the area by conserving and where appropriate enhancing its historic environment*'.

As the site is within the South Devon AONB, JLP Policy DEV25 'Nationally Protected Landscapes' is of relevance. This requires proposals to '*conserve and enhance the natural beauty of the protected landscape with particular reference to their special qualities and distinctive characteristics or valued attributes*'. Special attention must also be given to desirability of preserving or enhancing the character or appearance of the Dartmouth Conservation Area in accordance with the Council's duty under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and the setting of individually listed buildings in the locality under Section 66 of the same Act.

No permanent additions are proposed as part of the application other than the addition of small studs to demarcate the extent of each of the 9 pitches. Each area will consist of tables, chairs, separation barriers and parasols, which are proposed to be in place during opening hours only. Images provided of the seating areas in use over previous seasons show parasols, seating and barriers that balance a degree of coordination between the businesses (blue parasols) and personalisation to respond to the branding of the business they serve.

Given the surrounding built form, and the complimentary nature of the proposals to a Town Centre setting, Officers consider the proposals are appropriate in terms of design, would preserve the setting of the AONB and Dartmouth Conservation Area and therefore comply with policies DEV20, DEV21 and DEV25 of the JLP. The Conservation Officer noted in their response that "*the vibrancy which will no doubt result will offer a positive enhancement to the immediate Conservation Area.*" The nature of the proposal would not detract from the setting of any individually listed buildings along South Embankment.

### **Highways/Access**

JLP Policy DEV29 Specific provisions relating to transport requires that '*Development will contribute positively to the achievement of a high quality, effective and safe transport system in the Plan Area*'.

The Applicant's design and access statement states that: "*During the previous two seasons (2020 & 2021), the operators of the nine areas have effectively managed the crossing of the highway by staff by the use of a banksman/supervisor as and when required. This was and will be a requirement within any agreement entered into between the Landlord and the operator. Throughout this time, there were no reported incidents in relation to the crossing of the highway*".

DCC Highways initially objected to the application as follows:

*"The Highway Authority notes the proposals include nine hospitality pitches on the eastern side of South Embankment Road designed to facilitate out door seating for several hospitality businesses located on the western side of South Embankment Road. When informally approached by South Hams District Council regarding this proposal previously the Highway Authority raised concerns regarding the likely regular crossing of South Embankment Road back and forth by waiting staff and customers between parked cars. This is whilst concentrating on carrying food and drinks. It is noted the proposals put forward a suggestion of a banksperson to monitor/control staff crossing the road. The Highway Authority considers*

*it is unlikely and impractical that the businesses will be able to each dedicate a permanent bank person to continually monitor staff and customers crossing the road. Furthermore, it is likely the Planning Authority would find it difficult to enforce this if it was conditioned as a requirement of planning.*

*Whilst the government has recommended Local Authorities are pro-active in facilitating local business needs through the pandemic restrictions, this is a permanent planning application, that if granted cannot be reversed. Therefore, whilst the proposals currently have not created any accident statistics over the last two years or so of restrictions, it is deemed inappropriate to assume this will be permanent with this less than ideal arrangement. It is therefore recommended that due to the safety concerns raised by the Highway Authority the District should continue to review licences on an ad hoc basis, so that should in the future accidents occur, the situation can be reviewed and reversed if needs dictate.*

*Unfortunately the Highway Authority does not have the benefit of traffic count data on this road, observations on site are that during the summer months this is a very busy road. This is at the exact time when the seating areas are likely to be at full capacity.”*

Following further discussions between Officers, the Applicant and DCC Highways, revised comments were submitted as follows:

*“Following the previous objections from the Highway Authority the applicant has suggested in order to establish if safety records arise from the proposals, in the first instance a temporary three year permission should be granted. Previously it is understood the District Council had taken the decision to lease pitches associated to the businesses in the same locations as is proposed, as part of the measures to ease conditions for businesses in response to Covid19. This has occurred over the last two seasons. The suggestion of a three year temporary permission with the offer that the businesses will supervise staff crossing the road at all times is thought to be a reasonable compromise. If the Planning Authority is minded to approve the temporary permission to enable road safety implications to be monitored the Highway Authority would not object to the application subject to the following conditions.*

***Recommendation:***

***THE HEAD OF PLANNING, TRANSPORTATION AND ENVIRONMENT, ON BEHALF OF DEVON COUNTY COUNCIL, AS LOCAL HIGHWAY AUTHORITY, MAY WISH TO RECOMMEND CONDITIONS ON ANY GRANT OF PLANNING PERMISSION***

*· Unless written permission is received from the Local Planning Authority, the use hereby permitted shall be removed and the land restored to its former condition on or before 3 years from the date of this planning permission.*

*Reason: In order to enable the Local Planning Authority to monitor the impacts of the proposed change in use on highway safety.*

*· Businesses shall provide a member of staff to supervise road crossings between their premises and associated pitch at all times.*

*Reason: In the interests of highway safety.”*

Officers are satisfied that the above recommended conditions would provide appropriate and enforceable means to control the situation for a temporary period and enable the highways implications to be further assessed through the submission of a an application to further extend/make permanent the change of use at the end of the temporary consent period.

### **Neighbour Amenity**

The seating areas would be located in a busy town centre location where a certain degree of activity during the days and evenings, especially during the holiday season would be expected.



It is however acknowledged that there is potential for conflict with some existing residential accommodation. It is proposed that with the inclusion of a condition limiting the use of these areas to between 9am and 10pm (as has been the case during the past 2 seasons), the granting of a temporary permission should not give rise to any significant concerns regarding the impact to nearby residents, and is considered to comply with policy DEV1 of the JLP.

### **Flooding**

Although the sites are within Flood Zone 3, due to the temporary and moveable nature of the seating areas, the proposals are not considered to give rise to any significant risk from flooding. The proposals will not result in an increased risk from surface water flooding.

### **Low Carbon**

JLP Policy DEV32 requires all development to minimise its use of natural resources over its lifetime, such as water, minerals and consumable products, by reuse or recycling of materials in construction. The nature of the proposals comprising a temporary extension to the seating areas of existing businesses is not considered to give rise to any significant implications in terms of compliance with Policy DEV32.

### **The Planning Balance**

On balance, subject to the use of a banks person to supervise road crossings and that the permission is temporary (for 3 years) to allow the monitoring of any implications for highway safety, the proposed use is considered to be complimentary to this town centre location and will contribute to its vitality and viability. The proposals are therefore considered to be acceptable and the application is recommended for approval on this basis.

***This application has been considered in accordance with Section 38 of the Planning & Compulsory Purchase Act 2004 and, with Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.***

### **Planning Policy**

#### Relevant policy framework

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 Plymouth & South West Devon Joint Local Plan 2014 - 2034 is now part of the development plan for Plymouth City Council, South Hams District Council and West Devon Borough Council (other than parts of South Hams and West Devon within Dartmoor National Park).

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

TTV1 Prioritising growth through a hierarchy of sustainable settlements

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

TTV3 Strategic infrastructure measures for the Main Towns

DEV1 Protecting health and amenity  
DEV2 Air, water, soil, noise, land and light  
DEV3 Sport and recreation  
DEV14 Maintaining a flexible mix of employment sites  
DEV16 Providing retail and town centre uses in appropriate locations  
DEV17 Promoting competitive town centres  
DEV18 Protecting local shops and services  
DEV20 Place shaping and the quality of the built environment  
DEV21 Development affecting the historic environment  
DEV23 Landscape character  
DEV25 Nationally protected landscapes  
DEV26 Protecting and enhancing biodiversity and geological conservation  
DEV28 Trees, woodlands and hedgerows  
DEV29 Specific provisions relating to transport  
DEV31 Waste management  
DEV32 Delivering low carbon development  
DEV35 Managing flood risk and Water Quality Impacts

### **Neighbourhood Plan**

The application is located within the parish of Dartmouth; a Neighbourhood Plan is under preparation and an Inspector was appointed in April 2022 (Reg 17 stage) so is now at an advanced stage of preparation and carries weight for decision making. In particular Policy DNP TE 4 ; 'Respect, protection and enhancement of civic spaces' identifies South Embankment as a civic space. The policy supports external seating areas in these locations and seeks to facilitate greater economic activity in these spaces. It is considered the application proposal accords with the objections of this policy and overall does not present any clear conflict with the emerging Neighbourhood Plan.

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**

### **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.

### **Recommended conditions in full**

1. Unless written permission is received from the Local Planning Authority, the use hereby permitted shall be removed and the land restored to its former condition on or before 3 years from the date of this planning permission.

Reason: In order to enable the Local Planning Authority to monitor the impacts of the proposed change in use on highways safety.

2. The development hereby approved shall in all respects accord strictly with drawing number(s) Site Location Plan, 15/528/002 Rev F and Plot Dimensions Plan (plot sizes only) received by the Local Planning Authority on 30th November 2021.



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. Each business shall provide a member of staff to supervise road crossings between their premises and associated pitch at all times.

Reason: In the interests of highway safety.

4. All tables, chairs, parasols, barriers and other items shall be removed from the pitches and they shall not be used for the serving of customers outside of the following times: 09:00am – 22:00 pm.

Reason: To safeguard the amenities of adjoining residents.