

PLANNING APPLICATION REPORT

Case Officer: Cheryl Stansbury

Parish: Tavistock **Ward:** Tavistock South East

Application No: 4205/19/HHO

Agent/Applicant:

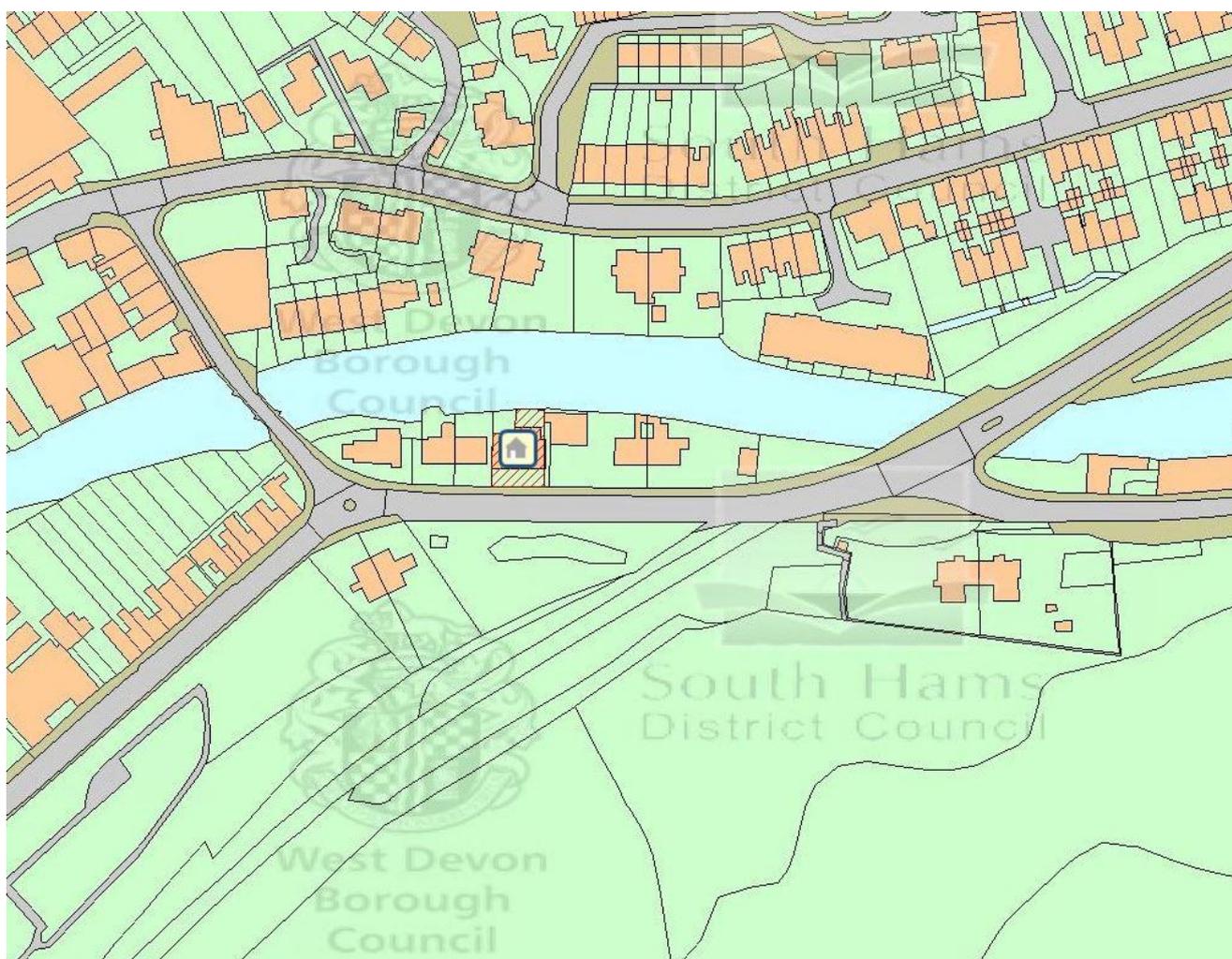
Mr R Lezemore
11A Mount Tavy Road
Tavistock
PL19 9JB

Applicant:

Mr R Lezemore
11A Mount Tavy Road
PL19 9JB

Site Address: 11a Mount Tavy Road, Tavistock, PL19 9JB

Development: READVERTISEMENT (revised plans received) Retrospective householder application for enlargement of patio area



Reason item is being put before Committee: At the request of the Ward Members based on the following concerns:

- The impact on the visual amenity of the neighbouring properties and the area itself (Dev10 of the JLP, noting this is also the position of Tavistock Town Council).
- The impact on the heritage amenity of the conservation area.

Recommendation: Conditional Approval

Conditions:

1. Adherence to plans
2. Obscure glazed screen/fence on west side elevation of patio to be installed within 3 months of decision
3. Install drainage within 3 months of decision

Informative:

1. Avoidance of doubt – proposal only relates to rear patio area, not works to the dwelling/parking area
2. This decision does not negate the need to secure appropriate third party consents (Building Regulations, EA consent or SWW approval)

Key issues for consideration:

- Principle of development
- Design/Impact on character of the area
- Neighbour impact
- Drainage/flood risk

Site Description:

The application site is located in Tavistock, in the Conservation Area and World Heritage Site. It comprises a recently renovated bungalow, the rear garden of which backs onto the river; the site is in Flood Zone 3.

The Proposal:

This retrospective proposal is for a cantilevered timber-deck patio area with glass balustrading around the riverside perimeter. Consent was previously been granted under application 0990/19/HHO for various works to the dwelling and included the enlargement of an existing rear patio with a gabion basket structure underneath; glazed screening was proposed facing the river, similar to that in place now. This application enlarged the patio almost to the edge of the property boundary, approximately 4.4 m from the rear wall of the dwelling, but the patio was not constructed in accordance with the drawings. Instead, the structure subject to this application was constructed. The deck measures approximately 10.5 m wide, projecting 6.4m from the rear elevation of the dwelling; it overhangs the river by between 1.39 and 1.76m.

Accordingly, the decking, as it exists, extends the patio shown in 0990/19/HHO by just under 2m. It is worth noting that the patio shown on that application would have fallen under permitted development, not requiring planning permission. The decking now subject to this application requires permission by virtue of the cantilever over the river and because a small section of it sits between the side wall of the property and its boundaries.

Consultations:

WDBC Conservation Officer: The River Tavy is identified as a 'key characteristic' of the town in the adopted 2008 Conservation Area (CA) Appraisal (CAA), referenced throughout as a feature of great significance in the development of the town and its special character. The CA was enlarged at the time of the CAA to include more of the river as acknowledgement of this significance.

The CA Management Plan states in Section 7.3 ('The Control of New Development'):-

- The scale and form of new development should follow established historic precedents
- New development should be sympathetic to the surrounding historic buildings in terms of uses, materials and details

Consideration of S72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is a fundamental requirement - 'special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area'. In addition NPPF 200 and 201 apply.

Although the decking is not prominently visible from public vantage points, it fails to either preserve or enhance the character or appearance of the CA. Whilst the enjoyment of the river from gardens is well established, it is mostly done from the river bank and on a scale that is proportionate to reasonable domestic use; the general appearance is of relatively minimal structures and interventions which read as typical of what would be expected in a garden.

The scale of this deck and the fact that it is cantilevered out over the river is exceptional and inconsistent with the natural character of the river frontage, which is in itself a positive feature of the CA. The size of the area enclosed and the materials used makes the structure an intervention that can only be considered to cause harm to the CA.

The development does not directly affect features of the WHS that have Outstanding Universal Value (OUV) attributes. The setting of the listed Dolvin Road Cottages would not be harmed but the unlisted (CA and WHS positive) Bedford cottages either side of the site would be slightly affected. The houses on Parkwood Road opposite the site are of some interest in WHS terms and the structure is likely visible from the gardens, but this would not constitute harm to OUV. This part of the river did not contribute directly to industrial activity, despite nearby foundry sites and impacts on the CA are of greater concern in this instance.

The site has the potential to be visible from Vigo Bridge (grade II) if intervening planting were to be removed. Without this screening some level of harm would be likely to its setting.

As there is 'less than substantial harm' to the designated heritage asset of the CA, NPPF 196 applies. There is no public benefit to balance the harm and it would be entirely possible to have a modest structure to facilitate appreciation of the river from the bank without harm.

County Highways Authority: No highways implication

South West Water: No objection in relation to surface water. We have not received an application from the owner for consent to be building over the public network

Environment Agency: Most recent response 30/03/2021: The surface water outfall which is proposed to be constructed through the riverside wall will need a Flood Risk Activity Permit from us prior to the works commencing.

The construction of the outfall will require part of the wall to be removed for the pipe to be located and we need to be assured that the wall will be reconstructed to an acceptable standard as part of these works.

Consideration should be given to positioning the outfall pipe close to the existing steps to help prevent turbulence occurring around the pipe during high flow conditions.

18/12/2020: Our position remains as previously set out in our letter to you dated 25 June 2020, which was, if you are minded to approve this application, we would not maintain an objection because, in this particular instance, we consider that the proposal will not increase flood risk and will be an improvement on the previously approved plans which appear to show gabions in the river channel.

However, we would like to add that we consider that the revised plans do not represent the true profile of the river bank.

The revised site and block plan 13C shows the river bank sloping down with its toe to be in alignment to the front face of the patio. In reality the river bank appears generally vertical along this section of river, as can be seen in the photos.

The revised plan 14 Cross sections appears to show the existing gabion steps possibly extending further into the river channel than is the case. We recommend that the planning officer checks this detail.

25/06/2020: We would normally object to an application which involves encroachment over the main river, because such development can result in an increase in flood risk and restrict access to the river for essential/emergency maintenance. However, as explained in our letter of 17 April, we previously discussed compromise with the applicant, which would ensure that gabions are not placed in the river channel (as was proposed in 0990/19/HHO). Therefore, if you are minded to approve this application, we would not maintain an objection because, in this particular instance, we consider that the proposal will not increase flood risk and will be an improvement on the previously approved plans which show gabions in the river channel.

One of our officers met with the applicant at 11a Mount Tavy Road on 16 July 2019 to discuss the proposed installation of gabions in front of the existing river bank to enable a patio extension, which had been granted permission under 0990/19/HHO. The applicant informed our officer that the permission included a row of gabions to be placed in front of the existing river bank/wall; 0990/19/HHO includes the following description: "enlargement of the patio area towards the river with gabion basket substructure and glass handrail".

We informed the applicant that we would not accept gabions being placed in the river channel due to the negative impacts they could have regarding their potential to destabilise the adjoining riverside wall on the neighbouring property. The applicant indicated that the proposed gabions, which he considered formed part of the planning permission, would extend out no more than where the steps/informal walkway were located in front of the existing riverside wall. This is a distance of approximately 800mm.

After further discussions a compromise was reached whereby we accepted 'in principle' a 'decking type structure' installed on top of the river bank, provided it did not project any further beyond the line of the existing river bank/wall than the concrete steps (~800mm) and was in accordance with the extent of the patio area shown on the planning permission already granted. We accepted this as a compromise to enable what was considered at the time to be a valid planning permission to be carried out.

There seems to have been some confusion regarding the interpretation of the previously approved drawings. It now appears that the permission did not include any enlargement of the patio area towards/over the river as the decking/patio area has now been confirmed as extending 1927mm beyond that which was granted planning permission under: 0990/19/HHO. However, the photos indicate that the decking appears to extend just beyond the general

alignment of the concrete steps/informal footway over the river channel. As we mentioned in our previous response, we are satisfied that this decking/patio area will not result in an increase in flood risk in this particular location.

However, we would like to reiterate, we would usually object to any structure of this type which encroaches into, or over a river channel. This type of structure could cause flooding issues if it was in a different location for example if it was on the outside of a meander where the river was narrower or its banks lower. Our officer's discussions/comments on site were based on the assumption, and advice given by the applicant, that planning permission had been granted for the gabions/patio extension into the river. If we had known at the time that the permission did not permit any extension of the patio area into the river beyond the existing alignment of the river bank, we would not have come to our compromise position regarding the decking.

17/04/2020: Given the extant permission, we would not object to this application provided you are satisfied the decking would not extend beyond the line shown in the approved plans. If this is the case, we consider the current application (4205/19/HHO) to be an improvement to the extant permission which included gabions in the River Tavy; we do not support the installation of gabions in the river channel.

However, we want to make it clear that we would normally object to this type of development and would not support any further developments of this kind which extend over the river channel due to the potential risk of debris impact/damage and the general principle of not encroaching in/over a watercourse corridor.

We would usually object to this type of development due to the principle of a structure encroaching over the edge of the river channel and the precedent it might set for others to do the same. However, 0990/19/HHO was granted in April 2019 for a patio extension towards the river in which the permitted plans show gabions were to be placed into the River Tavy in front of the existing river bank to enable this extension. A glass handrail was proposed on the patio extension (as in this retrospective application). We did not have sight of the previous application 0990/19/HHO so were unable to provide comments at the time.

We would have objected to the installation of the gabions within the river channel due to the negative impacts they could have had regarding their potential to destabilise the adjoining riverside wall on the neighbouring property. During high river flows, turbulence would have occurred on the downstream end of the gabions thereby putting strain on the neighbouring wall which shows signs of a previous partial collapse close to the boundary with this property.

The property owner at 11A Mount Tavy road contacted us after the previous permission for the patio extension was granted. We attended site and were surprised to see that the river bank was not as was shown on the drawings (i.e. no existing gabions appeared to be present). The river bank comprised of a wall made of river sourced stone (as is common in Tavistock). There were some concrete steps leading from the garden onto an informal walkway raised above surrounding river bed levels, both of which appeared to extend approximately 0.8m out onto the river bed. The property owner indicated that the proposed gabions, which formed part of the permission already granted, would extend out approximately to this distance (0.8m) where the steps/informal walkway were located.

We informed the owner we would not permit gabions to be placed into the river channel in front of his wall because of the risk to the integrity of their neighbour's wall. After discussing the situation, a compromise was reached in that a decking type of structure set on top of the river bank would be acceptable to us, provided that it was compliant with the previous permission

(0990/19/HHO) granted in respect of the patio extension (i.e. that it would not extend towards the river channel any further beyond the existing garden area than that shown on the approved plans). This design would enable the property owner to achieve his aims of extending the patio and remove the risk of potential damage to neighbouring river bank wall by the omission of the gabions from the design.

It is unclear if the current decking extends beyond the line shown in the plans previously approved and referenced in 0990/19/HHO. We would advise you to determine whether this is the case before determining the application.

We point out that there is a risk of damage to the current structure from debris impact during high floods. However, most large floating debris is likely to be directed across the other side of the river channel where the flows would likely be greater, on the outside of the long bend).

Tavistock Town Council: 21st December 2020: Object on the same basis as the previous objection, which remains unchanged;

- Harm to visual amenity of the neighbourhood
- Harmful impact on immediate neighbours
- The above contrary to Policy DEV10.

26 February 2020: Object. Harm to visual amenity of the neighbourhood; harmful impact on immediate neighbours; contrary to policy DEV10.

Representations from Residents

Several letters of objection from one individual have been received. Issues raised are summarised as follows:

- Inaccurate plans
- Design and visual appearance
- Scale of the decking
- Impact on Conservation Area
- Impact on World Heritage Site
- Drainage and flooding
- Wildlife
- Loss of privacy/overlooking
- Enlargement from previous approval
- Conflict with SWW mains sewer

Relevant Planning History

3969/20/HHO - Retrospective application for external works to dwelling not in accordance with 0990/19/HHO. Pending

2068/20/CLE - Lawful development certificate for existing use of outbuilding as model railway retail shop. Refused 18/12/2020

0094/20/FUL - Alterations to building and creation of new vehicular access and hardsurfacing of forecourt. Pending

0990/19/HHO - Householder application for changes to external appearance with new location of front door and infilling of garage door opening, enlargement of the patio area towards the river with gabion basket substructure and glass handrail. Approved 04/06/2019

11857/2008/TAV - Change of use of shop to ancillary residential accommodation. Approved 09/06/2008

2526/2002/TAV - Change of use of part retail unit to use for domestic purposes in association with adjacent domestic dwelling. Approved 25/02/2002

ANALYSIS

Principle of Development:

The principle of works to a dwelling within the main towns is accepted by virtue of Policies SPT1, SPT2 and TTV1 in the Plymouth and South West Devon Joint Local Plan, subject to the proposal meeting all other policies within the JLP.

Design/character of the Area:

The proposal comprises a timber deck, cantilevered to give the appearance of a 'floating' platform that overhangs the river with the timber decking sitting on steel supports.

It is surrounded by a fixed, transparent glazed safety screen/balustrading, which maintains the illusion of the rear of the property being kept open. Other nearby neighbouring properties have left the end of their gardens unfenced in order to overlook the river and a range of garden structures and patios are visible along the river bank. Although the cantilevered decked area protrudes out over the river bank, beyond the extent of the original garden, it is considered that the 'floating' structure is an improvement on the more solid and clumsy appearance of gabion baskets that were previously approved. The modern materials and design of the transparent glass balustrading is honest and is considered to create an open aspect to the rear of the site.

Concerns have been raised regarding the appearance of the structure and its visual impact on the surrounding area, being in the Conservation area and World Heritage Site (WHS). The structure is not visible from Mount Tavy Road or any nearby public vantage points, including both bridges, due to intervening buildings or vegetation, but it can be viewed from the rear gardens of properties on the other side of the river bank along Parkwood Road.

Local Planning Authorities are required, by virtue of Section 72 of the Planning Listed Buildings and Conservation Area Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas. This requires a judgment (informed by an understanding of the significance of the historic asset represented by the Conservation Area) of the effect of the proposal on the conservation area's 'character or appearance'. Character or appearance' is not confined just to the historic built fabric of the area, but extends to non-visual matters. The assessment of likely harm to a conservation area is a matter of planning judgment. The factors to be taken into account in the assessment of whether the proposed development preserves or enhances the character or appearance of the Conservation Area will include the nature, scale and siting of the proposed development, its proximity and likely visual relationship to the conservation area, the historic characteristics of the conservation area itself and which have a bearing on its value and appreciation, local topography and the presence of other features – both natural and man-made – in the landscape

or townscape. Ultimately, what factors are relevant will depend upon the particular facts and circumstances of the particular application.

Once harm has been identified however, there is a strong presumption against the grant of planning permission, though, in exceptional cases the presumption may be overridden in favour of development which is desirable on the ground of some other public interest'. Accordingly the harm has to be given considerable importance and weight.

In relation to the World Heritage Site the NPPF 2019 states: The National Planning Policy Framework (NPPF) defines a World Heritage Site as a designated heritage asset and therefore weight should be given to its conservation and development that results in substantial harm or loss to the site should be avoided wherever possible.

The dwelling itself is of modern appearance, having a neutral contribution towards the WHS and the Conservation Area.

As set out above, the Conservation Officer has objected to the proposal, noting that whilst the decking is not prominently visible from public vantage points, in fact the Case Officer has not been able to find any public vantage points from where it can be seen, it does not preserve or enhance the character or appearance of the Conservation Area.

Noting that many properties which back onto the river have various forms of seating and structures from which to enjoy the riverside setting, including the immediately adjoining property which has a timber summerhouse in its rear garden, these are not of the scale and form of the cantilevered decking.

It is noted that the Conservation Area Management Plan states that new development should follow established historic precedents in terms of scale and form, and be sympathetic to surrounding historic buildings in terms of uses, materials and details.

It could be argued that there are no modern structures in the immediate area, and nothing cantilevered over the river, therefore this structure is "out of keeping", however, Officers do not feel that in itself is reason to refuse this application. The decking, by virtue of it being cantilevered, is a large structure, however, it appears stark because it is new. It will weather over time and the provision of clear glass screening gives a more lightweight appearance than a timber structure would; it also enables views back into the site.

Officers agree with the Conservation Officer in that the development does not directly affect features of the World Heritage Site that have Outstanding Universal Value attributes.

It is worth considering what could be erected on site under permitted development, as a "fall back", which could be a smaller patio that did not sit over the river. The applicants could build up to the river edge, and that could be bounded by a much more solid timber enclosure. This potentially could have more visual impact than that subject to this application and the Council would have no control over it. There would also be no way to secure the enhanced drainage works that are part of this application.

On balance, whilst the design and materials cannot be said to be "traditional", the scale of the proposal, its materials and that a similar (albeit smaller) structure could be erected under permitted development, and that it is well screened from public vantage points leads so notwithstanding the view of the Conservation Officer, Officers to conclude there is no harm to the Conservation Area. Subject to conditions, the development is considered acceptable in

relation to its surroundings and the setting of the Conservation Area in compliance with the NPPF and JLP Policy DEV20.

Neighbour Amenity:

The neighbouring property, 11 Mount Tavy Road, has raised an objection to the proposal in terms of it being overbearing and causing a loss of privacy.

It is considered that the current development, with clear glass balustrading on the west side elevation of the patio results in some additional overlooking into the rear garden of 11 Mount Tavy Road above that which would have taken place prior to its installation. It is considered that this could be adequately addressed through the installation of a 1.8m high obscure glazed screen or an extension to the existing fence along the west side elevation of the patio. This would prevent views back into the neighbouring garden and also not impact negatively upon enjoyment of that garden. A condition is therefore imposed for details to be agreed and the screen/fence erected within 3 months of any approval.

With the benefit of this condition the proposal is considered to have an acceptable impact on the privacy and amenity of adjacent occupiers in accordance with Policy DEV1 of the JLP.

Drainage and Flood Risk:

Whilst concern has been raised by the Environment Agency, as set out in their consultation responses, following a site visit and clarification on the proposal they have reached a compromise with the applicant and confirmed they have no objection from a flood risk perspective, given the current proposal is seen an improvement over that which was previously approved, which showed gabion baskets in the river.

In terms of drainage, prior to constructing the deck, there was no formal drainage scheme in place; water just dispersed naturally towards and through the river bank. A lot of discussion has taken place in order to satisfy the Council's drainage specialists that the decking would not destabilise the river bank whether through increased run-off or from the weight of the structure upon the bank itself.

The applicant commissioned an engineering report which looked at the constructed deck, the riverbank and also produced a drainage scheme which proposes the installation of an attenuation tank to the side of the bungalow with a controlled discharge into the river.

A further concern has been raised by the objector in that there is a possible conflict between the proposed attenuation tank and an existing mains drainage system which runs through the rear gardens of the properties in the street. South West Water did not respond to the consultation via the "weekly list", possibly because the official mains sewer is shown as running through Mount Tavy Road and not to the rear of the dwellings, and have been contacted by the Case Officer. SWW have stated they do not object to the application. Whilst it is noted that no build over agreement has yet been sought by the applicant, this is a matter for the applicant to address with SWW and is not a material planning consideration.

The proposal, subject to a condition requiring the installation of the drainage scheme within 3 months of any approval, is therefore considered to accord with Policy DEV35 of the JLP.

Tamar Estuaries SAC:

The site falls within the Zone of Influence for new residents having a recreational impact on the Tamar European Marine Site (comprising the Plymouth Sound and Estuaries SAC and Tamar Estuaries Complex SPA). This Zone of Influence has recently been updated as part of the evidence base gathering and Duty to Cooperate relating to the Joint Local Plan. A scheme to secure mitigation of the additional recreational pressures upon the Tamar European Marine Site can be appropriately secured by unilateral undertaking, and this approach has been agreed by Natural England.

In this case however the proposal is for an extension to decking only, and not a new residential unit and so the impact on the SAC will be neutral as there is no intensification of the use. No contribution will be required.

Other matters:

Concerns raised about the inaccuracy of drawings have been addressed through revised plans and re-consultation has taken place on these.

The installation of toilets/ensuite bathrooms in the property is not a matter for planning, nor is it relevant to this application as it relates only to the decking.

Planning Balance

The proposal is minor in nature, located to the rear of the property and not visible from public vantage points.

The Conservation Officer has objected to the proposal, however, for the reasons discussed above and taking into account the fall-back position for permitted development, the minor addition of under 2 m compared to the approved scheme is not considered to result in harm to the Conservation Area or World Heritage Site. Conditional approval is therefore recommended.

This application has been considered in accordance with Section 38 of the Planning & Compulsory Purchase Act 2004 with Section 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
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
DEV22 Cornwall and West Devon Mining Landscape World Heritage Site
DEV23 Landscape character
DEV26 Protecting and enhancing biodiversity and geological conservation
DEV35 Managing flood risk and Water Quality Impacts

Neighbourhood Plan

The Tavistock Neighbourhood Plan Is not advanced enough to carry any weight in the decision making process.

Other material considerations include the policies of the National Planning Policy Framework (NPPF) including but not limited to paragraphs 2, 11, 127,190, 192, 200 and guidance in Planning Practice Guidance (PPG). Additionally, the following planning documents are also material considerations in the determination of the application:

- Tavistock Conservation Area Appraisal and Management Plan
- The World Heritage Site Draft Management Plan (currently out for consultation).

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:

1. The development hereby approved shall in all respects be retained in accordance with drawing numbers: 01B Location Plan received on 16.11.2020; 13C Site and Block Plan received 17.11.2020; 15A North Elevation and 14B Cross Sections received 16.2.2021.

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.

2. Within 3 months of the date of this permission, a screen of minimum 1.8 metres high shall be erected on the western boundary of the decking, in accordance with details which shall first be submitted to and agreed in writing by the Local Planning authority. Once approved, works shall be carried out and retained/maintained as agreed, thereafter.

Reason: To prevent overlooking directly into the garden of the adjoining neighbouring property.

3. Within 3 months of the date of this permission, the drainage scheme as detailed in the report by John Grimes dated 9th March and one drawing 16920/201/P2 shall be implemented, unless an alternative is first agreed in writing by the Local Planning Authority.

Reason: To ensure surface water is dealt with appropriately to avoid an increase in flood risk or destabilisation of the river bank.

Informatives:

1. For the avoidance of doubt, this permission relates only to the rear decking and no works to the dwelling or front wall/parking area.
2. The applicant is reminded of the need to seek other consents separately to this planning approval: Consent to Discharge from the Environment Agency; Flood Risk Activity Permit from the Environment Agency; South West Water approval to build over the mains drainage system; Building Regulations approval.