

## PLANNING COMMITTEE AGENDA - 2nd December 2020

### Applications of a non-delegated nature

<u>Item No.</u>	Description
01.	<p>20/01507/FULL - Retention of timber outbuilding to be used ancillary to the house, retention of alterations to ground level changes and change of use of agricultural land to domestic garden at 8 Mill Stream Gardens, Halberton, Tiverton.</p> <p><b>RECOMMENDATION</b> Grant permission subject to conditions.</p>
02.	<p>20/01170/FULL - Change of use of land for siting of Shepherd's Hut and composting toilet for personal use and short term holiday letting at Land at NGR 271309 108525, Hele Cross, Nymet Rowland.</p> <p><b>RECOMMENDATION</b> Grant permission subject to conditions.</p>

Application No. 20/01507/FULL

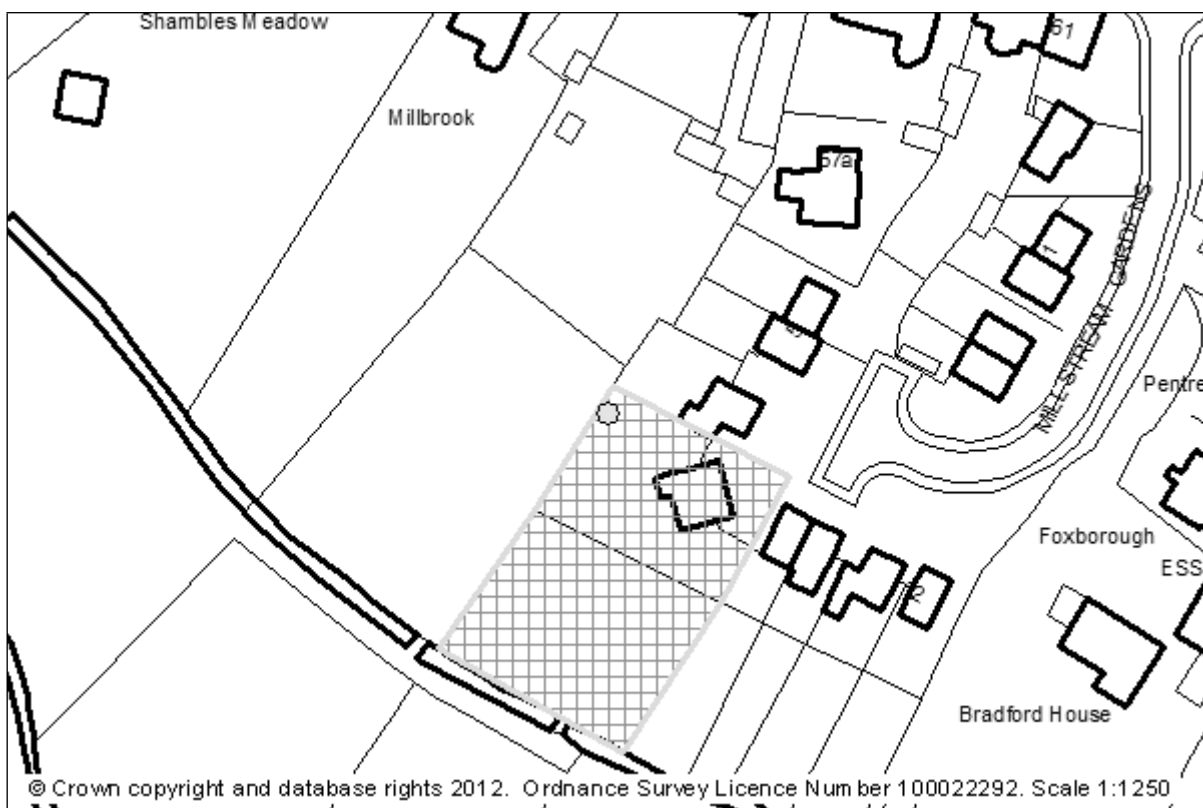
Grid Ref: 300896 : 112776

Applicant: Mrs Jessica Jackson

Location: 8 Mill Stream Gardens  
Halberton  
Tiverton  
Devon

Proposal: Retention of timber outbuilding to be used ancillary to the house, retention of alterations to ground level changes and change of use of agricultural land to domestic garden

Date Valid: 18th September 2020



## **APPLICATION NO: 20/01507/FULL**

### **MEMBER CALL-IN**

**Cllr Ray Radford has called this application in to consider whether the use of the shed is appropriate, to consider the re-profiling works to the garden and whether those works have a detrimental impact on occupants of neighbouring properties.**

### **RECOMMENDATION**

Grant planning permission subject to conditions

### **PROPOSED DEVELOPMENT**

Retention of timber outbuilding to be used ancillary to the house, retention of alterations to ground level changes and change of use of agricultural land to domestic garden.

The timber outbuilding has been built larger than the permission granted in 2019. The previously approved shed measured 4.6m x 3.6m with a height of 2.6m. The shed seeking to be retained as built, measures 6.7m x 3.2m with a height of 2.4m. The shed is to be used for ancillary purposes to the main house. The applicant has a beauty/nail business which she intends to run from the shed.

The ground level changes include the importing of soil to level out an area of the ground to enable better maintenance of the garden. The soil has been grassed over. These works have also been done and so the application seeks to retain the works as carried out.

The application also seeks permission for the change of use of a section of land at the bottom of the garden currently classed as agricultural use to form an additional domestic garden.

### **APPLICANT'S SUPPORTING INFORMATION**

Site location plan  
Block plan  
Floor plan and elevations  
Photographs.

### **RELEVANT PLANNING HISTORY**

90/00446/OUT - PERMIT date 9th January 1992 Outline for residential development and alterations to vehicular access

93/00677/ARM - REFUSE date 15th October 1993 Reserved matters for the erection of 12 semi-detached houses and construction of estate road and access and conversion of existing canteen into a garage

94/01805/ARM - PERMIT date 16th January 1995 Reserved matters for the erection of twelve semi detached houses with estate road and access and conversion of existing canteen into a garage

96/01806/FULL - PERMIT date 20th February 1997 Renewal of planning permission granted under ref. 4/25/90/446 (outline) and 4/25/94/1805 (reserved matters) for the erection of 12 No. semi-detached houses with estate road and access and conversion of existing canteen into a garage

98/00594/FULL - PERMIT date 4th June 1998 Amendments to planning permission no. 4/25/96/1806 to provide four detached dwellings on plots 7,8,11 and 12 in lieu of two pairs of semi-detached houses  
 99/02751/FULL - PERMIT date 30th July 1999 Erection of rear conservatory  
 18/00954/HOUSE - PERCON date 7th August 2018 Conversion of garage to additional ancillary accommodation  
 19/01494/CAT - NOBJ date 10th October 2019 Notification of intention to reduce the height a group of hawthorns by 6m and re-coppice 2 sycamore trees in a Conservation Area  
 19/01945/HOUSE - PERMIT date 8th January 2020 Erection of garden shed and 1.8m high garden fences on north and south boundaries  
 20/01331/HOUSE - WITHDRAWN date 21st September 2020 Erection of garden shed and 1.8m high garden fences on north and south boundaries to include alterations to ground levels (Revised Scheme)

## **DEVELOPMENT PLAN POLICIES**

### **Mid Devon Local Plan 2013 – 2033**

S13 - Villages

DM1 – High quality design

DM11 – Residential extensions and ancillary development

DM25 – Development affecting heritage assets

## **CONSULTATIONS**

### **Halberton Parish Council: 13.10.20**

Halberton Parish Council considered the application at their meeting on the 13 October 2020 and their comments remain unchanged from the previous application at the same property (20/1331/HOUSE):

The Council notes the building is being advertised for use as a commercial premises and not a garden shed so would query whether the correct planning application has been submitted. The Council also enquires if a proper engineering assessment was carried out prior to the earthworks for example the impact of run off, or on the leat. Also there are concerns as to whether proper consultation was carried out with neighbours prior to the works. The Council has concerns over the height of the garden which is now overlooking neighbouring properties.

In addition, the Council requests that planning officers do a site visit to understand the implications on neighbouring properties.

The Council requests that the application be called-in if officers are minded to approve it.

**Highway Authority:** 07.10.20 - No Comments.

**Environment Agency:** Operational development less than 1 ha within Flood Zone 1 - No EA consultation required. See surface water management good practice advice.

## **REPRESENTATIONS**

Three letters of objection have been received and the comments contained within those letters which relate to planning matters are summarised below:

- Location of the site within the Conservation Area;
- Parking and traffic impacts;
- Retrospective nature of the application;
- Tree works;
- Building being constructed larger than had previous permission for;

- Fences erected on site;
- Soil imported to the site;
- Drainage;
- Business use of the shed;
- Impact on the leat/stream;
- Visual appearance of the application scheme;
- Amenity impact of the scheme on neighbouring site uses.

## **MATERIAL CONSIDERATIONS AND OBSERVATIONS**

**The main issues in the determination of this application are:**

- 1) Principal of development**
- 2) Use of the shed and changes to its dimensions since the previous approval**
- 3) The importing of soil to reprofile the garden and impact on adjoining sites**
- 4) The erection of fences and gates**
- 5) Works to trees, hedges and other vegetation on the site**
- 6) Change of use of lower section of garden from agricultural use to domestic garden**

### **1. Principal of development**

- 1) The site is located within the settlement limit of Halberton which is one of the defined villages set out in the Mid Devon Local Plan and as such policy S13 applies. The site is in a village location and the property is a detached dwelling with good size side and rear garden with parking on the driveway to the front/side of the property. The works have already been carried out and so this application is retrospective in nature. The Local Planning Authority notes that no offence has been committed and works carried out without planning consent are done so at the owners risk. The application process should consider that the works are retrospective but the application should not be determined differently because of its retrospective nature.

Policy DM1 (high quality design) states that designs of new development must be of high quality. The principles of new development include a clear understanding of the characteristics of the site, its wider context and the surrounding area; efficient and effective use of the site; positive contribution to local character including heritage or biodiversity assets; and visually attractive places that are well integrated with surrounding buildings, streets and landscapes, and do not have an unacceptably adverse effect on the privacy and amenity of the neighbouring properties.

Policy DM11 (residential extensions and ancillary development) provides in principle support for this type of development where the development respects the character, scale, setting and design of the existing dwelling; will not result in over-development of the dwelling curtilage; and will not have a significantly adverse impact on the living conditions of occupants of neighbouring properties.

Policy DM25 (development affecting heritage assets) states that the Council will apply a presumption in favour of preserving or enhancing all designated heritage assets and their settings. This includes considering the impact on the Halberton Conservation Area and the neighbouring listed building.

An assessment of the application scheme against individual policies is set out in more detail in below sections of the report.

An officer from the LPA has visited both the application site and the neighbouring site (Cherry Tree Cottage) which is the listed property referred to in this report with the agricultural/ equestrian piece of land.

## **2. Use of the shed and changes to its dimensions since the previous approval**

- 2) The first element of the application seeks to regularise the size differences to the shed which has already been built on the site. The previous planning application (reference: 19/01945/HOUSE) granted permission for a shed which measured 4.6m x 3.6m (just over 16sqm) with a height of 2.6m. This application seeks to retain the shed which has been erected on site which is larger than that approved under the 2019 application. The current building measures 6.7m x 3.2m (just over 21sqm) with an overall height of 2.4m which is lower than that previously approved at 2.6m. The original planning application for the dwelling removed permitted development rights for new ancillary buildings on the site meaning that a planning application is required. These type of buildings including their size would normally fall under permitted development. The use of a building for ancillary purposes includes being able to use the space to be able to work from home or provide a small scale office space or space for beauty treatments. The Local Planning Authority must therefore consider whether the size and location of the shed is suitable and the use of the shed. The LPA consider that the size of the building is suitable within the generous plot being well located to use a corner of the plot which does not impact on the useable garden space for which there is plenty to the rear and side of the property. It does not affect parking provision on the site (more than 2 spaces can easily be accommodated on the site in accordance with the parking policy) and does not impact negatively on the amenity of any neighbouring properties in terms of overbearing impact or loss of light.

Representation has been made regarding concerns about traffic and parking associated with the business activity. The applicant has a beauty/nail business which she intends to run from the shed. As mentioned previously, the use is considered to be an ancillary use and that a material change of use of the dwelling to a business use will not occur. It is not considered that the size of the shed will give rise to a significant rise in additional traffic or parking requirement. The applicant has verbally said that there would be one appointment at a time for customers of the applicants beauty/nail business and therefore no more than one car at a time arriving to the site assuming that the customer drives to the site. The sites parking area to the front/side is more than sufficient in size to accommodate one extra parking space if required but the ancillary use does not require additional formal parking to be identified. Therefore the LPA also concludes that as a small-scale space to work from home/ operate a business can occur without a material change of use where there is no material impact on highway safety.

The construction is timber like many other outbuildings found in gardens and has a monopitch roof which gently slopes from front down to the back. The overall height of the shed at the front of 2.4m which is considered to be a suitable height in a garden given that permitted development rights would normally allow a building up to 2.5m in height within 2m of a boundary. The LPA is satisfied that the shed is well designed and of a suitable scale given its location, respects the character of the area and the existing dwelling, does not result in an over-development of the dwelling curtilage, and does not result in any detrimental impacts on the residential amenity of neighbouring properties and complies with policies DM1 and DM11. The site is located within the Halberton Conservation Area. The Conservation Officer has been consulted on this application. They consider that in respect of the small domestic scale office/garden building, the scale and design are not harmful to the character of the Conservation Area. The shed has been considered in terms

of its potential impact on the listed building nearby (Cherry Tree Cottage) and the LPA is unable to identify any harm to the listed building or the setting of the listed building. As such the LPA considers that the shed fully complies with policies DM1, DM11 and DM25 of the Mid Devon Local Plan.

### **3. The importing of soil to reprofile the garden and impact on adjoining sites**

- 3) The second element of the application seeks to regularise the importation of soil to re-profile the garden of the property. It is unknown exactly how much soil has been imported to the site as this application is retrospective in nature and the Local Planning Authority does not have a plan which shows how the site appeared, prior to the works being carried out. Therefore the LPA must make a decision based on what they have in front of them and whether the reprofiling works to the garden are acceptable or not. It is understood that the works were carried out due to the upper section of garden closest to the house being difficult to maintain due to the ground level differences which made maintaining the lawn on a slope difficult. An amount (unknown quantity) of soil was brought onto the site with the aim of levelling out the top section of garden to make it more manageable. The top soil has now been grassed over which provides an appearance of continuation with the rest of the garden. Towards the south of the site which leads down to the leat at the bottom of the site, the level of the land slopes down. It is noted that a land drain has been installed under the ground to where the garden has been reprofiled which is to aid surface water runoff from the house roof and general garden area. Representations have been received which query this arrangement and whether it can be used to drain for example hot tubs, Jacuzzis, pools and similar types of water holding vessels. These types of vessels would need to be emptied into the mains foul drains so as to avoid contamination of the leat. The applicant has made no plans to empty vessels into the leat and therefore the land drain is for surface water drainage purposes only. Given that the site is located in the Halberton Conservation Area, the Conservation Officer has been consulted on this proposal and provided the following comment. 'The proposal involves a ground levelling which is difficult to assess as the application information lacks any sections of existing and former levels. However in terms of the character of the Conservation Area there is an existing hedge boundary adjoining the area of fill and it is considered an effective screen from the wider Conservation Area.' The proposal has been considered in terms of its impact on the nearby listed building (Cherry Tree Cottage) and no harm has been identified in terms of impact on the listed building itself or to the setting of the listed building. Representation has been made by the occupants of the adjoining land. The representation objects to the re-profiling element of the application due to loss of privacy and overlooking. Whilst it is noted that the level of the land has increased and there is some element of overlooking to the adjacent agricultural/ equestrian land, there is not considered to be any overlooking issues for the neighbours residential garden space. Your officers have considered whether there has been any loss of residential amenity. It is not considered that this includes agricultural/ equestrian land but does include private domestic garden areas. The formal domestic garden belonging to the neighbouring property is set back quite a distance from the area of land which was re-profiled and it is not considered that there are any issues with overlooking or loss of privacy in this instance. It is noted that there is a general change in outlook for the neighbouring property as a result of the works but the LPA consider that this is acceptable in policy terms. As such the reprofiling works are considered to comply fully with policies DM1 and DM25 of the Local Plan.

#### **4. The erection of fences and gates**

- 4) The third element to the application which requires consideration is the change of use of agricultural land on the lower section of land south of the existing garden which leads down to the leat. The area of land in question is not agricultural in appearance and appears simply as an extended area of sloping grassed land which leads down to the leat. A fence has been erected on the site on the slope to stop children entering the leat. As mentioned in an above section of the report, the fence is less than 2m in height and would be permitted development. The question here is whether the change of use from agricultural land to domestic garden is acceptable and whether the change of use would have a detrimental impact on the Conservation Area. Many of the properties in this area have an area below the formal garden which is in agricultural use. The land due to its topography serves no real purpose for outbuildings and it is noted that if this change of use is allowed, would not benefit from any permitted development rights which would allow for any outbuildings unless a planning application is received. The area in question already appears fairly domestic in appearance, albeit there is no domestic paraphernalia on the site at present. As a domestic garden this area could be used for planting, playing on, siting temporary structures for example and this use is considered to be acceptable and would have no wider impact on the Conservation Area or any neighbouring properties including the nearby listed building and the setting of the listed building. The proposal is considered to comply with policies DM1, DM11 and DM25.

#### **5. Works to trees, hedges and other vegetation on the site**

- 5) The submitted block plan shows gates and fences proposed (or already in place) marked in red. There is no condition on the original planning consent which removed permitted development rights for boundary treatments. As such, as long as the fences and gates (or other boundary treatments) do not exceed 2 metres in height then permission is not required. As such the LPA makes no further comment on this on the basis that the applicant has verbally confirmed that they would not wish to exceed the 2 metre heights allowed.

#### **6. Change of use of lower section of garden from agricultural use to domestic garden**

- 6) Reference has been made in representations received that unauthorised works have been carried out to trees in the Conservation Area. Due to the location of the site within the Halberton Conservation Area any works to trees is required to go through a notification procedure whereby the Local Planning Authority consider the proposed works. When the LPA considers these types of notifications there are only two options available. The first is to allow the works as proposed to go ahead having been notified of the works proposed. The second option is to protect the tree through the imposition of a Tree Preservation Order. This gives the tree(s) in question a higher level of legal protection. In 2019 a notification was received (reference: 19/01494/CAT) for the intention to reduce the height a group of hawthorns by 6m and re-coppice 2 sycamore trees. The works undertaken were considered to be justified and the LPA did not consider that a Tree Preservation Order was warranted. The issues raised in representation made to the application regarding the hedgerow being cut is a boundary issue and therefore is a civil issue between parties.



## **CONDITIONS**

1. The date of commencement of this development shall be taken as 23<sup>rd</sup> September 2020, the date the application was registered by the Local Planning Authority.
2. The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule on the decision notice.

## **REASONS FOR CONDITIONS**

1. In order to establish a legal commencement date for the development to enable the development to be monitored by the Local Planning Authority.
2. For the avoidance of doubt in the interests of proper planning.

## **REASON FOR/ APPROVAL OF PERMISSION/GRANT OF CONSENT**

The application scheme in terms of the scale, design and position of the shed together with its intended use is considered to be supportable in policy terms. The re-profiling of the garden to enable better maintenance is considered to be acceptable in terms of its overall completed appearance on site and its unidentifiable harm on the Conservation Area. The change of use of agricultural land to domestic garden is considered to be acceptable given the general appearance of the area and what the domestic garden could be used for. Overall the application scheme as a whole is considered to respect the character, scale, setting and design of the existing dwelling and the wider site and residential area on the edge of the village backing onto the leat/stream. The shed as built does not result in an over development of the curtilage and it is not considered that there are or would be any significant adverse impacts on the residential amenity of occupants of the neighbouring properties. Parking provision for the property is considered to be acceptable and in accordance with policy standards. Traffic impacts will not change from the existing arrangement significantly. Overall the proposal is considered to comply with the following policies; S13, DM1, DM11, DM25 of the Mid Devon Local Plan and the National Planning Policy Framework.

The Human Rights Act 1998 came into force on 2nd October 2000. It requires all public authorities to act in a way which is compatible with the European Convention on Human Rights. This report has been prepared in light of the Council's obligations under the Act with regard to decisions to be informed by the principles of fair balance and non-discrimination.

Application No. 20/01170/FULL

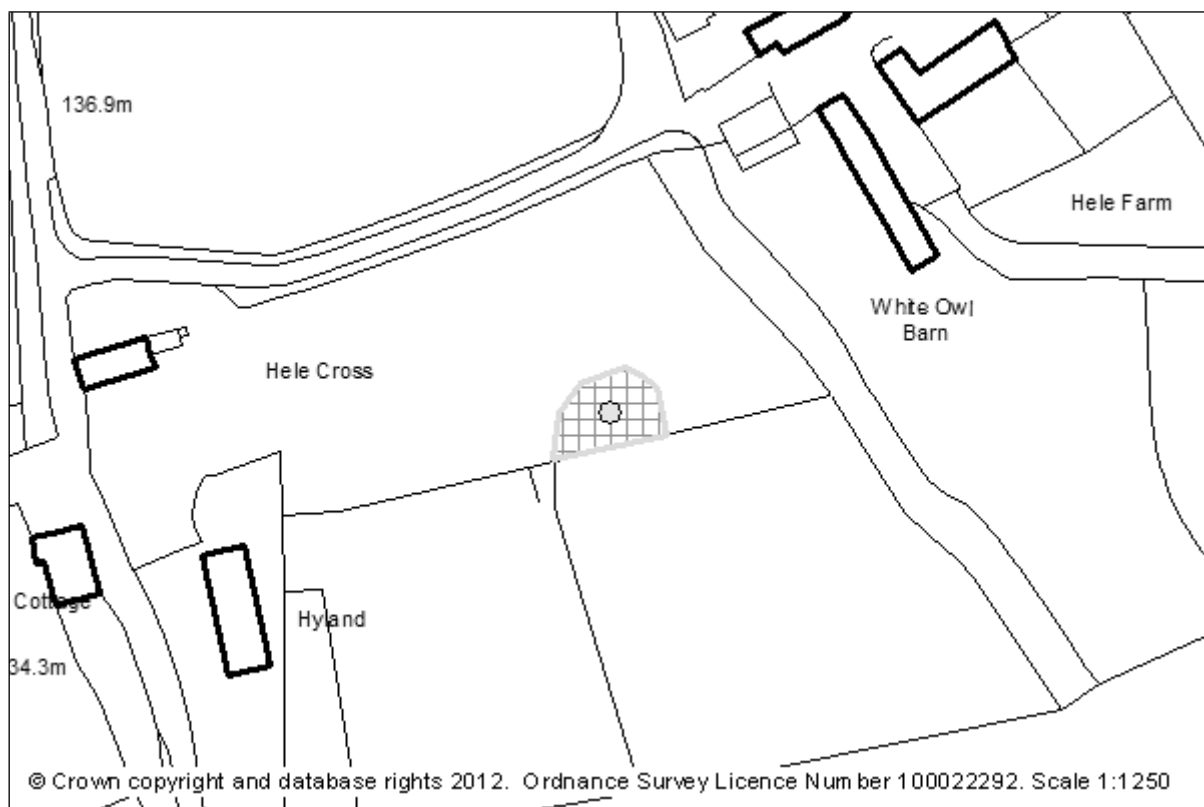
Grid Ref: 271266 : 108544

Applicant: Mr M Kingsley

Location: Land at NGR 271309 108525  
Hele Cross  
Nymet Rowland  
Devon

Proposal: Change of use of land for siting of Shepherd's Hut and composting toilet for personal use and short term holiday letting

Date Valid: 3rd August 2020



## **APPLICATION NO: 20/01170/FULL**

### **MEMBER CALL-IN**

This planning application has been called before committee by Councillor Colthorpe as the chair of planning committee. Councillor Squires is overseeing the ward following the death of Councillor John Daw and recommended the application be discussed for the following reasons:

1. Is the proposal appropriate for residential garden?
2. To consider local amenities.
3. To consider whether noise levels are appropriate for the location given the adjoining quiet area.
4. Development in the open countryside.

### **RECOMMENDATION**

Grant permission subject to conditions.

### **PROPOSED DEVELOPMENT**

The proposed development is for the change of use of land for siting of Shepherd's Hut and composting toilet for personal use and short term holiday letting at Land at NGR 271309 108525, Hele Cross, Nymet Rowland.

The site is located in the small settlement of Nymet Rowland which is not recognised as a village in the local plan as having a settlement limit. As such, the site is classified as being in the countryside. The site is in Flood Zone 1 which represents a low risk of flooding and is outside of any Conservation Areas. The nearest listed buildings are approximately 65 and 88 metres west and east of the site respectively.

The application seeks to provide a sustainable tourism opportunity within the Mid Devon countryside citing nature, walking and cycling as attractions. The hut itself measures approximately 4.2m by 2.2m with the floor plans showing enough space for a bed, shower and sink. A flue for a wood burner is also shown on the proposed elevation plans.

Initially, the hut and toilet were proposed towards the eastern boundary of the garden area however this was subsequently revised so that the siting was further to the west. This amendment was undertaken in a hope to alleviate the concerns of objectors but following consultation more concerns were raised. Therefore, a second and final revision was subsequently made to move the proposal north, closer to the applicant's own dwelling and adjacent to an existing stable block. This is therefore the final position of the proposed hut and toilet.

The application includes a planting plan showing proposed landscaping to the east and south-east of the site and a parking plan. The latter shows that the access and parking arrangements for the site will be shared with the existing access and parking area serving the applicant's dwelling.

### **APPLICANT'S SUPPORTING INFORMATION**

Foul Drainage Assessment  
Noise Management Plan  
Business Plan/Planning Statement  
Composting Toilet Information

Site Location Plan  
Block Plan  
Planting Plan  
Parking Plan  
Proposed Elevations and Floor Plan.

## **RELEVANT PLANNING HISTORY**

03/00723/FULL - PERMIT date 5th June 2003

Change of use of land from agricultural to domestic, erection of stable block, relocation of garage, and formation of banks

## **DEVELOPMENT PLAN POLICIES**

### **Mid Devon Local Plan 2013 – 2033**

S1 – Sustainable Development Principles  
S9 – Environment  
S14 – Countryside  
DM1 – High Quality Design  
DM5 – Parking  
DM22 – Tourism and Leisure Development  
DM25 – Development affecting heritage assets

## **CONSULTATIONS**

### **Nymet Rowland Parish Council, 23<sup>rd</sup> August 2020:**

Further to your Consultation Request to the Clerk on the 5th August and resulting extraordinary Parish Council meeting on 21st August '20. The agreed findings of Councillors to the related application documents are as follows.

Application for Planning Permission Document

Section 5. DM1 The proposal states that both structures 'would be mobile to allow rotation of the waste receptacles in the ground'

This would seem to contradict the fact that the water supply would emerge from a fixed trench and be permanently plumbed into the structures

Section 5 also states that work or change of use has not started.

This is incorrect, there is evidence of extensive ground work including trenching and the presence of a substantial bore, blue plastic water supply pipe in place

Section 7. Are you supplying additional information on submitted plans, drawings or a design and access statement? Answered No

Area plans and drawings for the two structures are viewable on the Planning Portal.

Section 8. Pedestrian and Vehicle Access. Roads and Rights of Way.

All answered as No, However access is via a drive owned by a neighbouring property who have granted the applicant access to their property for private, not commercial use.

Section 9. Vehicle Parking. Answered No.

There is currently very limited existing parking space. This is causing considerable concern as to the effects of potential overflow onto either the aforementioned private access driveway, or the single track public road.

Section 11. Assessment of Flood Risk. How will surface water be disposed of? Answered as Soakaway.

There is no related detail given of guttering on the structures handling surface water.

More crucially, given the capacity of the supply piping to a sink in the Shepherd's Hut, plus a shower and wash basin shown in the Composting toilet building, there is no description of how a potentially very significant resulting volume of grey / foul water would be disposed of. Clearly this cannot be allowed to enter the human waste composting pit or onto neighbouring property and their drainage facilities. It should be noted that as witnessed in the past few days of heavy rainfall, during any periods of heavy or persistent rainfall, the village and surrounding fields are very susceptible to immediate and often dramatic surface water runoff. This is due to saturated, shallow topsoil that lies on a thick strata of semi permeable mix of shale and heavy grey clay

Foul Drainage Assessment Form

All answers on this document are answered as N/A Overall, there are no answers given as to why it is not feasible to connect to an existing foul water system. Why is the foul water / sewage not being piped to the existing septic tank at the property? .

Section 10. Expected Flow. Answered as N/A.

Given the evident potential very considerable capacity of the water supply feed pipe, why is this answered as N/A?

Section 12 Maintenance

There is no description of what maintenance will be used. Clearly there is going to be foul waste from both the Composting Lavatory and the grey water waste. Consequently this is a crucial question to be answered.

The waste from the Composting Lavatory is causing very great concern, particularly in view of the dangers of Covid-19 from human waste, especially in a surface water flood run off occurrence.

Consultee Comments Document - Comments

Contaminated Land Answered as No Objection.

Whilst the current land conditions may not be contaminated, there appears to be a strong risk of this changing if foul or grey water is allowed to outflow uncontrolled.

Drainage: Answered as No Objection to this proposal

Given all the aforementioned information, this seems incorrect, particularly as the proposal is incomplete.

Change of Use. Such change of use would directly conflict with a recent planning directive to a planning application for a neighbouring property. The directive explicitly prohibits a change of use from private to commercial use.

The Parish Council received objection representations from a significant number of householders in the immediate area. They feel they will be directly affected by such a change and have not been consulted in any manner by the applicants. Their concerns are primarily noise, the effects of the waste disposal and that such change of land use may well be the thin end of the wedge to further development on a green field locality. They have stated that they would vigorously appeal against a decision to approve this application.

This is a contentious application that could have long term implications. A number of items require to be answered which can only be achieved by the planning officer conducting a site visit accompanied by a member of this Council. In consequence, at this time Nymet Rowland Parish

Council cannot support approval of this application.

### **Nymet Rowland Parish Council, 26 August 2020**

I note the Applicant's email dated 25th August 20, claiming he was not invited to the Parish Council meeting, this is incorrect. To meet the specified date for consultation submissions and to allow for a public notice period, it was necessary that the meeting was arranged very promptly. In accordance with Parish Council meeting procedures, the meeting was open to all Members of the Public. In accordance with the regulations, notices of the meeting were publicly posted. These allowed for the statutory period, inviting those wishing to attend, to contact myself to request the details of the virtual (VTC) meeting. A number of MOPs who asked to participate were advised accordingly.

The applicant had not consulted with their immediate neighbours, or the Parish Council on this matter. There was adequate opportunity for them to discuss and communicate the details with all concerned beforehand. It would appear that both their communication and ensuring they kept themselves aware of the related activity to this application, was critically lacking. Clearly, that is the responsibility of the applicant, no one else.

The Consultee submission by the Parish Council questioned why a number of sections on the related application documents were either not answered, incomplete or appeared contradictory. Great care was taken to ensure the document was entirely objective.

### **Nymet Rowland Parish Council following revised plans:**

No further comments received.

### **Environment Agency:**

Operational development less than 1 ha within Flood Zone 1 - no EA consultation required - see surface water management good practice advice - see standard comment.

### **Environment Agency, 5<sup>th</sup> November 2020:**

I have just reviewed this application afresh and can confirm that you were right in the first instance not to consult us. This development is non-major and is on non-mains drainage and less than 1 ha within Flood Zone 1, as you have highlighted. As such we have no comment to make on the foul drainage or surface water as this falls under the remit of the LPA.

For information, I have attached our position statement on composting toilets.

### **Highway Authority, 11<sup>th</sup> September 2020:**

The site is accessed off an unclassified County Route which is restricted to 60 MPH although observed traffic speeds are considerably lower. This road is a typical Devon lane with no footways or lighting, although there are passing places from Lapford to Nymet Rowland and passing places between Hele Cross and Nymet Bridge Cross.

The number of personal injury collisions which have been reported to the police in this area between 01/01/2015 and 31/12/2019 is none at the location of the site. The number of trips this development could generate will not be a severe affect on the Highway. The applicant has not shown the vehicle access to the proposed Shepherds Hut from the public highway and parking provisions. Therefore the County Highway Authority can not put forward a positive recommendation until this information has been received.

### **Highway Authority, 5<sup>th</sup> October 2020:**

Further Information Received 30/9/2020

The Applicant has submitted a revised parking plan and further information on the parking for the visitors to the Shepherd's Hut which will be along the lane and in the area the existing parking. This is acceptable to the Highway Authority.

### **Public Health 13<sup>th</sup> August 2020:**

Contaminated Land: No objection to this proposal. (05.08.20).

Air Quality: No objection to this proposal. (05.08.20).

Environmental Permitting: No objection to this proposal. (11.08.20).

Drainage: No objection to this proposal. (05.08.20).

Noise & other nuisances: Due to the close proximity nearby residential properties the applicant must develop a noise management plan (NMP) detailing how noise on the site will be managed. The NMP must be agreed with the LPA prior to any guests staying on site. (05.08.20).

Housing Standards: No comment. (10.08.20).

Licensing: This may require a licence, please advise to contact licensing 01884 255 255 [licensing@middevon.gov.uk](mailto:licensing@middevon.gov.uk) . (05.08.20).

Food Hygiene: No comments. (11.08.20).

Private Water Supplies: If a private supply is to be used by more than one property or has a commercial function, The Private Water Supply (England) Regulations 2016 as amended will apply. A risk assessment and sampling regime will be necessary. The supply must not be used until the Local Authority (Mid Devon District Council) is satisfied that the supply does not constitute a potential danger to human health, including single domestic use.

You must also register with the Local Authority (Mid Devon District Council) any private water supply. Failure to do so may result in a Section 85 Notice, with which failure to comply is an offence.

Please contact Public Health at Mid Devon District Council on completion of proposal.

IF MAINS WATER IS TO BE USED, WOULD HAVE NO COMMENT. (05.08.20).

Health and Safety: No comments. (11.08.20).

### **Public Health, 14<sup>th</sup> September 2020**

I'm happy with the noise management plan and with regards to the toilet it may be worth conditioning that no waste material from the toilet can be spread on any garden areas where edible food is produced otherwise all good.

### **Public Health, 6<sup>th</sup> October 2020:**

Due to the small size of the burner I'd have no concerns as long as only dry seasoned wood is used.

### **Public Health, 8<sup>th</sup> October 2020:**

At >50m, the distance attenuation would be sufficient to reduce any noise to an acceptable level.

However, due to the low background sound levels in the area if the distance is <50m (to the amenity areas of nearby residential properties) I'd expect some sort of additional sound mitigation i.e. acoustic barrier fencing.

### **Public Health 2<sup>nd</sup> November 2020:**

Noise and mitigation:

The new proposed site is approximately 35 metres from the nearest residential property. Although mitigation was requested for under 50m in the other locations, the new site now would provide adequate mitigation from the extensive plantation which is already established. The noise management plan also details extensive measures to ensure the reduction of any noise at source by implementing guest and management control measures.

Foul water: I do not have any concerns about the very small amount of grey water from the sink and shower going into a small soakaway with sand filtration as long as the Environmental Agency has been consulted - Any potential impact on a water course should be consulted with the Environment Agency.

Wood-burner:

As Ian has said it is a requirement to burn dry seasoned wood and installation is carried out by a HETAS installer with an adequate flue height.

## **REPRESENTATIONS**

A total of 19 letters of objection and one letter of support have been received at the time of writing this report.

Before the receipt of any revised plans, one letter of support and nine letters of objection were received. The letter of support states that the application mainly appears to be for personal use, there will be limited impacts on noise and the local highway network and the design of the hut is in-keeping with the area. It goes on to state that sustainable tourism will benefit the area. The concerns raised in the initial letters of objection are summarised below:

1. Insufficient village amenities
2. Existing B and B's within dwellings
3. Impacts on the local highway network
4. Insufficient parking
5. Impact on privacy
6. Noise impacts
7. Setting a precedent for further development
8. Hygiene and nuisance relating to the composting toilet
9. Foul water and drainage concerns
10. Fire safety
11. Access to the shared private road
12. Property value
13. How will services be joined such as electricity
14. No commercial use for application 18/01689/FULL
15. Planting plan not sufficient

Following the first set of revised plans which relocated the site further west, a further six letters of objection were received. These were largely from households that had already objected to the original scheme. The issues relating to; noise, fire, application 18/01689/FULL, grey water, the composting toilet, village amenities, parking and access were re-highlighted.

Following the final relocation of the proposed site, a further four letters of objection were received from households that had previously objected to the scheme. The letters confirm that the objector's retain their objection. The one additional point raised is that other Councils are looking to refuse single shepherd hut applications.



## **MATERIAL CONSIDERATIONS AND OBSERVATIONS**

**The main issues in the determination of this application are:**

- 1. Principle of Development**
- 2. Policy Requirements**
- 3. Other Material Considerations**

### **1. Principle of Development**

S.38[6] of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. The National Planning Policy Framework [the Framework], published by the Government in March 2012 and revised in 2018 and later in 2019, is noted as one such material consideration.

Within the NPPF, paragraph 83 with respect to supporting a prosperous rural economy outlines that:

‘Planning policies and decisions should enable:

- a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings;
- b) the development and diversification of agricultural and other land-based rural businesses;
- c) sustainable rural tourism and leisure developments which respect the character of the countryside; and
- d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.’

The site is located in the settlement of Nymet Rowland which is classified in policy terms as countryside by the local plan 2013-2033. Policy S14 deals with countryside development and sets out acceptable rural uses, which includes tourism and leisure development. The proposal must therefore be assessed under the relevant development management policies having regard to all material considerations.

### **2. Policy Requirements**

The key policy in determining the proposal is DM22 (Tourism and Leisure Development) which states that tourism plays an important role in generating income for local residents and is generally welcomed so long as it is located sensitively. The specific requirements of the policy are:

“Proposals for new or expanded tourism, visitor or leisure facilities will be supported within or adjacent to defined settlements. Elsewhere, the nature of the proposed development must justify a countryside location and minimise environmental impacts, avoiding an unacceptable traffic impact on the local road network. Development proposals must:

- a) Respect the character and appearance of the location;
- b) Where appropriate, involve conversion or replacement of existing buildings; and
- c) Demonstrate that the need is not met by existing provision within nearby settlements.”

Given that the site is outside of a defined settlement, it must accord with the above three points. A summary assessment against these criteria is set out below:

a) The character of the area is typical of the Mid Devon countryside with a substantial amount of agriculture mixed with sporadic countryside properties. The hut and compost toilet are proposed to be sited on the applicants land adjacent to an existing stable block. The applicant benefits from a large garden area which includes the aforementioned stables, paddocks and lawns. There are a significant number of hedgerows and trees in the area. Therefore, the hut and toilet will be largely screened from public view in light of the existing countryside screening in the area.

Both the hut and toilet are timber based constructions with treated oak walls and timber windows and doors. The roof is proposed to be constructed of galvanised roof sheets. The materials are traditional and typical for the rural location. The overall appearance of the structures is modest and inoffensive. Therefore, in terms of appearance, the proposal is considered to respect the character and appearance of the area.

As set out above, the location is in the countryside which therefore results in a quiet and peaceful character. This has been suggested by neighbours via the letters of objection and was the case at the time of the site visit. Significant concerns were raised by occupants of nearby properties relating to noise impacting both residential amenity but also the character of the area. In Public Health's latest comments which are in relation to the final position of the proposed hut, they state; "the new proposed site is approximately 35 metres from the nearest residential property. Although mitigation was requested for under 50m in the other locations, the new site now would provide adequate mitigation from the extensive plantation which is already established." Additionally, a planting plan was submitted to restrict noise travelling towards the dwellings east and south east of the site. A comprehensive Noise Management Plan was also submitted which limits singing, shouting, music and fireworks. Public Health stated that; "the noise management plan also details extensive measures to ensure the reduction of any noise at source by implementing guest and management control measures." Furthermore, Schedule 2, Part 5, Class A of the Town and Country Planning General Permitted Development Order (2015) allows the use of land, other than a building, as a caravan site subject to the relevant licenses set out in The 1960 Act. Therefore, the noise that could result from permitted development could feasibly be higher than that from the siting of one shepherd hut.

On balance, the proposed scheme is considered to protect the character and appearance of the area both in terms of visual and noise impacts.

b) This criterion is not relevant to this proposal as it does not relate to the conversion of an existing building or the replacement of an existing building.

c) It was raised within the letters of objection that there are two other known bed and breakfast facilities in the Nymet Rowland area. These are said to be in annexes relating to existing dwellings. A statement has been submitted which outlines that the shepherds hut will be marketed towards environmentally conscious customers who enjoy cycling, rambling and walking. The statement goes on to outline that the proposal will seek to fulfil the requirements of the Green Champion tourism award given its sustainable approach. It is acknowledged therefore, that the need for this type of tourism has not already been met in the immediate location. No nearby planning history could be found to dispute this.

Overall, the application scheme is considered to meet with the key requirements of DM22.

Policy DM1 seeks to ensure high quality design according to a number of principles which are outlined below:

- a) Clear understanding of the characteristics of the site, its wider context and the surrounding area;
- b) Efficient and effective use of the site, having regard to criterion (a);
- c) Positive contribution to local character including any heritage or biodiversity assets and the setting of heritage assets;
- d) Creation of safe and accessible places that also encourage and enable sustainable modes of travel such as walking and cycling;
- e) Visually attractive places that are well integrated with surrounding buildings, streets and landscapes, and do not have an unacceptably adverse effect on the privacy and amenity of the proposed or neighbouring properties and uses, taking account of:
  - i) Architecture
  - ii) Siting, layout, scale and massing
  - iii) Orientation and fenestration
  - iv) Materials, landscaping and green infrastructure
- f) Appropriate drainage including sustainable drainage systems (SUDS), including arrangements for future maintenance, and connection of foul drainage to a mains sewer where available;
- g) Adequate levels of daylight, sunlight and privacy to private amenity spaces and principal windows;
- h) Suitably sized rooms and overall floorspace which allows for adequate storage and movement within the building together as set out in the Nationally Described Space Standard with external spaces for recycling, refuse and cycle storage; and
- i) On sites of 10 houses or more the provision of 20% of dwellings built to Level 2 of Building Regulations Part M 'access to and use of dwellings'.

A summary assessment against the relevant points has been undertaken:

- a) As established under DM22, the site is in a rural area surrounded by typical Mid Devon countryside. The traditional timber design of the structures are considered to show an understanding of the characteristics of their surroundings. Overall, the design and appearance are in-keeping with the characteristics of the area.
- b) The location of the site was moved twice in an attempt to alleviate the concerns of nearby residents. The final position adjacent to the existing stable block is considered to make the most efficient use of the site as there is less distance from the parking area to the hut and it provides the smallest opportunity for adverse noise and visual impacts. The structures appear subservient to the existing stable block and would sit comfortably within the wider location.
- c) There will be no adverse impacts on the biodiversity of the area as a result of the proposal. The additional planting proposed is expected to result in a biodiversity net gain in accordance with both this criterion and policy S1. In terms of heritage assets, the site is outside of any Conservation Areas and the nearest listed buildings are approximately 65 and 88 metres west and east of the site respectively. Given the existing and proposed screening and separation distances, there are no concerns with regards to impacts on heritage assets in accordance with DM1. This is therefore also in accordance with Policy DM25 which seeks to protect heritage assets.
- d) Some of the initial letters of objection highlight the lack of infrastructure in Nymet Rowland. It is therefore acknowledged that the use of a private car is likely to be required to reach the site. This policy seeks to encourage more sustainable modes of transport which is in line with the aims set out for the proposal which are based around sustainable tourism and the provided statement cite walking and cycling as activities for guests. Therefore, whilst a private car is very likely to be used to arrive at the location, it is expected that walking and cycling activities would be the norm following arrival. This is typical for most of the countryside tourism facilities across Mid Devon. Policy DM5 acknowledges that the private car is still the optimal form of transport in the district in

light of national and local ownership figures. On balance, the scheme is considered sustainable in terms of transport.

e) The assessment under DM11 and DM1 (a) and (b) concludes that the development would be visually attractive and not at odds with its location. Some concerns have been raised with regards to privacy and therefore this criterion has been carefully considered. However, in light of the latest position of the site, it is not expected that there will be any adverse privacy concerns. A significant separation distance to neighbouring properties (approximately 35m to the closest property) helps to protect privacy. This is a distance that is significantly more than a typical arrangement with regard to domestic gardens for example whereby there are rarely privacy concerns.

With regards to impacts on neighbouring amenity, the impacts surrounding the composting toilet have also been considered. Neither Public Health nor the Environment Agency have raised any objection to the toilet with Public Health stating that waste should not be spread where edible food is produced. This is secured by way of condition and applicants should satisfy themselves of any licence requirements beyond the planning permission stage of the development

f) SUDs are not a requirement for this application however the arrangements for foul water drainage and surface water run-off have been considered. The applicant confirmed that a small soakaway is proposed with sand filtration which will be created to receive the grey water and allow it to percolate into the ground. In their latest comments, Public Health raise no objection to this system subject to the Environment Agency being consulted on this aspect of the proposal. The Environment Agency were not initially consulted due to the site being operation development in Flood Zone 1 however following Public Health's response, they were approached for comment. In an email dated the 5<sup>th</sup> of November 2020, the Environment Agency confirmed that they have no comment. There is therefore no reasonable reason to refuse the application based on foul water.

In terms of surface water and flooding, the site is in Flood Zone 1 which is the lowest flood risk category. Given the small scale of the structures relating to the application, there is not expected to be a significant increase in water run-off and therefore there are no significant concerns with regard to flooding or pollution of watercourses.

Criteria (g) to (i) of DM1 relate to new residential development and are not relevant to this application.

The principle of the development has been established and the application is considered to comply with the two key policies – DM1 and DM22. However, a number of other material considerations have been raised and will be assessed in the following section.

### **3. Other Material Considerations**

This section of the report will assess the other material considerations raised in assessing this application that were not covered by DM1 or DM22 above.

In terms of car parking, DM5 states that for tourism development there should be one parking space per bedroom. Therefore, in this case the development would expect one parking space. The parking plan shows that the intention is for guests to park in the existing parking area that serves the property and is well related to the stable block. This area measures approximately 6 metres by 9 metres and the information in the application states that it would be capable of serving 4 cars. Based on the measurements, it is likely that the area would only be capable of housing 2-3 cars, this would therefore impact the existing residential parking. DM5 states that there should be two parking spaces per residential dwelling. However, there is a further parking area to the west

alongside the highway which provides a further parking space for the property and there is the opportunity for overflow parking along the private track subject to civil matters. Therefore, overall, there will be at least three parking spaces available, meeting the requirements of DM5 (one space for the shepherds hut and two for the dwelling). The Highway Authority have raised no objection to this approach.

It is not expected that the siting of one shepherd hut is going to significantly increase traffic in the area and as such the local road network is considered to be protected. Again, the Highway Authority have raised no objection in their final comments. In terms of access, it is alluded to above that there is some dispute with regards to the use of the shared private track. This is a civil matter as opposed to a planning matter and therefore not a material consideration for this scheme.

A common concern raised by local residents is that a precedent will be set by approving this application and more huts could be sited in the future. Any further works would need to be determined on its own merits whereby further permission would be required notwithstanding the permitted development legislation discussed under DM22 (a). If this were to occur, an assessment would need to be undertaken based on planning policy relating to neighbouring amenity, parking and highways impacts amongst other things. It is therefore not necessarily the case that this development sets a precedent for future development as there will be further policy requirements to meet.

Fire safety has been considered in light of a flue shown on the proposed elevations for the Shepherds Hut. As already established, there is a significant separation distance between the site and neighbouring dwellings and the risk of fire is considered to be low. Public Health have raised no objection subject to correct fire safety procedures and laws being followed.

One household objecting to the proposal has brought a nearby application to attention, reference; 18/01689/FULL. The application relates to the formation of a riding arena (800 sqm) and installation of solar panels to existing stable block roof. Condition 3 of this application limits the arena to private use due to highways concerns and as such the objectors feel application 20/01170/FULL that is nearby, should also be limited. However, all applications must be determined on their own merits with a commercial riding stable being viewed differently to a single Shepherds Hut for tourism accommodation with different policy considerations. In highway terms, traffic generated from an 800sqm equestrian facility could be expected to result in significantly more traffic movements than that relating to a singular shepherds hut given the end user and nature of the development.

Finally, points have been raised with regards to the routing of electricity to the hut and the impact on nearby property values but these are not considered material planning considerations.

*Section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between different people when carrying out their activities. This is called the Public Sector Equality Duty or "PSED". No persons that could be affected by the development have been identified as sharing any protected characteristic.*

## **CONDITIONS**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule on the decision notice.
3. All planting comprised in the approved details of landscaping as shown on the submitted plans, shall be carried out in the next planting season and any trees or plants which within a period of five years from the implementation of the scheme (or phase thereof), die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The landscaping scheme shall be so retained.
4. Unless otherwise agreed in writing by the Local Planning Authority, the development hereby permitted shall be implemented and occupied thereafter strictly in accordance with the recommendations and requirements of the Noise Management Plan dated September 2020 submitted as part of this planning application.
5. No waste material from the composting toilet shall be spread on any garden areas or where edible food is produced.
6. (i) The approved holiday accommodation unit on the site shall be occupied for holiday purposes only.  
(ii) The approved holiday accommodation units shall not be occupied as a person's sole, or main, place of residence.  
(iii) The owners/operators shall maintain an up-to-date register of the names of all occupiers of the approved holiday accommodation units on the site and of their main home addresses and shall make this information available at all reasonable times to the Local Planning Authority.

## **REASONS FOR CONDITIONS**

1. In accordance with provisions of Section 51 of the Planning and Compulsory Purchase Act 2004.
2. For the avoidance of doubt in the interests of proper planning.
3. To ensure that the development makes a positive contribution to the character and to protect the amenity of the area in accordance with Policies DM1 and DM22 of the Mid Devon Local Plan 2013-2033.
4. To safeguard the amenity of occupants of nearby residential properties in accordance with Policies DM1 and DM22 of the Mid Devon Local Plan 2013-2033.
5. In the interests of public health and safety and in accordance with Policies S1 and S9 of the Mid Devon Local Plan 2013-2033.
6. In accordance with the submitted details and because the site is outside of defined settlement limits in the open countryside, where permanent dwellings with unrestricted

occupation would be contrary to adopted planning policy, and this proposal is considered to be in accordance with Policies DM1 and DM22 of the Mid Devon Local Plan 2013-2033.

## INFORMATIVES

1. If you are planning a new development or extending an existing property over, or within 3 metres of public assets you need to contact South West Water.  
Note: South West Water will not permit building within 4.5 metres of public water mains, sewage rising mains or sewers on a new development or redevelopment site. For more information please refer to the information on our website:  
Clean water – <https://www.southwestwater.co.uk/developer-services/water-services-and-connections/building-near-water-mains/>  
Waste water - <https://www.southwestwater.co.uk/buildover>
2. Private Water Supplies: If a private supply is to be used by more than one property or has a commercial function, The Private Water Supply (England) Regulations 2016 as amended will apply. A risk assessment and sampling regime will be necessary. The supply must not be used until the Local Authority (Mid Devon District Council) is satisfied that the supply does not constitute a potential danger to human health, including single domestic use. You must also register with the Local Authority (Mid Devon District Council) any private water supply. Failure to do so may result in a Section 85 Notice, with which failure to comply is an offence. Please contact Public Health at Mid Devon District Council on completion of proposal.
3. Applicants should satisfy themselves with health and safety laws and legislation relating to the wood burner and fire safety. It is a requirement to burn dry seasoned wood and installation is carried out by a HETAS installer with an adequate flue height.

## REASON FOR APPROVAL OF PERMISSION

The application scheme for the change of use of land for siting of a Shepherd's Hut and composting toilet for personal use and short term holiday letting at Land at NGR 271309 108525 Hele Cross, Nymet Rowland is considered acceptable in policy terms. There will be no significant adverse impacts on the character and appearance of the area or on the amenity of residents of nearby properties. The need for this type of tourism development has not been met nearby. There is sufficient parking on site and there will be no significantly adverse impacts on the local road network. The drainage arrangements are considered acceptable and there is low risk of flooding. As such, the scheme complies with Policies S1, S9, S14, DM1, DM5, DM22 and DM25 of the Mid Devon Local Plan (2013-2033) and the National Planning Policy Framework.

The Human Rights Act 1998 came into force on 2nd October 2000. It requires all public authorities to act in a way which is compatible with the European Convention on Human Rights. This report has been prepared in light of the Council's obligations under the Act with regard to decisions to be informed by the principles of fair balance and non-discrimination.