

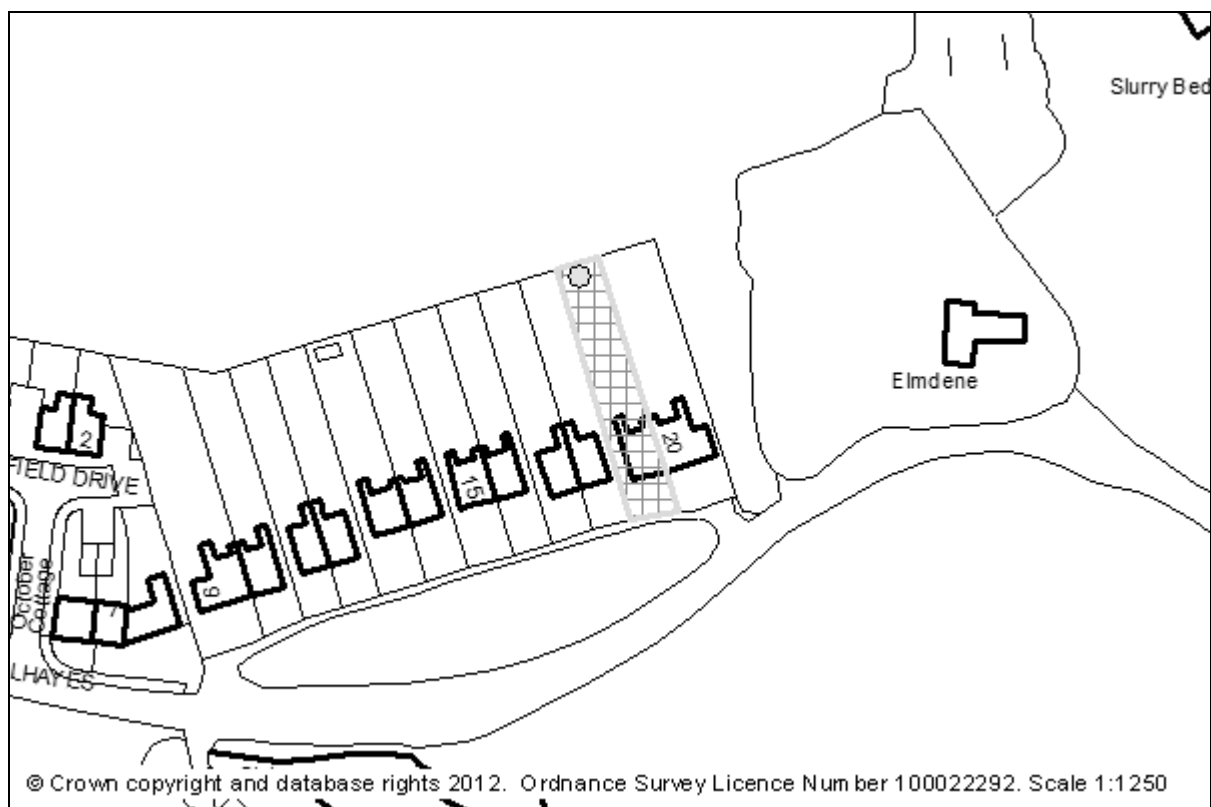
Grid Ref: 113966 : 314195

Applicant: Miss Marie
Ingersoll

Location: 19 Lower
Millhayes
Hemyock
Cullompton
Devon

Proposal: Retention of
timber outbuilding
to be used
ancillary to the
main house,
retention of
decking and
proposed
installation of
water supply and
drainage pipes
underground

Date 2nd October 2020
Valid:



REPORT OF THE HEAD OF PLANNING AND REGENERATION

20/01537/HOUSE - Retention of timber outbuilding to be used ancillary to the main house, retention of decking and proposed installation of water supply and drainage pipes underground - 19 Lower Millhayes, Hemyock, Cullompton

Description of Development:

The applicant seeks planning permission for the retention of timber outbuilding to be used ancillary to the main house, the proposed installation of water supply and drainage pipes underground. The initial submission included the retention of an area of decking, however since Members considered this application the decking has been reduced so that this would now fall within permitted development limits, not exceeding 300mm from original ground level.

A certificate of proposed lawful use application was refused in August 2020 (reference: 20/00887/CLP) due to the proposed installation of water supply and drainage being considered to be excavation works requiring planning permission hence this application has been submitted. The application seeks planning consent for the retention of timber outbuilding to be used ancillary to the main house. Historically (pre-2017) there was an outbuilding on the site which is visible in aerial photographs at the end of the garden.

In 2019 the planning enforcement team were made aware of the site and the outbuilding. This application now seeks to regularise the outbuilding as built on the site with some minor changes including changing a door to an obscure glazed window to serve the shower room/toilet and one new window on the rear to serve the proposed bedroom. The outbuilding measures 4.4m x 7.5m with an additional porch on the front measuring 3.35m x 1.8m. The maximum height of it is 2.5m. It is located 22.4m from the rear of the house.

Reason for Report:

At the meeting on the 10th March 2021, it was resolved that Members were minded to refuse the application and therefore wished to defer the application for consideration of an implications report setting out suggested reasons for refusal and the associated implications.

RECOMMENDATION(S)

Grant permission subject to conditions

Relationship to Corporate Plan:

Environment

- Protecting the natural environment

Financial Implications: An appeal may require the appointment of planning consultants to assist in the defence of the reasons for refusal. The applicant may make an application for costs on any appeal against the Council and such costs claims are made by demonstrating that there has been unreasonable behaviour. That being the case, Members must be able to clearly justify each and every reason for refusal in line with the development plan and all other material considerations.

Legal Implications: The report identifies the risks in proceeding with an appeal based on the reasons given by the Committee on the 10th March 2021 – both in terms of outcome of an appeal and the risk of a costs decision. The Council will still need to prepare draft planning conditions for the appeal.

Risk Assessment:

If Committee decide to refuse the application for reasons that cannot be sustained at appeal there is a risk of a successful appeal costs claim against the Council for reasons of unreasonable behaviour.

REASONS FOR REFUSAL AND IMPLICATIONS:

At the Planning Committee held on the 10th March 2021, Members gave consideration to:

- A condition could be introduced to raise the boundary fencing to a height of 2 metres to increase privacy
- Concerns from Members that the plans in front of them were inaccurate
- Concerns about what the building was to be used for
- If the building had a kitchen
- The difference in permitted development rights for properties within an Area of Outstanding Natural Beauty
- How the use of the building would be monitored
- The views of the objector who felt that the building failed to comply with any of the permitted development rights, the building was not timber and the planning report was a manipulation of policy
- The views of the agent who stated that the outbuilding was not to be used as an independent dwelling or a holiday let and would be used as an ancillary building. There were no current plans to install a kitchen and the application met criteria for policies DM11 and DM27
- The views of the Parish Council who felt that the shed dominated the top of the garden, the installation of a water supply was inappropriate and would encourage more frequent use. Neighbouring properties could be looked into by people using the decking
- The views of the Ward Member who stated that the decking had a negative impact on neighbouring properties, there were a lot of anomalies with the dimensions of the building

- Members views that the building was not compliant with policies DM1, DM11 or DM27
- The building was too far away from the house, on an elevated site and too dominant

Members of Planning Committee resolved that they were minded to refuse the application and therefore wished to defer the application for an implications report to consider the proposed reasons for refusal that of:

The proposed outbuilding and decking in terms of its size, appearance and location on an elevated site is not considered to make a positive contribution to the local character. In addition it is considered to adversely affect the amenity of neighbouring occupiers by virtue of unacceptable overlooking and its overbearing nature. Adequate justification for the proposal has not been provided and the submitted information is unclear. Consequently the proposal is contrary to policy DM1 and DM11 of the Mid Devon Local Plan.

The wording for the reason for refusal

The Committee was minded to refuse the application on the grounds listed above. Set out below is the reason for refusal which would appear on the planning decision notice to address the above issues raised:

1. In the opinion of the Local Authority, the proposed outbuilding and decking in terms of its size, appearance and location on an elevated site is not considered to make a positive contribution to the local character of the area. The development is considered to adversely affect the amenity of neighbouring occupiers by virtue of unacceptable overlooking and its overbearing nature, with inadequate justification provided for the proposed ancillary accommodation on site. The proposal is therefore considered to be contrary to policies DM1 and DM11 of the Mid Devon Local Plan 2013-2033.

The implications of refusing the application

As noted earlier in the report the area of decking has now been reduced so that the decking on site would constitute permitted development falling within Class A, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), not exceeding a height of 300mm when measured from the original ground level. Therefore no enforcement action could be taken to remove this decking structure and a reason for refusal based on the grounds of the decking installed or potential for overlooking from said decking would be deemed to be unreasonable. As such Members are advised that any reason for refusal on this ground would fail and should not be included within any reason for refusal given.

That would then leave the following suggested wording:

1. In the opinion of the Local Authority, the proposed outbuilding in terms of its size, appearance and location on an elevated site is not considered to make a positive contribution to the local character of the area. The development is

considered to adversely affect the amenity of neighbouring occupiers by virtue of unacceptable overlooking and its overbearing nature, with inadequate justification provided for the proposed ancillary accommodation on site. The proposal is therefore considered to be contrary to policies DM1 and DM11 of the Mid Devon Local Plan 2013-2033.

Part of the ground of refusal relates to Members concerns regarding to the visual impact of the building on the character of the area through the size, appearance and position on an elevated site with reference made by that Members felt that the proposal would be contrary to Policies DM1 and DM11.

Policy DM1 (High quality design) states that *'Designs of new development must be of high quality, based upon and demonstrating the following principles:*

- 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'.*

With respect to the criteria outlined above, it would appear that Members are concerned primarily with criterion (a), (c) and (e) of Policy DM1 which focuses on understanding the characteristics of the site and surrounding area and to ensure that development makes a positive contribution to local character and creates visually attractive places taking into account architecture and materials.

Policy DM11 (Residential extensions and ancillary development) states that *'Extensions to existing dwellings and other ancillary development will be permitted provided that they:*

- a) Respect the character, scale, setting and design of existing dwellings;*
- b) Will not result in over-development of the dwelling curtilage; and*

c) Will not have a significantly adverse impact on the living conditions of occupants of neighbouring properties.'

On this matter of the impact on the character of the area, as referred to within the officer report, under permitted development rights in an Area of Outstanding Natural Beauty an outbuilding of 10sqm can be erected in the garden of a dwelling as long as it is less than 20m from the rear of the dwelling and the height could be 4m where located over 2m away from the boundary. This outbuilding amounts to a total of 39.03sqm and is located 22.4m from the back of the house which is the reason planning consent is required for its retention. The outbuilding measures 4.4m in depth x 7.5m wide (across the garden) amounting to 39.03sqm. The overall height of the monopitched building is 2.5m and there is a small porch like structure on the front of the outbuilding which measures an additional 3.35m x 1.8m. The property benefits from a long garden which is considered more than sufficient to accommodate the outbuilding of this size.

The outbuilding which is existing on the site is constructed of timber with a dark stain/paint on it. The building appears as an outbuilding in the rear garden of the property and does not look out of keeping in its scale or appearance with other garden sheds and structures found in gardens in the immediate area. The site is located within the Blackdown Hills Area of Outstanding Natural Beauty. The site is within the village of Hemyock and the impact of the proposal on the AONB is considered to be limited to the site and terrace of houses rather than the further village or AONB setting. The appearance of the outbuilding and decking are typical of many domestic outbuildings and the officer view is that they do not appear out of keeping. As such the proposal is considered to comply with policies DM1, DM11 and DM27 of the Mid Devon Local Plan 2013-33.

In terms of the structure itself, another matter which would need to be considered by Members is that there is aerial photography that shows the building in situ from June 2017. In Members were minded to refuse this application and an enforcement notice served for its removal, it is considered that given the time available to appeal an enforcement notice of one month and taking into consideration the appeal timeframe with the Planning Inspector a period of 4 years is likely to be passed. As such the building will be immune from any enforcement action. Therefore Members will need to consider this point and to whether any refusal should result to the conversion of the structure into ancillary accommodation and the proposed works to the building to allow this to happen.

The outbuilding is to be used ancillary to the main house, there is currently a garden store area which is proposed to become a bedroom and shower room, with proposals to include obscure glazing to the door to provide privacy. In the other area of the structure is a current bedroom which has been used by a member of the family to sleep within. With respect to the current bedroom, the proposal is to change this into a general sitting room and as such a one bedroom annexe would be created with information provided that the mother of the applicant would reside in this building, being able to care for the grandchildren.

As noted in the officer report, if the outbuilding were to be used as a separate dwelling house which was noted as a concern of neighbouring residents, then a full

planning application would be required for that use with further assessment required on whether this would be appropriate. The applicant has confirmed that the outbuilding is used for ancillary living accommodation and the water supply and drainage pipes are proposed so that a small shower room can be installed to serve the outbuilding. A condition is possible to control the use of the outbuilding in order to prevent this from being used, let, sold or otherwise disposed of as a separate unit of living accommodation. This is a standard condition which has been applied to other annexe buildings allowed within the curtilage of residential properties within the district, which are to be occupied by relatives to the occupiers of the main dwelling on site.

Another concern by Members relates to the impact on neighbouring properties amenity.

Officers have visited this site and it is noted that there is intervisibility between gardens due to the slope of the land with the rear gardens higher than the terrace properties. However the decking installed now would be permitted development and as such occupiers of the dwelling could stand in this location and view back toward the rear of neighbouring properties. Therefore this just leaves the matter of the building constructed and whether this would result in significant overlooking to the detriment of amenity currently enjoyed by occupiers of neighbouring property.

As noted earlier, permitted development rights would allow for a building 4m higher with a floor area of 10 square metres in the position of the current outbuilding which could result in a similar outlook. With respect to the two openings, one door is to be obscure glazed which could be conditioned leaving one. The height of the outbuilding is 2.5m which again is not considered to be an overbearing height, especially taking into consideration the distance between the building and the back of properties. The view from officers is that there would not be any significantly adverse overlooking or loss of privacy and whilst the impact on the visual amenity and character of the application site and area in general is subjective, in all likelihood the building is to remain given the length of time the building has been on site becoming immune to enforcement action.

One implication of a reason for refusal on the above grounds is that in the event of an appeal being made, the Planning Inspector even if minded to dismiss the appeal could award a partial award of costs where they believe a party has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense. There are appeal decisions whereby the Inspector has concluded that sufficient evidence has not been provided in light of adopted development plan policies other than beyond very generalised assertions and therefore did not substantiate the reason for refusal and thus put the applicant to the unnecessary expense of preparing grounds of appeal and then final comments to rebut the reason.

Conclusion:

Your officers have concerns that whilst the impact of the building on the character of the site and surrounding area would be a subjective assessment, the reason for refusal as set out above is unlikely to be upheld at appeal. This is due in part to the fact that the single storey building has been in situ for four years and therefore

immune from enforcement action with only the use being a matter for consideration which could be controlled by planning condition. In addition to this, the area of decking has been reduced in line with permitted development rights which exist which address the matter of overlooking and the position of the single storey building being to the rear of the site means that there are limited public vantage points to the building in question and therefore Members should consider these matters carefully. However approval remains the recommendation of officers for the reasons set out in the earlier Officer report to Planning Committee attached.

Contact for any more information

Mr Adrian Devereaux, Area Team Leader
01884 234267

Background Papers

Committee report

File Reference

20/01537/HOUSE

Circulation of the Report

Cllrs Richard Chesterton
Members of Planning Committee

Attach previous Committee report

Original Report from Planning Committee 10th March 21

APPLICATION NO: 20/01537/HOUSE

MEMBER CALL-IN

The application has been called in by Councillor Clist to consider whether the outbuilding is suitably scaled, designed and justified, whether the installation of water supply and drainage is justified and whether the decking has a negative impact on the amenity of neighbouring properties.

RECOMMENDATION

Grant permission subject to conditions

PROPOSED DEVELOPMENT

Retention of timber outbuilding to be used ancillary to the main house, retention of decking and proposed installation of water supply and drainage pipes underground

A certificate of proposed lawful use application was refused in August 2020 (reference: 20/00887/CLP) due to the proposed installation of water supply and drainage being considered to be excavation works requiring planning permission hence this application has been submitted.

The application seeks planning consent for the retention of timber outbuilding to be used ancillary to the main house. Historically (pre-2017) there was an outbuilding on the site which is visible in aerial photographs at the end of the garden however it is unclear the dimensions of previous outbuildings as either no planning consent was required or no planning consent was obtained. The applicant has confirmed that the previous owner of the property remodelled the outbuilding around 2017 which extended the outbuilding. In 2019 the planning enforcement team were made aware of the site and the outbuilding. This application now seeks to regularise the outbuilding as built on the site with some minor changes including changing a door to an obscure glazed window to serve the shower room/toilet and one new window on the rear to serve the proposed bedroom.

The outbuilding measures 4.4m x 7.5m with an additional porch on the front measuring 3.35m x 1.8m. The maximum height of it is 2.5m. It is located 22.4m from the rear of the house. Under permitted development rights in an Area of Outstanding Natural Beauty an outbuilding of 10sqm can be erected in the garden of a dwelling as long as it is less than 20m from the rear of the dwelling. This outbuilding amounts to a total of 39.03sqm and is located 22.4m from the back of the house which is the reason planning consent is required for its retention.

The second element of the application seeks planning consent for the proposed installation of water supply and drainage to the outbuilding used ancillary to the main house (19 Lower Millhayes). The use of the building as a separate dwelling would require planning permission; as would a change of use to allow the building to be rented out and/or advertised as a separate entity such as a holiday let. This is not what the application is proposing and therefore no further consideration of this will be given.

The third element of the application seeks to regularise some decking which has been erected on the site as it is slightly more than permitted development will allow. Under permitted development legislation an area of decking up to 30cm can be installed in a garden. Due to the slope of the garden part of the decking is between 30cm and 45cm in height and therefore this application also seeks permission to retain the decking as built on site.

APPLICANT'S SUPPORTING INFORMATION

Site location plan, existing and proposed plans.

RELEVANT PLANNING HISTORY

05/01183/FULL - REFUSE date 8th August 2005 Erection of two storey extension to rear of property

20/00887/CLP - REFUSE date 19th August 2020 Certificate of lawfulness for the proposed installation of water and drainage to an existing outbuilding in rear garden

DEVELOPMENT PLAN POLICIES

Mid Devon Local Plan Review 2013 – 2033

S13 - Villages

DM1 – High quality design

DM11 – Residential extensions and ancillary development

DM27 – Protected landscapes

CONSULTATIONS

Hemyock Parish Council: 5th November 2020 - The parish council is not content with the application. The facilities are inappropriate for a garden shed, the potential usage is overdevelopment and due to its elevated position overlooks directly into the neighbouring properties resulting in a loss of privacy. This development could encourage more than ancillary accommodation and create a rental opportunity.

8th February 2021 - The parish council is NOT content with the application and concurs with the issues raised in Major Jenkins letter to MDDC dated 14th January, namely: the application contravenes policy with regard to height, location, raised platform and privacy.

Highway Authority: 21.10.20 - No Comments.

Environment Agency: Householder development and alterations within Flood Zone 1 - No EA consultation required.

REPRESENTATIONS

A total of six letters of objection have been received at the time of writing this report. The main material considerations mentioned are summarised below:

- Use of the shed as a separate dwelling;
- Parking provision;
- Queries over need of ancillary accommodation;

- Privacy issues;
- Potential renting out of the shed;
- Decking area.

MATERIAL CONSIDERATIONS AND OBSERVATIONS

The main issues in the determination of this application are:

- 1) Principle of development
 - 2) Use of the outbuilding
 - 3) Visual impact
 - 4) Impact on neighbouring properties amenity
 - 5) Impact on Blackdown Hills AONB designation
- 1) Principle of development

The site is located within the settlement limit of Hemyock which is one of the districts defined settlements set out in the Mid Devon Local Plan 2013-33. Development in village locations is covered by policy S13.

The development proposed is ancillary to the existing residential dwelling and therefore the proposal must be considered against policy DM11 of the Mid Devon Local Plan 2013-3 (residential extensions and ancillary development). Policy DM11 provides in principle policy support for residential extensions and ancillary development where the following set of criteria are met:

- a) Respect the character, scale, setting and design of existing dwellings;
- b) Will not result in over-development of the dwelling curtilage; and
- c) Will not have a significantly adverse impact on the living conditions of occupants of neighbouring properties.

A summary assessment of the application scheme against these criteria is set out below or within sections of the report later identified:

A) See section 3 of the report below.

B) The outbuilding and decking which are in situ and are not proposed to be extended further do not result in the overdevelopment of the dwelling curtilage. The outbuilding measures 4.4m in depth x 7.5m wide (across the garden) amounting to 39.03sqm. The decking measures 6.4m wide (across the garden) x 3.9m deep (extending out from the front of the outbuilding into the garden towards the house) amounting to an area of less than 25sqm. The property benefits from a long garden which is more than sufficient to accommodate the outbuilding and decking. The proposed water supply and drainage will not result in an overdevelopment of the dwelling curtilage as the works will be hidden below ground.

C) See section 4 of the report below.

2) Use of the outbuilding

The outbuilding is to be used ancillary to the main house. If the outbuilding is to be used as a separate dwelling house then a full planning application would be required for that use. The applicant has confirmed that the outbuilding is used for ancillary living accommodation. The water supply and drainage pipes are proposed so that a small shower room can be installed to serve the outbuilding. A condition to control the use of the outbuilding is proposed to be imposed to stop the outbuilding from being used, let, sold or otherwise disposed of as a separate unit of living accommodation.

3) Visual impact

The outbuilding which is existing on the site is constructed of timber with a dark stain/paint on it. The building appears as an outbuilding in the rear garden of the property and does not look out of keeping in its scale or appearance with other garden sheds and structures found in gardens in the immediate area. The outbuilding measures 7.5m wide which is approximately the width of the garden and is 4.4m deep. The overall height of the monopitched building is 2.5m. There is a small porch like structure on the front of the outbuilding which measures an additional 3.35m x 1.8m.

Under permitted development rights in an AONB the applicant could erect an outbuilding which amounts to up to 10sqm within 20m of the rear of the house. The height allowable would be 2.5m if within 2m of the boundary or 4m if more than 2m from the boundary and has a dual pitched roof. Officers have therefore considered what could be done under permitted development rights and would consider that if a 4m high structure in the middle of the garden is allowable, the retention of the outbuilding as has been built is no more harmful than what could be erected on the site.

The decking which is existing on the site is constructed of timber decking found in many other residential gardens. The decking measures 6.4m wide (across the garden) x 3.9m deep (extending out from the front of the outbuilding into the garden towards the house). The section of decking measuring over 30cm in height is approximately 1.5m and so it is only that 1.5m x 6.4m that is being considered as the rest would be permitted development. The appearance of the decking in the residential garden is not out of keeping with the general area and has weathered to blend in well. The decking is low level and therefore can only be seen because of the slope of the gardens which slopes upwards from the houses to the tops of the gardens. The visual appearance of the decking is considered to be acceptable in this garden location and has no wider visual impact beyond the row of houses along Lower Millhayes.

The proposed water supply and drainage would be installed below ground level in the garden and therefore it is not considered that there would be any adverse impact in allowing the proposed pipes.

4) Impact on neighbouring properties amenity.

Officers have visited this site and it was clear that there are no significant adverse impacts resulting from the outbuilding or decking. There is intervisibility between gardens due to the slope of the site and the additional area of garden is not considered to increase the intervisibility to such an extent that the privacy of neighbouring properties is compromised. The general arrangement of having a row of terraced properties with gardens which elevate towards the ends by their very nature means that there is already increased intervisibility between properties. The outbuilding and decking area is not considered to be overbearing on neighbouring properties and due to the distance between the decking at the back of the properties, it is not considered that there is any significantly adverse overlooking or loss of privacy. The decking is a maximum height of 45cm in areas due to the slope of the land but it is not considered that this is an overbearing height when people are stood on it. The height of the outbuilding is 2.5m which again is not considered to be an overbearing height.

5) Impact on Blackdown Hills AONB designation

The site is located within the Blackdown Hills Area of Outstanding Natural Beauty. The site is within the village of Hemyock and the impact of the proposal on the AONB is considered to be limited to the site and terrace of houses rather than the further village or AONB setting. The appearance of the outbuilding and decking are typical of many domestic outbuildings and do not appear out of keeping. As such the proposal is considered to comply with policy DM27 of the Mid Devon Local Plan 2013-33.

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. The accommodation hereby permitted shall be used solely for purposes ancillary to 19 Lower Millhayes only and shall at no time be used, let, sold or otherwise be disposed of as a separate unit of living accommodation.

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. The applicant has been assessed on this basis only and would require planning permission for a separate unit.

REASON FOR/ APPROVAL OF PERMISSION/GRANT OF CONSENT/ REFUSAL

The retention of timber outbuilding to be used ancillary to the main house, retention of decking and proposed installation of water supply and drainage pipes is considered to respect the character, scale, setting and design of the existing dwelling. The application scheme does not result in an overdevelopment of the dwelling curtilage and the proposal will not lead to any significantly adverse impacts on the living conditions of neighbouring residential properties. The application scheme is not considered to have a negative or wider impact on the Blackdown Hills AONB designation. On this basis the application scheme is considered to be in accordance with policies S13, DM1, DM11 and DM27 of the Mid Devon Local Plan 2013-33 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.