

## PLANNING COMMITTEE AGENDA - 8th November 2023

### Applications of a non-delegated nature

<u>Item No.</u>	Description
01.	23/00711/HOUSE - Removal of outbuilding and retention of a replacement garden structure at 7 Silver Street, Thorverton, Exeter. <b>RECOMMENDATION</b> Grant permission subject to conditions.
02.	23/01166/LBC - Listed Building Consent for the removal of outbuilding at 7 Silver Street, Thorverton, Exeter. <b>RECOMMENDATION</b> Grant Listed Building Consent subject to conditions.
03.	23/01255/LBC - Listed Building Consent for repairs to roof at 5 St Paul Street, Tiverton, Devon. <b>RECOMMENDATION</b> Grant Listed Building Consent subject to conditions.
04.	22/00907/FULL - Retention of disused quarry for use as two firing ranges at Devon & Cornwall Constabulary, Pondground Quarry, Holcombe Rogus. <b>RECOMMENDATION</b> Grant permission subject to conditions.

Application No. 23/00711/HOUSE

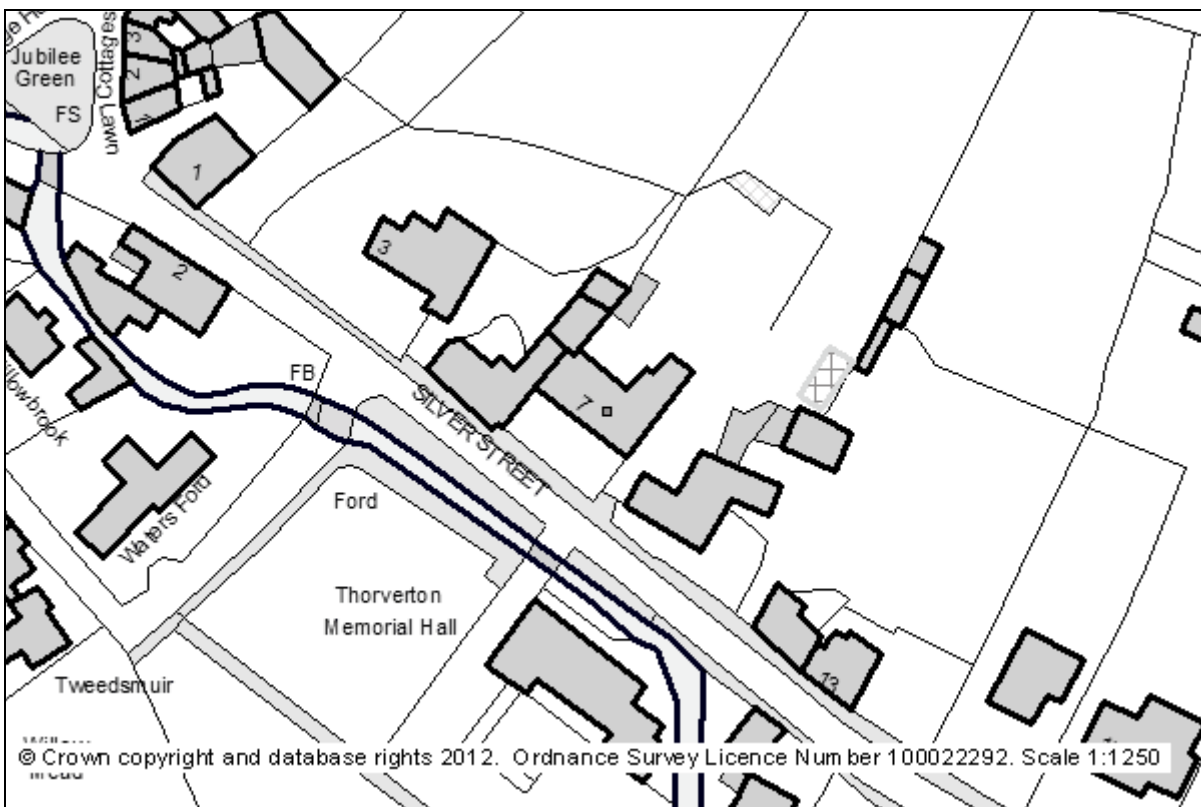
Grid Ref: 292698 : 102066

Applicant: Mr Rhys Roberts

Location: 7 Silver Street  
Thorverton  
Exeter  
Devon

Proposal: Removal of outbuilding and retention of a replacement garden structure

Date Valid: 5th May 2023



## **APPLICATION NO: 23/00711/HOUSE**

### **REASON FOR REFERRAL TO COMMITTEE**

This application is required to be considered by the Planning Committee, in line with the Council's adopted Scheme of Delegation, as the applicant is an Elected Member within the District.

### **RECOMMENDATION**

Grant permission subject to conditions.

### **PROPOSED DEVELOPMENT**

The development relates to a residential property at 7 Silver Street, Thorverton. The site is located within the Thorverton Conservation Area, and within the defined settlement boundary. It is noted that Silver Street and part of the front garden to 7 Silver Street falls within flood zone 3; however the site of the proposed development to the rear falls within flood zone 1, which represents the lowest probability of flooding. The property benefits from a generous residential curtilage, and has neighbouring properties to the north-west and south-east, both of which are also listed. The property itself is Grade II Listed. The listing describes the site as:

*“House. C18 with some late C19 remodelling but possibly a thorough refashioning of an earlier building on the site. Colourwashed rendered cob on stone rubble footings, gable end of rear wing timber framed with brick infill ; slate roof, gabled at ends and gabled at end of wing ; end stacks with brick shafts, right end stack projecting, large projecting lateral stack to rear wing. Plan: Single depth main range, 3 rooms wide with a central entrance into an entrance hall with the principal stair in a gabled turret to the rear of the entrance hall, principal rooms to left and right. Rear right kitchen wing at right angles to the main range heated by a lateral stack. The main range has been extended to the rear bringing the rear elevation flush with the stair turret: this extension has provided a service stair adjacent to the main stair and a glazed late C19 garden room under a catslide roof to rear left. Exterior 2 storeys. Symmetrical bay 7 front with deep eaves carried on moulded brackets above coving. Wide central C20 porch with Doric columns and a cornice; panelled front door (top panels glazed) with an eared architrave. Fenestration of 12-pane sashes. The rear elevation has a gabled stair turret with a large rectangular stair window with glazing bars. The late C19 garden room to the right of the turret is glazed to the garden. The lateral stack on the right return of the kitchen wing is large and may date from a C17 building phase. Interior C18 joinery survives, including shutters and doors. Pretty principal stair with slender turned balusters and a square newel post. Pitched stone flooring survives below the boarded floor of parts of the kitchen wing. Roof kitchen wing only inspected : pegged x apex collar rafter roof trusses of an C18 date ; similar roof trusses said to survive in main range. Thorverton was formerly part of the Pynes Estate and is referred to as Pynes Tenement before the name changed to Thorverton. A substantial gentleman's house in Silver Street, slightly set back from the road and forming a good group with other detached houses.”*

This application seeks permission for the removal of outbuilding and retention of a replacement garden structure to the rear of the property. A subsequent Listed Building Consent application has also been submitted, reference 23/01166/LBC, for the removal of the existing structure as this abutted the listed curtilage wall, and this runs alongside this application and is also before members.

The existing garden structure was previously located within the rear gardens of the property, and this was used for the purpose of storing garden machinery and other domestic items. It is noted

that a structure to this area of the site can be found on OS maps dating from 1889; however taking into account the most recent photographs provided of the structure, it appears that this building has undergone ad-hoc repairs and alterations over time, with numerous building materials found within the structures fabric.

The submitted Planning Statement states that this structure suffered severe storm damage which caused the structure to collapse, following which the applicant sought to replace this as it was no longer fit for purpose of structurally sound for continued use. Further information has since been submitted at the request of the Planning Officer, detailing that the damage occurred in October 2021. Photographs of the damaged structure, and the subsequent replacement structure, have also been submitted.

The replacement structure is located on the same site, to the rear of 7 Silver Street against the boundary with the listed building to the east. The building measures 4.68m x 9.28m, covering an area of approximately 43.43 sqm. The building extends approximately 2.2m to the eaves and 3.425m to the highest part of the dual-pitched roof. The building is clad in vertical timber cladding, with a corrugated steel roof. To the north-west elevation, timber double doors and a single timber door can be found, along with a timber framed window. A timber framed window can also be found to the north-east elevation. The building has black plastic rainwater goods, which discharge to a water butt. Internally, the building is separated into two sections. The building is required for the secure and watertight storage of garden tools and machinery, and other domestic items.

It is noted that this application was submitted on the 4th May 2023 and validated on the 5th May 2023. The original application form stated that the applicant was not an authority employee or member, which was correct at the time of the submission. Elections took place on the 4th May within the district, when the outcome of the candidates standing were not known. However, the Case Officer received an email on 15th May from the applicant's agent, stating that since submitting the above application, that the applicant had been duly elected to the position of District Councillor for Cadbury and that this therefore made the information submitted at the time no longer accurate. An amended copy of question 9 of the application form was submitted following this, reflecting this change. Following receipt of this email, the agent was notified that the application would therefore now need to go before the Planning Committee, as a planning application cannot be determined under delegated powers if submitted by an Elected Member.

Furthermore, it is noted that application description has been amended by the case officer in order for it to accurately reflect the proposed development. The intent of the proposal is clearly outlined within the supporting submitted as part of this application. As such, this amendment is not considered to prejudice any relevant parties.

## **APPLICANT'S SUPPORTING INFORMATION**

- Application form
- Amendment to question 9 of application form
- Site location and block plan
- Proposed plans and elevations
- Planning statement
- Heritage statement
- Wildlife trigger list
- Confirmation works carried out re Wildlife Survey
- Supporting photographs
- Maintenance schedule
- Email re replacement rainwater goods

## **RELEVANT PLANNING HISTORY**

97/00624/FULL - PERMIT date 16th June 1997

Application for consent to carry out works to a Red Oak tree in a Conservaton Area

04/01590/FULL - PERMIT date 11th October 2004

Erection of a single storey extension and replacement garage

04/01598/LBC - PERMIT date 11th October 2004

Listed Building Consent for the erection of a single storey extension and replacement garage

04/02431/CAT - PERMIT date 20th January 2005

Notification of intention to prune 1 no Hornbeam Tree within a Conservation Area

16/01828/CAT - NOBJ date 6th January 2017

Notification of intention to fell 1 Beech and 1 Pear tree within the Conservation Area

17/00182/CAT - NOBJ date 8th March 2017

Notification of intention to reduce limbs of 1 Oak tree by 2m and fell 2 Arcacia trees within the Conservation Area

23/01166/LBC - PCO date Listed Building Consent for a replacement garden structure

## **DEVELOPMENT PLAN POLICIES**

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

Policy S1 - Sustainable development priorities

Policy S9 - Environment

Policy S13 - Village

Policy DM1 - High quality design

Policy DM5 - Parking

Policy DM11 - Residential extensions and ancillary development

Policy DM25 - Development affecting heritage assets

## **CONSULTATIONS**

### **Thorverton Parish Council**

Thorverton Parish Council neither objects to nor supports the Planning Application in this instance, but the Council does value the existence, quality and integrity of the Conservation area. The Council wishes to support the MDDC Planners' process of evaluating this retrospective planning application.

### **Conservation Officer**

In light of the 2004 permission (04/01598/LBC), and its partial implementation through the removal of the old garage and construction of the rear extension:

The design is unsympathetic, the structure overlarge and dominant, and the landscaping rather domestic for what is an ancillary shed. However, it is similar to what was consented in 2004. It is highly regrettable that the internal cob wall, that was to be retained as part of the 2004 consent,

has been lost. Had the owner contacted the council at the time and not demolished the building in its entirety, this may have been saved and protected.

I have concerns about the maintenance of the historic cob wall to the east of the new garage. The gap between the garage and the wall is insufficient to allow decent maintenance, including repairs, checking stability, even limewashing to provide a small amount of weathering. The existing RWG on the garage appear to be plastic, and are covered, preventing water entering them, which is preventing water being directed away from the wall at present. I suggest a maintenance schedule be drawn up and adhered to, which would ensure its longevity.

I suggest that the PD rights be removed for it as well to prevent it being leased, let, or rented out as a structure unconnected to the main house. I do not anticipate that any increase in size would be permissible as this is already a large structure. No increase in domestication should be permitted either, such as the installation of a woodburning stove, etc. This should be kept as simple as possible to emulate the historic structure that was previously in the location.

### **Highway Authority**

The County Highway Authority have no comments to make on this application

### **Environment Agency**

Householder development - No EA consultation required

## **REPRESENTATIONS**

This planning application has been advertised by means of a site notice, neighbour notification letters and by advertising in a local newspaper in accordance with the legal requirements for publicity on planning applications, and the Council's Adopted Statement of Community Involvement October 2016.

At the time of writing this report, general comments/questions have been asked and 3 objection comments have been received, making the following summarised points:

### **Summarised General Comment(s):**

- Anomalies regarding this application highlighted and clarification sought regarding current MDDC planning processes. Comments also made regarding mismanagement associated with this application
- Building a structure without receiving prior planning approval on the assumption that a retrospective application will make the issue go away, (if it comes to light).
- A new ward councillor apparently not pointing out this new responsibility to the planning department in order to ensure it is placed in front of the planning committee for deliberation in the normal manner
- The building concerned is a grade 2 listed property and it appears that the agent may have also neglected to inform the applicant (and / or the LPA?) of the extra responsibilities associated with this new status as the portal confirms the normal professional consultation or advice for a building of this status does not appear to have been sort.

- Queries made regarding the enforcement search tab on the portal.
- Planning works well when the LPA, applicant, agent, consultees and the public are all communicating in an open and transparent manner via the planning officer and the portal, please explain why this has not happened in this application. I have made this neutral comment as my issue is not concerned so much with associated planning policy, my issue is with the obviously low levels of good process management, transparency and governance demonstrated by the MDDC planning department. We now have a new council who suggest they are keen to increase transparency. In turn, I am now also keen to see how this application proceeds.

#### Summarised Objection Comment(s):

- This planning application should be taken to a Planning Committee for a decision due to the applicant being a District Councillor. Under the MDDC Scheme of Delegated Powers this matter should not be delegated, and the Council has a duty to maintain transparency and impartiality in the decision making process.
- Reference made to an application that has previously been refused at a nearby property. The decision notice for this application states that the development was "*considered to harm the setting of the heritage asset and the character of the Thorverton Conservation Area. No clear and convincing justification has been made for the development in this location, and the proposal demonstrates no public benefit. The proposal is therefore contrary to policies DM1 and DM25 of the Mid Devon Local Plan 2013-2033 and the National Planning Policy Framework*".
- Comparisons made to a similar building refused within a similar neighbouring site. This application was refused as being harmful to the heritage asset whilst providing no or public benefit to outweigh the harm. The public benefit was the maintenance of the historic orchard, however, MDDC did not accept this view. Similarly, there is no public benefit to outweigh the harm in the Councillors retrospective application.
- I suggest that proper independent consultation by your experts should be made. The Councillor should remove his intrusive building entirely and a financial penalty applied.
- No application for Listed Building Consent has been made to accompany this planning application. Officer note – there is an application that is also before members.
- The submitted Planning and Heritage Statements heavily rely on a previously approved planning application from 2004 for the construction of a replacement garage in the same location. However, the eight Development Plan Policies under which that application was assessed are outdated, with the adoption of several new Local Plans and the National Planning Policy Framework (NPPF) since then. Consequently, the 2004 application cannot be utilized to demonstrate that the principle of development and impact on heritage assets has already been considered and accepted, as claimed in the application.
- The application does not include a habitat survey (bats and birds) which is a local requirement prior to the demolition of a building or works to a roof space. This is because the outbuilding and any existing habitat was demolished without consent. Similarly no archaeological assessment process has taken place. Most residents in Thorverton who have applied for planning permission and listed building consent are subject to these processes and costly surveys.

- Under the Code of Conduct for Councillors, there is an obligation to act in accordance with the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. As an elected councillor, the applicant must uphold these principles and ensure democratic accountability and planning transparency are maintained at all times. It is essential to the integrity of the planning system that a District Councillor is held to the same standards that every other resident is subject to under the planning process.
- Following the Conservation Officer's comments on applications 23/00711/HOUSE and 23/01166/LBC the success of both these applications is contingent on the partial implementation of the 2004 permission (04/01598/LBC) through the removal of the old garage and construction of the rear extension. Otherwise, according to the Conservation Officer "The design is unsympathetic, the structure overlarge and dominant, and the landscaping rather domestic for what is an ancillary shed....It is highly regrettable that the internal cob wall, that was to be retained as part of the 2004 consent, has been lost. Had the owner contacted the council at the time and not demolished the building in its entirety, this may have been saved and protected. "Of the works permitted in 2004, only the demolition of the existing garage has taken place. The construction of the rear extension has not been implemented. This is evidenced by the "As Existing" plans and elevations dated May 2003 compared to the current plans and elevations. The only difference between them being the installation of a rooflight on the East Elevation and french doors on the North Elevation. Neither of these alterations benefit from permission under the 2004 application and should be further investigated as breaches of listed building consent that should be regularised.

The 2004 permission is subject to ten conditions, five of which are pre-commencement conditions (conditions 3, 4, 5, 8 and 9). None of these conditions have been discharged and all relate to the preservation of the character and architectural integrity of the Listed Building. Condition 3 requires materials to be submitted "Before the commencement of any works hereby permitted.." The reason for this condition is given as "To protect the character of the Listed Building and the visual qualities of the Conservation Area". These conditions all go to the heart of the permission. Condition 10 refers to the retention of the cob wall. According to the Conservation Officer, this condition has been breached. Given that the 2004 permission has expired, and five pre-commencement conditions that go to the heart of the permission have not been complied with and one condition has been breached, on what basis does the LPA deem the permission to be lawful and extant?

Without the benefit of partial implementation of the 2004 permission, no policy reason has been posited for the approval of this retrospective application by either the applicant (the local District Councillor) or the LPA.

- The application should be assessed under current policy (DM1 High Quality Design and DM25 Development Affecting Heritage Assets) and take into account the Conservation Officer's comments that "The design is unsympathetic, the structure overlarge and dominant, and the landscaping rather domestic for what is an ancillary shed."
- The applicant has not consulted the historic environment records, if they had, they would have shown the demolished building on maps dating back to 1889. The demolished building was clearly of historical significance and should be assessed as such, including any contribution it made to its setting.



- In email correspondence (3rd July 2023), the applicant has claimed the heritage asset was damaged in storms in October 2021 and provided photos of the damage after this date. Materials were delivered and work commenced on the construction of the new outbuilding on 18th October 2021 (photographic evidence submitted). Even if the alleged storms occurred on 1st October, this leaves only 10 working days to take photos of the damaged structure in case of enforcement action, design the proposed structure, commission a builder and arrange for the supply and delivery of materials and workmen. If it cannot be evidenced that the demolished heritage asset was damaged by storms in Oct 2021, it should be assumed that the damage was due to neglect and therefore the deteriorated state should not be taken into consideration in determining the application.
- The submitted Location Plan does not show the land that was used to access the site from the public highway, or the extent of land owned by the District Councillor that is adjacent to the property. An updated Location Plan that accurately describes the application should be requested.

*Please note that the full comments received can be found on the public planning file.*

## **MATERIAL CONSIDERATIONS AND OBSERVATIONS**

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

- 1. Policy, procedure and principle of development**
- 2. Design and neighbourhood amenity**
- 3. Impact upon heritage assets**
- 4. Ecology**
- 5. Parking**
- 6. Flooding**
- 7. Other**
- 8. Conclusion**

### **1. Policy, Procedure and Principle of development**

- 1.1.** 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], is noted as one such material consideration. The National Planning Policy Framework outlines three dependant objectives of sustainable development; economic, social and environmental.
- 1.2.** In 2020 the Council adopted the Mid Devon Local Plan 2013-2033 and this takes priority in decision making. The site is in the Thorverton settlement boundary so policy S13 (villages) applies which permits appropriately scaled residential development such as extensions, outbuildings and annexes. More specifically, DM11 sets out the requirements of residential development which are assessed in full in Section 2 of this report. Policy DM25 relates to development affecting heritage assets, and this will be discussed within section 3.

### **2. Design and neighbourhood amenity**

- 2.1.** Policy DM1 requires development to be of a high quality design, showing a clear understanding of the characteristics of the site, its wider context and the surrounding area.

Policy DM11 of the Mid Devon Local Plan deals with residential extensions and other ancillary development, more specifically it supports this development subject to the following criteria:

- a) Respect the character, scale, setting and design of existing dwelling;
- b) Will not result in an 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 against these criteria is set out below:

**2.3** The proposal seeks permission for the retention of a replacement garden structure within the domestic curtilage of 7 Silver Street. An existing garden structure was previously located within the rear garden of the property, and this was used for the purpose of storing garden machinery and other domestic items. It is noted that a structure to this area of the site can be found on OS maps dating from 1889; however taking into account the most recent photographs provided of the structure, it appears that this building has been repaired and altered over time, with numerous building materials found within the structure's fabric.

The replacement structure is located on the same site, to the north-east of the dwelling within the rear garden, against the boundary with the listed building to the east. The building measures 4.68m x 9.28m, covering an area of approximately 43.43 sqm. The building extends approximately 2.2m to the eaves and 3.425m to the highest part of the dual-pitched roof. The building is clad in vertical timber cladding, with a corrugated steel roof. To the north-west elevation, timber double doors and a single timber door can be found, along with a timber framed window. A timber framed window can also be found to the north-east elevation. The building has black plastic rainwater goods, which discharge to a water butt. Internally, the building is separated into two sections. The building is required for the secure and watertight storage of garden tools and machinery, and other domestic items. Taking into account the scale of the generous domestic curtilage to the rear and the building it replaces, the scale of the proposed building is considered acceptable to provide sufficient storage for equipment and machinery in relation to the maintenance of the garden, and for other domestic storage. Whilst concerns have been raised regarding the materials used, the materials are not considered to be uncommon in regards to their use for a garden storage structure. It is noted that the bulk of the building is not readily visible from public vantages outside of the site.

Whilst the Conservation Officer has commented that the design is unsympathetic and dominant, it is however similar to what was consented in 2004. This 2004 permission established that the principle of removing the existing structure, and that replacing it with a large 3 bay garage was acceptable. As such whilst this proposal was not implemented, it is a material consideration that the removal of the existing structure on site and its replacement with a timber clad garage/storage building to this area of the rear curtilage was considered permissible, and this must be taken into account. The design of the building allows for a functional replacement building of a smaller scale to the one previously permitted. It is considered that the principle of replacing the structure has been established, and the proposed building would result in a smaller structure that would result in no more harm to the character of the site when compared to the previously approved scheme.

**2.4** The property benefits from a reasonable garden curtilage and taking into account its scale the proposed building does not significantly impact upon this. There is ample space remaining for the enjoyment of current and future occupiers and as such there are no concerns relating to over-development of property curtilage and conformity with criterion b) of Policy DM11 can be demonstrated.

**2.5** In terms of overshadowing and overbearing impacts, the distance to the adjoining neighbours has been considered. Whilst the building is located in close proximity to the south-eastern boundary, the large listed boundary wall extends beyond the eaves height of the building. Taking into account the use of the building, overall there are not considered to be any significant adverse impacts on the amenity of residents of nearby properties.

### **3. Impact upon heritage assets**

**3.1** Policy DM25 relates to development affecting heritage assets, stating that heritage assets and their settings are an irreplaceable resource. As such we must apply a presumption in favour of preserving or enhancing all designated heritage assets and their settings, and require development proposals likely to affect the significance of heritage assets, including new buildings, alterations, extensions, changes of use and demolitions, to consider their significance, character, setting (including views to or from), appearance, design, layout and local distinctiveness, and the opportunities to enhance them.

**3.2** In coming to this decision the council must be mindful of the duty as set out in section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the listed building, its setting and features of special architectural or historic interest which it possesses, and have given it considerable importance and weight in the planning balance.

**3.3** A Heritage Statement has been submitted in support of this application. This identifies the affected heritage asset on site and neighbouring heritage assets, and considers the implication of the development on their significance. This assessment is considered to be proportionate to the impacts on the heritage assets at this domestic site level.

**3.4** The Local Planning Authorities specialist Conservation Officer has been consulted on this proposal, and has visited the site as part of their consideration. Following this and further consideration, formal comments have been made and these can be found in full within the 'Consultations' section of this report.

**3.5** The existing garden structure was previously used for the purpose of storing garden machinery and other domestic items. It is noted that a structure to this area of the site can be found on OS maps dating from 1889; however taking into account the most recent photographs provided of the structure, it appears that this building has undergone ad-hoc repairs and alterations over time, with numerous building materials found within the structures fabric. The submitted Planning Statement states that this structure suffered severe storm damage which caused the structure to collapse, following which the applicant sought to replace this as it was no longer fit for purpose of structurally sound for continued use. Further information has since been submitted at the request of the Planning Officer, detailing that the damage occurred in October 2021. Photographs of the damaged structure, and the subsequent replacement structure, have also been submitted. Taking

into account the photographs of the condition of this structure, it is likely that a repair would have been difficult to incorporate into the new structure. Whilst it is regrettable that this has been lost, taking into account the previous permission that established the principle of its demolition was acceptable, and the damage that occurred in 2021, the removal of this structure is deemed acceptable.

**3.6** Within the Conservation Officers comments, whilst it is considered that the design is unsympathetic and the structure overlarge and dominant and that had the LPA been consulted on the replacement structure a more sympathetic design could have been achieved, it is noted that permission was granted in 2004 (04/01590/FULL & 04/01598/LBC) in part for a replacement garage on the same site, following demolition of the existing structure. Following receipt of these comments, additional concerns have been raised within the received representations regarding whether these previous permissions were lawfully implemented, taking into account the work carried out in relation to these permissions and the conditions applied to these decisions. The Local Planning Authority have considered these comments, and it is accepted that as the pre-commencement conditions were not discharged at the time, these permissions cannot be considered to have lawfully been implemented. Notwithstanding this, it is a material consideration that the removal of this structure and its replacement was previously considered acceptable by the Local Planning Authority. What one must assess is whether there are benefits arising from the subject proposal that outweigh any identified harm.

**3.7** Within the received representations, it has been highlighted that the 2004 permission was assessed under Development Plan Policies which are now outdated; consequently the 2004 application cannot be utilized to demonstrate that the principle of development and impact on heritage assets has already been considered and accepted. These outdated policies have been replaced by new policies within the new Mid Devon Local Plan 2013 – 2033. The most relevant of which is Policy DM25, which relates to development affecting heritage assets including Listed Buildings and Conservation Areas. Policies DM1 and more specifically DM11 for residential development, relates to building design. It is considered that the replacement structure approved in 2004 would still be permissible under the current local plan; taking into account the condition of this structure, as evidenced in the additional photographs submitted, it is likely that a repair would have been difficult to incorporate into a new structure and as such its replacement would be acceptable. The garage approved in 2004 sought to provide a structure for domestic purposes incidental to and in connection with the use of the site as a single dwellinghouse, which would be sited where the lean-to building was located, however on a slightly larger footprint. A new structure in this location would not be readily visible, and the use of timber cladding as a key external material would still be considered acceptable for a domestic outbuilding in this location. As such, the 2004 permission would still be considered to be permissible under the new local plan.

**3.8** Taking into account the previous permission on site, the acceptance of this scheme must be given weight when considering the impact of the proposed scheme on the heritage assets, and whether the structure in place would be more harmful than the one previously approved. Although the proposed building is of a slightly different design to the one approved, the scale of the approved scheme was larger than the scheme before us. The approved garage extended to approximately 57.2sqm in footprint, with the now proposed replacement structure covering an area of 43.4sqm. Both the previously approved garage and the replacement structure before us featured timber cladding to the exterior walling, although the approved building featured a

traditional dual-pitched slate roof. The approved garage extended to approximately 4.1m across the length of the ridge, compared with the overall height of 3.425m of the proposed building. This results in a building that projects far less above the height of the boundary wall than the approved garage. On balance, whilst it is accepted that the proposal is of a domestic scale that does not provide a wider public benefit, it is considered that the principle of replacing the structure has been established, and the proposed building would result in a smaller structure that would result in no more harm to the heritage assets when compared to the previously approved scheme. The case for harm to the Listed Building needs to be considered in context, and in the planning balance the heritage benefits of the scheme must be taking into consideration and weighed against any harm. These heritage benefits are discussed in the following paragraph.

**3.9** It is considered that whilst the removal of the structure directly from listed curtilage wall will remove some protection offered by the former structure, the new siting of the replacement structure off of this will result in a heritage benefit to the heritage asset, as this will allow for access behind the structure to inspect and maintain the listed boundary wall. Following receipt of the Conservation Officers comments, a maintenance schedule relating to the ongoing care and works applicable to the cob boundary wall has been submitted. An annual inspection of the integrity of the wall will take place, with proper assessment of cracks and subsequent works where required. Frequent inspections will be undertaken and removal of debris from rainwater goods associated with the gardens structure, to prevent these becoming blocked and resulting in water overflowing and impacting upon the wall. Debris between the structure and the wall will be monitored and removed, and limewash or similar applied to the wall when necessary. Works to the wall will be undertaken by local stonemasons who look after the cob walls surrounding the property. The Maintenance Schedule has been reviewed and agreed by the Conservation Officer, and it will be conditioned that the wall is maintained in perpetuity in accordance with these details. This is considered a benefit of substantial weight as it will allow maintenance and care of the heritage asset. Furthermore, it has been noted by the Conservation Officer that the section of cob wall adjacent to the south-western gable end of the replacement structure has suffered from damage caused by rats burrowing holes into the cob wall. Whilst it is not uncommon for cob walls to suffer from this in countryside areas, the access to this wall now created by the siting of the replacement building off of it presents the opportunity to sensitively infill and repair these holes, and improve the health and structure of the listed wall. As such, a schedule of works will be required via condition relating to the repair of this area of the wall in order to secure a further heritage benefit to the heritage assets on site.

**3.10** The Conservation Officers comments do raise concerns regarding the current rainwater goods installed on the building. The existing rainwater goods on the garage appear to be plastic, and are covered, preventing water entering them, which is preventing water being directed away from the wall at present. It has been agreed in writing that the rainwater goods to the building, excluding the plastic rainwater butt, will be replaced with black metal rainwater goods. This will be secured via condition, to ensure appropriate final appearance and design that is more in keeping with the setting, and to ensure that rainwater is directed away from the cob wall to ensure its long term protection. The Conservation Officer is content with this condition, and will be consulted when the details required by this condition are submitted.

**3.11** Taking into account the damage to the existing structure and the material consideration of the 2004 permission, as well as the heritage benefits through the alterations to the rainwater goods

and the benefit to the curtilage boundary wall, the securement of the maintenance schedule for this listed cob wall, and further repairs to damaged sections of this wall carried out, overall it is considered that any harm is outweighed by the benefits of the proposal and is supported by the Conservation Officer and would therefore be acceptable in relation to Policy DM25.

**3.12** The site also falls within the Thorverton Conservation Area, and as such the impact of the development on this must also be considered. Taking into account the characteristics of the site and the buildings siting to the north-east of the dwelling within the rear garden, where the site of the building is not readily visible from public vantages within the Conservation Area, the proposal is not considered to impact upon the setting or significance of the wider Conservation Area.

**3.13** Reference has been made within the received representations, regarding a building of a similar design that was refused to the rear of the neighbouring property, Pynes (20/01890/FULL). Whilst this is noted, every application is determined on its own merits. These two applications are not considered to be directly comparable; the refused scheme related to agricultural development outside of the domestic curtilage of the property, where a significant length of access track and hardstanding were also proposed to be retained. In comparison, the scheme before us relates to development taking place in a contained site, with the building sitting within the domestic curtilage of the residential property at 7 Silver Street where the building is a replacement of an existing structure on site.

#### **4. Ecology**

**4.1** Policy S9 requires that development will sustain the distinctive quality, character and diversity of Mid Devon's environmental assets and minimise the impact of development on climate change. The details within the submission confirm that the existing building has already been demolished and its replacement constructed. As such whilst a wildlife survey would usually be requested for works relating to the demolition of a building, the works have been undertaken and therefore it would not be possible to obtain this information now.

**4.2** In order to provide a biodiversity enhancement at the site in line with Policy S9, the applicant has agreed to provide enhancements on site in the form of a bird and a bat box. Details of these will be secured via condition, and a timeline for the submission of these details and their subsequent implementation will be set out within this condition.

#### **5. Parking**

**5.1** Policy DM5 of the Local Plan required two parking space per residential development. This proposal is for the addition of a replacement structure incidental to the use of the dwellinghouse within the domestic curtilage, and therefore the requirement for parking is not increased. The existing parking area is not detracted from and therefore the scheme is in accordance with DM5.

#### **6. Flooding**

**6.1** In assessing the flood risk, it is noted that Silver Street and part of the front garden to 7 Silver Street falls within flood zone 3; however the site of the proposed development to the rear falls within flood zone 1, which represents the lowest probability of flooding. Rainwater goods are fitted to the building and these discharge to a water butt alongside. There are therefore no concerns regarding any potential increased surface water run-off or impact on flooding.

## **7. Other Matters**

**7.1** The submitted Site Location Plan outlines the area comprising the development in red, with other land within the applicants ownership identified in blue. Concerns have been raised that the submitted plan does not show the land that was used to access the site from the public highway, or the extent of land owned by the District Councillor that is adjacent to the property, and that an updated Location Plan that accurately describes the application should be requested. An updated location plan identifying the additional land has been requested and this has been identified with an amended blue edge on the updated Site Location Plan. It is not considered necessary to request an amended red edge, with the development itself not requiring access to the highway or identifying this within the application description.

## **8. Conclusion**

**8.1** The proposal is for the removal of outbuilding and retention of a replacement garden structure to the rear garden of 7 Silver Street, Thorverton. This is permissible under policies S13, DM1, DM11 and DM25 of the Local Plan and the principle of development has been established. The appearance, design and scale of the building has been considered against policy DM11, and on balance this is considered acceptable taking into account the sites generous curtilage and the scale and design of the building previously approved in 2004. It is not considered that the proposal will have a significant adverse impact on the residential amenity of residents of neighbouring properties. Taking into account the damage to the existing structure and the material consideration of the 2004 permission, it is considered that the proposal would result in no more harm to the heritage asset when compared to the previously approved scheme and most importantly, when considering the heritage benefits secured to the listed cob wall by virtue of this approval. Consideration has also been given to the other material considerations such as ecology and flood risk. Taking all of the above into account, the scheme is considered acceptable.

## **CONDITIONS**

1. The development shall be taken to have commenced on the 5th of May 2023, the date the application was validated 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.
3. The building hereby permitted shall be used only for private domestic purposes incidental to and in connection with the use of the site as a dwellinghouse, hereby referred to as '7 Silver Street', and shall not be used, let or otherwise disposed of for any other purpose.
4. Within 1 month of the date of this decision, design details of replacement black metal guttering, down pipes, other rainwater goods, shall be submitted to the Local Planning Authority for their written approval. These shall be provided and installed on the development hereby approved in accordance with the approved details, within 3 months of their approval and retained as such thereafter.
5. Within 1 month of the date of this decision full details of proposed biodiversity enhancement measures in the form of bird and bat boxes to be installed on site shall be

submitted to the Local Planning Authority for their written approval. These enhancements shall be provided in accordance with the approved details within 3 months of their approval and retained as such thereafter.

## **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.
3. To safeguard the amenity of occupiers of the existing and neighbouring dwellings in accordance with the requirements of DM11 of the Mid Devon Local Plan 2013-2033.
4. To safeguard the character and appearance and in the interests of the special architectural and historic interests of the listed building, in accordance with the provisions of the National Planning Policy Framework and Policy DM25 of the Mid Devon Local Plan 2013-2033.
5. In the interests of biodiversity in accordance with Policies S1 and DM1 of the Mid Devon Local Plan 2013-2033 and government advice in the National Planning Policy Framework.

## **INFORMATIVES**

In accordance with paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and pro-active way with the Applicant and has negotiated amendments to the application to enable the grant of planning permission.

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.

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.

## **REASON FOR APPROVAL OF PERMISSION**

The application scheme for the removal of outbuilding and retention of a replacement garden structure at 7 Silver Street, Thorverton, Exeter, Devon, EX5 5LT is considered on balance to be acceptable in policy terms. The overall scale of the proposed structure is acceptable in relation to the scale of the domestic curtilage, and it will not result in an overdevelopment of the site. On balance, taking into account the previous approval for a triple garage on the site, the design and proposed materials are considered acceptable. It is considered that there will be no significant adverse impacts on the amenity of residents of nearby properties. Taking into account the damage



to the existing structure and the material consideration of the 2004 permission, it is considered that the proposal would result in no more harm to the heritage asset when compared to this approved scheme and that a heritage benefit to the listed boundary wall has been demonstrated by virtue of the structures siting away from this heritage asset and the securement of conditions for the repair and maintenance of this listed boundary wall. The proposed building is of a smaller scale and features a similar palette of materials to that of the development previously approved. As such, on balance the scheme is considered to accord with Policies S1, S9, S13, DM1, DM5, DM11 and DM25 of the Mid Devon Local Plan (2013-2033) and guidance in the National Planning Policy Framework.

Application No. 23/01166/LBC

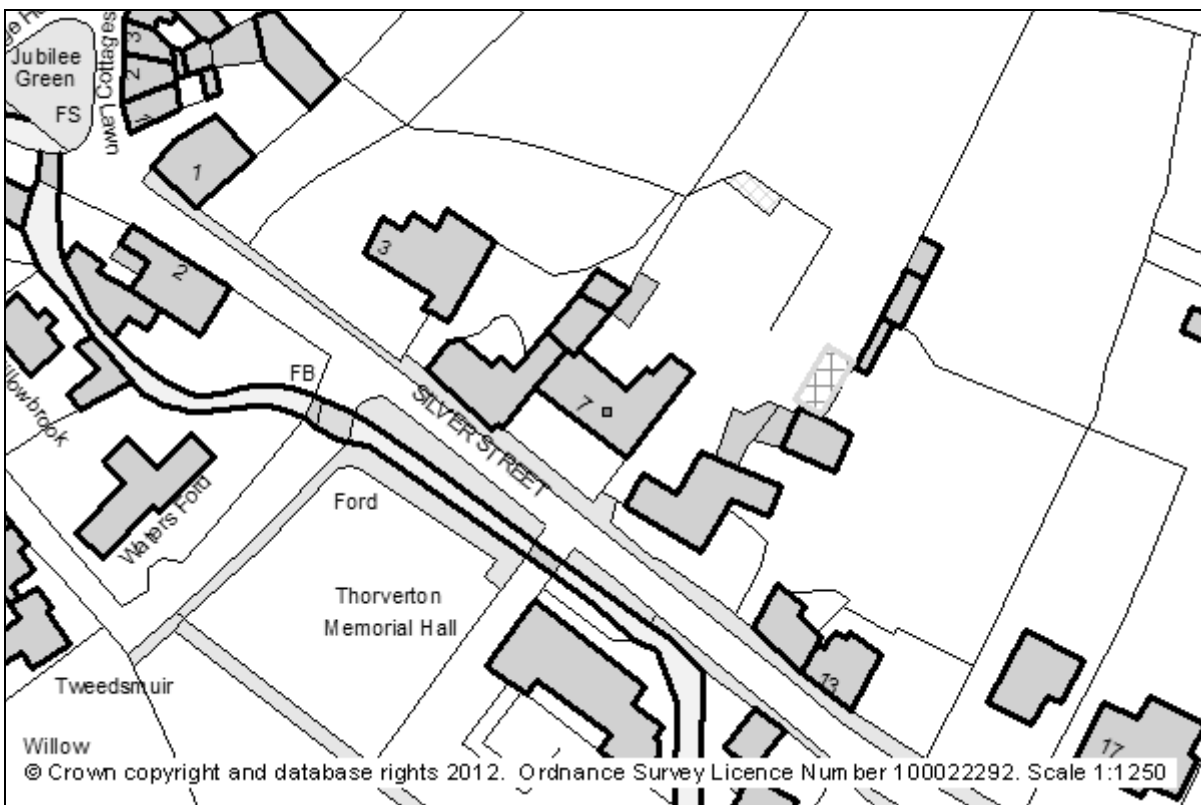
Grid Ref: 292698 : 102066

Applicant: Mr Rhys Roberts

Location: 7 Silver Street  
Thorverton  
Exeter  
Devon

Proposal: Listed Building Consent for the removal of outbuilding

Date Valid: 19th July 2023



## **APPLICATION NO: 23/01166/LBC**

### **REASON FOR REFERRAL TO COMMITTEE**

This application is required to be considered by the Planning Committee, in line with the Council's adopted Scheme of Delegation, as the applicant is an Elected Member within the District.

### **RECOMMENDATION**

Grant Listed Building Consent subject to conditions

### **PROPOSED DEVELOPMENT**

Listed Building Consent for the removal of outbuilding

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

The proposed development relates to a residential property at 7 Silver Street, Thorverton. The site is located within the Thorverton Conservation Area, and within the defined settlement boundary. The property benefits from a generous residential curtilage, and has neighbouring properties to the north-west and south-east, both of which are also listed. The property itself is Grade II Listed. The listing describes the site as:

*“House. C18 with some late C19 remodelling but possibly a thorough refashioning of an earlier building on the site. Colourwashed rendered cob on stone rubble footings, gable end of rear wing timber framed with brick infill ; slate roof, gabled at ends and gabled at end of wing ; end stacks with brick shafts, right end stack projecting, large projecting lateral stack to rear wing. Plan: Single depth main range, 3 rooms wide with a central entrance into an entrance hall with the principal stair in a gabled turret to the rear of the entrance hall, principal rooms to left and right. Rear right kitchen wing at right angles to the main range heated by a lateral stack. The main range has been extended to the rear bringing the rear elevation flush with the stair turret: this extension has provided a service stair adjacent to the main stair and a glazed late C19 garden room under a catslide roof to rear left. Exterior 2 storeys. Symmetrical bay 7 front with deep eaves carried on moulded brackets above coving. Wide central C20 porch with Doric columns and a cornice; panelled front door (top panels glazed) with an eared architrave. Fenestration of 12-pane sashes. The rear elevation has a gabled stair turret with a large rectangular stair window with glazing bars. The late C19 garden room to the right of the turret is glazed to the garden. The lateral stack on the right return of the kitchen wing is large and may date from a C17 building phase. Interior C18 joinery survives, including shutters and doors. Pretty principal stair with slender turned balusters and a square newel post. Pitched stone flooring survives below the boarded floor of parts of the kitchen wing. Roof kitchen wing only inspected : pegged x apex collar rafter roof trusses of an C18 date ; similar roof trusses said to survive in main range. Thorverton was formerly part of the Pynes Estate and is referred to as Pynes Tenement before the name changed to Thorverton. A substantial gentleman's house in Silver Street, slightly set back from the road and forming a good group with other detached houses.”*

This application seeks Listed Building Consent for the removal of outbuilding to the rear of the property. A householder planning application was originally submitted to seek permission to retain the replacement structure; following review of this application it was highlighted that Listed Building Consent would also be required for the removal of the existing structure as this abutted the listed curtilage wall, and this was subsequently submitted. An existing garden structure was previously located within the rear gardens of the property, and this was used for the purpose of storing

garden machinery and other domestic items. It is noted that a structure to this area of the site can be found on OS maps dating from 1889; however taking into account the most recent photographs provided of the structure, it appears that this building has undergone ad-hoc repairs and alterations over time, with numerous building materials found within the structures fabric.

The submitted Planning Statement states that this structure suffered severe storm damage which caused the structure to collapse, following which the applicant sought to replace this as it was no longer fit for purpose of structurally sound for continued use. Further information has since been submitted at the request of the Planning Officer, detailing that the damage occurred in October 2021. Photographs of the damaged structure, and the subsequent replacement structure, have also been submitted.

It is noted that the planning application linked to this LBC application was submitted on the 4th May 2023 and validated on the 5th May 2023. The original application form stated that the applicant was not an authority employee or member, which was correct at the time of the submission. Elections took place on the 4th May within the district, when the outcome of the candidates standing were not known. However, the Case Officer received an email on 15th May from the applicant's agent, stating that since submitting the above application, that the applicant had been duly elected to the position of District Councillor for Cadbury and that this therefore made the information submitted at the time no longer accurate. An amended copy of question 9 of the application form was submitted following this, reflecting this change. Following receipt of this email, the agent was notified that the application would therefore now need to go before the Planning Committee, as a planning application cannot be determined under delegated powers if submitted by an Elected Member.

Furthermore, it is noted that application description has been amended by the case officer in order for it to accurately reflect the proposed development. The intent of the proposal is clearly outlined within the supporting submitted as part of this application. As such, this amendment is not considered to prejudice any relevant parties.

## **RELEVANT PLANNING HISTORY**

97/00624/FULL - PERMIT date 16th June 1997

Application for consent to carry out works to a Red Oak tree in a Conservaton Area

04/01590/FULL - PERMIT date 11th October 2004

Erection of a single storey extension and replacement garage

04/01598/LBC - PERMIT date 11th October 2004

Listed Building Consent for the erection of a single storey extension and replacement garage

04/02431/CAT - PERMIT date 20th January 2005

Notification of intention to prune 1 no Hornbeam Tree within a Conservation Area

16/01828/CAT - NOBJ date 6th January 2017

Notification of intention to fell 1 Beech and 1 Pear tree within the Conservation Area

17/00182/CAT - NOBJ date 8th March 2017

Notification of intention to reduce limbs of 1 Oak tree by 2m and fell 2 Arcacia trees within the Conservation Area

23/00711/HOUSE - PCO date Retention of a replacement garden structure

## **DEVELOPMENT PLAN POLICIES**

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

Policy S1 - Sustainable development priorities

Policy DM1 - High quality design

Policy DM25 - Development affecting heritage assets

## **CONSULTATIONS**

### **Thorverton Parish Council**

At the time of writing this report, no comments have been received in regards to this Listed Building Consent application. However it is noted that comments have been received in regards to the linked planning application, 23/00711/HOUSE.

### **Conservation Officer**

In light of the 2004 permission (04/01598/LBC), and its partial implementation through the removal of the old garage and construction of the rear extension:

The design is unsympathetic, the structure overlarge and dominant, and the landscaping rather domestic for what is an ancillary shed. However, it is similar to what was consented in 2004. It is highly regrettable that the internal cob wall, that was to be retained as part of the 2004 consent, has been lost. Had the owner contacted the council at the time and not demolished the building in its entirety, this may have been saved and protected.

I have concerns about the maintenance of the historic cob wall to the east of the new garage. The gap between the garage and the wall is insufficient to allow decent maintenance, including repairs, checking stability, even limewashing to provide a small amount of weathering. The existing RWG on the garage appear to be plastic, and are covered, preventing water entering them, which is preventing water being directed away from the wall at present. I suggest a maintenance schedule be drawn up and adhered to, which would ensure its longevity.

I suggest that the PD rights be removed for it as well to prevent it being leased, let, or rented out as a structure unconnected to the main house. I do not anticipate that any increase in size would be permissible as this is already a large structure. No increase in domestication should be permitted either, such as the installation of a woodburning stove, etc. This should be kept as simple as possible to emulate the historic structure that was previously in the location.

## **REPRESENTATIONS**

This Listed Building Consent application has been advertised by means of a site notice, neighbour notification letters and by advertising in a local newspaper in accordance with the legal requirements for publicity on planning applications, and the Council's Adopted Statement of Community Involvement October 2016.

At the time of writing this report, 1 objection comment has been received, making the following summarised points:

- It is essential to the integrity of the planning system that a District Councillor is held to the same standards that every other resident is subject to under the planning process.
- Following the Conservation Officer's comments on applications 23/00711/HOUSE and 23/01166/LBC the success of both these applications is contingent on the partial implementation of the 2004 permission (04/01598/LBC) through the removal of the old garage and construction of the rear extension. Otherwise, according to the Conservation Officer "The design is unsympathetic, the structure overlarge and dominant, and the landscaping rather domestic for what is an ancillary shed....It is highly regrettable that the internal cob wall, that was to be retained as part of the 2004 consent, has been lost. Had the owner contacted the council at the time and not demolished the building in its entirety, this may have been saved and protected. "Of the works permitted in 2004, only the demolition of the existing garage has taken place. The construction of the rear extension has not been implemented. This is evidenced by the "As Existing" plans and elevations dated May 2003 compared to the current plans and elevations. The only difference between them being the installation of a rooflight on the East Elevation and french doors on the North Elevation. Neither of these alterations benefit from permission under the 2004 application and should be further investigated as breaches of listed building consent that should be regularised.
- The 2004 permission is subject to ten conditions, five of which are pre-commencement conditions (conditions 3, 4, 5, 8 and 9). None of these conditions have been discharged and all relate to the preservation of the character and architectural integrity of the Listed Building. Condition 3 requires materials to be submitted "Before the commencement of any works hereby permitted.." The reason for this condition is given as "To protect the character of the Listed Building and the visual qualities of the Conservation Area". These conditions all go to the heart of the permission. Condition 10 refers to the retention of the cob wall. According to the Conservation Officer, this condition has been breached. Given that the 2004 permission has expired, and five pre-commencement conditions that go to the heart of the permission have not been complied with and one condition has been breached, on what basis does the LPA deem the permission to be lawful and extant?
- Without the benefit of partial implementation of the 2004 permission, no policy reason has been posited for the approval of this retrospective application by either the applicant (the local District Councillor) or the LPA.
- The application should be assessed under current policy (DM1 High Quality Design and DM25 Development Affecting Heritage Assets) and take into account the Conservation Officer's comments that "The design is unsympathetic, the structure overlarge and dominant, and the landscaping rather domestic for what is an ancillary shed."
- The applicant has not consulted the historic environment records, if they had, they would have shown the demolished building on maps dating back to 1889. The demolished building was clearly of historical significance and should be assessed as such, including any contribution it made to its setting.

- In email correspondence (3rd July 2023), the applicant has claimed the heritage asset was damaged in storms in October 2021 and provided photos of the damage after this date. Materials were delivered and work commenced on the construction of the new outbuilding on 18th October 2021 (photographic evidence submitted). Even if the alleged storms occurred on 1st October, this leaves only 10 working days to take photos of the damaged structure in case of enforcement action, design the proposed structure, commission a builder and arrange for the supply and delivery of materials and workmen. If it cannot be evidenced that the demolished heritage asset was damaged by storms in Oct 2021, it should be assumed that the damage was due to neglect and therefore the deteriorated state should not be taken into consideration in determining the application.
- The submitted Location Plan does not show the land that was used to access the site from the public highway, or the extent of land owned by the District Councillor that is adjacent to the property. An updated Location Plan that accurately describes the application should be requested.
- If a District Councillor does not act within the Nolan Principles (the Seven Principles of Public Life), and the Local Planning Authority does not uphold its enforcement duties, then what is the point of a lawful planning process?

*Please note that the full comments received can be found on the public planning file.*

## **MATERIAL CONSIDERATIONS AND OBSERVATIONS**

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

- 1. Impact on the Listed Building**
- 2. Other Matters**
- 3. Conclusion**

### **1. Impact on the Listed Building**

- 1.1.** As set out above, the site is both within the Thorverton Conservation Area and Grade II listed. In coming to this decision the council must be mindful of the duty as set out in section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the listed building, its setting and features of special architectural or historic interest which it possesses. It must also be mindful of the duty as set out in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area, and have given it importance and weight in the planning balance. Similarly, DM25 of the local plan refers to heritage assets stating that they are irreplaceable resources. The policy seeks to preserve and enhance designated assets and their settings.
- 1.2.** It is noted that Listed Building Consent is only required for the removal of the existing garden structure, as this abutted the listed curtilage wall. The replacement structure does not impact upon the fabric of the heritage asset and as such only planning permission is required for this new structure.

- 1.3. A Heritage Statement has been submitted in support of this application. This identifies the affected heritage asset on site and neighbouring heritage assets, and considers the implication of the development on their significance. This assessment is considered to be proportionate to the impacts on the heritage assets at this domestic site level.
- 1.4. The Local Planning Authorities specialist Conservation Officer has been consulted on this proposal, and has visited the site as part of their consideration. Following this and further consideration, formal comments have been made and these can be found in full within the 'Consultations' section of this report.
- 1.5. The existing garden structure was previously used for the purpose of storing garden machinery and other domestic items. It is noted that a structure to this area of the site can be found on OS maps dating from 1889; however taking into account the most recent photographs provided of the structure, it appears that this building has undergone ad-hoc repairs and alterations over time, with numerous building materials found within the structures fabric. The submitted Planning Statement states that this structure suffered severe storm damage which caused the structure to collapse, following which the applicant sought to replace this as it was no longer fit for purpose of structurally sound for continued use. Further information has since been submitted at the request of the Planning Officer, detailing that the damage occurred in October 2021. Photographs of the damaged structure, and the subsequent replacement structure, have also been submitted. Taking into account the photographs of the condition of this structure, it is likely that a repair would have been difficult to incorporate into the new structure. Whilst it is regrettable that this has been lost, taking into account the previous permission that established the principle of its demolition was acceptable, and the damage that occurred in 2021, the removal of this structure is deemed acceptable.
- 1.6. Within the Conservation Officers comments, it is noted that permission was granted in 2004 for a replacement garage on the same site, following demolition of the existing structure. Following receipt of these comments, additional concerns have been raised within the received representations regarding whether these previous permissions were lawfully implemented, taking into account the work carried out in relation to these permissions and the conditions applied to these decisions. The Local Planning Authority have considered these comments, and it is accepted that these permissions cannot be considered to have lawfully been implemented due to pre commencement conditions not being discharged. Notwithstanding this, it is a material consideration that the removal of this structure and its replacement was previously considered acceptable by the Local Planning Authority, and whilst it is accepted that the proposal results in less than substantial harm to the setting of the heritage assets, it must be considered whether the removal of the outbuilding is acceptable in regards to its impact on the identified heritage assets and whether there is any heritage benefit arising from the works.
- 1.7. Within the received representations, it has been highlighted that the 2004 permission was assessed under Development Plan Policies which are now outdated; consequently the 2004 application cannot be utilized to demonstrate that the principle of development and impact on heritage assets has already been considered and accepted. These policies have now been replaced by corresponding plans within the new Mid Devon Local Plan 2013 – 2033. Policy DM25 relates to development affecting heritage assets including Listed Buildings and Conservation Areas. Policies DM1 and more specifically DM11 for residential development, relates to building design. It is considered that the replacement structure approved in 2004 would still be permissible under the current local plan; taking



into account the condition of this structure, as evidenced in the additional photographs submitted, it is likely that a repair would have been difficult to incorporate into a new structure and as such its replacement would be acceptable. On balance, it is considered that the principle of replacing the structure has been established and as such, the 2004 permission for the removal of the outbuilding would still be considered to be permissible under the new local plan.

- 1.8. Given the importance of the listed building and its location within the Thorverton Conservation Area, a number of conditions are proposed to protect and maintain the historic fabric of the listed curtilage wall. It is considered that whilst the removal of the structure directly from listed curtilage wall will remove some protection offered by the former structure, the new siting of the replacement structure off of this will result in a heritage benefit to the listed cob wall, as this will allow for access behind the structure to inspect and maintain the listed boundary wall. Following receipt of the Conservation Officers comments, a maintenance schedule relating to the ongoing care and works applicable to the cob boundary wall has been submitted. An annual inspection of the integrity of the wall will take place, with proper assessment of cracks and subsequent works where required. Frequent inspections will be undertaken and removal of debris from rainwater goods associated with the gardens structure, to prevent these becoming blocked and resulting in water overflowing and impacting upon the wall. Debris between the structure and the wall will be monitored and removed, and limewash or similar applied to the wall when necessary. Works to the wall will be undertaken by local stonemasons who look after the cob walls surrounding the property. The Maintenance Schedule has been reviewed and agreed by the Conservation Officer, and it will be conditioned that the wall is maintained in perpetuity in accordance with these details. Furthermore, it has been noted by the Conservation Officer that the section of cob wall adjacent to the south-western gable end of the replacement structure has suffered from damage caused by rats burrowing holes into the cob wall. Whilst it is not uncommon for cob walls to suffer from this in countryside areas, the access to this wall now created by the siting of the replacement building off of it presents the opportunity to sensitively infill and repair these holes, and improve the health and structure of the listed wall. As such, a schedule of works will be required via condition relating to the repair of this area of the wall in order to secure a further heritage benefit to the heritage assets on site.

## **2. Other Matters**

- 2.1 The submitted Site Location Plan outlines the area comprising the development in red, with other land within the applicants ownership identified in blue. Concerns have been raised that the submitted plan does not show the land that was used to access the site from the public highway, or the extent of land owned by the District Councillor that is adjacent to the property, and that an updated Location Plan that accurately describes the application should be requested. An updated location plan identifying the additional land has been requested and this has been identified with an amended blue edge on the updated Site Location Plan. It is not considered necessary to request an amended red edge, with the development itself not requiring access to the highway or identifying this within the application description.

### **3. Conclusion**

3.1 Taking into account the damage to the existing structure and the material consideration of the 2004 permission, and the securing of repairs and the maintenance schedule for the listed cob wall, it is considered that whilst the works are of a domestic scale that do not provide a wider public benefit, it is considered that the principle of removing the structure has previously been accepted, and given its condition following storm damage it is likely that a repair would have been difficult to incorporate into the new structure. Whilst it is regrettable that this has been lost, the heritage benefits identified above that allow for the repair and maintenance of the cob wall are considered to outweigh the harm caused through the loss of the original outbuilding. Overall, on balance the proposal is considered to be in accordance with DM25 of the local plan.

### **CONDITIONS**

1. The works shall be taken to have commenced on the 19<sup>th</sup> of July 2023, the date the application was validated by the Local Planning Authority.
2. The cob wall that bounds the site will be maintained in accordance with the Maintenance Plan received on 13<sup>th</sup> September 2023.
3. Within 1 month of the date of this decision, a schedule of works for the repair of the south-west boundary wall as shown in yellow on Plan number 200\_102, shall be submitted to the Local Planning Authority for their written approval. Once approved, the works shall be undertaken to the south-west boundary wall within 3 months of their approval and completed. The wall shall thereafter be maintained in accordance with the maintenance plan as approved under Condition 2.

### **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. To safeguard the character and appearance and in the interests of the special architectural and historic interests of the listed building, in accordance with the provisions of the National Planning Policy Framework and policy DM25 of the Mid Devon Local Plan 2013-2033.
3. To safeguard the character and appearance and in the interests of the special architectural and historic interests of the listed building, in accordance with the provisions of the National Planning Policy Framework and policy DM25 of the Mid Devon Local Plan 2013-2033.

### **INFORMATIVES**

In accordance with paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and pro-active way with the Applicant and has negotiated amendments to the application to enable the grant of Listed Building Consent.

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.

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.

## **REASON FOR GRANT OF CONSENT**

The application scheme for Listed Building Consent for the removal of outbuilding at 7 Silver Street, Thorverton, Exeter, Devon, EX5 5LT is considered on balance to be acceptable. Taking into account the damage to the existing structure and the material consideration of the 2004 permission, and the securing of repairs and the maintenance schedule for the listed cob wall, it is considered that whilst the works are of a domestic scale that do not provide a wider public benefit, the principle of removing the structure has previously been accepted. The heritage benefits identified allow for the repair and maintenance of the cob wall and these are considered to outweigh the harm caused through the loss of the original outbuilding. The proposal is considered to be in accordance with policy DM25 of the Mid Devon Local Plan 2013-2033.

Application No. 23/01255/LBC

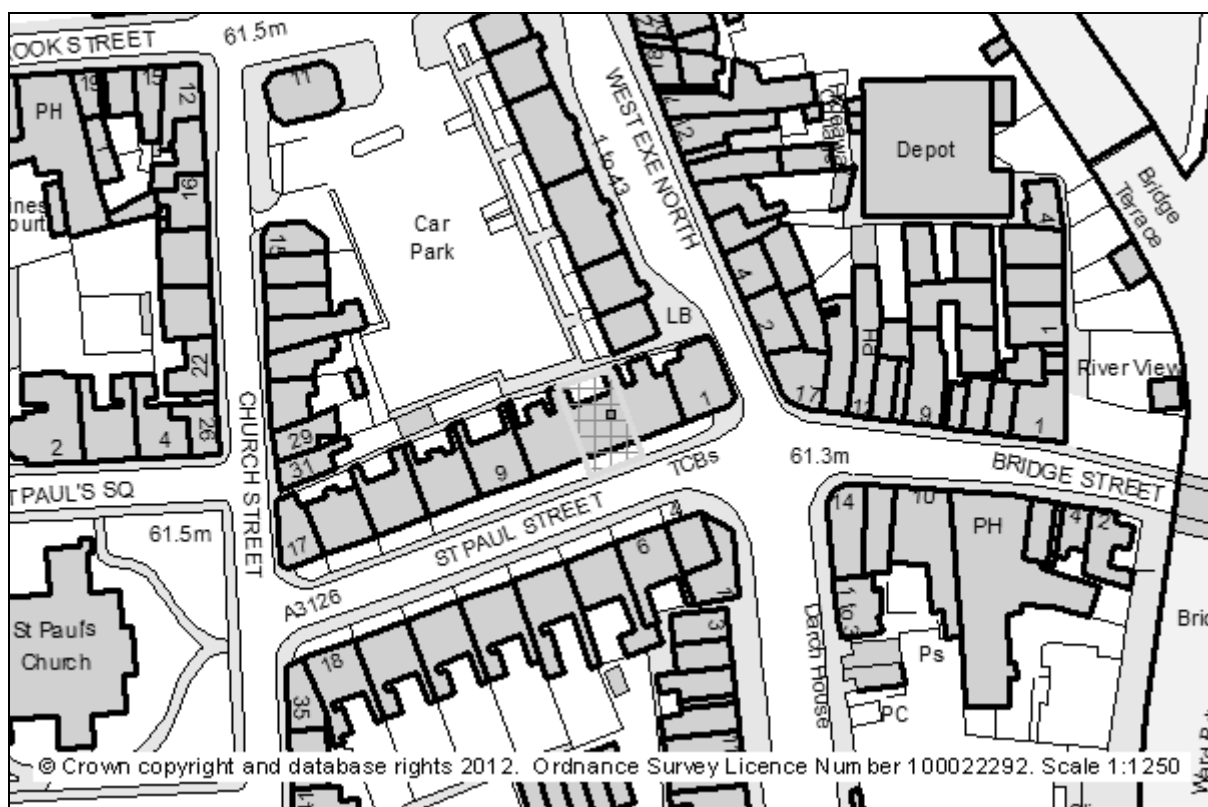
Grid Ref: 295204 : 112566

Applicant: Mrs Samantha Bennett, Mid Devon District Council

Location: 5 St Paul Street  
Tiverton  
Devon  
EX16 5HT

Proposal: Listed Building Consent for repairs to roof

Date Valid: 22nd August 2023



**APPLICATION NO: 23/01255/LBC**

**Site Visit: Yes**

**Date of Site Visit: 28 September 2023**

**Decision Delayed Reason:** Date of committee

**REASON FOR COMMITTEE ITEM**

This application has been put before the planning committee as the applicant and owner of the building is Mid Devon District Council.

**RECOMMENDATION**

Grant Listed Building Consent subject to conditions

**PROPOSED DEVELOPMENT**

Listed Building Consent for repairs to roof

**APPLICANT'S SUPPORTING INFORMATION**

Design and Access Statement  
Roof works specification  
Ecological assessment  
Images of the roof

**RELEVANT PLANNING HISTORY**

08/00919/FULL - WDN date 10th July 2008 Change of use from single dwelling to multiple occupancy accommodation

08/00920/LBC - WDN date 10th July 2008 Listed Building Consent for internal alterations

08/01254/FULL - WDN date 19th August 2008 Change of use from single dwelling to multiple occupancy accommodation (Revised Scheme)

08/01255/LBC - PERMIT date 6th October 2008 Listed Building Consent for internal alterations (Revised Scheme)

09/01601/FULL - PERMIT date 21st December 2009 Change of use from a single dwelling house to a house in multiple occupation (Revised Scheme)

**DEVELOPMENT PLAN POLICIES**

**Mid Devon Local Plan 2013 – 2033**

S1 Sustainable development priorities

DM1 High quality design

DM25 Development affecting heritage assets

**CONSULTATIONS**

**Tiverton Town Council** - support

## REPRESENTATIONS

None received

## MATERIAL CONSIDERATIONS AND OBSERVATIONS

- 1.1 The alteration of a statutorily listed building within the Tiverton Conservation Area, and the council's statutory requirement to 'have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses', as set out in section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 must be assessed.
- 1.2 Applicants for consent that affects a heritage asset must be able to justify their proposals. The NPPF says that the LPA should require an applicant to describe the significance of any heritage asset affected including any contribution made to their setting. This should be sufficient to understand the potential impact of the proposal on its significance. As a minimum the Heritage Environment Record should have been consulted and the building assessed using appropriate expertise where necessary. When considering the impact of development, **great weight** should be given to the asset's conservation. Any harm or loss should require clear and convincing justification from the applicant. Any harm should be judged against the public benefit, including securing the optimum viable use. (The optimum use is the one that causes the least harm to the significance of the asset).
- 1.3 Local plan policies are material to the consideration of the determination of the application, but do not have the same statutory weight they have in a planning application.
- 1.4 The principle of repairing the roof, replacing slates where they have broken, and upgrading the roof to include a breathable membrane is acceptable. Natural materials have a finite lifespan and need replacing when they have reached the end of their life. The appearance of the terrace as a group is dependent on matching materials being used for the roof, therefore a condition is imposed requiring the reuse of existing slates where possible, and colour and texture to be matched when providing replacements. In addition, a bitumen felt is conditioned to ensure a plastic felt carrier is not required, as this would be an incongruous addition to the building.
- 1.5 The ecology of the roof space has been assessed by an ecologist and found not to contain evidence of bird or bat use, or potential for such. No further survey or mitigation work is recommended.
- 1.6 The applicant is currently unsure if insulation board will be required as the depth of the rafters is unknown. A condition is therefore applied requiring information regarding the location, size, and material of any insulation to be submitted and approved in writing prior to its installation.
- 1.7 In coming to this decision the council must be mindful of the duty as set out in section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the listed building, its setting and features of special architectural or historic interest which it possesses. The repair of listed buildings using traditional materials is supported, and conditions have been imposed to ensure the appearance and integrity of the building and its surrounding listed buildings is not compromised.

1.8 In coming to this decision the council must be mindful of the duty as set out in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area, and have given it importance and weight in the planning balance. The appearance of the group of buildings within the conservation area is as a collective of planned housing, and their homogeneity of materials is an important part of that group.

## **CONDITIONS**

1. The works hereby approved shall commence within three years from the date of this permission.
2. All new works and works of making good to the retained fabric, whether internal or external, shall be finished to match the adjacent retained / historic work with regard to the methods used and to colour, material, texture and profile.
3. Where possible, the existing slates shall be reused, and any new slates required to replace any broken or friable slates shall be of the same colour, size, and texture, and shall be maintained as such.
4. Prior to the installation of any new insulation, details of the size, location, and material of such insulation shall be submitted to and approved in writing by the local planning authority and the works shall be carried out in accordance with those approved details and shall be maintained as such.
5. Bitumen eave carrier felt shall be used, meaning no plastic felt support trays shall be fitted.

## **REASONS FOR CONDITIONS**

1. In accordance with Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
2. In order to safeguard the special architectural and historic interest of the designated heritage asset and comply with Policy DM25 of the Mid Devon Local Plan 2013-2033.
3. In order to safeguard the special architectural and historic interest of the designated heritage asset and comply with Policy DM25 of the Mid Devon Local Plan 2013-2033.
4. In order to safeguard the special architectural and historic interest of the designated heritage asset and comply with Policy DM25 of the Mid Devon Local Plan 2013-2033.
5. In order to safeguard the special architectural and historic interest of the designated heritage asset and comply with Policy DM25 of the Mid Devon Local Plan 2013-2033.

## **INFORMATIVES**

### Conditional Approval (no negotiation)

In accordance with paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and pro-active way and has imposed planning conditions to enable the grant of listed building consent.

### Other consents

This consent relates to listed building matters only. Should alterations to the approved scheme be required in order to comply with other legislation, such as Building Regulations, an additional listed building consent may be required prior to the works being undertaken.

### **REASON FOR GRANT OF CONSENT**

Subject to conditions, the proposed works are acceptable in that they would preserve the special interest of the listed building. The proposal is considered to be in accordance with Policy DM25 of the Mid Devon Local Plan 2013-2033.

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. 22/00907/FULL

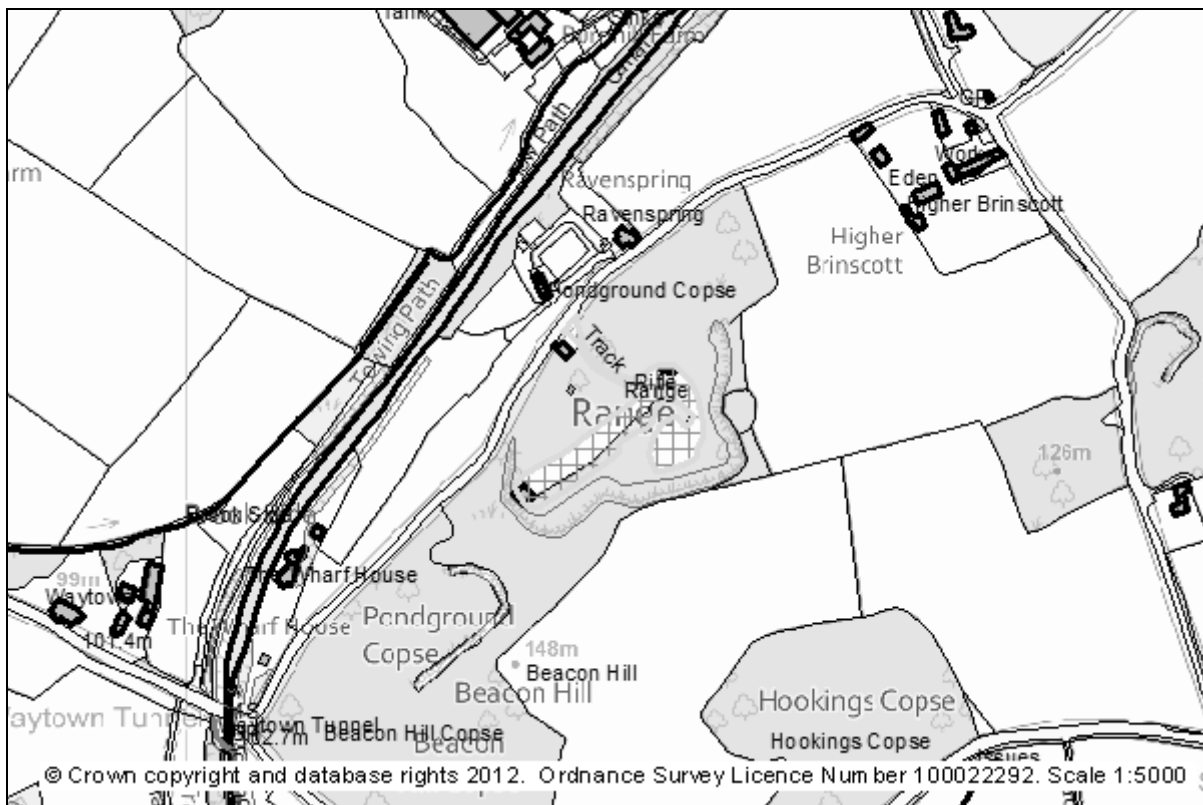
Grid Ref: 307243 : 119264

Applicant: Mr David White, Devon and Cornwall Police

Location: Devon & Cornwall Constabulary  
Pondground Quarry  
Holcombe Rogus  
Devon

Proposal: Retention of disused quarry for use as two firing ranges

Date Valid: 20th May 2022



## **APPLICATION NO: 22/00907/FULL**

### **MEMBER CALL-IN**

This application has been called in by the previous Ward Members, Councillor Collis and Councillor Norton for the following reasons:

*I have received a large amount of emails and messages containing concerns from local residents regarding this application in the past week. The following needs to be considered, frequency of use of the range and times during the days of use, noise management from the guns which will need a noise attenuation fence and security of the site to include the open woodland which surrounds it.*

Whilst the previous Ward Members are no longer elected members of the Council, it was felt necessary to still take the application to committee due to the current Ward Member concerns over the application.

The application was set to come before members on the scheduled committee of 11<sup>th</sup> October, but was withdrawn due to late representation being submitted that required officer attention.

### **MEMBER SITE VISIT**

Devon and Cornwall Police were requested to organise an extraordinary day's shooting at Pondground Quarry on 5<sup>th</sup> September 2023. This was at the request of MDDC so that Members of the Planning Committee could visit the site and hear the shooting from various areas surrounding the site in order to help in their assessment of this proposal. A Public Health Officer was in attendance with another within the locality (primarily at the school and along the canal) noting firing noise. Members first heard the shooting within Pondground Quarry before being taken to the neighbouring property of Eden where holiday accommodation is located, followed by Lowdwells Lock where Members walked along the canal and stopped opposite the other side of Pondground Cottage. The next visit was to Greenham Reach before finally going to Webbers School in Holcombe Rogus.

### **RECOMMENDATION**

Grant permission subject to conditions

### **PROPOSED DEVELOPMENT**

The application is for the retention of disused quarry for use as two firing ranges at Devon & Cornwall Constabulary, Pondground Quarry, Holcombe Rogus, Devon. It is an application made by Devon and Cornwall Police to continue using the quarry site for two firing ranges. There has been a history of shooting from two firing ranges on site dating back from 1978.

The planning application originally submitted sought planning permission to fire between 9.00 and 17.00 on Mondays to Friday for an average of 3 days per week over 47 weeks a year; amounting

to shooting across 141 days. However, following objections received and consultee comments, this has now been reduced down to shooting for 70 days of the year.

Whereas the earlier permissions did not have any stipulations/controls in term of the shooting and when it could take place, the proposed shooting would be restricted as follows:

- 70 days shooting per annum.
- Firing only taking place up to 47 weeks of the year (no firing during 2 weeks over Christmas and none for the first 3 weeks of August)
- A maximum of 2.5 days shooting in any given week
- Shooting only being allowed on a Tuesday, Wednesday and half day on a Thursday between the hours of 0900 and 1700, except for Thursdays when it will be between the hours of 0900 and 1300.

The firing range is located in a former quarry known as Pondground located approximately 1 mile to the east of the village of Holcombe Rogus and the site area measures approximately 0.41ha. The site is in a rural area and comprises two firing ranges and associated welfare buildings. The longer of the two ranges is orientated approximately North-East to South-West and the shorter range North to South. The site is surrounded by the quarry walls on all sides with access to an unclassified road to the North. There are two small welfare buildings to the North East of the site.

The site it is within a regionally important geological site for aggregates, and as such is within an adopted minerals safeguarding zone. The site is a quarry within a Mineral Safeguarding Area, defined to protect the important limestone deposit, part of which is currently being extracted at the nearby Westleigh Quarry. To the west of the site is the Grand Union Conservation Area designated in October 1994, and there are a small number of listed buildings in the wider vicinity of the site.

## **POST SITE VISIT UPDATE**

The site visit to Pondground Quarry was undertaken by Members of the Planning Committee on the 5<sup>th</sup> September 2023 where Members were able to experience the operations within the quarry with firing taking place on the two firing ranges. The lower range being restricted to four shooters and the upper range having a maximum of six shooters where the quietest of the three weapons was used. The police arranged for combination of shooting to take place from both ranges at the same time to produce a genuine shooting experience for Members at the loudest it would ever be. Members were then able to travel to a number of sites around the surrounding area to experience the shooting take place and what impact this has on amenity.

## **APPLICANT'S SUPPORTING INFORMATION**

Application Forms, Plans and Drawings, Planning Statement, Noise Management Plan, Heritage Statement, Traffic Statement, Wildlife Trigger Table, Supporting Statement, Letter from Acoustic Consultants Limited, Peregrine Survey and Preliminary Ecological Appraisal.

## **RELEVANT PLANNING HISTORY**

The planning history of the site is listed below and is a material consideration in the consideration of this application. As members will note, the site has extensive history of being a firing range.

78/01508/FULL - PERMIT date 7th November 1978 (temporary permission for 5 years)  
Construction and temporary use of two firing ranges by Devon and Cornwall Police Authority

81/01413/FULL - PERMIT date 9th September 1981 (temporary permission for 5 years) Renewal for the change of use from disused quarry to two firing ranges

86/01651/FULL - PERMIT date 11th November 1986 (temporary permission for 5 years) Renewal for the change of use from disused quarry to two firing ranges

96/01226/FULL - PERMIT date 14th October 1996 (temporary permission for 5 years) Renewal of temporary planning permission reference number 4/29/86/1651R for the change of use from disused quarry to two firing ranges

04/02000/FULL - PERMIT date 3rd December 2004 (temporary permission for 10 years) Renewal of conditional planning permission 4/29/96/1226/R for the change of use from disused quarry to 2 no. firing ranges

04/02001/FULL - PERMIT date 8th December 2004  
Erection of a steel purpose built portable building approx. 9.2 x 3.05 m to provide welfare facilities

07/00577/FULL - WDN date 14th May 2007 Variation of condition 2 of planning permission 04/02000/FULL to include use of the land by Taunton Deane Shooting Association

14/00220/FULL - WDN date 4th April 2014 Erection of a 3 sided building

14/00546/FULL - PERMIT date 22nd May 2014 Erection of a 3 sided building (Revised Scheme)

## **DEVELOPMENT PLAN POLICIES**

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

Policy S1 - Sustainable development priorities  
Policy S8 – Infrastructure  
Policy S9 – Environment  
Policy S14 – Countryside  
Policy DM1 - High quality design  
Policy DM3 - Transport and air quality  
Policy DM4 – Pollution  
Policy DM5 – Parking  
Policy DM25 – Development Affecting Heritage Assets

National Planning Policy Framework

National Planning Practice Guidance

Noise Policy Statement for England (NPSE)

Devon Minerals Plan - Policy M2

## **CONSULTATIONS**

**Holcombe Rogus Parish Council** – 14<sup>th</sup> June 2023

Holcombe Rogus Parish Council notes the recent Peregrine Survey submitted by the Applicant. While the Survey concludes that it is unlikely that there will be any disturbance to Peregrine nesting since none were observed in the quarry, it also noted that many other bird types are likely to be disturbed and displaced by the proposed firearms training. This appears to act against Planning policies that call for Developments to protect or enhance biodiversity at and around their sites.

Consequently, the Council's existing Objection to this Application stands. Should permission be granted, our Council supports the recommendation that shooting should not start until after 1st August in 2023 to avoid disturbing nesting buzzards and suggests that there should be a Condition calling for the cessation of shooting during the nesting seasons in future years.

**Holcombe Rogus Parish Council** – 6<sup>th</sup> April 2023

#### RESPONSE TO MDDC IN RESPONSE TO THE ADDITIONAL INFORMATION PRELIMINARY ECOLOGICAL APPRAISAL

Holcombe Rogus Parish Council have had an initial review of the Preliminary Ecological Appraisal at Pondground Quarry Shooting Ranges but feel unable to comment on this preliminary appraisal when the document itself (see below) recommends a full survey should be carried out. The Council are also aware that the survey would need to be carried out before the end of May, so trust that Mid Devon Planning Authority will request Devon & Cornwall Constabulary to carry out this survey immediately.

It is recommended that further effort is made to determine if any schedule 1 part 1 bird species are nesting in the quarry, or within potential disturbance range of shooting activities, and if so the whereabouts of any nest site to assess whether shooting during the nesting season is likely to cause a disturbance offence. To this end we recommend that a survey is undertaken check for the presence of peregrine falcon which is generally known to nest on cliff faces including in quarries where these are suitable. At first impression the quarry faces appear to be suboptimal nesting habitat but we advise consultation with the local raptor monitoring group/persons as a starting point. If this approach cannot offer conclusive assessment, then a period of survey is recommended to be undertaken by an ornithologist experienced with peregrine nesting behaviour.

Such a survey would be needed with immediate effect between March and May (the breeding season) if it were to happen this year. Given the seasonal constraints to the survey it would be prudent to start survey at the earliest opportunity in case there is no background information available from a raptor specialist or in case of a delay in contacting the right persons who might have information

Leslie Findlay  
Parish Clerk  
On behalf of Holcombe Rogus Parish Council

**Holcombe Rogus Parish Council** – 2<sup>nd</sup> March 2023

#### RETENTION OF DISUSED QUARRY FOR USE AS TWO FIRING RANGES APPLICATION NUMBER 22/00907/FULL

These are the further comments of Holcombe Rogus Parish Council (the Council) following a Meeting of the Council held on Thursday 23rd February 2023  
The meeting considered a report dated 1st February 2023 prepared by Acoustic Consultants Ltd (ACL) on behalf of the Devon and Cornwall Police (Police Authority)

1. The author of the ACL Report states that the Report considers the impact of noise through measurement and comparison with guidance which the author believes is relevant. This being so, why have ACL not done this, given that they have measured and are clearly aware of the guidelines, if they believe it's relevant?
2. The ACL report states that there have not been any substantiated noise complaints due to the operation of the Pondground Quarry. This is not correct. Ample evidence of unacceptable noise levels has been provided by the independent Acoustic reports of Parker Jones Acoustics dated 23rd June 2022, and 14th of June 2022 as supported by the report by LF Acoustics 22nd October 2022. The noise levels recorded were clearly at a level that have a substantial adverse impact on those living nearby and indeed further afield.
3. Moreover, the Police Authority acknowledged in December 2020 that there had been complaints about the unacceptable noise level and that there had been an increase in use

The Police Authority's email of 11th of December 2020 acknowledged;

- a. The awareness of complaints
- b. That the use of the quarry had been on the increase.
- c. That the use will regrettably increase further through 2021.
- d. That the new training calendar from April 2021 had not yet for being formulated, but is likely to be impactful.

(See email from Sergeant Jon Bunt 11th December 2020)

4. As to the usage of Pondground Quarry, ACL state that usage has been variable with no obvious trend and peaking out at about 70 days in 2017. The Council is advised that this is incorrect. The Council understands that peak usage occurred in 2021, which was 59 days and not circa 70 days in 2017. In 2020 the usage Level was only 28 days and still gave rise to further complaints to the Police Authority.
5. The ACL report further states that there will be no adverse effect on the acoustic character of the area. This is an extraordinary claim to make given the clear and lucid independent acoustic reports submitted on behalf of the local community. Clearly there is a significant observed adverse effect level of noise as referred to in the Noise Policy Statement of England and such impact should therefore be avoided.
6. If the ACL report is designed to support a claim that the planning application is simply seeking to regularise an existing historic use, this has no merit. The proposed usage of 70 day is, as the Council understands it, is considerably in excess of the amount of historic usage.
7. Firing ranges (of the kind previously in use at Pondground Quarry) should follow CIEH guidance. ACL on behalf of the Police Authority refuse to accept that it is relevant notwithstanding that the guidance has, we are advised, been adopted by the MOD and police and local authorities across the country as the appropriate guidance to follow for the type of use proposed for Pondground Quarry. This is no doubt because the Police Authority would not be able to meet those standards and would need to move operations elsewhere. The answer is not to ignore the human cost and disregard the pain and suffering of those living nearby.
8. The ACL report suggests that there is a differing approach to noise measurement depending on whether the firing range is a new one or an existing one. There is no basis for such an approach. What matters is the intensification of use and the impact on those living nearby.

9. The ACL report says that MDDC are of the view that noise from historic or previous use of the firing range is not unacceptable. Given that MDDC does not, as the Council understands it, have any acoustic expertise in-house and has refused to obtain any independent acoustic advice, it is unclear how MDDC could have reached this view.

10. Based on what is said above, it is difficult not to form the view that MDDC have already made up their minds in respect of the Planning Application even before consideration by planning committee.

11. In our Council's opinion, there is nothing in the ACL report that justifies the grant of planning permission. Furthermore and in conclusion, MDDC should be aware that our Council has been advised that it would be unlawful for MDDC to take any further action in considering this planning application on account of the apparent failure of MDDC to discharge its legal obligations to obtain independent reports on the impact of the proposed development on ecology, wildlife, the Canal Conservation Area and other land nearby. The Council is also advised that this may lead to an application to stay further consideration of the current Planning Application so as to enable MDDC to discharge its legal obligations.

LJ Findlay  
Parish Clerk

### **Holcombe Rogus Parish Council** – 7<sup>th</sup> February 2023

These are the further comments of Holcombe Rogus Parish Council ('Council') following a meeting of the Council held on Thursday 26th January 2023 to consider the above application and further submissions on behalf of Devon & Cornwall Police ('Police Authority'). For ease of reference there is attached to this letter a copy of the Council's letter to MDDC dated 21st October 2022 - see Appendix to this letter.

#### 1. Failure to follow guidance appropriate to firing range

1.1. It is considered that there are serious failings on the part of MDDC in its consideration of this planning application.

1.2. MDDC has been sent copies of reports from acoustics consultant Parker Jones Acoustics dated 23rd June 2022 and 14th July 2022 and L F Acoustics dated 22nd October 2022.

1.3. These reports clearly show that shooting at Pondground Quarry has caused a significant adverse impact on the local community.

1.4. Although there are no specific guidelines in relation to noise levels for firing ranges, it is necessary to utilise the most appropriate guidance when assessing potential noise impacts.

1.5. It is clear that the most appropriate guidance to be considered is that of the Chartered Institute of Environmental Health ('CIEH'). Their clay target shooting guidance should be followed. This is because the type of noise from firing ranges is very similar to clay shooting. It is worth noting that the CIEH guidance has been adopted by the MOD (including for its training grounds) and many local planning authorities.

1.6. Nevertheless, MDDC Environmental Health Officer ('EHO'), who is not an acoustics expert, has refused to consider CIEH guidance. It has not been possible for Parker Jones Acoustics (and LF Acoustics) to engage in a meaningful dialogue with the EHO. This Council is advised that the EHO does not have a proper understanding of the assessment of noise. Comments by the EHO, such as reference to 'distant pops and bangs', indicates a complete lack of appreciation of the seriousness of the issues. In this context, MDDC is referred to particulars of further EHO comments set out in a letter dated 2nd September 2022 from Ruston Planning to MDDC. The EHO is unwilling to instruct an independent noise consultant to assist MDDC in carrying out a proper assessment of noise issues in order to evaluate the potential for adverse impacts.

1.7. The failure of the Police Authority and EHO to follow appropriate guidance means that the due diligence process being undertaken by MDDC is flawed.

1.8. The shooting noise level at Pondground Cottage as measured by Parker Jones Associates reached 85dB. This is 30dB above the recommended noise level limit of 55dB. The 55dB noise level limit has been widely accepted by planners and regulators and is the standard against which acoustic reports for firing ranges should be judged.

1.9. It should also be noted that complaints about the use of Pondground Quarry have escalated because the Police Authority have doubled the use of the quarry and, it is understood, are using noisier weapons.

2. Planning statement of CL Planning Limited dated 4th January 2023 submitted on behalf of the Police Authority

2.1. Clearly the noise impact arising from the use of Pondground Quarry is the key issue and there is, in the opinion of the Council, nothing in the NPPF which could possibly justify the grant of planning permission for activities that would continue to inflict the level of harm that has been clearly demonstrated by the report[s] of Parker Jones Acoustics and LF Acoustics.

2.2. Paragraph 7.4 of the Planning Statement of CL Planning Limited purports to show that the noise readings reported are similar to those in the Parker Jones Acoustics report and LF Acoustics report. This is not the case and should not be relied upon. An hourly average methodology is not an appropriate way to measure noise in this case and is unreliable.

2.3. In view of the Council's comments in this letter, it is not agreed that the advice of the EHO is a significant material consideration in favour of the grant of planning permission.

2.4. It is worth noting that Policy DM4 of the NPPF (Pollution) indicates that planning permission will only be granted if there is no negative impact on health, natural environment, and general amenity.

2.5. CL Planning highlight paragraph 97 of the NPPF (which is a general statement about the need to recognise and support development required for operational and defence purpose). Whilst the Council recognise the importance of the Police Authority's work, this is outweighed by the substantial negative impacts that have been identified.

3. Ecology and natural environment and comments of CL Planning on behalf of the Police Authority

3.1 As indicated by the NPPF, planning policy has an environmental objective namely to protect and enhance the natural, built, and historic environment including helping to improve biodiversity and combat pollution.

3.2 Pondground Quarry overlooks the Grand Western Canal which is a Conservation Area

3.3 The activities at Pondground Quarry will clearly have a significant impact on the Conservation Area and surrounding land. There is a need for an ecology report both in relation to the quarry itself, the canal Conservation Area and adjoining land. The comments of the Grand Western Canal Advisory Committee dated 30th August 2022 have simply been ignored. Pondground quarry is itself designated as a 'priority habitat' by the BAP (biodiversity action plan).

3.4 In The Wildlife Trigger table statement submitted by the applicant has been incorrectly completed since the firing ranges are in a Quarry of more than 0.1hectare within woodland. It is acknowledged on behalf of the Police Authority.in the recent Planning Statement that the area of the ranges is 0.4of a hectare. A Wildlife Report needs to be conducted on this site prior to consideration by the MDDC Planning Committee.

3.5 In relation to protected sites and areas and protected species and development there is clear guidance to planning authorities on the Government website as to how local planning authorities should review planning applications and discharge their obligations.

3.6 It is not apparent to the Council that any steps have been taken by MDDC/EHO to carry out a proper assessment of these important matters in accordance with Government guidance and obtain independent reports.

3.7 Furthermore, it should not be forgotten that, given that the past use of the quarry, the



issue of the leaching of contaminated water into the Canal and other watercourses creates a significant environmental risk.

4. Historic Significance Statement submitted by Daniel J Metcalf on behalf of the Police Authority.

4.1. The historical information provided about the surrounding area over many years and the changes that have taken place is interesting but is considered to be largely irrelevant.

4.2. This does not address the key issues arising from the planning application, namely the health and well-being of the local community arising from the intolerable noise over many hours, together with substantial adverse environmental and ecology impacts on the Grand Western Canal Conservation Area and other land.

4.3. The exclusion of consideration of adverse impacts on Greenham Barton and Cothay Manor are not understood; these are exceptional properties of historic significance (Grade 1 Listed), and have the potential to be adversely affected by the current development proposals.

5. Conclusions

5.1 Pondground Quarry firing range is no longer suitable for a modern police force: it is not fit for purpose. The Police Authority needs a site that has modern facilities that can achieve the noise limit of 55dB (as per the CIEH recommendations) which has been adopted throughout the country by the police authorities, the MOD and local planning authorities. Given the size of Devon and Cornwall there will be ample space to have modern facilities that can comply with the recommended noise level of 55dB as clearly articulated in the acoustic reports of Parker Jones Acoustics and LF Acoustics Limited. Pondground Quarry has not been used since 24th May 2022 and this should continue to be the case.

5.2 The acoustic data provided by the Police Authority has not been fully explained and does not follow the correct guidelines for assessing noise for firing ranges and the EHO has refused to obtain an independent noise assessment.

5.3 Clearly, the recommended noise limit of 55dB cannot be adhered to, and the Police Authority will need to find alternative facilities elsewhere.

5.4 There has been a complete failure of the Police Authority and MDDC planning even to recognise the seriousness of the adverse impact of a firing range on ecology, the Grand Western Canal Conservation Area and Country Park, and wildlife. These matters have been dismissed out of hand.

5.5 Such due diligence as has been carried out by MDDC planning is, in the Council's opinion, not credible. In these circumstances, the Council considers that no reasonable planning authority should approve the requested planning permission for the continuance of the use by the Police Authority.

5.6 Accordingly, planning permission must be refused.

### **Holcombe Rogus Parish Council** – 24<sup>th</sup> October 2022

Further to the Council's submissions to MDDC dated 15th June 2022 and 6th September 2022 a further meeting of our planning committee was held on the 13th October 2022. The meeting was attended by members of our local community as well as residents in nearby Greenham who are seriously affected by the firing range activities and the proposals being put forward by Devon and Cornwall Police ('the Police Authority')

These are the further comments of the Council

1. Addendum to Police Authority Noise Management Plan dated 7th October 2022

In relation to the Addendum to the Noise Management PI dated 7th October 2022 provided on behalf of the Police Authority (including data provided by Acoustics Consultants Ltd), it appears that the Addendum was not based on a typical day's shooting but nevertheless it is our

understanding that the noise levels shown by the Addendum are not materially different in many respects from the readings taken by Parker Jones Acoustics as set out in the Report dated 21st April 2021. However, no analysis of the findings of Acoustics Consultants Ltd has been provided and they do not dispute the noise assessment of Parker Jones Acoustics.

Moreover, the Addendum states that the Police Authority can in circumstances that it determines to be exceptional increase the amount and intensity of use of the firing range even though it is already at an unacceptable level. This provides no protection at all for the local community and is unacceptable.

2. Intolerable noise impact. The noise from the operation of the firing range is making life intolerable for those living nearby and adversely affecting their health and wellbeing. It would in the Council's opinion be unconscionable to continue to inflict so much pain and suffering on the community.

3. 55dB benchmark. The submissions made to MDDC clearly show that a noise benchmark of 55dB has been widely accepted as an appropriate benchmark for firing range uses. Considering that the unchallenged Noise Impact Assessment carried out by Parker Jones Acoustics (see below) shows readings of up to 78dB it is not surprising that the local community is up in arms.

### 3. Due diligence by MDDC

Our Council is concerned by the failure of MDDC itself to require or to carry out a robust and objective noise assessment. In the event, the Noise Impact Assessment carried by Parker Jones Acoustics has been provided and its conclusions are not disputed by the Police Authority or MDDC. There has been a failure to carry out an ecology assessment including consideration of any adverse impact on the Grand Western Canal (a Local Nature Reserve /Country Park and Conservation Area), wildlife, other protected habitats, and sites, including heritage assets. Given the level of noise caused by the firing range activities, it seems inconceivable that there are no material adverse impacts.

### 4. Planning Policy

MDDC are referred to the letter to MDDC dated 7th June 2022 from Andy & Alison Hill with an analysis of applicable planning policy.

## Conclusions

1. After having considered the numerous objections to the Planning Application submitted by the Police Authority and the responses made by officers of MDDC, it is very difficult not to take the view that MDDC has so far in this case abandoned the high standard of due diligence that our Council has come to expect. This needs to be rectified.

2. It has been clearly demonstrated by the large number of objections from the local community and the comprehensive and lucid Noise Impact Assessment dated 21st April 2021 (and subsequent Addenda) prepared by Parker Jones Acoustics that the noise levels arising from the use of the Poundground Quarry are far in excess of those that any reasonable person can be expected to endure. The Police Authority has not disputed the findings of Parker Jones Acoustics.

3. On the one hand, it has been clearly demonstrated by submissions made to MDDC that there is a widely accepted benchmark of 50dB by which to assess the acceptability or otherwise of noise levels relating to firing range activities. On the other hand, the Police Authority is, it would appear, seeking planning permission without any effective and enforceable controls on the noise levels arising the firing range activities. This is totally unacceptable.

4. Unless the Police Authority agrees in unequivocal terms and in legally binding form to restrict its use of the Pondground Quarry to accord with the 50dB benchmark, this inevitably means that the Police Authority will need to move its operations to an alternative site that does not have the damaging effects being experienced in our community.

5. It is not an option for the Police Authority to continue to subject our community and those living nearby to the level of harm currently being suffered.

6. As matters currently stand planning permission should be refused.

### **Holcombe Rogus Parish Council** – 6<sup>th</sup> September 2022

Holcombe Rogus Parish Council's comments supporting its Objection to Application 22/00907/FULL following the noise assessment on 2nd August 2022

Representatives of the Parish Council attended a demonstration firearms session on 2nd August 2022 at Pondground Quarry, Holcombe Rogus hosted by Devon and Cornwall Constabulary.

Members of the public were present, notably those who lived in nearby properties. Representatives of Mid Devon District Council's Environmental Health Department and Planning Officers also attended.

All present were asked to wear appropriate ear protection during firing to protect their hearing. Even with these worn the firing was loud. After the initial demonstrations, it was suggested that guests dispersed to locations of their choice in the neighbourhood to assess the noise away from the quarry.

It was disappointing to learn that the Environmental Health Team were very reluctant to accept an invitation to go into the Eden Lodge property to listen from a location that claims to be badly affected by the increased firing in the past couple of years. Eventually, they were persuaded to visit. (It was noted that Councillor Collis was noticeably startled by the sound at Eden Lodge when firing was resumed.) This reluctance suggested that the team did not want to gain first-hand experience of the sort of noise experienced by the residents at Eden Lodge.

Some residents had commissioned a Sound Assessment by Parker Jones Acoustics. This professional firm points out that there is no standard for assessing acceptable and unacceptable noise from the type of firing from the Police training. He draws on standards used in other types of firearms use. After drawing conclusions from this exercise, he felt that the noise he had measured at various locations around the quarry was likely to have exceeded acceptable levels mentioned in BS 8233:2014. While this relates to noise experienced at new builds it seems most unfortunate that the new Application for firearms training may inflict noise levels considered unacceptable for new properties on existing dwellings.

The Environmental Health Officer has dismissed the conclusions out of hand because there is no specific standard for firearms training; failing to acknowledge the professional attempt to rationalise this shortfall in the British Standards.

She has resisted calling for a Noise Impact Assessment for this Application which I understand often accompanies Applications with the potential to cause noise nuisance in a locality.

I hope that members of the Planning Committee will take notice of the follow-up letter submitted by Parker Jones Acoustics, published on 15th July 2002, which carefully argues that the Environmental Health Officer's Report may be considerably flawed.

Should members agree with Parker Jones Acoustics conclusions they should refuse this Application in its present form.

**Holcombe Rogus Parish Council** – 15<sup>th</sup> June 2022

Holcombe Rogus Parish Council (the Council) objects to this Application in its present form.

The Council understands that Devon and Cornwall Police have training obligations set by the Government and that this contributes to the safety of communities.

Since the last Permission to use Pondground Quarry as a Police Firearms' training site expired in 2014, this Application should be considered as a new Application to be decided on its current Planning attributes.

Approximately one third of 35 local residents attending a Holcombe Rogus Parish Council Planning Committee meeting on 9th June expressed a desire for the cessation of the unauthorised firearms training at Pondground Quarry. This appeared to be a reaction to the current, increased firearms activity.

It has been noted that the intensified firing has created significant distress amongst school pupils in Holcombe Rogus and behavioural disturbance to animal stock nearer to the quarry.

In spite of what the Police Officers present on 9th June said, residents felt that there was more firing taking place at Pondground in the past two or three years of the unauthorised use of the site. A resident presented a note of the frequency of firing since 2019 to support this view.

The Application asks for permission to fire between 9.00 and 17.00 on Mondays to Friday for an average of 3 days per week over 47 weeks a year; 141 days.

Paragraph 8 of the Applicant's submitted Noise Management Plan refers to "Exceptional Circumstances" when "Devon and Cornwall Police may have to, from time to time, increase the frequency and duration of shooting, and indeed the type and number of weapons that are fired at Pondground Quarry."

In the absence of a definition of "exceptional circumstances" this is unacceptable and has the potential to negate the requested duration and frequency stated in the Application.

The Application does not include a Noise Impact Assessment without which the effect on neighbouring properties can't be judged.

Some nearby residents commissioned a professionally executed Noise Impact Assessment which has been included in the Application's Associated Documents. When determining this Application the Council urges Mid Devon District Council to take note of its conclusion;

"...that the noise from the Police's firearms' training at Pondground has a significant adverse impact on local residents. The usual action to this in the NPPF would be to "avoid"; refuse permission if not mitigated."

Pondground Quarry is within 200 metres of the Grand Western Canal; a Conservation Area and Local Nature Reserve. The effects of firearms' training in the quarry may well have a deleterious influence on this sensitive area. Before determining this Application consideration should be given to calling for an Environmental Impact Assessment to be submitted by the Applicant.

The Council also questions the need for using a site that necessitates such long journeys for many Police Officers being trained. A site nearer the centre of the Devon and Cornwall Constabulary's area would be more logical. Could the Police explore the possibility of finding a more central site to improve their carbon footprint?

The Council objects to this Application in its present form since it fails to address the impact on the locality.

**Council's Public Health Team** - 19th September 2023 (Following Planning Committee Visit and receipt of additional report of Parker Acoustics relating to noise readings on day)

Comment from Jo Pope, Community Team Lead, PH Team MDDC: "On 5<sup>th</sup> September I attended an on-site meeting with Councillor members during a Police Shooting exercise to listen to a typical shoot. This was to ascertain the usual noise that occurs when shooting takes place at this location and various locations throughout the village.

When I arrived there were members of the Public outside the gates, clearly upset by the proposed planning application. On entering the site the police explained the protocol and health and safety considerations and then the shoot began. It was explained to us that we could wear ear defenders but that it wasn't a necessity. I chose not to wear, so I could hear the noise without any impediment.

The sound on site was loud, as to be expected, but only for about 30 seconds with long periods where shooting did not take place. After spending about 30 minutes on site we moved onto various locations in the village. The first was Eden Bed and Breakfast, directly behind the shooting ground. Here the noise again was clearly audible but we could hold a conversation and it is clear that the vegetation acts as a shield to some of the noise. After that we went to the canal towpath on the other side of the site and at this point it was audible but much more distant. Other locations further away the sound could be heard, but again just like distant fireworks for about 30 seconds with long periods of no shooting.

At the school we spoke to the Head teacher who advised that the shooting noise distracts the children and impacts on their learning. Whilst there we listened to 2 rounds of shooting in quick succession though with other external noises (such as traffic and pedestrians), the noise would be considered low impact. Even with little background noise the shooting was just perceptible, like popping noises in the distance.

The most affected site was Pondground Cottage, the closest receptor to the noise. Here the noise was loud, though again interspersed with long periods of no shooting."

Comment from Janet Wallace, Consultant EHO, PH Team MDDC: "During the shooting exercise on 5th September I was situated in the centre of Holcombe Rogus near to the school site. There was a light wind from the east which had the effect of carrying noise from the quarry area towards the village. During the period that I was there, there was quite a bit of traffic activity in the centre of the village including a tractor, delivery vans and noisy reversing associated with the pub car park area. I could hear distant pops of the shooting on occasions when there was no adjacent traffic or other noises. As I have observed previously this sounded like distant fireworks, occurring for perhaps 30 seconds at a time interspersed with long periods of no shooting. There were a few pedestrians around and none of them reacted when the noise occurred.

I then moved to a location on the Grand Western Canal near the garden of Pondground Cottage. At this point the shooting noise was loud whenever it occurred, clearly audible over building works going on adjacent to where I was standing. As I have observed previously this shooting was in

short bursts interspersed with long periods of no shooting noise. I was watching the coots and birds during this time and none of them reacted to the loud noises.

We have seen the additional report of Parker Acoustics which described noise readings made during the shooting exercise on 5th September. The report concentrates mainly on the maximum noise levels recorded (short lived loud noises) which has been reported previously by consultants for both the applicant and residents. It reports 1 hour average noise levels of 52dBa at Eden Lodge against a level of 45dBa when there was no shooting. The level against which the consultant is making his assessment is 55dBa 1 hour so in fact the recorded levels did not exceed this at Eden Lodge. At Pondground Cottage (immediately across the road from the quarry) the two 1 hour levels are 57dBa with shooting, and 47dBa without shooting. This is a similar finding to previous noise reports and not significantly in excess of the 55dBa 1 hour. The writer still suggests that up to 140 days shooting a year would take place and for up to 8 hours per day; whereas in fact, 12 months ago, 70 days in total were agreed, with a maximum of 6 hours per day use of the quarry (30 minutes of shooting "on-time") on a maximum of 2.5 specific days per week. A condition has already been suggested by the EHO which would secure this. The various target levels contained in noise control guidance quoted by the noise consultant refer to steady and continuous noises (for example throughout the working day) whereas in this case the noise is occasional, sporadic and short lived. It is important to take into consideration respite time, as we have previously described, and in this case the respite time is 330 minutes out of 360 on a shooting day, 165 hours out of 168 hours in a 7 day week, and at least 295 out of 365 days in each year.

In conclusion we have no objection to the approval of this application subject to the inclusion of the conditions that we have previously recommended which have the effect of controlling the occurrence of the shooting on any week and throughout the year. "

#### **Council's Public Health Team** – 30<sup>th</sup> March 2023

Further to the consultation on the Preliminary Ecological Appraisal submitted, the response from the Public Health Team was that it does not need to comment on the ecology appraisal.

#### **Council's Public Health Team** – 13<sup>th</sup> February 2023

We have reviewed the noise report submitted by the noise consultant engaged by Devon and Cornwall Police. EHOs were on site during the monitoring and shooting exercise in August 2022 and are satisfied that the shooting carried out was in line with what is usually carried out. Each of the 3 types of weapons was used at the maximum number of shooting positions. EHOs also listened to the noise off site as previously reported. We have no concerns regarding the report and its findings.

We have also reviewed the latest comments submitted by the Parish Council and some residents. In the EHO submission in October 2022, and previous comments, we clearly set out our role and the basis on which our comments and recommendations are made. Noise level readings were similar in all the reports (both those commissioned by residents and D and C Police) and the EHO has clearly stated why the noise standards quoted by the resident's noise consultant are not appropriate in this situation. Similar comments have been made by the D and C Police noise consultant. However, even if they were appropriate, noise in excess of guidelines is not a justification for refusal of planning applications; but it does suggest that control will be required. Where this occurs, the next step is for the EHO to review the mitigation and control measures suggested by the applicant, and then advise the planning officers which we have done.

From the outset the EHO suggested that a Noise Management Plan is appropriate, and this is typical in many situations where sporadic noise is clearly audible off-site. It was the EHO who requested that the number of shooting days was halved to a number in line with previous years (140 to 70), the days of the week were halved (to 2.5 from 5, giving a minimum of 4.5 clear days of respite each week), and the days of the week and hours of the day were specified. Several residents have stated that the level of previous usage was not unacceptable, and this is demonstrated by the absence of any complaints about noise in the past. Respite time is a very important consideration in applications such as this, and the comments of October 2022 clearly set this out.

We therefore have no additional comments in relation to the noise report submitted by Devon and Cornwall Police.

**Council's Public Health Team** – 27<sup>th</sup> October 2022

We have considered the Addendum to the Noise Management Plan submitted on 7th October 2022. Devon and Cornwall Police have continued to liaise with the council officers, parish council and residents and more information along with compromises have resulted from this. We have the following comments regarding the additional information contained in the addendum:

1. Over the last 4 years the number of days of actual shooting varied between 29 and 60 per year, that means there were between 336 and 305 days with no shooting. The applicant has stated that the 60 days during 2020/21 was influenced by covid when more training outside was necessary. As this was the maximum in 4 years, and some flexibility might be needed at times, we would recommend that a maximum of 70 days per annum is permitted, a reduction in the number of days requested by D and C Police. Should D and C Police require, and have justification for, this to be amended in the future then an application to vary the condition could be made.
2. Noise measurements were taken by a consultant appointed by D and C Police in August 2022 in order to determine the average hourly noise levels at the nearest residences during a shooting training day, and the "on-time" of the shooting noise. The measurements showed that wind direction was a significant factor with the shooting noise being loud only at properties downwind at the time. The highest average noise level (described as the Leq 1 hour) was 57dBa. This is very close to the 55dBa (1 Hour) figure that the parish council mention; in fact the difference of 2dB is not discernible to the human ear. The noise consultant employed by residents did not use the correct measurement periods as explained in our previous comments. Individual maximum levels were higher, but it is the hourly average which is the appropriate criteria because this takes into account the long periods of quiet.
3. The measurements showed that the "on-time" of shooting noise, which occurred in short bursts lasting 10-30 seconds, was around 5 minutes in each hour. Therefore there were 55 minutes in each hour when background noise of birds and leaves rustling was dominant, with no shooting noise. On site during these quiet periods officers are undergoing verbal instructions and changeovers; the verbal instruction being the majority element of this training.
4. It is significant in these types of applications to consider the respite time. This contrasts with other shooting uses such as a clay pigeon shoot when firing noise might occur as almost continuous shooting bursts for several hours at a time. There is no accepted guidance for this specific type of use and therefore it is more appropriate to use the Noise Management Plan approach to meet the requirements of the relevant policies, and provide clarity for both members of the public and users of the site.

5. In order to further assist the community with respect to certainty, the Police have now committed to specific shooting days. These would be Tuesdays, Wednesdays and Thursday morning. Shooting might take place over a maximum of 6 hours (during the normal working day) - this represents a total of 30 minutes of shooting within each 360 minute training day.

In conclusion, we have taken into account the regional need for the facility for a vital emergency service, the 40 year history of the site which has somewhat characterised this area, the absence of complaints regarding noise from the community over these years, and the significant periods of time (both during shooting days and the rest of the year) when no shooting of this type takes place in this location. We therefore have no outstanding concerns regarding the noise management of this site, but recommend that a condition along the following lines is included on any approval:

"Subject to the following specific requirements, the Devon and Cornwall Police Pondground Quarry Noise Management Plan Addendum dated October 2022 shall be implemented and remain in place throughout the life of this consent. The specific requirements are

- (i) Shooting shall take place only on Tuesdays and Wednesdays, and Thursday mornings.
- (ii) Shooting shall take place on a maximum of 70 days in any calendar year.
- (iii) Shooting shall take place over a maximum of 6 hours per shooting day (3 hours on Thursdays)."

#### **Council's Public Health Team** – 15<sup>th</sup> August 2022

Further to the noise demonstration exercise, we have the following final comments regarding this application.

I, with colleagues, attended a noise demonstration exercise on 2nd August 2022. The purpose of this was so that the applicant could demonstrate to officers, the planning officer, the local district council and members of the parish council and public the way in which shooting training is carried out within the quarry. There were sufficient police officers on site to use the two, four bay firing ranges both together and separately. The pattern of short periods of shooting (1-2 minutes) interspersed with longer periods of quiet (5-20 minutes) was similar to that which we observed in 2020. The noise was loud on site, and everyone wore ear defenders.

The noise was also clearly audible off-site at the nearest residences downwind. It will also have been audible to a lesser degree in the gardens of other residents further away. In the residents' gardens the noise sounded like a burst of exploding fireworks. Whilst in the residents' gardens I observed the reactions of a child and also a pony. Neither reacted negatively to the noise, and we could all talk at normal volumes over the noise without having to raise our voices or stop. On each occasion the noise occurred for no more than 2 minutes each burst.

We then went to a location upwind of the shooting ground, about the same distance away. As with our previous observations the firing noise was very distant and a lot less audible; in fact we had to stop talking to hear it. This shows that on any particular day the noise is audible at only some residences, depending on the weather conditions and wind direction. Therefore, other than the cottage near the entrance to the quarry, no specific residence would be affected on every shooting day. A critical factor for us is the times and days of shooting (ie. during the normal working day when many homes are not occupied) and the history of shooting (it has been located here for more than 30 years) because this sporadic noise has characterised this area. This would explain why our records show that the public health team have not received any complaints regarding excessive shooting noise from this location (records are kept for 7 years). The loudness of the noise on any particular occasion



is not a good reference point because this varies so much depending on conditions. For ease of reference I have attached below our earlier comments of 24th June and they should be read in conjunction with our initial comments dated 6th June 2022.

"Our original comments stand but I have been asked to consider a noise report submitted by a resident who lives around 200m away from the quarry. We had previously mentioned our subjective assessment of the noise that could actually be heard at a number of locations around the locality; noise that varies greatly with weather conditions and shooter numbers. A noise survey was carried out on behalf of a local resident by Parker Jones Acoustics in April 2021. The survey was based on a single day's attended monitoring at two residential locations. The writer has referred to various noise standards which exist, none of which can be specifically applied to this kind of shooting ground. My observations on the report are as follows:

1. The objector suggests that it is mandatory for an applicant to submit a noise report. This is not the case; the requirement is for noise impact to be assessed appropriately and this has been done, in consultation with the planning and environmental health officers.
2. There is no accepted or adopted guideline or code of practice for assessing shooting ground noise.
3. Any maximum noise levels are sporadic and not continuous; a burst of firing followed by a longer period of silence. Therefore maximum noise levels alone are not meaningful - the writer refers to 30 second averages of loud noises reaching 80dBa or so, this is similar to a human shouting or a car revving close by, ie. a loud noise but for a very short period of time.
4. The writer suggests that the noise has a "significant adverse impact on local residents". This is a very specific term quoted in various guidelines but can only be used if the standard measurement parameters are used. A critical parameter is the period over which the noise is measured or averaged over, and this is 1 hour. The guidance cannot be applied if the correct parameters are not used. For example a loud noise occurring for a total of 1 minute in 1 hour, interspersed with 59 minutes when that noise does not occur is regarded completely differently to a noise of the same loudness occurring continuously for that 1 hour period.
5. Time of day, frequency of occurrence, history of use, need for the noise, potential for mitigation and suggested control measures are all very important in relation to this kind of application. The writer has not considered any of these parameters. Conversely the applicant has considered all of these in their proposed Noise Management Plan.
6. The Noise Policy Statement for England is specific guidance with prescribed requirements and descriptors. These have not been followed and therefore this guidance cannot be used.
7. There is guidance regarding clay pigeon shoots, mainly for operators to use when designing and managing their site. This was published by the Chartered Institute of Environmental Health. It refers to a shooting noise level and the criteria for assessing it. Again this has not been exactly complied with, and the monitoring was only done on one day. However, even taking this into consideration the results show that this guidance is not breached.
8. The WHO criteria is often misquoted and misused, as in this case. It applies only to steady continuous noise, such as a nearby major road or airport. This is not a steady continuous noise and therefore this criteria cannot be applied. Again the relevant period is 1 hour and the writer has not used 1 hour data.
9. BS8233:2014 is a standard used for new housing. It is used to determine whether new residents might be affected by unacceptable existing noise and to calculate what

mitigation measures could be included, primarily in the new houses. The measurement period in this standard is 16 hours and therefore the writer cannot reference this standard.10. The PPG Minerals noise guidance referred to cannot be applied because this is not a minerals operation. This is a disused quarry, similar to many others, which has no current or recent minerals use. Of course, siting the firing range within a quarry is in itself a very good noise control measure.  
If any of these points need further clarification please contact me again."

We recommend that D and C Police take the opportunity to review the proposed Noise Management Plan since the demonstration exercise took place, in order to determine whether any suggestions made by local residents can be accommodated. We also recommend that, for clarity, the applicant provide data showing usage records of the last 4 years of shooting in Pondground quarry

**Council's Public Health Team** – 24<sup>th</sup> June 2022

Thank you for consulting Environmental Health again on the above application. Our original comments stand but I have been asked to consider a noise report submitted by a resident who lives around 200m away from the quarry. We had previously mentioned our objective assessment of the noise that could actually be heard at a number of locations around the locality; noise that varies greatly with weather conditions and shooter numbers.

A noise survey was carried out on behalf of a local resident by Parker Jones Acoustics in April 2021. The survey was based on a single day's attended monitoring at two residential locations. The writer has referred to various noise standards which exist, none of which can be specifically applied to this kind of shooting ground. My observations on the report are as follows:

1. The objector suggests that it is mandatory for an applicant to submit a noise report. This is not the case; the requirement is for noise impact to be assessed appropriately and this has been done, in consultation with the planning and environmental health officers.
2. There is no accepted or adopted guideline or code of practice for assessing shooting ground noise.
3. Any maximum noise levels are sporadic and not continuous; a burst of firing followed by a longer period of silence. Therefore maximum noise levels alone are not meaningful - the writer refers to 30 second averages of loud noises reaching 80dBa or so, this is similar to a human shouting or a car revving close by, ie. a loud noise but for a very short period of time.
4. The writer suggests that the noise has a "significant adverse impact on local residents". This is a very specific term quoted in various guidelines but can only be used if the standard measurement parameters are used. A critical parameter is the period over which the noise is measured or averaged over, and this is 1 hour. The guidance cannot be applied if the correct parameters are not used. For example a loud noise occurring for a total of 1 minute in 1 hour, interspersed with 59 minutes when that noise does not occur is regarded completely differently to a noise of the same loudness occurring continuously for that 1 hour period.
5. Time of day, frequency of occurrence, history of use, need for the noise, potential for mitigation and suggested control measures are all very important in relation to this kind of application. The writer has not considered any of these parameters. Conversely the applicant has considered all of these in their proposed Noise Management Plan.
6. The Noise Policy Statement for England is specific guidance with prescribed requirements and descriptors. These have not been followed and therefore this guidance cannot be used.
7. There is guidance regarding clay pigeon shoots, mainly for operators to use when designing and managing their site. This was published by the Chartered Institute of Environmental Health. It refers to a shooting noise level and the criteria for assessing it. Again this has not been exactly complied with, and the monitoring was only done on one day. However, even taking this into consideration the results show that this guidance is not breached.

8. The WHO criteria is often misquoted and misused, as in this case. It applies only to steady continuous noise, such as a nearby major road or airport. This is not a steady continuous noise and therefore this criteria cannot be applied. Again the relevant period is 1 hour and the writer has not used 1 hour data.

9. BS8233:2014 is a standard used for new housing. It is used to determine whether new residents might be affected by unacceptable existing noise and to calculate what mitigation measures could be included, primarily in the new houses. The measurement period in this standard is 16 hours and therefore the writer cannot reference this standard.

10. The PPG Minerals noise guidance referred to cannot be applied because this is not a minerals operation. This is a disused quarry, similar to many others, which has no current or recent minerals use. Of course, siting the firing range within a quarry is in itself a very good noise control measure.

If any of these points need further clarification please contact me again.

### **Council's Public Health Team** – 6<sup>th</sup> June 2022

Officers from Devon and Cornwall Police have worked closely with ourselves in Environmental Health and the MDDC planning officers in putting together the noise management plan. We are aware that some local residents are concerned about a perceived increase in use of the quarry for shooting practice and we needed to understand the reasons for this. We attended a routine shooting training exercise where both ranges were being used and a large number of officers were in attendance. Wherever possible officers are trained in groups in order to minimise the number of days on which the quarry needs to be used. During the day I observed the noise adjacent to all the residences in the vicinity and some further away where residents had expressed concern. The weather on the day was dry with a light wind from the south west. At all locations, other than near the house close to the main gates, we observed long periods of silence interspersed with single shots and sometimes multiple. Each "shooting event" took about 20 - 30 seconds at the most, with a silence gap in between. The noise sounded like distant "pops" rather than loud bangs. We also observed the noise within the quarry and only some guns produced noise that needed ear defenders or noise that interrupted speech. There were up to 10 officers shooting in any group and this exercise was operated as any usual training exercise. Importantly, although some shooting noise was loud and might record high levels, the duration was so short that they would hardly register on any averaged out noise readings (the usual time periods are 15 minutes or 1 hour). One objector refers to the loud noise and planning controls, but these only apply where that loud noise occurs continuously for long periods of time, such as near some industrial processes. This is not the case here.

In terms of noise control and mitigation, we have set out the aspects that we would like to see specified in the report, aspects such as days, times, "on time", etc. A draft was provided to us before being submitted and we have taken into account concerns of residents, most of whom wanted to see clarity in terms of what might happen and when. In summary these are:

- Shooting only between the hours of 9am and 5pm Monday to Friday.
- Noise "on-time" would be a maximum of 4 hours per day in intermittent short bursts.
- Only a maximum of 3 days per week.
- No more than 10 guns in any group.
- Use of low noise ammunition where possible
- Shooting days to be signed, including personal notification of the resident close to the main gate.

The applicant has included all the agreed recommendations and we have no outstanding concerns regarding this application. We recommend that the commitments made within the noise report should be required to be put in place and maintained throughout the life of any permission by way of reference to the noise report in a specific planning condition. A suitable condition would be

along the following lines:

"The noise mitigation and control measures outlined in the Noise Management Report submitted by Devon and Cornwall Police and dated April 2022 must be implemented and maintained throughout the life of this planning consent. Reason: to provide clarity to, and to protect the amenities of, local residents.

**Devon Stone Federation** - 8<sup>th</sup> June 2023

Thank you for informing the Devon Stone Federation that further information has been submitted in connection with this application. The DSF has nothing to add to the comments made in our initial response of 11/6/22 which are set out below.

**Devon Stone Federation** – 14<sup>th</sup> April 2023

Thank you for informing the Devon Stone Federation (DSF) that further information has been submitted in connection with this application. The DSF has nothing to add to the comments made in our initial response.

**Devon Stone Federation** – 17<sup>th</sup> February 2023

The Devon Stone Federation has no further comments to add to our original consultation response of 11 June 2022. In short the DSF has no objection, provided the use is limited to 20 years to prevent sterilisation of the underlying aggregate mineral as per Policy M2 of the Devon Minerals Plan.

**Devon Stone Federation** – 3<sup>rd</sup> February 2023

Thank you for informing the Devon Stone Federation that further information has been submitted in connection with this application. The DSF has nothing to add to the comments made in our initial response.

**Devon Stone Federation** – 11<sup>th</sup> October 2022

Thank you for this consultation request. The DSF was consulted about this application back in June and our response was as set out below. We do not wish to alter our response now.

**Devon Stone Federation** - 11<sup>th</sup> June 2022

Details of this application have been passed to the Devon Stone Federation (DSF) by Andy Hill, the Devon Minerals Officer. The DSF represents aggregate mineral operators in Devon and is a consultee for planning proposals within Mineral Safeguarding Areas and Mineral Consultation Areas defined in the adopted Devon Minerals Plan. In commenting on applications, the DSF considers whether the proposals are consistent with Policy M2 of the Devon Minerals Plan, which seeks to prevent mineral resources from being sterilised by incompatible surface development.

In this case, the site is a quarry with an extent permission for mineral extraction and also lies within a Mineral Safeguarding Area, defined to protect the important limestone deposit, part of which is currently being extracted at the nearby Westleigh Quarry. However, the temporary use of the site is not considered to represent a constraint in the short term.

Therefore the DSF requests that if permission is granted, the permission is subject to a condition limiting the duration of the permission to 20 years. On this basis the DSF has no objection.

We would be grateful if the above could be taken into consideration when the application is determined.

**Devon County Council – Minerals & Waste** – 23<sup>rd</sup> January 2023

In response to the attached letter, I confirm that Devon County Council has no further comments in response to the additional information, and that the comments made in my email of 7 June 2022 still apply.

**Devon County Council – Minerals & Waste** – 7<sup>th</sup> June 2022

Thank you for the consultation.

The application site benefits from an extant planning permission for mineral extraction and is located within a Mineral Safeguarding Area for the limestone resource. Policy M2 of the Devon Minerals Plan seeks to safeguard such resources from sterilisation or constraint by new development.

As the operational limestone quarry at Westleigh has an anticipated remaining life in excess of 20 years, the mineral resource at Pondground Quarry and surrounding land is viewed as a long term resource. Policy M2 includes criterion (c) which allows for temporary development that does not inhibit longer term extraction, and Devon County Council, in its role of mineral planning authority, does not object to continuation of the use as a firing range subject to imposition limiting the duration of that use to a period not exceeding 20 years.

**Local Highway Authority** – 12<sup>th</sup> June 2023

The County Highway Authority recommends that the Standing Advice issued to Mid Devon District Council is used to assess the highway impacts, on this application.

**Local Highway Authority** - 13<sup>th</sup> February 2023

The County Highway Authority recommends that the Standing Advice issued to Mid Devon District Council is used to assess the highway impacts, on this application

**Local Highway Authority** – 12<sup>th</sup> October 2022

The County Highway Authority has no further comments to make.

**Local Highway Authority** – 21<sup>st</sup> June 2022

Observations:

The County Highway Authority had been contacted prior to the application being submitted. This proposal does not create a severe effect on the highway network and the access into the disused quarry meets the requirements for the speeds in this area. Therefore the County Highway Authority has no objections.

Recommendation:

The Head of Planning, Transportation and Environment, on behalf of Devon County Council, as Local Highway Authority, has no objection to the proposed development

**Environment Agency** - 09 February 2023

Environment Agency position:  
No objection

Given this proposal is a continuation of an existing use and no operational development is proposed we have no comments to make at this time.

**Environment Agency** – 12<sup>th</sup> May 2022

Change of use within Flood Zone 1 - No EA consultation required.

**The Grand Western Canal Joint Advisory Committee** - 6<sup>th</sup> February 2023

The Grand Western Canal Joint Advisory Committee has noted the Applicant's submission of the Additional Planning and Heritage Statements published on 20th January 2023. Members object to the Applicant's suggestion in the Heritage Statement that the noises from industrial activity in the late 19th Century on the adjacent canal in the Holcombe Rogus area create a precedent for the canal corridor's being a noisy environment thereby making the proposed firearms' noise a normal, acceptable part of the canal's environment.

Members would like the Planning Committee to note that industrial transport on the canal ceased at least one hundred years ago. Consequently, the canal has been a quiet corridor for a century. This historical tranquillity undoubtedly was a factor in its becoming a Country Park in 1971 and subsequently a Local Nature Reserve. Firearms training noise must be considered as a new intrusion and appropriate mitigation must be implemented if the Application is a permitted.

Members have now reflected on the possible impact of this noise in the canal's wildlife and have reviewed the entries in the Wildlife Trigger Table. They were surprised that the answers did not trigger a Wildlife Report.

However, it was soon noticed that there were some incorrect entries in the Wildlife Trigger Table; Part A 1a was incorrectly completed since the Applicant has entered that the Application site is less than 0.1.

A cursory examination of a map shows that the site is significantly larger and the Applicant's own Additional Planning Statement published on 20th January 2023 contains the following in Section 2; 2.1 The application site measures circa 0.41 ha and is located in a rural location circa 1 mile east of Holcombe Rogus.....

Clearly, Part A, 1a should have been entered as "Yes".

Additionally, 1b viii should have been entered as "Yes" since the Application site is in woodland and could have an effect on hydrology. Surface water from the site could drain down to the adjacent Grand Western Canal carrying accumulated contaminants from the discharge of the training firearms. Members therefore insist that a Wildlife Report should follow the Wildlife Trigger Table when it is re-completed correctly. Determination of the Application should not take place until the results of the Wildlife Report are available for the Planning Committee's consideration. The Grand Western Canal Joint Advisory Committee continues to Object to this Application

**The Grand Western Canal Joint Advisory Committee** – 31<sup>st</sup> August 2022

I write on behalf of the Grand Western Canal Joint Advisory Committee (GWCJAC)

Application 22/00907/FULL

The GWCJAC Objects to this Application.

Devon and Cornwall Police is applying for permission to use Pondground Quarry in Holcombe Rogus for firearms training.

A temporary permission for this purpose expired in 2014.

MDDC apparently reminded the Police of this expiration at the time. For reasons unknown neither the Police nor MDDC followed-up so that there was no new Application nor Enforcement by MDDC.

Firearms training continued at the site without permission until increased firearms activity caused the quarry's neighbours to question this a couple of years ago. The Police were then prompted to submit this Application for permission to continue using the quarry.

The current Application refers to a "continuation" of the use of the quarry. The GWCJAC considers that this should be treated as a new Application and that the Planning Committee should not take into account the unauthorised use since 2014.

This Application calls for freedom to fire at the quarry for an expected 141 days a year during Monday to Friday 9.00am to 5.00pm. However, the Application mentions that undefined "exceptional circumstances" could result in firing outside these dates and times.

It should be noted that the Grand Western Canal in Devon is in a Conservation Area, is a Country Park and also a Linear Nature Reserve.

The possibility of increased use will create quite disturbing conditions in the general locality and the prospect of considerable disruption to the tranquillity of the canal corridor from Lowdwells to well beyond Whipcott.

Members are worried that the peaceful, nature-rich environment of the Country Park in the Conservation Area will be destroyed by the increased frequency of firearms training at Pondground Quarry. A member of the GWCJAC visited the towpath north of Waytown Tunnel during a demonstration firing session on 2nd August 2022. Obviously the impression gained was subjective but the sound of firing in the canal's cutting there was very loud and, for example, drowned-out any hope of hearing bird-song.

The GWCJAC has received a message from a near neighbour of the Pondground Quarry expressing concern about the welfare of the environment caused by the impact of the firearms training adjacent to the canal.

Members consider that he voices this well in his message which follows;

I am writing to voice my concerns of the impact from a planning application at pond ground quarry on the western end of the Grand Western Canal.

As a local resident that lives very close to the canal I have noticed a massive drop in the number bats flying around at dusk and owls heard at night. This seemed to happen when the police massively increased the use of the quarry as a firing range back in 2020. Since then it has come to light that their temporary planning permission expired in 2014. Their recent application asks for a further increase to 141 days per year with even further increases in 'exceptional circumstances'. I

am extremely concerned that the current increase has caused the drop in those species that are particularly sound sensitive, so further increases would compound things further. I believe this is demonstrated by the visible drop in bats and owls but am sure there are many other species negatively impacted. In my view the application should at the very least include an environmental survey to look into the potential impact on the current wildlife population and if this is lower than expected then why?

In addition to the environmental impact the planning process has brought to light how the firing has effected many of those who use the canal on a regular basis. This seems to especially apply to dog walkers whose animals are sufficiently frighten to persuade them to go elsewhere on firing days. This is clearly documented in many of the 75 objections listed on the application. Is this in the committees view acceptable?

The GWCJAC accepts that Devon and Cornwall Police has to undertake firearms training but questions whether it should be carried out adjacent to such a valuable green corridor as the Grand Western Canal.

If the Planning Committee feels that this Application should be permitted we urge it to ensure that the frequency of normal firing is well defined, restricted to the pre-2014 levels and that the "exceptional circumstances" when firing times may be extended is also given a definition that prevents its being abused.

Adam Pilgrim - on behalf of the GWCJAC.

**Council's Conservation Officer** – 17<sup>th</sup> October 2023 (Following receipt of Barristers Opinion)

The policy background has been set out by Greg Venn (previous Conservation Officer), therefore does not need to be repeated here. The quarry has been used for firing for 40 years. Most of the designated heritage assets were therefore designated during a time when the area was experiencing roughly the same ambient noise as it is now, including the firing, although this noise level has increased slightly by the additional noise from the M5 as car use has increased. While ambient setting may not have been part of the consideration of setting pre-2005 (when HE listings started to become less an identification method and more an assessment of significance), the setting has not significantly changed during that time. Were the amount and type of firing to stay the same, there would therefore be no change to the acoustic experience of these designated heritage assets.

The applicant has now provided a heritage statement which follows the NPPG guidance and the Historic England *Setting of Heritage Assets* guidance. The methodology is sound. I agree with many of the conclusions of the statement. However, there is one area where I disagree. Paragraph 4.9 is concerned with the significance of the Grant Western Canal, and states:

*'the tranquillity of the canal is not part of its historical interest...the scene we experience today is not that which would have been presented to our eyes in the heyday of this waterway and hence, in pure historical terms, the canal must be disregarded as a receptor. Simply put, even though the canal is proximate, the designed use of it does not relate to its tranquillity (quite the opposite) and hence it derives none of its historic significance from low ambient noise levels.'*

I agree that the canal was not designed to be tranquil, but also that it was not designated a conservation area during the time of its industrial usage. Conservation areas are 'areas of special architectural or historic interest, the character or appearance of which is it desirable to preserve or enhance' (The Act s.69). The canal is unusual in that its original historic use as an industrial transport route is not its current character, which is one of leisure use within the countryside. It is



not unusual for such features to change their character over the years as their use, as can be seen with other canals across the country. The Oxford Canal, for example, has also changed character to a quiet and peaceful wildlife haven in predominant leisure use, at much the same time as the Grand Western Canal. The industrial heritage of the canal is recognised and conserved, but the predominant character now and at the time of designation is that of countryside travel and leisure. Therefore, the tranquillity of the canal as a designated heritage asset is not irrelevant, and must be considered as a material consideration. The relevant parts of the NPPF are 195, 199, 200, and 202.

For this reason, I do believe that the character of that part of the canal that passes near the quarry would be negatively impacted upon by retaining the established and previously permitted level of firing (unrestricted number of days) and suggest that reducing this to the proposed 70 days would be a reduction in the previously permitted disturbance level. The amount of harm that unrestricted firing would bring would be less than substantial, as it would not impact on the whole conservation area, and would not be a high level of less than substantial harm due to the restricted number of days and times. This amount of less than substantial harm should either be designed-out to stay at its previously permitted level, mitigated, or balanced against public benefit. As the quarry is not a heritage asset, designated or otherwise, mitigation within the quarry might be achievable without increasing harm to surrounding heritage assets.

**Council's Conservation Officer** – 22<sup>nd</sup> June 2023 (Following receipt and consideration of a Heritage Statement)

I do not consider that the continued use of the quarry as a firing range would detrimentally affect the settings of the listed buildings and conservation areas in the vicinity.

The quarry has been used continuously since 1978 as a firing range. All the listed buildings and conservation areas listed within the heritage statement were listed or designated post 1978 (the earliest in 1988, after a period of 10 years use as a firing range). Therefore, the ambience created by the firing would have been in existence at the time of listing and designation, and would likely have been taken into consideration.

While it is true that the area historically would have been industrial in character, creating large amounts of noise, the more important factor here is that the character of the area has not changed since the listing and designation of the nearby heritage assets, nor is it proposed to be. Therefore, I conclude that no harm would occur to the significance (including settings) of these heritage assets by the continued use of the quarry as a firing range.

**Council's Conservation Officer** – 25<sup>th</sup> October 2022 – (before Heritage Statement received)

You have asked me for a view on this proposal.

You will be aware that the Grand Western Canal is close by, and that there are several listed buildings within 500m - Higher Brinscott Farmhouse; Burrow Farmhouse and adjoining cottage, the stables, barn and cow house at Burrow Farm; Pine Croft; Waytown Tunnel and Waytown Lime Kilns.

The setting of listed buildings is a statutory duty where we must 'have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses' (section 66 of the Listed Building Act). This is to be given considerable importance and weight. This is supported by the NPPF which is a material consideration and the local plan policy which again has statutory weight through section 38(6) of the Planning Act.

The setting of the canal is not a statutory duty in terms of section 72 of the Listed Building Act as it is not inside the conservation area, but is to be considered as required though the NPPF and local plan.

The NPPF says that the LPA should require an applicant to describe the significance of any heritage asset affected including any contribution made to their setting. This should be sufficient to understand the potential impact of the proposal on its significance. As a minimum the Heritage Environment Record should be consulted and the building assessed using appropriate expertise where necessary.

When considering the impact of development, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Where the proposal will lead to less than substantial harm, the harm should be judged against the public benefit, of the proposal including, where appropriate, securing its optimum viable use.

The NPPF also requires that in determining applications, local planning authorities should take account of:

- a) The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b) The positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- c) The desirability of new development making a positive contribution to local character and distinctiveness.

Policy DM25 of the Local Plan Review 2013-2033 states

Heritage assets and their settings are an irreplaceable resource. Accordingly the Council will:

- a) Apply a presumption in favour of preserving or enhancing all heritage assets and their settings;
- b) Require development proposals likely to affect the significance of heritage assets, including new buildings, alterations, extensions, changes of use and demolitions, to consider their significance, character, setting (including views to or from), appearance, design, layout and local distinctiveness, and the opportunities to enhance them;
- c) Only approve proposals that would lead to substantial harm or total loss of significance of a designated heritage asset where it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or the requirements of the National Planning Policy Framework are met;
- d) Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this, harm should be weighed against the public benefits of the proposal, including securing its optimum viable use; and
- e) Require developers to make a proportionate but systematic assessment of the impact on the setting and thereby the significance of heritage asset(s)

There is no heritage assessment with this application.

Whilst this proposal is away from the listed buildings and is outside the conservation area, it has the potential to impact on the experience.

Planning Practice Guidance states

What is the setting of a heritage asset and how can it be taken into account?

The setting of a heritage asset is defined in the Glossary of the National Planning Policy Framework.

All heritage assets have a setting, irrespective of the form in which they survive and whether they are designated or not. The setting of a heritage asset and the asset's curtilage may not have the same extent.

The extent and importance of setting is often expressed by reference to the visual relationship between the asset and the proposed development and associated visual/physical considerations. Although views of or from an asset will play an important part in the assessment of impacts on setting, the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust, smell and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places. For example, buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each.

The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights of way or an ability to otherwise access or experience that setting. The contribution may vary over time.

When assessing any application which may affect the setting of a heritage asset, local planning authorities may need to consider the implications of cumulative change. They may also need to consider the fact that developments which materially detract from the asset's significance may also damage its economic viability now, or in the future, thereby threatening its ongoing conservation.

Advice on how to assess the setting of heritage assets is given in Historic Environment Good Practice Advice in Planning: 3 (2nd Edition) - The Setting of Heritage assets. This advises on page 11 that the experience of the asset is to be considered which would include noise and the tranquillity of the heritage assets amongst a list of others that should be considered.

I am not a noise expert, and I have not looked into the planning history of the site, and to that extent cannot give a view on whether the proposal would detrimentally impact on the significance of the conservation area. What I can say is that the impact of noise from a proposal is a matter which we should consider with regard to the listed buildings and the conservation area, and then weigh any harm to the heritage assets in the balance against the public benefit of the proposal. We cannot strike the balance until we understand the level of harm.

At his time we do not have a heritage statement with the application and given that it has the potential to impact on the heritage assets the applicant should be invited to submit a setting assessment of the heritage assets, as required by the PPG, NPPF and policy DM25. As you are aware the level of detail should be proportionate to the assets importance and no more than is sufficient to understand the potential impact of the proposal on the significance of the heritage assets.

### **Devon Wildlife Trust** – 14<sup>th</sup> June 2023

Further to receipt of your letter dated 5<sup>th</sup> June, I have reviewed the latest information submitted as part of Planning Application Ref: 22/00907/FULL. Unfortunately, the comments provided in my letter dated 16<sup>th</sup> March do not appear to have been addressed. My comments and objection (attached) therefore remain extant.

(In respect of this response, since the original response from Devon Wildlife Trust on the 16<sup>th</sup> March 2023, it should be noted that the applicant has submitted both a Peregrine Survey and

Preliminary Ecological Appraisal and as such it is considered that the assessments required to assess ecological matters on site have been received and as discussed within the report below, there is no requirement to provide a 20% net gain in biodiversity).

### **Devon Wildlife Trust** – 16th March 2023

We object to the planning application because we consider that the proposals do not provide sufficient evidence to satisfy the requirements relating to biodiversity in paragraphs 174d and 175d of the National Planning Policy Framework or the requirements of paragraph 99 of ODPM Circular 06/2005 Biodiversity and Geological Conservation. Furthermore, the Environment Act 2021 and National Planning Practice Guidance requirements relating to biodiversity net gain have not been addressed. These requirements are reproduced at the end of this letter.

The comments provided below are based on a Desk Study Appraisal produced by Richard Green ecology (March 2023). We consider that insufficient evidence has been provided because:

1. The application does not include an Ecological Impact Assessment. The Desk Study produced for the site recommends a Preliminary Ecology Appraisal is undertaken for the site. This should be carried out, followed by any protected species surveys which are required. A full Ecological Impact Assessment of the scheme must then be carried out which assesses the impact of the proposal on habitats and protected species. This must include an assessment of the impact of noise on existing wildlife present within the site and zone of influence of the proposals, and must be carried out by an ecologist with experience of noise impact assessment.

2. The report produced for the site does not include an assessment of net gain (or loss) of biodiversity. The most recent DEFRA Biodiversity Metric should be utilised to calculate loss/gain. Biodiversity net gain calculations for the site must be produced using a detailed landscaping plan and must show net gain. In light of the biodiversity crisis, DWT recommends all developments achieve a 20% net gain. For the reasons given above, we object to the planning application and recommend that it is refused.

## **REPRESENTATIONS**

This planning application has been advertised by means of a site notice, neighbour notification letters and by advertising in a local newspaper in accordance with the legal requirements for publicity on planning applications, and the Council's Adopted Statement of Community Involvement (October 2016). Two site visits have also been undertaken, the first on the 2<sup>nd</sup> August 2022 to allow the case officer, MP for the constituency of Tiverton and Honiton, Ward Members and Members of the Parish Council, the ability to hear the shooting and the second site visit on the 5<sup>th</sup> September 2023 to allow Members of the Planning Committee the ability to hear the shooting.

At the time of writing, 95 letters of representation have been received, 89 letters of which are of objection, one letter of general comment and 5 were letters of support. Letters of representation can be viewed in full on the council's website. The grounds of objection have been summarised as follows:

- Impact on neighbouring amenity through noise disturbance of the shooting. This can be loud and without warning.
- Noise levels of the shooting are excessive based on the most appropriate guidance which is that of the Chartered Institute of Environmental Health ('CIEH').
- MDDC has been sent copies of reports from acoustics consultant Parker Jones Acoustics dated 23<sup>rd</sup> June 2022 and 14<sup>th</sup> July 2022 and L F Acoustics dated 22<sup>nd</sup> October 2022. These

reports clearly show that shooting at Pondground Quarry has caused a significant adverse impact on the local community.

- Whilst shooting has taken place in past, the noise and intensity of the shooting has increased through types of weapons now fired and number of times shooting occurs
- Previous shooting was around the permitted development level of 28 days and not to the higher figures quoted by the Police. The police would need to show evidence to demonstrate their figures
- The development has a detrimental impact on holiday businesses surrounding the site.
- The development has a detrimental impact on heritage assets such as the Great Western Canal Conservation Area and nearby listed buildings
- The shooting has a harmful impact on the environment through lead contamination from shooting activity
- The shooting has a harmful impact on wildlife including the County Wildlife Park Site of the Great Western Canal.
- The shooting impacts the Primary School in Holcombe Rogus which impacts pupils and their ability to learn
- The site is above 0.1ha in size and therefore a wildlife report is required.
- There would be other sites available which would be better located to serve Devon and Cornwall Police.
- The site is designated as a priority habitat by The Biodiversity Action Plan, located directly adjacent to the Grand Western Canal country park and designated nature reserve.
- Highways implications through the impact on local road network. The access to the site is via a very narrow single track lane in poor condition that is also part of the national cycle network. During previous shooting days the number of vehicles counted (and recorded) on site has been around 10 cars and vans. This equates to approximately 60 additional journeys per week.
- It seems the issue of pollution caused by human waste has not been addressed.
- There have been previous complaints made to Environmental Health about the noise pollution prior to this application.
- The Devon and Cornwall Police state that they need to be fully trained with firearms to keep the public safe. However, no data is supplied justifying this position.
- Safety - Pondground quarry is easily accessible and some sections are not fenced at all.
- Concerns for local children who play in the woods and what could happen with live bullets being fired.
- Using the data supplied by the DCP through a FOI request it is now indisputable just how much that the police have increased the usage of the site as a firing range. In 2012 the police used the site for two days, totalling 5.25 hours on site with 400 rounds fired. This can now be compared to their figures for 2021. The total number of days on site increased to 58 days, totalling 319.25 hours on site and a massive 113,730 rounds fired. So it is now clear that the historic use is not comparable to the more recent activity.
- In 2004, when they were last granted temporary permission to use the site the planning officer clearly states that "an increase in use is likely to be unacceptable". This permission expired in 2014, something they were made aware of, and instead of re applying the DCP decided to exponentially increase the use of the site regardless.
- Using data from DCP, their usage increased in 2014 to 37 days, totalling 178.5 hours on site with 28,623 rounds fired. That is an increase of 35 days, 172.25 hours and 28,223 rounds over two years. Even though fully aware that their temporary permission had expired they continued to use the site increasing exponentially for a further seven years.
- The condition that Devon and Cornwall police were to have exclusive use of the site was flagrantly ignored with DCP inviting other forces on to the site along with the Marines on several occasions.

- No statement of community involvement has been submitted.
- Should there be a Mineral Resource Assessment to demonstrate that DCP can comply with Policy M2: section c) the non-mineral development is of a temporary nature and can be completed and the site restored to a condition that does not inhibit extraction or operation within the timescale that the mineral resource or infrastructure is likely to be needed?
- No clear and convincing justification has been provided as to why this increased use needs to occur at Pondground Quarry given the impact it causes.
- No assessment of alternative sites has been provided. Where have DCP been carrying out their firearms training since May 2022?
- Wouldn't their firearms training be better implemented if it were spread out across the counties they serve or held in a purpose-built facility that has been commissioned with the same planning rigour and consideration for neighbours as per other Police forces?

Following on from the Member site visit on the 5<sup>th</sup> September and writing of the earlier officer report, a further Noise Impact Assessment carried out during the last demonstration shooting at Pondground on 5<sup>th</sup> September 2023 by Parker Jones Acoustics was received with an additional objection (Mr Hill), both of which can be viewed in full on the planning file. In summary the additional letter of objection outlines that they believe the fundamental issue is the sheer noise level, the frequency of usage and the lack of a proper noise assessment by the applicant. The objection notes that Parker Jones Acoustics has carried out 2 noise monitoring exercises and produced Noise Impact Assessments for both. Their first report was also independently peer reviewed by LF Acoustics. Both reports (and the peer review) conclude there is a "significant adverse impact" caused by the shooting.

In addition to the above, details from a third party to what is described as a similar scale firing range, located at Lower Fosse Farm, Crudwell and how it was determined has been provided which was circulated to Members outlining measures Public Health were to impose and the guidance used to assess noise.

An objector (Ms Forward) has also submitted evidence of the complaints that they have made regarding the shooting at Pondground Cottage which was a complaint made to MDDC on the 11<sup>th</sup> January 2021, a complaint made to the Police & Holcombe Rogus Parish Council on the 1<sup>st</sup> February 2021 all of which are on the public file to view.

In addition, a Barrister's Opinion has been provided on behalf of a number of local residents, providing an opinion as to whether Members had all the information to determine this application. It addresses matters of impact of the development through noise and on heritage assets and how these should be determined, points of which are addressed in further detail in the report below. Public Health has also provided a direct response which has been included within the appendix to this report where Members can view the points made by the Barrister and the direct response provided by the Public Health team as well as comments from the Case Officer and Conservation Officer.

The grounds of support have been summarised as follows:

- This facility has been in use for many years and helps to provide vital training to Police officers, who are prepared to put themselves in harm's way. They do this to try and protect the public of Devon and Cornwall and anywhere else, when required.
- They deserve the support of the local and wider community, to retain this training facility.
- It seems there is a proposal to reduce the number of firing days at Pondground

- From a public safety viewpoint it is vital the police firearms officers are not only fully trained but maintain their extremely high levels of expertise set by the Home Office. After all, it is they we will call upon to respond and deal with the worst possible scenario
- These officers need to train for a huge range of scenarios, hence the need to replicate them in an outdoor environment.
- Disagree with objections that suggest that there is some "environmental harm" implicit in the noise experienced on the limited number of days in the year that the range is in use for firearms training and practice.
- It is almost inconceivable that the abundance of wildlife - in particular on the nearby canal - would be evident if there was any serious threat or disturbance from the use of the range. I have seen swans, ducks and water hens all raise successful, thriving broods from nests only yards away from the range. I have seen kingfishers; woodpeckers and even an otter on, or in the immediate environs of, the canal between Pondground and Lowdwells - hardly an environmental disaster area.
- If we are to seriously consider reducing persistent noise pollution then we will need to include consideration of measures such as :-
  - stopping or even reducing noise pollution locally by setting up noise monitors on any local road during the long summer harvesting season when bellowing, 10 tonne tractors towing huge trailers full of grain or silage or, worse yet, slurry thunder up and down our narrow lanes between dawn and dusk;
  - limit the number of trucks going to and from the local quarries;
  - stop or limit the use of blasting at the local quarries;
  - limit or ban the use of bird scarers by local farmers;
  - limit or ban game hunting seasons and organised shoots;
  - stop or limit all late night or early morning pest hunting.
- The fact that Pondground has safely enabled the provision of that capability for more than forty years is a worthy testament to the economic and environmental suitability and practicality of the range.
- The reality is that the range is a vitally important asset that needs to be used and maintained. It's in a safe and suitable location and the limited impact it has is mitigated so there is little benefit to be gained by imposing additional cost and inconvenience through limitations on its current use.
- I support the Police living close by for over 50 years and have never had an issue with the noise although I have always been able to hear it.
- In terms of nuisance the police firing is only during working days and during the day, and our subjective assessment would rank sixth behind the following that happen all hours and days of the week in this locality:
  - Low flying military planes,
  - The rookery in the Grand Western Canal nature reserve,
  - Tractor traffic (particularly the new mayhem that occurs during the bio fuel harvest),
  - Quarry traffic hitting the bicycle killing potholes on the whipcott road,
  - Licenced game shooting,
  - The whinnying horse across the canal.
- I note the noise complaints and would point out that in 1976 the police were using a model 19 S&W revolver. My particular weapon was 2.5" barrel producing in the range of 175 decibels at close range. The modern semi-automatic weapons with enclosed breach and firing pin produce in the range of 160 decibels.
- After 45 years any immediate impact on wildlife will have occurred many many years ago and will now be an occasional background noise. Recent losses of wildlife are more likely, in my opinion, due to natural causes such as bird flu, which from personal experience, living on the Grand Western Canal, were 6 signets last year and the failure to hatch a further 6 or 7 this year, after firing was suspended.

- With regard to the GWCJAC objections they were taken before myself and others joined the committee and may not necessarily reflect the views of current members.
- As a former police firearms officer for 16 years I cannot stress the importance of what is limited training on the ranges in question, causing noise for a few minutes in the hour as stated in recent tests.
- Note more often and in both rural and close proximity to residential areas the use of gas powered bird scaring devices which operate at and above 160dB. Designed to scare birds of any breed for longer periods of days not minutes in the hour occasionally.
- Having been in situations where the high level of training within the Devon and Cornwall police proved invaluable including on one occasion the split second decision to fire or not.

## **MATERIAL CONSIDERATIONS AND OBSERVATIONS**

This application is for the retention of a disused quarry for use as two firing ranges at Devon & Cornwall Constabulary, Pondground Quarry, Holcombe Rogus. The site has been used for the purposes of firing at two ranges by Devon and Cornwall Police for over 40 years but the last planning permission lapsed in 2014 although the police have continued to shoot on site. Therefore this application seeks to partly retrospective apply for the permission whilst also seeing consent to continue shooting for a temporary period of 7 years as recommended by planning condition.

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

- 1. Principle of the development including the planning history of the site**
- 2. Impact on amenity, predominantly through noise intrusion**
- 3. Impact on heritage assets**
- 4. Impact on the wider environment**
- 5. Impact on wildlife**
- 6. Highway Implications**
- 7. Site security**
- 8. Other matters - temporary use for 20 years given the minerals**

### **1. Principle of the development including the planning history of the site.**

1.1 The site is in a countryside location where Policy S14 (Countryside) is supportive of agricultural and other appropriate rural uses requiring new development to preserve and where possible enhance the character, appearance and biodiversity of the countryside while promoting sustainable diversification of the rural economy. As demonstrated by the planning history, the use of shooting from two ranges at Pondground Quarry has occurred since the late 1970's and has benefited from a number of permissions where the LPA have, in granting permission, confirmed that the principle of the use was acceptable. Planning history is a material consideration, and must be taken into account in the decision making process. Planning permission was also approved in 2014 for the erection of a 3 sided building associated with the firing range.

1.2 Planning Permission for use as a firing range at Pondground Quarry has been granted on the basis of temporary permission in the past, and is sought again now, but this is related to the safeguarded mineral allocation of the site. On application 04/02000/FULL, the officer report advised that there were no third party representations or parish council comments to the application at the time and that *'the site is removed from settlements + passerby's hence is a reasonably safe location'*. The officer site visit notes also advised that *'seems like a good location for a firing range, as is an out of the way location, is well enclosed by quarry walls, has*



*reasonable highway access and space for parking, noise would not result in nuisance to a village or other more densely populated area*. It is not considered that there has been any significant change since this decision that would lead your officers to have a different opinion.

- 1.3 The National Planning Policy Framework (NPPF) at paragraph 97(b) advises that *'decisions should promote public safety and take into account wider security and defence requirements by .... supporting development required for operational defence and security purposes'*. The site is used by Devon and Cornwall Police for the training of firearms officers to supplement their main shooting range in Exeter. Since 1978 the site has been used as two firing ranges to fulfil the police service's obligation to adequately train officers in the use of firearms. So far as can be determined, this use has continued without interruption, with the renewal of temporary permissions from that date until 2014; when the last formal temporary consent lapsed. However, the use of the land as a training firing range has continued to the present day when Devon and Cornwall Police were alerted to the need to renew the consent. Hence, the submission of the current application.
- 1.4 It has been outlined by the applicant that the use of the former quarry as two live firing ranges is critical to Devon and Cornwall Police's ability to carry out its legal policing duties in Devon and Cornwall and the Isles of Scilly. Devon and Cornwall Police exists to detect and prevent harm, to protect the vulnerable and to reduce crime. Devon and Cornwall Police has an indoor live firing range at its headquarters in Middlemoor in Exeter and the outside live firing range at Pondground Quarry. Both ranges are used by all of the Police's firearms officers who travel to the ranges for the necessary training and accreditation. Whilst the vast majority of Devon and Cornwall Police's firearms training takes place at Middlemoor, this is only a single indoor firing range. Due to the capacity of the indoor range it is absolutely imperative that the Police undertakes concurrent training for most of the year, and this requires the use of Pondground Quarry.
- 1.5 The applicant states that their tactical training is run at a number of other non-firing range venues across the South West. Unfortunately their military colleagues are at full capacity with the use of their own facilities and the Police are unable to use their firing ranges. As such the Police are not able to rely on the military facilities as their availability is minimal. The accreditation for armed officers is carried out yearly. Their training is spread over 12 months, meaning that a firearms officer will attend one week of training every 6 weeks. Furthermore, officers must qualify every 6 months in each firearm (pistol, carbine and shotgun). This is non-negotiable and will result in officers losing their accreditation if they do not meet this requirement. As such this facility is required and there are no alternative sites available to undertake outdoor shooting. At the Member Site Visit, it was noted that there is a requirement to train up to 150 shooters but currently they are only able to achieve between 110 and 120, therefore indicating the shortfall and the need for this facility.
- 1.6 It is also worth noting that Class B, Part 4 of Schedule 2 of the Town and Country Planning General Permitted Development Order 2015 (as amended) outlines permitted development rights for temporary use of land. *Class B* allows for ***the use of any land for any purpose for not more than 28 days in total in any calendar year and the provision on the land of any moveable structure for the purposes of the permitted use***. Therefore notwithstanding the historic use of the site for shooting by Devon and Cornwall Police, the fallback position is that shooting could take place on site for 28 days of the year with any additional days requiring planning permission. Shooting has taken place on site since the initial planning approval in 1978 with shooting still continuing on site, only recently ceasing given the determination of this planning application.

1.7 The Application originally submitted sought planning permission to fire between 9.00 and 17.00 on Mondays to Friday for an average of 3 days per week over 47 weeks a year; 141 days. However, following objections received and consultee comments, this has now been reduced down to shooting for 70 days of the year which is considered to be acceptable. It should also be noted that any permission will only be temporary for a period of 7 years only, which is addressed later in the report.

1.8 Therefore in light of the above, the principle of shooting from two firing ranges on site has been accepted previously on this site and it is noted that there were no conditions imposed on earlier planning permissions restricting the shooting; therefore meaning at the time shooting could have taken place on site as required. The application before members today therefore, provides more control. As part of this application, a Noise Management Plan has been submitted which could be conditioned through the planning permission, outlining shooting would be restricted as follows:

- 70 days shooting per annum.
- Firing only taking place up to 47 weeks of the year (no firing during 2 weeks over Christmas and none for the first 3 weeks of August)
- A maximum of 2.5 days shooting in any given week
- Shooting only being allowed on a Tuesday, Wednesday and half day on a Thursday between the hours of 0900 and 1700, except for Thursdays when it will be between the hours of 0900 and 1300.

1.9 In light of the above, it is considered that the use of the site for two firing ranges can be supported, subject to the development not resulting in a detrimental impact where the harm outweighs the need for the use. This assessment on impact is considered further below.

## **2. Impact on amenity, predominantly through noise intrusion**

2.1 The protection of existing occupiers of land and premises from noise generating new development, is a fundamental material consideration, although in this case it should be noted that the use of the quarry for the purposes of two firing ranges by Devon and Cornwall Police has taken place since 1978 at Pondground Quarry. In the National Planning Policy Framework (NPPF), noise pollution is identified as an environmental risk factor which must be taken into account in planning. Paragraph 174e states that planning policies and decisions should prevent new and existing development from "contributing to, being put at unacceptable risk from, or being adversely affected by" unacceptable levels of noise pollution, among other types of pollution.

2.2 Paragraph 185 requires "new development to be appropriate for its location taking into account the likely effects (including cumulative effects) of pollution" and to achieve this, planning decisions are expected to "a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life; b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason;..".

2.3 DEFRA has overall responsibility at Government level for noise management in England, and in 2010 published its Noise Policy Statement (NPSE), intended to contribute to the healthy environment aspect of the sustainable development approach to which the Government is committed. The NPSE puts consideration of noise impacts firmly in the context of sustainable development and is clear, at paragraph 2.18, that noise impact does not override other

considerations of economic and social benefit. The NPSE has three aims in respect of environmental, neighbour and neighbourhood noise and its impact on health and quality of life. The Noise Policy Aim states:

*Through the effective management and control of environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development:*

- *avoid significant adverse impacts on health and quality of life;*
- *mitigate and minimise adverse impacts on health and quality of life; and*
- *where possible, contribute to the improvement of health and quality of life.*

- 2.4 The Noise section of the Planning Policy Guidance (PPG) recognises at paragraph 003 (updated 22/7/2019) that noise is both a complex technical issue and a subjective matter, with the subjective nature of noise meaning that there is not a simple relationship between noise levels and the impact on those affected, which will instead depend on how various factors combine in any particular situation.
- 2.5 In determining noise impacts the guidance requires noise to be measured, to identify whether the overall effect of the noise exposure is, or would be, above or below the significant observed adverse effect level and the lowest observed adverse effect level for the given situation, as per the benchmarks set by NPPF policy and NPSE. However, the guidance illuminates this by advising that adverse effects are not to be defined only in terms of a single value of noise exposure but may be a result of a combination of factors including the frequency, duration and time of day the noise occurs.
- 2.6 Paragraph 005 of the Noise section advises that noise has no adverse effect so long as the exposure does not cause any change in behaviour, attitude or other physiological responses of those affected by it. It is noted that increasing noise exposure will at some point cause the 'significant observed adverse effect' level boundary to be crossed and result in a material change in behaviour such as keeping windows closed for most of the time or avoiding certain activities during periods when the noise is present, which is undesirable.
- 2.7 Some of the likely factors influencing whether noise could be a concern are listed in paragraph 006. It states the '*The subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. This will depend on how various factors combine in any particular situation. These factors include:*
- *the source and absolute level of the noise together with the time of day it occurs. Some types and level of noise will cause a greater adverse effect at night than if they occurred during the day – this is because people tend to be more sensitive to noise at night as they are trying to sleep. The adverse effect can also be greater simply because there is less background noise at night;*
  - *for a new noise making source, how the noise from it relates to the existing sound environment;*
  - *for non-continuous sources of noise, the number of noise events, and the frequency and pattern of occurrence of the noise;*
  - *the spectral content of the noise (i.e. whether or not the noise contains particular high or low frequency content) and the general character of the noise (i.e. whether or not the noise contains particular tonal characteristics or other particular features), and;*
  - *the local arrangement of buildings, surfaces and green infrastructure, and the extent to which it reflects or absorbs noise.'*

- 2.8 How planning can address the adverse effects of noise sources are considered in paragraph 010 of the Noise section. This states that in general, for developments that are likely to generate noise, there are 4 broad types of mitigation. One of these being using planning conditions to restrict activities allowed on the site at certain times which is what has been recommended on this occasion.
- 2.9 Policy DM1 of the Mid Devon Local Plan 2013-2033 requires that development is of a high quality and does not have an unacceptably adverse effect on the privacy and amenity of neighbouring properties and uses. The potential noise impacts of the proposal have generated concern from a number of third parties and the Parish Council. This includes neighbouring tourist businesses, most notably to the property Eden, to the north east of the site. Having viewed the planning history at this property, it was noted that planning permission was approved under 17/01085/FULL for the retention of existing holiday lodge and erection of an additional holiday lodge on the 15<sup>th</sup> September 2017. The boundary of Eden has been measured as being over 180m from where the shooting takes place at Pondground Quarry.
- 2.10 Residents instructed ParkerJones Acoustics to produce a Noise Impact Assessment whereby noise readings were taken on the 21<sup>st</sup> April 2021. Noise readings were taken from Pondground Quarry and Eden where the conclusions were that noise levels reached between 70dB and 85dB LAFmax and therefore represented a significant adverse impact on local residents due to noise from the shooting range. As such the acoustic consultant was of the view that the planning permission should be refused. ParkerJones Acoustics produced a further response on the 8<sup>th</sup> June 2022 to the Noise Management Plan submitted by the applicant based on shooting across 141 days, again with the conclusion to refuse permission.
- 2.11 An initial site visit was arranged on the 2<sup>nd</sup> August 2022 to allow the case officer, MP for the constituency of Tiverton and Honiton, Ward Members and Members of the Parish Council, the ability to hear the shooting. Acoustic Consultants Ltd. instructed by the applicant also carried out a Site Noise Monitoring Report. The readings were taken at the Shooting Ground, Pondground Cottage and Eden Cottage. Readings were taken from a fourth site but gun noise was not distinguishable on the day. The Typical dB LAeq(1 hour) readings were stated as 57.1 at Pondground and 57.3 at Eden Cottage with Typical dB LADmax being 78 at Pondground and 76 at Eden Cottage. Following this visit and report, the Noise Management Plan was revised to the timings now before members, which includes being limited to 70 days shooting which could take place over 2.5 days per week across 47 weeks. It should be noted that 2.5 days per week over 47 weeks equates to 117.5 days per year but the shooting would be limited to 70 days.
- 2.12 ParkerJones Acoustics did not initially provide any further response following the changes proposed, rather a resident instructed LFAcoustics who provided a response on the 27<sup>th</sup> October 2023. The conclusion of this acoustic consultant was that whilst measures within the Noise Management Plan will go some way to reduce the duration of the exposure to noise during the year, whilst operating, the potential for significant adverse impacts remains. The limit of shooting days to 70 days per annum were noted but in the opinion of LFAcoustics the limit should be set no higher than the days usage pre-pandemic and should be set at a maximum of 30 days per annum.
- 2.13 Following the visit of Members of the Planning Committee, a further report on behalf of local residents from Parker Jones Acoustics dated 13th September 2023 which sets out their findings recorded at the time of the recent demonstration was provided. It is commented upon by the author of the report who was present throughout the site visit and recorded that noise levels at Pondground Cottage notably increased after councillors left. The Public Health

Officers also present at the demonstration have provided their comments as can be seen within the consultee response section within the report. Notwithstanding this, the Public Health Officer has stated that this report does not bring anything new to the consideration, other than to illustrate again that it is not appropriate to make decisions of this type purely on the basis of noise measurements carried out.

2.14 With respect to noise concerns, the applicant has seriously considered the issue by engaging the services of Acoustic Consultants Limited, who are well established and respected independent acoustic engineers. As noted above these engineers have provided a noise management plan and associated addendum, which seeks to address the issue of noise. Acoustic Consultants Ltd. also provided a letter dated 29th September 2022 providing details of the Site Noise Monitoring Visit that was undertaken by them in 2nd August 2022.

2.15 The Council's Public Health Team have reviewed the D & C Police noise assessment as outlined within their consultee response on the 13th February 2023 and has also seen the comments and letter submitted by the parish council and other residents. The Environmental Health Officer noted that some perhaps are still not sure how noise readings are used, despite their explanations. Downwind close by the shooting bursts are very loud as were heard on the arranged site visit in August 2022, but further away they fall off to the "popping" noise, and upwind it was barely audible at all. The Environmental Health Officer commented that '*All shooting noise does this and each burst is very short with long periods of silence in between.*'

2.16 The response from the Public Health Officer is that "*We have reviewed the noise report submitted by the noise consultant engaged by Devon and Cornwall Police. EHOs were on site during the monitoring and shooting exercise in August 2022 and are satisfied that the shooting carried out was in line with what is usually carried out. Each of the 3 types of weapons was used at the maximum number of shooting positions. EHOs also listened to the noise off site as previously reported. We have no concerns regarding the report and its findings.*

*We have also reviewed the latest comments submitted by the Parish Council and some residents. In the EHO submission in October 2022, and previous comments, we clearly set out our role and the basis on which our comments and recommendations are made. Noise level readings were similar in all the reports (both those commissioned by residents and D and C Police) and the EHO has clearly stated why the noise standards quoted by the resident's noise consultant are not appropriate in this situation. Similar comments have been made by the D and C Police noise consultant. However, even if they were appropriate, noise in excess of guidelines is not a justification for refusal of planning applications; but it does suggest that control will be required. Where this occurs, the next step is for the EHO to review the mitigation and control measures suggested by the applicant, and then advise the planning officers which we have done.*

*From the outset the EHO suggested that a Noise Management Plan is appropriate, and this is typical in many situations where sporadic noise is clearly audible off-site. It was the EHO who requested that the number of shooting days was halved to a number in line with previous years (140 to 70), the days of the week were halved (to 2.5 from 5, giving a minimum of 4.5 clear days of respite each week), and the days of the week and hours of the day were specified. Several residents have stated that the level of previous usage was not unacceptable, and this is demonstrated by the absence of any complaints about noise in the past. Respite time is a very important consideration in applications such as this, and the comments of October 2022 clearly set this out.*

*We therefore have no additional comments in relation to the noise report submitted by Devon and Cornwall Police."*

- 2.17 It is understood that third parties debate the readings taken and from their own readings could be higher with their noise consultant experts advising that the amount of days for shooting should be more in line with those allowed under permitted development limits. A recent complaint is that further trees have been cut down on site which could result in more noise intruding into the surrounding area. On the matter of tree cutting, the applicant confirmed that the owners of the application site which are not Devon and Cornwall Police commissioned tree surgeons to carry out some maintenance works relating to ash dieback. This work and any associated tree felling does not relate to this planning application which seeks planning permission for the retention of this site for two firing ranges by use only by the police.
- 2.18 Within the Noise Management Plan Addendum October 2022 the case is made that with regard to the shooting hours per day, each training day is 8 hours long (albeit shorted on Thursdays) but yields 6 hours of contact time; the period when the student is actually being trained. This accounts for travelling and breaks. This is a nationally accepted formula. This further results in typically four hours per day of actual shooting (less on Thursdays). This takes account of breaks, explanations of shooting practices and patching of targets and such like.
- 2.19 A Barrister's Opinion has been received which questioned whether the first officer report failed to deal with the matters around noise, as well as the technical guidance used to assess noise levels. It goes on to state that the Local Planning Authority had not examined how noise levels affecting residential properties might be mitigated and reduced to a minimum. A full response has been provided by the Public Health Team to matters raised which is appended to this report. However, it is considered that the report does not fail to address the relevant matters and outlines why it is considered that the use proposed is acceptable subject to conditions.
- 2.20 A key matter raised within the Barrister's Opinion was the judgement made that the levels of noise experienced by local residents exceeds standards deemed acceptable not just by the world health organization, but also by every technical guidance addressing noise and planning. The Public Health Officer has explained that this is not the case with full explanation provided within the appended response.
- 2.21 The Public Health Officer has commented that *'noise level measurements are appropriate in cases where it is necessary to assess the existing noise levels and to recommend standards that need to be achieved by new developments – i.e. sound level meters are tools not decision makers. There are various standards quoted by the objectors' noise consultant but these are all specific to particular circumstances and must only be used in ways described in the preamble to each. None of the ones quoted apply to this situation, certainly not the WHO standard which refers very specifically to "steady continuous noise" and is often misused. The noise under consideration here is not steady or continuous and the WHO standard actually specifically applies to noise such as that created by major roads and busy airports.'* As such, it is considered that all matters relating to the noise impact of the development have been assessed correctly.
- 2.22 Within the Barrister Opinion provided, the point is made that the use of the land for shooting is a new activity, a view based on the fact that the previous planning permission lapsed. However, as can be seen by all the information provided, it is clear that the use of the site for two firing ranges by Devon and Cornwall Police has continued for over 40 years. The view of the Public Health Officer which is supported by that of the Planning Officer is that it is not

considered that the shooting activities adversely affect “privacy or amenity” because the number of occasions of shooting over a week, month or year is low, and when the shooting is taking place the “on-time” of the noise is interspersed with long periods of no noise from the activity. The term “unacceptable negative impact on health” is a very specific term which is not appropriate to use in this situation where the loud noises are occasional rather than continuous. Furthermore the Public Health Officer has noted that they have not been presented with any information or evidence that there has been any impact on the health of any resident. The comments from residents at the outset were focused on the annoyance caused by the loudness of the noise at times and in certain close by locations.

2.23 Another matter raised through the Barrister’s Opinion was that substantial noise reduction may be achievable with shooting stands, constructed bespoke for the Pondground Firing Range, constructed on site using timber sides and rockwool to provide sound absorptive properties acting as acoustic barriers with one side open, to muffle the reverberation or reflection of noise of the gun shots off the walls of the quarry, so reducing the noise impact, not just on the local community and particularly those living closest to the quarry but also on the heritage assets.

2.24 The Public Health Officer undertook a review of the 3 most important documents with regards to noise - the Police noise report from Acoustic Consultants Ltd of Feb 23, and the Noise Management Plan (NMP) of May 2022 and Addendum of October 2022. In the original NMP the Police state that silencers cannot be used because the officers are required to train as they deploy and silencers can affect the fall of shot. In light of the Barrister Opinion, the matter has been revisited. The applicant was therefore requested to provide further detailed explanation as to why measures to deal with noise transmission of site were not possible. The response to the various options considered was as follows:

#### ‘Use of moderators

*UK armed policing units do not deploy operationally with sound moderators on carbines, handguns or shotguns. Using moderators in training is not feasible as it affects the fall of shot. If an officer trains and qualifies using a moderated weapon system and deploys using a non-moderated weapon they will not have trained for operational reality. Moderators are also heavy and affect the balance of the weapon system which again has an effect on performance. If a police officer fires their weapon operationally it is a matter of safety that everyone in the vicinity is aware of the fact. This allows the public to move away and for other police officers to know a shot has been fired. Some military units will use moderated weapons, but those operations are beyond the scope of the police.*

#### The use of ear defenders

*The activities conducted at Pondground are shooting practices. We do not conduct tactical training with live ammunition as the risks are too high. At Pondground we focus on the motor skills of firing the weapon systems accurately which develops officers’ capability and ultimately enables them to stay qualified. Officers are required to wear ear defenders for this element due to the proximity to the weapons and exposure to noise. It is worth noting that armed officers wear ear defenders when deploying operationally to firearms operations as the communication systems are linked to the ear defenders. The specific ear defenders used do allow for situational awareness. The only way to test accuracy with weapons is to fire live ammunition on a firing range. We carry out tactical training, such as building search and vehicle tactics, elsewhere.*

On-site Noise mitigation

The firing ranges are located within a quarry with the quarry walls to some sides and trees to others. Any acoustic panels on site are going to have minimal impact as the noise would pass over the top of them. Noise mitigation needs to be employed as close to the source as possible to have any impact. Booths for the officers to station themselves in whilst they fire their weapons are not practicable as police shooting is done from varying distances to the targets. This is generally from 5 to 50 metres. Some of the shoots also require the officer to move between firing points which is referred to as a walk down shoot. As such, firing booths are not feasible.

2.25 In light of the above, further on site mitigation to deal with noise transmission at source has been ruled out. Notwithstanding concerns raised by third parties, the noise levels associated with the shooting based on 70 days in any calendar year, only on Tuesday, Wednesday and Thursday which can be conditioned is considered to be acceptable to mitigate against noise intrusion. As commented earlier in this report, the permitted development rights allow for shooting over 28 days a year so this represents a further 42 days of shooting across the year.

2.26 Notwithstanding the matter of noise generated from the use of site where different acoustic consultants acting for either the applicant or third parties disagree on readings and level of harm, the concern raised by residents is to the intensity of the use and that there has been a significant increase in the amount of firing taking place within the Quarry over the last few years.

2.27 Devon and Cornwall Police note that the planning consent in 2004 did not limit the number of days that live firing could take place at Pondground Quarry. As such, they have been able to use the two firing ranges at Pondground Quarry without planning limitation. Without such restrictions, they comment that they have used the firing ranges between 29 and 60 days per year over the last four years, as the table below shows:

Training Year	Both Ranges Used	Top Range Only	Bottom Range Only	Total Days Firing
2018/19	18	9	2	29
2019/20	20	7	4	31
2020/21	49	3	8	60
2021/22	33	15	5	53

2.28 Further figures have been provided by residents which it is stated is received through an FOI request which outlines:

Year	Total DCP days on site	Total Hours on Site	Total Rounds Fired
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2012	2	5.25	400
2013	20	80.75	14971
2014	37	178.50	28623
2015	30	124.25	31372
2016	68	332.00	83642
2017	29	181.75	27964
2018	17	92.50	12194
2019	32	171.25	46553
2020	51	194.25	46628
2021	58	319.25	113730

2.29 Residents have outlined within their submissions that on 11<sup>th</sup> December 2020 Devon and Cornwall Police acknowledged via email, noise complaints received from MDDC and on the 11<sup>th</sup> January 2021. A further noise complaint was raised by Pondground Cottage. The applicant has been requested to comment on the differences between the two sets of figures provided and the response was 'I am aware that a number of FOI requests have been submitted and that information regarding the use of the ranges has been obtained. The information obtained via the FOI Act (the second of the two tables in your email) does not accord with the information that I have. For instance, the number of days shooting, according to my data, states (figures per financial year, e.g. April to March):

2011/12 – 27 days shooting

2012/13 – 14 days

2013/14 – 16 days

2014/15 – 44 days

2015/16 – 45 days

2016/17 – 71 days

2017/18 – 14 days (range was effectively closed due to canopy build)

2018/19 – 29 days

2019/20 – 30 days

2020/21 – 59 days (the outdoor firing range – as opposed to the indoor firing range - was used more during the pandemic to limit the spread of the coronavirus)

2021/22 – 53 days (the outdoor firing range – as opposed to the indoor firing range - was used more the during the pandemic to limit the spread of the coronavirus)

2022/23 – 11 days (the range was closed after public opposition)'

2.30 A further response from the applicant to the rounds fired was received commenting that:

'Our records for the number of bullets fired in a year from April to March differ from the figures submitted by the member of public. From April 2021 to March 2022 the total figure for both ranges for rounds fired is **73,315**. Clearly this is well below the figures that the placards were showing and the final figure in yellow below (113,370). In addition, the time on site for 2021 is also wrong and should read **246.5** hours and **48** days shooting, not the quoted 58 days. We have also checked the figures for 2020. The supplied FOI information is wrong and should be **80,956** rounds fired and not the quoted 46,628. Clearly some of the figures were inaccurate, and the bases of the placard figures is **wrong by 40,415** rounds. Also, the quoted increase in

*rounds fired between 2020 and 2021 is incorrect. The difference on the bottom table shows an increase of 67,102 rounds from one year to the next. The reality is a reduction of rounds fired by **7,641** from 2020 to 2021. This information disproves the alleged increase in shooting in 2021.*

*The difference is probably due to the public's use of the calendar year versus our accounting year (April to March). Over the two years April 2020 to March 2022 we averaged about 80,000 rounds. The member of the public is suggesting 46,628 in 2020 and 113,370 in 2021. AS you can see, there was no sharp increase over these years: we fired about 80,000 rounds each year. We do accept that these 2 years post-COVID are higher, for reasons I have said in my previous email below.'*

2.31 The 'email below' referred to was as follows:

*'...I can advise that in the years post-COVID, especially in the year 2021/22, officers were using the outdoor ranges at Pondground more in order to limit the spread of the coronavirus (as opposed to using the indoor range at Middlemoor). The numbers do broadly correlate, in that we have advised that in the year 2021/22 there were a total of 53 days shooting at Pondground (highlighted green) whereas the member of the public has calculated (further to the Freedom of Information request) that there were 58 days shooting at Pondground (see blue highlight). The result of the increased use of Pondground during this time is reflected in the higher number of bullets shot at Pondground in that year.'*

2.32 In light of the above, it could just be a case of a calendar year reading against that of a financial calendar year reading to explain the differences in totals, but in any event it is clear that from either set of figures taken, shooting has taken place continuously on site from 2012/13 up to 2022, ranging from around 14 days up to 71 days. In terms of complaints received to the Council, these appear to have been from the end of 2020 but interestingly not in 2016 when the reading appears to have been at its highest.

2.33 With respect to the rounds shot, based on the 2021 figures supplied by residents, this would average 1960 rounds across a day, and it should be noted that the site visit arranged with Members on the 5<sup>th</sup> September 2023, the Police confirmed that 1250 rounds had been shot with the shooting taking place between 10.15am and 12.45am on the day with both firing ranges being used, which allows 4 shooters on the lower range with the louder weapons and 6 shooters on the top range using pistols. As such it could be argued that the shooting on the day is representative of a normal shooting day whereby there are breaks between shooting and the firing was at its loudest.

2.34 Whilst the visit was arranged for members only, and was not a public meeting, some residents were present as had heard of the visit taking place. Residents commented to Members that they were of the view that the intensity had significantly increased and that circumstances appear to have changed since 1978 when the first permission was issued. In response, it should be noted that Devon and Cornwall is the largest force area in England, and that in 2023 the population for the area covered by Devon and Cornwall is stated as being 1.76 million residents, living in 722,300 households. The force announced it had 3,716 officers in May 2023; an increase of 6% since austerity cuts in 2010. However, there are fewer officers per member of the public than in 2012, due to an 8% population increase, with the Police Federation warning there was a "significant demand" for officers. In May 2023, there were 225 more officers in the two counties than when the austerity cuts began. But the latest Office of National Statistics (ONS) figures show the number of people living in Devon and Cornwall increased by 131,000 between 2010 and 2021.

2.35 In terms of gun crime and the need for this facility, reported figures released from the Home Officer identified that there were seven firearm offences for every 100,000 people in the Devon and Cornwall policing area in 2020-21 – up from six the year before. The data covers crimes involving lethal firearms like shotguns and handguns and non-lethal weapons such as stun guns, but excludes offences involving air weapons. In 2020 Home Office figures show Devon and Cornwall recorded 124 crimes involving firearms and has dealt with 1,420 since police force records began in 2007-08. The backdrop is therefore that the population has significantly increased over the last 10 years, that firearm offences have increased but whilst the number of police has increased, it has not kept up pace with the population increase in general. Devon and Cornwall Police advised Members on site that there was a need to train 150 officers across the year but that they were only able to meet a figure between 110 and 120. Also that whilst they were just about getting by, this was through doubling up exercises at Middlemoor with requests made for MOD sites although there were challenges as the MOD could stop their exercises at any or bad weather could stop shooting time meaning training experiences would have to be planned out again (you could not pick up from where left off). Therefore underlining the case for the need to shoot at Pondground Quarry.

2.36 Paragraphs 92 – 103 of the NPPF make it very clear that officers should give consideration to promoting healthy and safe communities. Part of this is inevitably ensuring that there are sites provided to the police to enable them to carry out their duties of protecting the public and keeping people safe. Given the extensive work that has been undertaken in relation to the sound testing and the weight placed on the planning history of the site and how it has always been used for this purpose; it is considered that the use is acceptable.

### **3. Impact on heritage assets**

3.1 The entrance to Pondground Quarry is located adjacent to the Grand Western Canal Conservation Area whereby the canal and tow path within the Conservation Area are located approximately 70m away from the entrance to the application site. There are a number of listed buildings in the area, most notably the Grade II listed property of Brinscott located to the north east, approximately 280m from the firing range and the Grade II Waytown Tunnel to the southwest, approximately 230m from the firing range. There are a number of further listed buildings but located further away.

3.2 In coming to a decision the council must be mindful of the duty as set out in section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the listed building, its setting and features of special architectural or historic interest which it possesses, and have given it considerable importance and weight in the planning balance. In addition, in coming to a decision the council must be mindful of the duty as set out in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area, and have given it importance and weight in the planning balance.

3.3 The proposals have the potential to affect the setting of listed buildings and the conservation area. Both are protected by the Planning (Listed Buildings and Conservation Areas) Act 1990 (s 66 and 72). The NPPF establishes that the decision-maker must establish whether the proposal causes “substantial” or “less than substantial” harm to the heritage asset. If the latter is the case, the harm must be weighed against the public benefits. The harm must, however, be given considerable importance and weight to ensure that the statutory duties in s 66 and 72 are met. See in this regard e.g. *City & Country Bramshill Limited v Secretary of State for Housing, Communities and Local Government* [2021] EWCA Civ 320.

- 3.4 Policy DM25 (Development affecting heritage assets) of the Mid Devon Local Plan 2013-2033 is also relevant. This policy states:

*Heritage assets and their settings are an irreplaceable resource. Accordingly the Council will:*

- a) Apply a presumption in favour of preserving or enhancing all designated heritage assets and their settings;*
- b) Require development proposals likely to affect the significance of heritage assets, including new buildings, alterations, extensions, changes of use and demolitions, to consider their significance, character, setting (including views to or from), appearance, design, layout and local distinctiveness, and the opportunities to enhance them;*
- c) Only approve proposals that would lead to substantial harm or total loss of significance of a designated heritage asset where it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss or the requirements of the National Planning Policy Framework are met;*
- d) Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use; and*
- e) Require developers to make a proportionate but systematic assessment of any impact on the setting and thereby the significance of heritage asset(s).*

- 3.5 The second ground raised for a deferment outlined in the Barrister's Opinion was down to the consideration that loss of tranquillity is relevant to the setting of the local heritage assets, not just within the authority's district, but also those just over the border in Somerset, less than 1000 metres from the firing range. If harm would result, as is accepted, the statutory duty kicks in to see if tranquillity is an attribute of the setting to the conservation area and the heritage assets in issue and if so to examine if it can be better preserved. The Barrister's Opinion advised that it was not clear what the view of the Conservation Officer was on the matter and went on to comment that substantial noise reduction may be achievable so as to reduce the noise impact on heritage assets. The reasons why other noise reduction measures were not possible were outlined earlier in this report.
- 3.6 Following concerns raised to the impact of noise from the proposed use of the site and how this could impact on the significance of nearby heritage assets and how they would be experienced as a result of the proposed use on site, a Heritage Statement was requested by the Council's Conservation Officer. A Heritage Statement was subsequently submitted for considerations.
- 3.7 The Heritage Statement makes a case that although the area may well be quiet and tranquil at this time, the area would previously have been noisier due to the commercial use of the canal, the limekilns and the quarries. The Tiverton Canal website indicates that this section of the canal from Lodwells to Tiverton was to be completed in 1824 with the section to Taunton being opened later. This northern section was the first to close with the first section of canal between Tiverton and Lowdells remaining open. The Canal was profitable mostly carrying coal and limestone horse drawn tub boats from the quarries to the kilns at Tiverton. This continued until 1924 when commercial stone and coal conveying was finally stopped.
- 3.8 Whilst the previous uses at the quarry and surrounding area may have been noisy, the quarrying use ceased with the main material consideration being that the quarry has been used as two firing ranges by the Police since 1978 and this appears to have been a continuous use, whereby the temporary planning permission was not renewed in 2014

although the use continued. This is a period of time of over 44 years and the heritage assets and how they would be experienced would have included firing from this site.

3.9 The Council's Conservation Officer initial view having viewed the planning file and Heritage Statement was:

*'I do not consider that the continued use of the quarry as a firing range would detrimentally affect the settings of the listed buildings and conservation areas in the vicinity. The quarry has been used continuously since 1978 as a firing range. All the listed buildings and conservation areas listed within the heritage statement were listed or designated post 1978 (the earliest in 1988, after a period of 10 years use as a firing range). Therefore, the ambience created by the firing would have been in existence at the time of listing and designation, and would likely have been taken into consideration.*

*While it is true that the area historically would have been industrial in character, creating large amounts of noise, the more important factor here is that the character of the area has not changed since the listing and designation of the nearby heritage assets, nor is it proposed to be. Therefore, I conclude that no harm would occur to the significance (including settings) of these heritage assets by the continued use of the quarry as a firing range.'*

3.10 In light of the Barrister's Opinion over the matter of tranquillity and how it impacts on heritage assets, the Council's Conservation Officer has revisited the matter and provided a further assessment. The response being that tranquillity of the canal as a designated heritage asset is not irrelevant, and must be considered as a material consideration. The relevant parts of the NPPF being paragraphs 195, 199, 200, and 202. The response being:

*'For this reason, I do believe that the character of that part of the canal that passes near the quarry would be negatively impacted upon by retaining the established and previously permitted level of firing (unrestricted number of days) and suggest that reducing this to the proposed 70 days would be a reduction in the previously permitted disturbance level. The amount of harm that unrestricted firing would bring would be less than substantial, as it would not impact on the whole conservation area, and would not be a high level of less than substantial harm due to the restricted number of days and times. This amount of less than substantial harm should either be designed-out to stay at its previously permitted level, mitigated, or balanced against public benefit. As the quarry is not a heritage asset, designated or otherwise, mitigation within the quarry might be achievable without increasing harm to surrounding heritage assets.'*

3.11 The Council's Conservation Officer has therefore recognised that there would be a level of harm from the proposed use but this would be at the low end of 'less than substantial harm'. It is noted that the Heritage Consultant who wrote the Heritage Statement concluded that the heritage impact of the proposal to cause 'less than substantial harm' with it being suggested that the harm is in fact negligible and relates only to Brinscott. It was noted that the buildings and settings surrounding this quarry have historically been subjected to noise in one form or another. If it is concluded that the harm is less than substantial, it is considered that the wider benefits of the use of the site for open air shooting practice by Devon and Cornwall Police for this much needed service outweighs the negligible harm to heritage assets. As such the development is considered to accord with Local Plan Policy DM25.

#### **4. Impact on the wider environment**

4.1 Another issue raised by objectors relates to the impact of the shooting on the wider environment including wildlife and land contamination considerations. Ecology is considered later within this report but below is an assessment of the use on the landscape and environmental considerations.

4.2 As noted the site has historically been used as two firing ranges within two open areas on site. There are already a number of buildings and structures on site which have previously approved planning permission. The site is well contained by existing vegetation and topography such that there are no views from outside of the site to the firing ranges. The main impact being a result of noise intrusion which has been considered earlier in this report.

4.3 Policy S9 (Environment) of the Mid Devon Local Plan 2013-2033 outlines that:

*Development will sustain the distinctive quality, character and diversity of Mid Devon's environmental assets and minimise the impact of development on climate change through:*

- a) High quality sustainable design which reinforces the character and distinctiveness of Mid Devon's historic built environment, mitigates and adapts to climate change and creates attractive places;*
- b) The efficient use and conservation of natural resources of land, water and energy, minimising pollution and preserving the quality and productivity of the best and most versatile agricultural land wherever possible;*
- c) The provision of measures to reduce the risk of flooding to life and property, requiring sustainable drainage systems including provisions for future maintenance, guiding development to locations of lowest flood risk by applying a sequential test where appropriate, and avoiding an increase in flood risk elsewhere;*
- d) Renewable energy development in locations where there is an acceptable local impact, including visual, on nearby residents, landscape character and wildlife, balanced with the wider sustainability benefits of renewable energy;*
- e) The preservation and enhancement of the distinctive qualities of Mid Devon's natural landscape, supporting opportunities identified within landscape character areas. Within the Blackdown Hills Area of Outstanding Natural Beauty, and within the setting of the Blackdown Hills Area of Outstanding Natural Beauty, and Exmoor and Dartmoor National Parks, the primary objective will be to protect the special qualities of that landscape and its setting;*
- f) The protection and enhancement of designated sites of international, national and local biodiversity and geodiversity importance. On both designated and undesignated sites, development will support opportunities for protecting and enhancing species populations and linking habitats. If significant harm resulting from development cannot be avoided impacts should be adequately mitigated. Compensation measures will only be considered where appropriate as a last resort; and*
- g) The preservation and enhancement of Mid Devon's cultural and historic environment, and the protection of sites, buildings, areas and features of recognised national and local importance such as listed buildings, conservation areas, scheduled monuments and local heritage assets.*

4.4 With respect to the above criterion, it is noted that the use on site is historic, it is contained within this wooded site taking place within the open areas where the shooting takes place. The site is within flood zone 1 which is the lowest level of flooding and as considered earlier in the report, whilst located close to heritage assets, it is outside of any landscape designation and any harm is not considered to be significant.

4.5 Objectors have raised the concern of possible ground contamination through the historic use of the site. Policy DM4 (Pollution) outlines that '*applications for development that risks negatively impacting on the quality of the environment through noise, odour, light, air, water, land and*

*other forms of pollution must be accompanied by a pollution impact assessment and mitigation scheme where necessary. Development will be permitted where the direct, indirect and cumulative effects of pollution will not have an unacceptable negative impact on health, the natural environment and general amenity.'*

- 4.6 As part of this application we have received and considered noise impact assessment and ecological assessments which deals with a number of the matters raised through this policy. In terms of contamination, the Environment Agency has raised no objections to the proposals or identified contamination of being of concern. The Council's Public Health Officer has stated that *'With regards to the contamination question, the Environment Agency comments are sufficient. The concern regarding potential contamination of the ground relates to the groundwater and therefore the EA comment covers this. Shots, as you have seen, are towards close range targets (unlike clay pigeon shooting where cartridges explode high in the air and can scatter shot over a wide area). Furthermore the procedures used by the Police include clearing the area at the end of each session within the quarry boundary. In my opinion, in this instance, this would not be a material planning consideration for this particular application. Incidentally, should, in the future, any of the area involved be considered to be contaminated then the owners already have responsibilities under the Environmental Protection Act 1990 which is the more appropriate legislation to deal with this kind of situation.'*
- 4.7 Therefore the use of the development is not considered to result in a detrimental impact on the wider environment being in accordance with policies S9 and DM4 of the Mid Devon Local Plan 2013-2033.

## **5. Impact on wildlife**

- 5.1 When this planning application was initially submitted no ecology reports were provided. This was due to the applicant incorrectly noting the size of the application site which outlined one would not be required. It is noted that given the location within a former quarry, there might be the potential for disturbing some wildlife e.g. breeding birds such as peregrine which are often found in quarries. The applicant therefore commissioned and submitted first a Preliminary Ecological Appraisal and then following the recommendations of this appraisal, undertook a Peregrine Survey which was subsequently submitted.
- 5.2 It is noted that an objection has been received from Devon Wildlife Trust on two grounds, the first being the need for surveys and secondly the requirement to provide a biodiversity net gain of 20%. It should be noted that ecology reports have now been submitted which do not identify any protected species being present which would prevent the use on site. The reports also outline recommendations addressing mitigation and biodiversity enhancements.
- 5.3 Within the Preliminary Ecological Appraisal Final Report, dated March 2023 and prepared by Simon Geary Ecology Services Limited, there is a section on Biodiversity Net Gain. As stated within the report, 'Biodiversity net gain is described as "...an approach to development that leaves biodiversity in a better state than before. Where a development has an impact on biodiversity it encourages developers to provide an increase in appropriate natural habitat and ecological features over and above that being affected" (Baker et al. 2019). Biodiversity net gain is included in planning policy and will become mandatory for major developments during January 2024 onwards, with minors requiring to provide it from April 2024 onwards. The current national target is to achieve a minimum 10% biodiversity net gain within a development. However, biodiversity net gain should be proportionate and relative to the scale of a development.

5.4 On this point of biodiversity net gain, for this minor planning application there is no requirement to provide biodiversity net gain of 10%, let alone 20% as requested by the Devon Wildlife Trust. Policies within the Mid Devon Local Plan only require biodiversity net gain to occur. The ecologist has highlighted that biodiversity net gain can be incorporated into the proposed development. This would be achieved by installing artificial dwelling places for some species, such as hazel dormouse boxes (6no.), bat boxes (6no.) and bird boxes (6no.) to suitable perimeter trees on the land holding but which are at the maximum distance achievable from the shooting ranges to mitigate noise disturbance effects. These biodiversity enhancement measures have been conditioned.

5.5 The Peregrine Survey has not identified any peregrines on site, only a nesting common buzzard. It noted that birds of prey such as common buzzard are typically wary and are particularly sensitive to disturbance close to nest sites. It therefore recommended that if consent was given to continue shooting on site in 2023, then the actual firing should not begin until 1 August 2023 to allow enough time for the common buzzards to finish nesting and thus avoid significant disturbance. This was why there was a delay to the Member site visit with the day of 5<sup>th</sup> September 2023 chosen, to allow time for the common buzzards to finish nesting.

5.6 With respect to the duties of the LPA in respect to ecology, Regulation 9 (5) of the Conservation of Habitats and Species Regulations 2010 ("the Regulations") provides that, "A competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions". In exercising their duty, the Local Planning Authority should assess the proposal against the three derogation tests of the Habitats Regulations 2010, these being:

- The development must meet a purpose of 'preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment'
- 'There is no satisfactory alternative'
- The development 'will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range'

5.7 In assessing these the first two of these tests, it is considered that the proposal satisfies them in that the use for two firing ranges is historic with the need of the development being to train firearms officers within Devon and Cornwall Police to carry out this necessary function. Additionally, there are no other satisfactory alternatives as whilst there are indoor training facilities close to Exeter, this is the only open air training site within their control. Objectors have enquired whether the use could take place elsewhere but the application has been made for this site, historically used for such purposes with no alternative locations identified within the control of the applicant.

5.8 Against the third test, it is considered that the proposal will not be detrimental to the maintenance of the species as appropriate mitigation/enhancements will be provided to achieve a biodiversity net gain. Subject to a planning condition securing these details, the development would comply with the aforementioned legislation and Policy S9 of the Local Plan, which seeks to protect and enhance species populations.

## **6. Highway Implications**

6.1 Policy DM3 requires that development must ensure safe access to the transport network. The proposal would utilise the existing access from the highway with no alterations proposed. The



access has good visibility and it is considered suitable to serve the proposed use having regard to the likely number of traffic movements associated with the proposed use.

6.2 The Local Highway Authority has raised no objection to the use of the site on highway grounds. As commented earlier in this report, the site has a history of planning permissions for the use of the site for two shooting ranges by the police, and it should be noted that the site was originally a quarry which could be the use put forward in the future which could result in more traffic movements and by larger vehicles.

6.3 There is ample space on site for parking and vehicles have the ability to enter and leave the site in a forward gear. As such the development is considered to comply with Policies DM3 and DM5 of the Mid Devon Local Plan 2013-2033 which requires a safe access from the highway and the requisite number of parking spaces for the use carried out.

## **7. Site security**

7.1 Concerns have been raised to site security and the ability of members of the public to walk onto site. Members will have noted from the site visit undertaken, the existing fencing at the site entrance and signs and the enclosed nature of the site through topography and existing woodlands. However, in light of the concerns raised, the applicant has confirmed that they would be happy to install further security fencing to prevent members of the public from entering the site. Details of the fencing would need to be secured through a planning condition and this has been recommended.

## **8. Other matters**

8.1 As noted earlier on within this report, given the sites location, Policy M2 of the Devon Minerals Plan seeks to safeguard such resources from sterilisation or constraint by new development. As such the consultee advice is that any planning permission should be limited to a period of 20 years to prevent sterilisation of the site.

8.2 Following discussions with the Ward Member Cllr Lock, and discussions with the police it has been suggested that to address concerns of local residents that a temporary 7 year consent be issued rather than the 20 year period advised by statutory consultees and that it first must be secured by additional security fencing. In light of this condition 1 within the report was amended to read as follows:

- 1. The use of the site as two firing ranges hereby approved shall not commence until security fencing has been erected as required by condition 6 below. The use hereby permitted shall be discontinued and the land restored to its former condition on or before 7 years from first use of the site for shooting following the installation of the security fencing.*

### ***Reason:***

*To enable the Local Planning Authority to review the matter at the end of the limited period and to prevent sterilisation of the underlying aggregate mineral as per Policy M2 of the Devon Minerals Plan.*

8.3 There is also a condition limiting the shooting use to only Devon and Cornwall Constabulary which would prevent any other individual or group from using the site as a shooting range.

8.4 On the Members site visit on the 5<sup>th</sup> September 2023, the Police noted other services they could offer which go outside of the planning system such as going to speak to children at the primary school or creating a liaison officer with the school to improve communication.

## 9. Summary

9.1 In summary, Devon and Cornwall Police have used the two firing ranges at Pondground Quarry continuously since 1978 without any restrictions and are able to shoot on site for 28 days of the year under permitted development rights. It would be a temporary planning permission for a period of 7 years in light of the requirement to prevent sterilisation of the underlying aggregate mineral at the quarry site. The initial submission was to allow shooting for 141 days of the year but this was reduced down to 70 days with a Noise Management Plan submitted outlining shooting would only take place Tuesdays, Wednesday and half day Thursday being between the hours of 0900 and 1700, except for Thursdays when it will be between the hours of 0900 and 1300. Shooting would also be limited to 47 weeks of the year. A refusal on the basis that no shooting on site would not be warranted especially in light of the fact that no planning permission is required by Devon and Cornwall Police to shoot for 28 days of the year.

*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 use of the site as two firing ranges hereby approved shall not commence until security fencing has been erected as required by condition 6 below. The use hereby permitted shall be discontinued and the land restored to its former condition on or before 7 years from first use of the site for shooting following the installation of the security fencing.
2. The permission hereby granted shall only allow for the use of the land by Devon and Cornwall Constabulary, and not for the benefit of shooting on site by other organisations/individuals.
3. The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule on the decision notice.
4. The use of the site hereby permitted, shall only take place in accordance with the Devon and Cornwall Police Pondground Quarry Noise Management Plan Addendum dated October 2022 and the following restrictions:
  - (i) Shooting shall take place only on Tuesdays and Wednesdays, and Thursday mornings.
  - (ii) Shooting shall take place on a maximum of 70 days in any calendar year.
  - (iii) Shooting shall take place over a maximum of 6 hours per shooting day (3 hours on Thursdays).

The use of the site in accordance with these details and restrictions shall be implemented and remain in place throughout the life of this consent.

5. The biodiversity net gain measures as proposed in the Preliminary Ecological Appraisal Final Report, dated March 2023 and prepared by Simon Geary Ecology Services Limited shall be

implemented, completed and retained in accordance with the requirements of that report. For the avoidance of doubt, this includes the installation of hazel dormouse boxes (6no.), bat boxes (6no.) and bird boxes (6no.) to suitable perimeter trees on the land holding but which are at the maximum distance achievable from the shooting ranges to mitigate noise disturbance effects. Within three months of the date of this planning permission, these boxes shall be installed in accordance with a scheme which shall previously have first been submitted to and approved in writing by the Local Planning Authority. Once installed, the approved measures shall be retained indefinitely.

6. Within three months of the date of this planning permission details for the design of a security fence to deter access to the site shall be submitted to and approved in writing by the Local Planning Authority.

A timeframe shall also be set out and agreed for the procurement and installation of the approved security fence on site and agreed in writing by the Local Planning Authority. Once provided, the agreed security fencing shall be retained for the life of the development.

7. Within three months of the date of this planning permission details shall be submitted to and approved in writing by the Local Planning Authority for a notification system to the community, including Webber's Primary School, to inform of the intended shooting days. Details shall confirm the point of contact and means of notification.

## **REASONS FOR CONDITIONS**

1. To enable the Local Planning Authority to review the matter at the end of the limited period and to prevent sterilisation of the underlying aggregate mineral as per Policy M2 of the Devon Minerals Plan.
2. Permission is granted in view of the special circumstances and to enable the Local Planning Authority to maintain control over the development.
3. For the avoidance of doubt and in the interests of proper planning.
4. To protect amenity of occupiers of neighbouring properties and the wider area in general in accordance with Local Plan Policy DM1 and DM4.
5. In the interests of nature conservation and to provide Biodiversity Net Gain in accordance with the guidance contained in the National Planning Policy Framework and Policy S1 of the Mid Devon Local Plan 2013-2033.
6. In the interests of site safety in accordance with Policy DM1 of the Mid Devon Local Plan 2013-2033.
7. To protect amenity of occupiers of neighbouring properties and the wider area in general in accordance with Local Plan Policy DM1 and DM4.

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

It is considered that the retention of the disused quarry for use as two firing ranges subject to conditions is supportable by Local Plan Policy. It is considered that the open areas used within the site is visually unobtrusive in its setting, is of an appropriate size suitable for its purpose, and will not detract from the nearby county Wildlife Site of the Great Western Canal. The site has been

used for the purposes of two firing ranges for in excess of 40 years and permitted development rights allow for a maximum of 28 days per year for the uses carried out. The proposals are considered to result in a less than substantial impact on the setting of heritage assets whereby the public benefits arising from the open air training of the Police Service are considered to outweigh this harm. Whilst a number of representations have been made with issues raised such as noise pollution, land contamination and impact on the wider environment, the Council's Public Health Team have raised no objections nor have statutory consultees such as the Environment Agency. The proposal is therefore considered to comply with Policies S1, S9, S14, DM1, DM3, DM4 and DM25 of the Mid Devon Local Plan 2013-2033 and Government advice in the National Planning Policy Framework. (NPPF).

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.

## **Appendix 1 – response and considerations to Barrister opinion.**

The Environmental Health Officer (EHO), Conservation Officer (CO) and Area Team Leader (ATL) has the following comments regarding some of the matters raised by Stephen Cottle which address points that have been put before him. The comments have been put against each of the relevant paragraphs of his report:

**SC 1. The Court has jurisdiction to quash a grant of planning permission where a planning committee adopt an officer’s report as the reasons for the decision and the Court is satisfied that the report has simply failed to deal with a matter on which the committee “ought to receive explicit advice”.**

EHO comment: It is not the case that the officer report “fails to deal with a matter”. The committee has received explicit advice on the activity at the quarry, the history and pattern of shooting, the days/times/duration of the noise. They have also been advised (via the report) of why it is not appropriate to purely use noise levels as a way of making decisions as to whether a noise is acceptable. The EHO has explained that the actual loudness of this noise at receptors is affected greatly by weather conditions, wind direction and the combination and numbers of weapons being used. The EHO has also explained from the outset why a noise of this type is best controlled by various types of mitigation and suggested the Noise Management Plan approach as the most appropriate way to do this.

ATL comment: The report in front of Planning Committee is considered to contain all the relevant information for the Committee and full public access is available to file to view any other matters.

**SC 2(i) That the levels of noise experienced by local residents exceeds standards deemed acceptable not just by the world health organization, but also by every technical guidance addressing noise and planning, that has been referred to, and there are a number of them. The NPPF at footnote 69 refers to the Government’s Noise Policy Statement for England, which you have not been referred to.**

EHO comment: noise level measurements are appropriate in cases where it is necessary to assess the existing noise levels and to recommend standards that need to be achieved by new developments – i.e. sound level meters are tools not decision makers. There are various standards quoted by the objectors’ noise consultant but these are all specific to particular circumstances and must only be used in ways described in the preamble to each. None of the ones quoted apply to this situation, certainly not the WHO standard which refers very specifically to “steady continuous noise” and is often misused. The noise under consideration here is not steady or continuous and the WHO standard actually specifically applies to noise such as that created by major roads and busy airports.

The EHO set this out clearly in comments of June 2022:

1. The objector suggests that it is mandatory for an applicant to submit a noise report. This is not the case; the requirement is for noise impact to be assessed appropriately and this has been done, in consultation with the planning and environmental health officers.
2. There is no accepted or adopted guideline or code of practice for assessing shooting ground noise.
3. Any maximum noise levels are sporadic and not continuous; a burst of firing followed by a longer period of silence. Therefore maximum noise levels alone are not meaningful – the writer refers to 30 second averages of loud noises reaching 80dBa or so, this is similar to a human shouting or a car revving close by, i.e. a loud noise but for a very short period of time.
4. The writer suggests that the noise has a “significant adverse impact on local residents”. This is a very specific term quoted in various guidelines but can only be used if the standard measurement parameters are used. A critical parameter is the period over which the noise is measured or averaged over, and this is 1 hour. The guidance cannot be applied if the correct parameters are not used. For example a loud noise occurring for a total of 1 minute in 1 hour, interspersed with 59 minutes when that noise does not occur is regarded completely differently to a noise of the same loudness occurring continuously for that 1 hour period.
5. Time of day, frequency of occurrence, history of use, need for the noise, potential for mitigation and suggested control measures are all very important in relation to this kind of application. The writer has not considered any of these parameters. Conversely the applicant has considered all of these in their proposed Noise Management Plan.
6. The Noise Policy Statement for England is specific guidance with prescribed requirements and descriptors. These have not been followed and therefore this guidance cannot be used.
7. There is guidance regarding clay pigeon shoots, mainly for operators to use when designing and managing their site. This was published by the Chartered Institute of Environmental Health. It refers to a shooting noise level and the criteria for assessing it. Again this has not been exactly complied with, and the monitoring was only done on one day. However, even taking this into consideration the results show that this guidance is not breached.
8. The WHO criteria is often misquoted and misused, as in this case. It applies only to steady continuous noise, such as a nearby major road or airport. This is not a steady continuous noise and therefore this criteria cannot be applied. Again the relevant period is 1 hour and the writer has not used 1 hour data.
9. BS8233:2014 is a standard used for new housing. It is used to determine whether new residents might be affected by unacceptable existing noise and to calculate what mitigation measures could be included, primarily in the new houses. The measurement period in this standard is 16 hours and therefore the writer cannot reference this standard.
10. The PPG Minerals noise guidance referred to cannot be applied because this is not a minerals operation. This is a disused quarry, similar to many others, which has no current or recent minerals use. Of course, siting the firing range within a quarry is in itself a very good noise control measure.

**SC 2(ii) This oversight is achieved by entirely negating and wrongly treating as legally irrelevant the fundamental point made by local residents and by the owners of the business most affected that cutting the hours when shooting takes place does not reduce the shooting noise level whilst it is taking place. Simply limiting the duration of usage is not enough. You can refuse on that basis because more work needs to be done to examine the ways and means of reducing decibel levels. The Government’s NPPF at paragraph 185 refers to the need for protection of tranquil areas and the onus is on you to “ensure” that has been done. PPG Paragraph: 010 Reference ID: 30-010-20190722 advises that apart from limiting activities, developers and decision makers may also consider “engineering:**

**reducing the noise generated at source and/or containing the noise generated; layout: ....and/or incorporating good design to minimise noise transmission through the use of ....purpose built barriers, or other buildings.” Reduced hours still gives scope for more bullets to be fired. The responses to the FOI requests show that in 2016, 332 hours over 68 days were spent on site and 83,000 shots fired, whilst in 2021, it was 58 days and a319 hours on site but 30,000 more shots were fired.**

EHO comment: The EHO clearly explained in her comments that just considering the loudness of the noise at any location was not an adequate way to assess the impact of this particular use. There are so many factors which would affect “averaged out” noise levels from one monitoring occasion to another. There are a number of practical ways in which potential noise impacts can be mitigated and these were discussed with the applicant from the outset – controlling number of events, number of days, hours in each day, and noise duration are commonly used practical controls for sporadic noises. In fact it was the EHO who suggested that the number of shooting days per annum should be halved (to be more in line with recent annual usage), the specific days of the week should be halved and specified, and the shooting window each day should be reduced. All of these measures are designed to preserve the tranquillity of the area whilst also integrating consideration of the economic and social benefit of the activity being applied for, and taking into account that this use has continued in this location for more than 30 years and could therefore be regarded as contributing to the character of the area (something that is set out in the applicant’s submission). On the subject of tranquillity the EHO was present on the nearby canal towpath during shooting. Whilst no shots were being fired the area was quiet with birdsong in the trees and coots swimming on the canal. She watched and listened to the same birds whilst shooting was taking place and none of these creatures reacted to the noise. The shooting noise lasted for 32 seconds. “Tranquillity” does not imply or require the complete absence of noise, and shooting noise in particular is very common in country areas.

**SC 2 (iii) That approving the application in the present circumstances may be said to be unlawful because neither the applicant, nor the council have examined how noise levels affecting these properties might be mitigated and reduced to a minimum. Para 185 of the NPPF uses the word “minimum”. Trying to achieve that hasn’t been done properly. The officer’s report does not convey the legal obligation to specifically address this relevant matter. All public authorities must justify interferences with private life, and noise from the firing range does that. Justification for this interference also requires the council to consider if less intrusive means are available to achieve the objective. That should be uncontroversial.**

EHO comment: see above – we have given clear opinions regarding how noise might be mitigated and reduced to a minimum. The NPPF actually advises “reduce to a minimum adverse impacts resulting from noise” and the PPG on Noise further expands on this stating that “this does not mean that adverse effects cannot occur”. So the writer is not correct in suggesting that noise levels must be reduced to a minimum – it is the adverse impacts resulting from noise which should be reduced and the mitigation measures outlined in the Noise Management Plan achieve this. At the quarry there are bunds and buffers and of course if an effective practical means of “deadening” the sound and reducing off-site levels becomes available then the purpose of the Noise Management Plan is to regularly review the situation to ensure that appropriate noise mitigation is used when available.

ATL comment: The report is considered to provide sufficient information in regards to the matters that have been raised. The report is comprehensive and is supported by the comments of the EHO officer and their specialist advice.

**SC 2 (iv) The officer's report does not explain to you the real difference between the figures put forward by (i) the applicant in the ACL report attached to it's addendum noise assessment, and those (ii) in the Parker Jones Report. Nor does the officer's report draw your attention to the glaring shortcomings in the ACL report. The false premise to the applicant's ACL report stems from the fact that the ACL report significantly underestimates the noise levels associated with the normal operation of the firing range, which resulted in an inaccurate assessment. This is so because the total duration of shooting presented within Table 3 of their report (339 seconds over a 1 hour period) is not representative of normal conditions, when the shooting is carried out on a more continuous basis. The measurements of noise from the April 2021 recordings made by PJA shows that the shooting noise was far more continuous, and from the local residents experience is more akin to between 50 - 70% of the time over a period of 1 hour. This underestimation of usage of over 7 dB(A) (possibly consistent with the interval whilst councillors and the MP in August 2022 moved between locations) within the ACL report puts the LAeq noise levels measured by ACL at odds with those recorded by Parker Jones. The Parker Jones recordings taken in April 2021 should be preferred. PJA's measurements do not appear to be disputed.**

EHO comment: we have now attended the area around Pondground on 3 occasions of shooting practice, one of which was without the knowledge of the Police. During the site visit of August 2022 the police officers explained to us clearly that in between each shooting burst there tends to be quite a long period of review, formal assessment, changing shooters and theoretical instruction before the next burst of shooting. This can take up to 20 minutes and our observations on every occasion are that there were short bursts interspersed with long periods of no shooting noise. The findings of the applicant's ACL report concur with this. We do not agree with the comment passed to the barrister that "shooting is carried out on a more continuous basis" or that "their report is not representative of normal situations"; and the un-evidenced comment that "the local residents experience is more akin to between 50 - 70% of the time over a period of 1 hour": even their own noise consultant has not suggested that in his observations. No, the PJA measurements on those particular days are not disputed, it is the use of them inappropriately against noise standards for other situations that we cannot accept. Again the EHO further comment in August 2022 referred to this issue:

"EHO comments Aug 2022: Therefore, other than the cottage near the entrance to the quarry, no specific residence would be affected on every shooting day. A critical factor for us is the times and days of shooting (i.e. during the normal working day when many homes are not occupied) and the history of shooting (it has been located here for more than 30 years) because this sporadic noise has characterised this area. This would explain why our records show that the public health team have not received any complaints regarding excessive shooting noise from this location (records are kept for 7 years). The loudness of the noise on any particular occasion is not a good reference point because this varies so much depending on conditions."

(A point of clarification is needed here – a complaint was received in December 2020 by the resident who raised the issue with the planning enforcement officer, which subsequently started this process, but there had been no complaints previous to 2020.)

ATL comment: As has been set out by the Environment Health Officer and as was witnessed on the site visit, there is a short burst of shooting across the two ranges followed by a period of quiet. This period of time is where the police officers and their instructors discuss walk up to view the targets and discuss the results of the shooting. This period can be up to 20 minutes so it is not a continuous intrusion of noise. Members may remember that on the site visit, a request was made to speed up the shooting to reduce the periods of silence so they could witness the noise of the



shooting. As such, officers agree with the Council's Public Health Team to how the noise levels should be measured.

**SC 2 (v) The officer's report does not explain to you the contents of a further report on behalf of local residents from Parker Jones Acoustics dated 13th September 2023 which sets out their findings recorded at the time of the recent demonstration, where the author of the report, who was present throughout recorded that noise levels at Pondground Cottage notably increased after councillors left.**

EHO comment: the EHO did submit further comments following receipt of this report which did not bring anything new to the consideration, other than to illustrate again that it is not appropriate to make decisions of this type purely on the basis of noise measurements carried out.

ATL comment: Whilst all information was available to members via the public website, the report to Planning Committee now includes reference to the receipt of this further report which has been reviewed by the Council's Public Health. It is understood that the noise levels recorded at the two neighbouring sites were lower than measured previously, but this was mainly due to the wind blowing in a different direction to the earlier site visit carried out in August 2022 when noise readings were undertaken. The response from the Public Health Officers, who also attended the site visit, has been included within the report.

**SC 2 (vi) That in the view of Historic England tranquillity is a potential attribute of the setting of a heritage asset, which include those just over the district boundary in Somerset that include remote country residences. The definition of setting in the glossary to the NPPF says "The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve." It is not less of a heritage asset because it was listed after use of the firing range commenced (used for only 2 days in 20125 ). There is no discussion of the significance of the noise to the current setting of the relevant assets and more importantly to the conservation area as experienced in 2023. The NPPF says that any harm to a designated heritage asset should require clear and convincing justification. The committee will readily accept that the experience of a heritage asset and the imaginings it evokes, is experienced differently with and without nearby gunfire. An applicant who had exhaustively carried out a thorough land search to look for possible alternative sites for locating a new firing range would be better placed to persuade you, than Devon and Cornwall police. No such evidence is before you. Have you been shown convincing justification in its absence? Only existing facilities have been considered.**

EHO comment: the observations of officers and others on site, together with the findings of the noise reports submitted by the objectors, clearly show that the noise is loud very close by but falls off significantly with distance, as all noise does. If shooting noise is audible at all 1km away then it would only occur when directly downwind and would sound at worst like distance "pops" of noise lasting for very short periods, and only on the days when shooting could take place. So we cannot agree that this noise affects remote country residences in Somerset. If this noise had caused significant adverse impacts on these assets then we would expect to have received complaints over the last 30 years and the council has not done so.

ATL comment: The Conservation Officer has further addressed this matter (see below) with the consultation response now included within the Officer report. Officers are content that whilst it is agreed that the use of the land for the firing will have less than substantial harm on the heritage assets, the harm is outweighed by the clear public benefit.

CO comment: The quarry has been used for firing for 40 years. Most of the designated heritage assets were therefore designated during a time when the area was experiencing roughly the same ambient noise as it is now, including the firing, although this noise level has increased slightly by the additional noise from the M5 as car use has increased. While ambient setting may not have been part of the consideration of setting pre-2005 (when HE listings started to become less an identification method and more an assessment of significance), the setting has not significantly changed during that time. Were the amount and type of firing to stay the same, there would therefore be no change to the acoustic experience of these designated heritage assets.

The applicant has now provided a heritage statement which follows the NPPG guidance and the Historic England *Setting of Heritage Assets* guidance. The methodology is sound. I agree with many of the conclusions of the statement. However, there is one area where I disagree. Paragraph 4.9 is concerned with the significance of the Grant Western Canal, and states:

*'the tranquillity of the canal is not part of its historical interest...the scene we experience today is not that which would have been presented to our eyes in the heyday of this waterway and hence, in pure historical terms, the canal must be disregarded as a receptor. Simply put, even though the canal is proximate, the designed use of it does not relate to its tranquillity (quite the opposite) and hence it derives none of its historic significance from low ambient noise levels.'*

I agree that the canal was not designed to be tranquil, but also that it was not designated a conservation area during the time of its industrial usage. Conservation areas are 'areas of special architectural or historic interest, the character or appearance of which is it desirable to preserve or enhance' (The Act s.69). The canal is unusual in that its original historic use as an industrial transport route is not its current character, which is one of leisure use within the countryside. It is not unusual for such features to change their character over the years as their use, as can be seen with other canals across the country. The Oxford Canal, for example, has also changed character to a quiet and peaceful wildlife haven in predominant leisure use, at much the same time as the Grand Western Canal. The industrial heritage of the canal is recognised and conserved, but the predominant character now and at the time of designation is that of countryside travel and leisure. Therefore, the tranquillity of the canal as a designated heritage asset is not irrelevant, and must be considered as a material consideration. The relevant parts of the NPPF are 195, 199, 200, and 202.

For this reason, I do believe that the character of that part of the canal that passes near the quarry would be negatively impacted upon by retaining the established and previously permitted level of firing (unrestricted number of days) and suggest that reducing this to the proposed 70 days would be a reduction in the previously permitted disturbance level. The amount of harm that unrestricted firing would bring would be less than substantial, as it would not impact on the whole conservation area, and would not be a high level of less than substantial harm due to the restricted number of days and times. This amount of less than substantial harm should either be designed-out to stay at its previously permitted level, mitigated, or balanced against public benefit. As the quarry is not a heritage asset, designated or otherwise, mitigation within the quarry might be achievable without increasing harm to surrounding heritage assets.

**SC 2 (vii) Last but not least a further material consideration weighing against approval not drawn to your attention is the fact that "Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established" No evaluation of this has taken place. This quote is taken from para 187 of the NPPF which is not referred to in the Officer's Report. The matter flows from the fact that the use as a firing range was unauthorised after 2014 and is relevant to the local business at Eden Lodge granted planning permission following this.**

EHO comment: The shooting ground has been in use for many years, including during the years when the temporary planning consent had lapsed. So it is not the case that the relatively recent holiday let business at Eden Lodge predates this application. Furthermore during the exercise in 2022 the EHO asked the owner how business was and he said it was booming. The EHO also asked if the guests had commented on the shooting noise but he said that as it takes place during the day in the working week most guests were out visiting local attractions. We did take likely daily activities into account when suggesting that specific days of the week were specified, because shooting during some hours on normal working week days was likely to impact on the least number of people as these were the times when working age people would be at work and visitors staying in the area would be on day trips.

ATL comment: As pointed out by the Public Health Officer, the use of Pondground Quarry as two firing ranges has continued on site since 1978 and whilst the planning permission lapsed in 2014, the use has remained ongoing as shown on firing data received. It is also noted that the neighbouring holiday business obtained planning permission in 2017, so the argument would be that the use has not had unreasonable restrictions placed on them. The earlier permission placed no restrictions on the firing which could take place and through noise surveys undertaken, mitigation has been recommended in the overall number of shooting days and the times of the day.

**SC 3. Before the above issues have been addressed further, the committee are therefore not equipped to decide the application, less still to approve it.**

EHO comment: The fundamental documents provided by Devon and Cornwall Police with respect to noise are the Noise Management Plan and Addendum, and the noise report provided by their own consultant. The EHO has provided detailed comments on these and responses to the noise reports submitted by residents. In our view the Committee would have sufficient information on which to base their decision.

ATL comment: Whilst the previous report to members was considered to provide the sufficient information required by members to make a decision; since receiving the Barrister opinion, matters raised have been revisited and the report before Members has been updated and further responses provided from the Public Health Team and Council's Conservation Office in light of the Barrister Opinion. As such it is considered that Members are equipped with comprehensive and full information to make a decision on this application.

**SC 4. In this case the threshold questions is whether**  
**(a) noise emissions from the firing range comply or conflict with the most relevant local plan policies and if so**  
**(b) whether material considerations indicate that nevertheless the application should be approved. The material considerations do not justify the departure from development plan policies in this case because there are reasonable steps that remain to be taken.**

EHO comment: We have taken into account all the documents and information submitted with the application and considered local plan policies and national planning guidance. Our recommendations to the planning officer indicate our view that this application does not conflict with any of these.

ATL – The Public Health Officer has noted that they have taken account of all the documents and information submitted and that these comply with policy. It is not considered that the proposal would represent a departure of local plan policies or national guidance with material considerations also leading to a recommendation to support.

**SC 5. The conclusions in the officer's report that are challenged as insufficient to equip you to properly decide the matter, are to be found in paragraphs 2.10 and 2.19 where it is concluded that the noise emissions would be acceptable, and in 3.9 where it is said that the development would accord with DM25.**

EHO comment: our view is that the documents submitted by the applicant, together with the various EHO comments are sufficient for the Committee to consider noise generated by the activities at the quarry.

ATL comment: It is considered that the report in front of Members is sufficiently detailed and contains all the information required to make a decision. It outlines the relevant Local Plan Policies and national planning guidance and the responses from the statutory consultees with the technical expertise in matters of public health, impact on heritage assets etc. The officer recommendation is clearly set out as are the planning conditions to enable the development to be supported.

**SC 6. The application should be refused or deferred because there are matters that need further work done on them. The first stems from the apparent conflict that the proposal has with the requirement in policy DM1 that new development should demonstrate that it does not "have an unacceptably adverse effect on the privacy and amenity of the proposed or neighbouring properties and uses".**

**DM4 is also relevant because it requires you to ask if the PJA figures are accepted, does that mean there is an unacceptable negative impact on health? The answer is yes and the dispute over the appropriate measurement period has not been resolved by the ACL recordings set out in para 2.3 of the officer's report, see the reasons for questioning these figures in para 2(iv) above.**

EHO comment: This is not a new activity – it has been taking place in this location for over 30 years. We do not consider that the shooting activities adversely affect "privacy or amenity" because the number of occasions of shooting over a week, month or year is low, and when the shooting is taking place the "on-time" of the noise is interspersed with long periods of no noise from the activity. The term "unacceptable negative impact on health" is a very specific term which is not appropriate to use in this situation where the loud noises are occasional rather than continuous. Furthermore we have not been presented with any information or evidence that there has been any impact on the health of any resident. The comments from residents at the outset were focused on the annoyance caused by the loudness of the noise at times and in certain close by locations.

ATL comment: As noted, the use of Pondground Quarry for use as two firing ranges by Devon and Cornwall Police has taken place since 1978 with temporary planning permission for the use having been approved on 5 separate occasions. These planning permissions did not include any restrictions to the amount of days shooting across the year or the hours of shooting. Through this application the number of days shooting would be controlled to 70 days in the year with shooting only to take place on either a Tuesday, Wednesday or half day Thursday within controlled hours of 0900 and 1700, except for Thursdays when it will be between the hours of 0900 and 1300. The fall-back position is that the applicant could shoot for 28 days of the year under permitted development rights. As such, it is considered that the use is supportable with conditions to control the above timings.

**SC 7. The further work that is required is in relation to acoustic barriers to reduce the sound coming out from the quarry and in relation to whether it really can be said to be necessary to locate the firing range if no land search for an alternative site for a new firing range has been done.**

EHO comment: the Police did consider whether acoustic barriers or any other physical noise mitigation were appropriate or achievable. For various operational and practical reasons this was found not to be possible. Since receiving this request for further information on this, we have asked the question again and received the following response:

*“The firing ranges are located within a quarry with the quarry walls to some sides and trees to others. Any acoustic panels on site are going to have minimal impact as the noise would pass over the top of them. Noise mitigation needs to be employed as close to the source as possible to have any impact. Booths for the officers to station themselves in whilst they fire their weapons are not practicable as police shooting is done from varying distances to the targets. This is generally from 5 to 50 metres. Some of the shoots also require the officer to move between firing points which is referred to as a walk down shoot. As such, firing booths are not feasible.”*

ATL comment: As commented upon, acoustic barriers have been considered and ruled out for this site. It should be noted that this site has been used for the purposes of shooting since 1978 and the application has been made retrospectively. The Police has confirmed the location of the indoor firing range outside of Exeter (which cannot meet the current demand) and use of outdoor sites owned by the armed forces. It has been explained why this is not a viable solution to meet the current needs and Devon and Cornwall do not have the finances to purchase a new site. Therefore the consideration in front of Members is to whether this site for the use intended is acceptable.

**SC 8. A letter is before you from the local headmaster referring to the habit of closing windows in the classrooms. A former teaching assistant, a Ms Orchard has also confirmed to the local residents that she witnessed first-hand, the disruptive effect that the shooting noise had at school, more so with outdoor PE.**

EHO comment: During the last site visit in September 2023 I spent at least one hour in the village centre adjacent to the school. I chose that location because on that day it was downwind of the quarry. I heard various local noises during that time, and on several occasions heard the sound of distant gunfire. It sounded like distant “pops” and sometimes distant rapid fire, with long periods of no shots in between. At one point I was talking to a local resident and was aware of distant pops. But I did not hear the noise above our conversation, and neither did the resident remark on it. It is my opinion that, although at times the noise might be audible, it could not reach a level where it was seriously disruptive to any teaching activities or required windows to be closed. The restriction of days of the week and times of the day would ensure that the number of occasions when the children were outside doing PE on days when the wind was blowing from the quarry to the school would be kept to a minimum.

ATL comment: Having visited on the two days shooting, given the direction the wind was blowing, the shooting undertaken in August 2022 could not be heard in the direction of the school whereas in September 2023, the ‘pops’ of firing could be heard. As commented by the Head Teacher, some days the shooting could not be heard and on other days it may be louder. As set out in the report, mitigation in terms of the number of days shooting and days have been recommended with the fall-back position being those of permitted development allowing 28 days of shooting.

**SC 9. The effect of global warming is not irrelevant to expecting children to be taught with the windows facing the quarry shut during the hotter summer months when shooting practice takes place. As a matter of public law, when considering the various options of refuse, defer or permit the proposed development, the outcome that would represent the best interest of the children at the school is making sure that the required matters set out under para 2 above, are properly gone into. How much weight you give the importance of doing what is the best interests of the children should not be less than the weight that you**

**attach to the importance of the police having the training facilities that they require. The latter should not trump the need to look into whether the disruption experienced by the local community from noise from the firing range can be reduced if not altogether avoided by a preferable site being found elsewhere.**

EHO comment: I refer to our comment above. The comment regarding global warming is not a relevant consideration to this application as there is no evidence that schools are having to open windows more because of it. It will always have been the case that on any very warm or hot day any school might wish to open the windows either partially or fully, and there is no reason why this cannot still be done on any school day. The number of occasions when it is a hot day, with wind blowing from the quarry, with shooting taking place would be, in our opinion, minimal. There are many schools across the country which are safely located close to continuous noise sources such as main roads, railways and some industrial operations. In this case the school is located in a rural village which is quiet for almost all of the time.

ATL comment: The comments of the Public Health Officer are noted and agreed with. No evidence has been provided that the school would need to shut the windows over the summer period if the shooting was approved. The Head Teacher also commented on the site visit that he has only been in his position for a year, with the shooting having been taken place for up to 40 years now. The comments from public health are considered to address the noise related concerns on this matter, and it is not felt that there is any evidence to support any reasons for refusal on this matter.

**SC 10. Why shouldn't a local planning authority asked to approve such noise pollution want further evidence that when shooting takes place there is no attenuation possible?**

EHO comment: We would not regard this particular noise (given its infrequency and the other parameters that have been described several times) as noise pollution. We have the information that would be needed on which to make recommendations and have done so. On the subject of attenuation, we did ask the Police for a view on whether it was possible to use attenuation on the weapons themselves and received this response:

"UK armed policing units do not deploy operationally with sound moderators on carbines, handguns or shotguns. Using moderators in training is not feasible as it affects the fall of shot. If an officer trains and qualifies using a moderated weapon system and deploys using a non-moderated weapon they will not have trained for operational reality. Moderators are also heavy and affect the balance of the weapon system which again has an effect on performance. If a police officer fires their weapon operationally it is a matter of safety that everyone in the vicinity is aware of the fact. This allows the public to move away and for other police officers to know a shot has been fired. Some military units will use moderated weapons, but those operations are beyond the scope of the police."

**SC 11. Controlling the duration by reducing the hours to just four hours per day is not the same as reducing the noise transmission whilst shooting takes place. The Council has not applied its mind to that issue and seemingly does not even accept the need for that to be done. To overlook such a material consideration as trying to find less intrusive means of achieving the objective and instead to now grant planning permission would not be in accordance with your legal obligations.**

EHO comment: We have considered all matters relating to this application, including options for reducing the volume of noise at source (see above). We have not overlooked any material considerations, and in fact from the outset have applied the balance we are required to in relation to the activity itself and potential impacts on the community.

ATL comment: The options for reducing noise transmission has been considered as noted by the Public Health Officer. Additional commentary from the applicant has been provided in the officer report to Planning Committee outlining why the various options considered would not be appropriate. Officers agree with the explanations given with control through planning conditions to address the matter being an appropriate way to mitigate against noise intrusion.

**SC 12. Now the matter has been raised a reasonable committee properly directing itself is respectfully invited to recognise that as the situation stands at present the applicant has not done what DM4 and para 185 of the NPPF expect, namely discussion of noise attenuation measures to reduce noise impact in the locality whilst the worst scenario of 8 shooting of 10 guns all at one time including carbines, takes place. Agreed figures should be possible, you have none. Agreed options or lack of them should be possible but you have not had them explained to you. The previous MP's suggestion of them fell on deaf ears. There is no evidence before you as to why his reasonable suggestions including a barrier and security fence were not taken up. To contemplate a condition being attached to the permission for such matters would be a mistake and is not an option that is open to you because installation of such structures amount to development and require a fresh planning application.**

EHO comment: These matters have been covered in the applicant's original documents and noise management plan. Since the queries raised by the Barrister the Police have provided that information again (see above).

ATL comment: No conditions are recommended for additional noise barriers to be installed through this application so as such no further planning application would be required. In respect to security fences, the applicant has confirmed that they are committed to provide these within the submitted information and approval of final details are possible through this application. Conditions for enclosures/boundary treatments are common and accepted within the wider planning context. It should be noted that permitted development rights exist for walls/fences and other means of enclosure to be installed on site without any formal planning permission. The condition imposed would ensure further security fencing is installed to address concerns raised through the planning process if the site being too accessible.

**SC 13. The second reason for asking for the matter to be deferred is because loss of tranquillity is relevant to the setting of the local heritage assets, not just within your authority's district, but also those just over the border in Somerset, less than 1000 metres from the firing range. If harm would result, as is accepted, (not by the council but by the applicant) your statutory duty kicks in to see if tranquillity is an attribute of the setting to the conservation area and the heritage assets in issue and if so to examine if it can be better preserved. The officer does not expressly say in para 3.9 which view is accepted and which is rejected. We infer the view of the council's conservation officer is rejected. It would be significant if your reading of the officer's report suggests to you that tranquillity to a heritage asset is legally irrelevant.**

ATL comment: The Conservation Officer has addressed this matter which is included within the officer report. See also the earlier response given above to SC 2 (vi).

**SC 14. Substantial noise reduction may be achievable with shooting stands, constructed bespoke for the Pondground Firing Range, constructed on site using timber sides and rockwool to provide sound absorptive properties acting as acoustic barriers with one side open, to muffle the reverberation or reflection of noise of the gun shots off the walls of the quarry, so reducing the noise impact, not just on the local community and particularly those living closest to the quarry but also on the heritage assets.**

EHO comment: the barrister has introduced a specific mitigation measure in his conclusion but not elsewhere in his comment, and neither have the objectors or their noise consultant mentioned or justified measures such as this, or suggested any other proven sound reduction measures for shooting noise at source. So we are not sure what technical experience the barrister has on which this comment is based, or whether he has seen the site for himself. Our experience with clay pigeon shoots is that timber and rockwool has very limited effect, if any. We have considered that specific loudness mitigation measures may be found to be effective in the future by suggesting the Noise Management Plan approach which by its very nature allows flexibility and encourages applicants to regularly review the mitigation used. We have recently revisited the matter of on-site mitigation with Devon and Cornwall Police and they have provided information which explains why additional physical sound barriers would be operationally restricting and of limited effect in any case.