

OFFICER'S REPORT

Case Officer:	Graham Smith		
Parish:	Salcombe	Ward:	Salcombe & Thurlestone
Application No:	2981/23/VAR		
Applicant:	Mr N. Horne - T24 Seven Ltd trading as Crab Shed Salcombe Damask Barn Brownstone Modbury, Devon PL21 0SQ	Agent:	Mrs Helen Morris-Ruffle - Visionary Planning UK Trevean 2 Penmelen Camelford PL32 9UH
Site Address:	The Crab Shed, The Fish Quay, Gould Road, Salcombe, TQ8 8DU		
Development:	Variation of condition 9 (flood survey & removal of permitted building) of planning approval 41/0189/13/F to postpone the proposed Flood Survey from 2033 and allow the building to be retained on site until 2044 (retrospective) (resubmission of 1137/23/VAR)		

Reason item is before Committee:

SHDC is the land owner.

Recommendation: CONDITIONAL APPROVAL**Conditions:**

1. Accord with Plans
2. Use linked to crab processing facility
3. Restriction on outside eating area use
4. No amplification of outside seating area
5. Temporary Permission until 2044
6. Mitigation Implementation

Key issues for consideration:

Principle of Development, Flood Risk, Design, Residential Amenity

Site Description:

The Crab Shed is a small restaurant in 'The Creek' public car park north of Salcombe town centre. The shed, which is constructed with timber in a pitched roof design overlooks the creek and is in close proximity to the place where Shellfish is brought onto shore and processed to the north. It has been in situ since the original permission was approved in 2013 with a temporary permission in place until 2033.

The site is within the Salcombe to Kingsbridge Estuary SSSI, the South Devon AONB, Cirl Bunting buffer zone, Flood Zone 2/3, Landscape Character Type 4A: Estuaries, the Undeveloped Coast, and the Salcombe Neighbourhood Plan area.

The Proposal:

The applicant seeks to extend the temporary permission of the Crab Shed until 2044. Condition 9 of the original permission for this unit is as follows:

The building hereby permitted shall be removed and the land restored to its former condition on or before 15 March 2033.

Reason: The Local Planning Authority considers that the proposed development should be reviewed in terms of flood risk.

The application therefore seeks to prolong the permission to allow it to continue to operate past the previous time limit.

Consultations:

- **Salcombe Town Council** - *It appears a flood survey has now been carried out to satisfy the current condition, but a further variation is requested. This is a technical application and we believe we should defer to the environment agency as to whether it is acceptable or not.*
- **Environment Agency – OBJECTION** – Insufficient evidence has been submitted to justify this variation and demonstrate that it will not result in an increase in flood risk. A revised flood risk assessment was submitted during the course of the application in an attempt to overcome the objection how this was deemed insufficient and the objection was maintained.
- **DCC Highways:** No Highways Implications.
- **Economic Development: SUPPORT**

Representations: None received

Relevant Planning History

41/2440/12/PREMIN - Pre-application enquiry for proposed new crab shed to include cafe' and interpretation building. Not concluded

41/0189/13/F - Full planning application for erection of new seafood cafe/restaurant and retail outlet. Conditional Approval

3655/19/VAR - Application for removal or variation of condition 9 of planning consent 41/0189/13/F. Withdrawn as applicant did not wish to proceed with application – business sold

1137/23/VAR - Variation of condition 9 (flood survey & removal of permitted building) of planning approval 41/0189/13/F to postpone the proposed Flood Survey from 2033 and allow the building to be retained on site until 2044. Withdrawn due to EA objection.

1247/23/FUL - Construction of small food preparation room to supplement kitchen for Crab Shed Restaurant. Withdrawn

2881/23/FUL – Application for variation of Condition 9 (Flood survey & removal of Permitted Building) of Planning Consent 41/0189/13/F to postpone the proposed flood survey. Withdrawn – duplicate application (see 2981/23/VAR)

2839/23/FUL - Construction of food preparation unit associated with Crab Shed restaurant – Conditional Approval

ANALYSIS

1.0 Principle of Development/Sustainability:

- 1.1 Policies SPT1 and SPT2 of the Joint Local Plan (JLP) provide a range of objectives on how sustainable development will be delivered. A sustainable economy is one where opportunities for business growth are both encouraged and supported. Environmental objectives encourage the effective use of land by reusing existing sites where appropriate and also ensuring that any adverse environmental impact arising from development can be minimised and effectively mitigated.

- 1.2 Policies such as DEV14 and DEV15 of the JLP provide support for the local economy and provide favourable conditions for existing business to thrive. The Salcombe Neighbourhood Development Plan (SNDP) recognises that the town economy depends on marine and associated service industries (6.4.1.1) and places a priority on the shore-based activities of the crab and fishing and processing industry (6.4.1.3) and maintaining and supporting economic activity and those existing uses that provide employment (6.4.1.2).
- 1.3 Colleagues in Economic Development have confirmed that this operation is part of a key segment of the marine sector which is recognised as a priority for council support. An essential part of this particular business is its location close to where the produce arrives. Under Policy DEV24 of the JLP a locational justification is required for the Undeveloped Coast location. Officers would consider that, given the links to the marine sector, there are exceptional local circumstances for it to continue to operate at this site.
- 1.4 As this application seeks to extend the permission for an already established local business officers would consider that it accords in principle with the wider vision of the plan and those parts that promote business growth subject to assessment against the relevant policies.

2.0 Flood Risk:

- 2.1 Policy DEV35 directs development away from areas at highest risk of flooding, ensuring that it is safe and does not increase flood risk and pollution elsewhere. This approach is in line with NPPF and while under paragraph 174 a development of this nature and scale would not trigger a requirement for sequential and exceptions tests a site-specific flood-risk assessment is still necessary given that it is within Flood Zone 3.
- 2.2 The flood risk assessment (FRA) submitted in support of this application proposes mitigation as follows:
 - Raising wiring and power outlets at ground level
 - Air brick covers to be installed
 - Flood doors provided at entrances/exits
 - Provision of demountable flood barriers to be erected on receipt of EA Flood Warnings
 - The owner will sign up to EA flood warning service
- 2.3 The information submitted in support of the application has been insufficient to allow the Environment Agency to withdraw their objection who have made the following comment:

As identified within the FRA, the site is at high risk of flooding and this is not only predicted to increase in magnitude but also in frequency. Nonetheless, we do not consider that the FRA has fully identified or mitigated the flood risks to the proposed building over its proposed lifetime. It is therefore contrary to paragraph 167 of the NPPF.

2.4 The EA suggested the following be included in the FRA:

- *The FRA should include appropriate allowances for wind and wave action because this will have an influence on the depth and frequency of flooding.*
- *The design flood level should be updated to include the results of the wind and wave action assessment and include at 600mm freeboard to account for any uncertainties.*
- *The new design flood level should be used to identify what mitigation measures are appropriate and at what level flood resilient and resistant techniques should be used at. **It may be that these are not achievable given the building finished floor levels are below the design flood level for 2044.** If, however they are achievable, the specific measures should be set out and be conditioned as part of the permission for the variation.*
- *An assessment should be made of the safe access and egress from the site for users and should consider the likely depths, duration and onset of a flood event. A Flood Warning Evacuation Plan should be prepared to allow the LPA to make an informed decision on whether they consider the risk can be managed during a flood event. A commitment will need to be made to update the FWEP regularly, along with signing up to receive a flood warning.*

2.5 The applicant submitted a revised FRA in an attempt to overcome these concerns and whilst mitigation is proposed, the EA confirmed that they remain of the view that the FRA has not fully identified or mitigated the flood risks to the proposed building over its proposed lifetime.

2.6 The EA concerns are noted as is their comment that their standards may not be achievable in the circumstances. The original permission for this development was approved with an EA objection and this proposal similarly does not overcome the concerns of the EA. In this respect the proposal does not strictly accord with Policy DEV35 of the JLP.

3.0 Design:

3.1 No physical changes are proposed to the previously approved design. The shed is an established feature of this part of the coast and having it at this location for the time period proposed is not considered to have any negative impact on tranquillity, local distinctiveness or character. The condition as revised will still require that it be removed and land reinstated at the end of the temporary timeframe unless otherwise agreed. In this respect it is considered to suitably conserve a Nationally Designated Landscape and is in compliance with Policies DEV20, DEV23, DEV24 and DEV25 of the JLP and SNDP Policies Env1, Env5, Env6 and B1.

4.0 Residential Amenity:

4.1 There are no residential properties in the immediate vicinity and it is noted that no objections have been received to the proposal. It is therefore considered that the extension of time can be accommodated without any adverse loss of amenity to the nearest residents and that the proposal is therefore in accordance with Policy DEV1 of the JLP.

5.0 Conclusion:

5.1 The objection of the EA to this proposal is noted and the applicant was afforded additional time to try and resolve this however ultimately they have been unable to do so in the circumstances. Whilst Officers would acknowledge that the threat of flooding is becoming more pronounced by climate change, the EA themselves have also noted that compliance with their standards may not be possible in this particular scenario. The applicant is not prepared to submit a third technical report and has therefore requested that a decision is made based on the information submitted. The application does not fully accord with Policy DEV35 of the JLP but does contain some additional mitigation over and above the existing permission which will run until 2033. This location is an integral part of this business which is part of an industry recognised as being important to the local economy and it is not considered that the same operation could run as efficiently elsewhere or would be as desirable to customers. When assessed against the plan as a whole, whilst the proposal to extend the timeframe of this development is not fully compliant officers give significant weight to the economic benefits associated with this proposal which are considered to outweigh concerns relating to flood risk. On balance it is recommended that conditional approval be granted.

This application has been considered in accordance with Section 38 of the Planning & Compulsory Purchase Act 2004

Planning Policy

Relevant policy framework

Section 70 of the 1990 Town and Country Planning Act requires that regard be had to the development plan, any local finance and any other material considerations. Section 38(6) of the 2004 Planning and Compensation Act requires that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of decision making, as of March 26th 2019, the Plymouth & South West Devon Joint Local Plan 2014 - 2034 is now part of the development plan for Plymouth City Council, South Hams District Council and West Devon Borough Council (other than parts of South Hams and West Devon within Dartmoor National Park).

On 26 March 2019 of the Plymouth & South West Devon Joint Local Plan was adopted by all three of the component authorities. Following adoption, the three authorities jointly notified the Ministry of Housing, Communities and Local Government (MHCLG)* of their choice to monitor the Housing Requirement at the whole plan level. This is for the purposes of the Housing Delivery Test (HDT) and the 5 Year Housing Land Supply assessment. A letter from MHCLG to the Authorities was received on 13 May 2019 confirming the change.

On 14th January 2022 the Department for Levelling Up, Housing and Communities published the HDT 2021 measurement. This confirmed the Plymouth, South Hams and West Devon's joint HDT measurement as 128% and the consequences are "None".

Therefore a 5% buffer is applied for the purposes of calculating a 5 year land supply at a whole plan level. When applying the 5% buffer, the combined authorities can demonstrate a 5-year land supply of 5.97 years at end of March 2022 (the 2022 Monitoring Point). This is set out in the Plymouth, South Hams & West Devon Local Planning Authorities' Housing Position Statement 2022 (published 19th December 2022).

[*now known as Department for Levelling Up, Housing and Communities]

The relevant development plan policies are set out below:

The Plymouth & South West Devon Joint Local Plan was adopted by South Hams District Council on March 21st 2019 and West Devon Borough Council on March 26th 2019.

SPT1 Delivering sustainable development
SPT2 Sustainable linked neighbourhoods and sustainable rural communities
TTV1 Prioritising growth through a hierarchy of sustainable settlements
TTV2 Delivering sustainable development in the Thriving Towns and Villages Policy Area
DEV1 Protecting health and amenity
DEV2 Air, water, soil, noise, land and light
DEV15 Supporting the rural economy
DEV20 Place shaping and the quality of the built environment
DEV23 Landscape character
DEV24 Undeveloped coast and Heritage Coast
DEV25 Nationally protected landscapes
DEV35 Managing flood risk and Water Quality Impacts

Neighbourhood Plan – The Salcombe Neighbourhood Development Plan was adopted on 19th September 2019 and forms part of the Development Plan. The relevant Policies are as follows:

Env1 - Impact on the South Devon Area of Outstanding Natural Beauty (AONB)
Env5 - Maintaining the character and the environmental quality of the estuary
Env6 - Locally Important Views
B1 - Design Quality and safeguarding Heritage Assets

Other material considerations include the policies of the National Planning Policy Framework (NPPF) including but not limited to paragraphs 174 and guidance in Planning Practice Guidance (PPG). Additionally, the following planning documents are also material considerations in the determination of the application:

**South Devon Area of Outstanding Natural Beauty Management Plan (2019-2024)
Plymouth and South West Devon Joint Local Plan Supplementary Planning Document (2020)**

Considerations under Human Rights Act 1998 and Equalities Act 2010

The provisions of the Human Rights Act 1998 and Equalities Act 2010 have been taken into account in reaching the recommendation contained in this report.

Recommended conditions:

1. The development hereby approved shall in all respects accord strictly with drawing numbers SK 002 Rev A, SK004 Rev A, SK005 Rev A, 012/007/002, 012/007/006, Design and Access Statement and Site Location Plan received by the Local Planning Authority on 10 January 2013.

Reason: To ensure that the proposed development is carried out in accordance with the drawings forming part of the application to which this approval relates.

2. The development hereby approved shall only be used for the preparation and sale of seafood in conjunction with the crab processing factory at Fish Quay.

Reason: To ensure the development proposed is only used connection with the established crab industry at Fish Quay, without which the use would be unacceptable in this location which is outside the Salcombe Development Boundary in accordance with Policy DEV15 of the Joint Local Plan.

3. The outside seating area shall not be used between the hours of 22:00 and 08:00 on any day of the week.

Reason: In order to protect nearby residential amenity in accordance with Policy DEV1 of the Joint Local Plan.

4. No system of public address, loudspeaker, amplifier, relay or other audio equipment shall be operated on the outside seating area at any time.

Reason: In order to protect nearby residential amenity in accordance with Policy DEV1 of the Joint Local Plan.

5. The building hereby permitted shall be removed and the land restored to its former condition on or before 15 March 2044.

Reason: The Local Planning Authority considers that the proposed development should be reviewed in terms of flood risk in accordance with Policy DEV35 of the Joint Local Plan.

6. The flood mitigation measures as detailed in the Flood Risk Assessment submitted in support of this application shall be implemented in full within 6 months of the permission hereby granted unless otherwise agreed in writing by the Local Planning Authority.

Reason: To minimise the impact of flood risk on the development in accordance with Policy DEV35 of the Joint Local Plan