

## OFFICER'S REPORT

<b>Case Officer:</b>	David Stewart		
<b>Parish:</b>	Stokenham	<b>Ward:</b>	Stokenham
<b>Application No:</b>	4114/23/VAR		
<b>Applicant:</b>	Mr Mikael Armstrong Hockham House Hockham Road Compton Newbury Berkshire RG20 6QN		
<b>Site Address:</b>	The Cove Guest House, Torcross, TQ7 2TH		
<b>Development:</b>	Application for variation of condition 2 (approved plans) of planning consent 53/3160/11/F		

### **Recommendation:**

Conditional Grant

### **Conditions**

1. Accord with Plans
2. Update to structural report for cliff
3. Seawall condition
4. Materials
5. Non reflective glazing
6. Restriction of PD
7. LEMP
8. Biodiversity Enhancement
9. Parking
10. Contamination
11. Privacy screen
12. CMP
13. Climate change details
14. External Lighting

### **Key issues for consideration:**

The effect of the amended scheme on the character and appearance of the area, with particular regard to the South Devon National Landscape (formerly the South Devon AONB), the Heritage Coast and the Undeveloped Coast designations

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### **Site Description:**

The site is situated to the south of Torcross, occupying an elevated position above the high-water mark and located on a shelf of ground below the cliffs to the west and the South Devon Coastal Path.

Part of the site was historically occupied by a building previously used as a guest house. The building has since been demolished, with some hardstanding remaining; the site has an untidy appearance. Access to the site is via a steep driveway.

The site is located outside of the discernible built-up area of Torcross. It is within the South Devon National Landscape and part of the designated Undeveloped Coast. The eastern edge of the site lies within Flood Zones 2 and 3 and the Slapton Ley SSSI. A Public Right of Way runs to the west of the site.

The site has an extensive previous planning history. In 2009 permission was granted for a replacement dwelling on the site. This was renewed in 2011 and further permissions were granted in 2014 and 2015 for a replacement dwelling. The 2015 permission was varied in 2017. At some stage between 2009 and 2011 the original building was demolished and in 2020 a certificate of lawfulness application was made that sought to confirm that the 2011 permission was lawfully implemented and was capable of lawful continuation subject to adherence to the requirements of the relevant planning conditions. On that basis the certificate was issued.

Further applications to vary the scheme were submitted with the most recent approved variation being 1411/21/VAR. Two further variations were submitted but refused and later dismissed at appeal under 0043/22/VAR and 2110/22/VAR.

An application made to vary the approved design was considered by planning committee in November 2023 which was refused under application number 2268/23/VAR. Further details of this are given below in a consideration of the current application.

### **The Proposal:**

This proposal seeks to vary the approved design of the dwelling whilst at the same time addressing the earlier ground of refusal. The earlier application was refused on the ground that the impact of the additional glazed area would have a detrimental impact on the designated landscape. This application now shows some of the previously glazed panels as solid panels. Otherwise, the appearance of the development is similar to that which was considered in the last application.

The current amendments showing a two-level timber framed, Huf Haus style structure. The proposed building has a timber framed structure set on a concrete frame which is based on standard modular dimensions. The result is a 5.5 bay module on the east and west elevation extending into the site by 2 modules.

The building is also divided vertically into two layers. A projecting balcony is shown on the east elevation which is about 1.2m wide with the roof projecting out the same distance. A projecting roof is also shown on the west side of the building. The southern 'extension', comprising the raised pool and terrace, remains unchanged in dimensions from the approved scheme.

The outer face of the timber frame is shown to be exposed and the eastern elevation predominantly glazed at the upper level. At the lower ground floor level there are solid, stone faced panels between the fenestration. On the north elevation there is a line of solid panels to the lower level with the exception of a door to the lower lobby. At the first floor, the elevation is glazed towards the east side but solid on the west side.

The south elevation is glazed at the upper levels but solid at the lower level. The west elevation, facing the hillside is predominantly solid render panels at the first-floor level with

two small opening at the lower level and two larger glazed panels at the upper floor level, one inset. It is this elevation that shows openings that were previously glazed now with solid fixed panels to reduce the glazed area.

Although not shown on the previous scheme the roof comprises a large area of solar panels set at a shallow angle and hidden by a solid upstand (which was shown on the approved variation). At the northern end of the building there is a roof terrace balustrade that, also shown on the approved variation.

### Consultations:

- Cllr Julian Brazil: The ward member expressed concerns over potential works to the cliff and sea wall and requested conditions relating to both to be inserted on the decision notice in the event of planning permission being granted.
- DCC Highways: No comments received
- Stokenham Parish Council: Objection: Although the overall glazed area was approximately equivalent to that in the approved design, the glazed area on the seaward (East) elevation had increased by some 10.28 sq.m, or 110 sq.ft, and would resemble a hugely bright lantern on an otherwise dark section of the undeveloped coast. Further erosion of local Dark Skies would be caused by the swimming pool illumination, together with external illumination around the pool. The adding back of the roof terrace from a previous design would elevate external noise and lighting, to the dis-benefit of neighbours and the dark coast. Should this proposal be approved then a request was made for strict conditions to be imposed on outside lighting. DEV32, Climate Emergency Compliance, and HUF HAUS greenwashing. The applicant made much of the ecological and environmental credentials of the HUF HAUS company. Should this proposal be approved then it was requested a condition empowered by a s106 requiring it to be a HUF HAUS and nothing else.
- South Hams Society: Objection The South Hams Society objects to this latest section 73 application for the Cove Guest House site. The Society have reviewed that latest case law for Section 73 applications, and we have come to the conclusion that there is a fundamental issue with this application. We refer the local planning authority to the case law - Case No: CO/2047/2022 IN THE HIGH COURT OF JUSTICE, KING'S BENCH DIVISION, PLANNING COURT which the Society will supply. The Society are of the opinion that the development proposal is fundamentally different from the original planning permission. Planning application 53/3160/11/F - Renewal of extant planning application 53/0136/09/F (demolition of guest house and replacement with single dwelling) did not include a swimming pool in the development proposal. This application is for variation of condition 2 (approved plans) of planning consent 53/3160/11/F. This new proposal includes a swimming pool. This is a fundamental change to the original planning permission and creates a conflict between the two applications. A swimming pool was excluded from the development proposal of the original permission by virtue of planning condition 8 (d) (a) of the planning permission 53/3160/11/F. It is obvious that the original development permission did not have a swimming pool and a swimming pool was excluded from the original application by condition 8. As a consequence, there is an obvious conflict with the planning approval 1411/21/VAR plans and planning conditions listed.

We therefore find conflict with the original planning permission and the submitted plans. We refer the local planning authority to the following points of the latest case latest referred to.

The Society also note that the submitted scheme includes a new footpath to a sun terrace from an existing footpath where a tree or trees will have to be removed.

Tree root systems are nature's rock anchors on steep terrain. There are plenty of examples where trees have been removed that have, a few years later led to cliff and bank falls. These have then led to unsightly rock face netting.

It is not obvious why you would need a cliff face access to the roof top terrace shown in this plan extract.

## **Representations:**

### **Representations from Residents**

Three letters of representation have been received setting out the following:

- The application has been refused before and dismissed at appeal. It was the view of the committee that it was unsustainable. When is the Council going to accept that the decision to build this type of house in this location wrong.
- The coastline is being eroded and the site will be lost in the longer-term putting future residents at risk. This will be contrary to the NPPF para 168.
- The latest version of the Cove scheme boasts 52 solar panels which take up nearly half the roof space. So not only are we presented with a huge area of glass on the facade of the building, but now we are faced with an enormous area of reflective material on the roof too. This would be ugly and distracting when viewed from the properties and public steps above.
- Despite constantly referencing Huf Haus in his supporting statement and previous ones, it is questionable whether the applicant has even been in touch with Huf Haus (a company which usually manages the planning process for its clients) before seeking to build one. Informed speculation suggests that a timber-framed building such as a Huf Haus may not be able to survive the damp Cove environment and that Huf Haus might not consent to offer its services for such a site. Surely it should be established whether a Huf Haus is a realistic possibility before any more time is spent debating the merits of one?
- The use of stone in the proposed scheme is an area where there needs to be more clarity.
- The proposal may not have three floors but it still has many more horizontal elements than the approved scheme. The planning officer is wrong to dismiss this as an insignificant difference.
- The engineer's report is deficient, to only be concerned with wind speed, as the report is, when trying to explain damage to a single section of coastline and not consider wind direction is a glaring error. As is the omission of any reference to tides. It may well be that the sea pounding the wall played a part in its destruction but for the report to not even mention saturation of the land behind the wall and drainage issues being possible factors runs at odds with what was observed.

### **Relevant Planning History**

- 0043/22/VAR Application for variation of condition 2 (approved plans) of planning consent 53/3160/11/F (resubmission of 1411/21/VAR)
- 0693/21/ARC Application for approval of details reserved by conditions 4, 5, 6, 7 and 9 for planning application 53/3160/11/F
- 1164/17/VAR Variation of condition 2 (approved plans) following grant of planning permission 53/2267/15/F

- 1411/21/VAR Application for variation of condition 2 (approved plans) of planning consent 53/3160/11/F
- 2110/22/VAR Application for variation of condition 1 (approved plans) of planning consent 1411/21/VAR
- 2268/23/VAR Application for variation of condition 1 (approved plans) of planning consent 1411/21/VAR (resubmission of 2110/22/VAR)
- 3321/18/FUL Erection of a replacement single dwelling (Renewal of planning application in respect of consent 53/2267/15/F)
- 3446/20/CLE Lawful development certificate for existing commencement of development of works to comply with consent 53/3160/11/F
- 3731/16/ARC Approval of details reserved by condition 9 (Reptile Mitigation Strategy) of planning consent 53/2267/15/F
- 53/0136/09/F Demolition of guest house and replacement with single dwelling
- 53/0143/87/3 Additional dormer window and revised ground floor fenestration,
- 53/0149/05/F Improvements to widen access drive
- 53/0564/86/3 Extension to ground floor and addition of first floor,
- 53/1103/00/F Provision of ramped access to beach and powered winch
- 53/1257/15/PREMIN Pre application enquiry for single dwelling on site of demolished guest house
- 53/1294/84/3 Rear dormer,
- 53/1545/77/3 Kitchen, bedroom and lounge extension
- 53/1695/12/F Householder application for conversion of existing boathouse with living accommodation to guest accommodation ancillary to Cove House
- 53/1775/08/F Demolition of existing guest house and replacement with new residential dwelling
- 53/2024/11/F Resubmission of planning application reference 53/2610/10/F for householder application for conversion of existing boathouse with living accommodation ancillary to Cove House
- 53/2084/97/3 Extensions to provide owners bedroom at rear and en-suite bathroom to a new internal bedroom at front,
- 53/2265/90/3 Conversion of coach house and staff accommodation to studio apartment with erection of extension,
- 53/2267/15/F Erection of replacement single dwelling
- 53/2356/12/PREMIN Pre-application enquiry for replacement of guest house with 9 no. new apartments
- 53/2609/14/F Erection of single dwelling on site of demolished guest house
- 53/2610/10/F Householder application for proposed conversion, extension and alteration of existing boathouse with living accommodation to guest accommodation ancillary to Cove House
- 53/3009/14/DIS Application for approval of details reserved by conditions 4, 5, 6, 7 and 9 of planning approval 53/2609/14/F
- 53/3160/11/F Renewal of extant planning application 53/0136/09/F (demolition of guest house and replacement with single dwelling)

## **ANALYSIS**

### Background

1. Before a consideration of the submitted scheme is commenced it is first appropriate to outline the extent of the approvals on the site and related matters that have been previously raised in objection to the development. It is also pertinent to address the objections relating to points of law raised by the South Hams Society.
2. A material start has been made on site to a scheme first approved in 2011 and that development can be continued to completion without further full planning permissions from the LPA.
3. There is also a valid permission to vary the design of the scheme under 1411/21/VAR to that which was approved and, again, that scheme can also be built out. The only consents required in either case are the discharge of conditions relating to:
  - details and samples of facing materials
  - hard and soft landscaping,
  - Reptile Mitigation Strategy
  - Construction Management Plan
4. Debate at the previous committee on application 2268/23/VAR also raised a number of issues. The first was whether a section 73 application could fundamentally change the design and appearance of the building. A High Court case dealt with this matter for a very similarly located plot of land overlooking the sea in Cornwall where the applicant had sought to vary the approved scheme through a S73 application to vary condition 2 of the planning permission. The Council refused the proposal to vary the design of the dwelling and at the subsequent appeal the Inspector concluded that the application would give rise to such a fundamental variation to the permission that the application fell outside s.73 because it conflicted with the description of the development in that permission and was contrary to policy.
5. This was challenged in the high court. The judge concluded that the appeal inspector was incorrect. "In my judgment there is more than sufficient doubt about that to justify quashing the decision on the basis that he misdirected himself by reference to the planning policy guidance and its concept of 'minor material amendments'" There is no definition of what may be acceptable or otherwise in an application to vary a condition. The Inspector's dismissal of the case was therefore quashed.
6. Paragraph 91 of the judgement states, "Neither the Inspector nor the Defendant contend that the Claimant's application involved any conflict with the operative part of the permission that permits construction of one dwelling on the Site. As I have already noted, there is no suggestion that this operative part of the amended permission (properly construed) was materially affected by the reference to the "plan(s)" or the "application" and it is accepted that the limitations on form and style arose only from the plans governed by condition 10. I can see that a decision maker might lawfully conclude that the proposed variation of condition 10 by substituting plans with a different form and architectural style could be described as a "fundamental variation" of that form and style. But there has been no change in the basic principle of what was being permitted on the Site, namely the construction of a single dwelling."

7. In this case the same can be applied, that there is no fundamental difference in the basic principle of what is being requested, namely the construction of a dwelling. Therefore, the Council is entirely correct in considering a change to the design of the dwelling even if there are major changes proposed.
8. The South Hams Society raise similar concerns and refer to a High Court case (CO/2047/2022) which related to a variation to a permission for the development of a solar farm, including ground mounted solar panels and an electricity substation, a 33kV substation. The claim for judicial review was made on the grounds that the Permission was ultra vires, section 73 TCPA since, by removing the substation permitted by the Original Permission, the Defendant granted a permission that conflicts with the operative wording of the Original Permission and/or that fundamentally alters the development permitted under the Original Permission.
9. In the case referred to, the development as originally approved included the provision of a substation and the way it was presented, the 33kV substation was essential to allow the solar park to achieve its purpose, namely connection to the grid. As such the substation formed part of the operative development, namely that it was essential. Section 73 of the T&CP Act allows only a consideration of the conditions attached to a permission and does not allow for a fundamental change to the operative development permitted.
- 10 The question in this case is what is the operative development? This is described as, “the demolition of guest house and replacement with single dwelling”. The current application to vary the 2011 permission, achieves, if permitted, the replacement of the demolished guest house with a single dwelling. Thus, the operative part of the original permission remains unchanged.
- 11 The next question that arises relates to the effect of permitting the current variation, which includes a swimming pool, on the original permission. The inclusion of a swimming pool does not change the operative permission. It is still the replacement of the demolished guest house with a single dwelling. Condition 8 of the original permission removed permitted development rights that would otherwise have applied to the dwelling on occupation. The condition does not prevent the provision of a swimming pool, it simply required that it should be the subject of planning control through the planning application system. The reason given outlines this “*To enable the Local Planning Authority to exercise control over development which could materially harm the character and visual amenities of the development and locality.*” Neither the reason for the condition or the officer’s report identified the reason as to prevent features that would have an adverse impact on the surroundings/ character of the area/ adjoining occupiers. It is therefore in order for the LPA to consider the swimming pool as a variation as it does not alter the operative permission. [NB It should be noted that the LPA approved a swimming pool addition as part of the variation to the 2011 design in 1411/21/VAR.]
- 12 Section 73 of the TCPA provides, “*Determination of applications to develop land without compliance with conditions previously attached.*  
(1) *This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.*  
(2) *On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—*

*Judgment Approved by the court for handing down. Fiske v Test Valley Borough Council*

*(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.*

*(emphasis added)*

- 13 Thus, under section 73 (2) (a) the authority is able to reach a decision on a variation that i) does not change the operative part of the development and ii) does grant permission subject to different conditions. It is for these reasons that the application to vary the 2011 permission rather than vary the 2021 variation can be legitimately considered.
- 14 Such considerations must, of course, take account of adopted policies and in this respect the original 2011 permission was granted under a different policy regime. The decision on the certificate of lawfulness granted was based on matters of fact and not policy. The 2021 variation to the design of the building was made judging the proposal against current adopted policies. There has been no change to the adopted policies since 2021, however in November 2022, the Council in conjunction with West Devon Borough Council and Plymouth City Council adopted the 'Plymouth and South West Devon Climate Emergency Planning Statement', which is a material consideration. This is a matter that is picked up in the relevant section.
- 15 The final point that needs to be highlighted before a consideration of this case is made is the nature of the previous refusal to vary the design of the dwelling. Application 2268/23/VAR had a single ground of refusal. The decision stated that;

“The extent of glazing proposed to the dwelling is likely to result in an unacceptable level of light spill which would have a harmful impact on the dark skies character of the surrounding landscape, failing to conserve and enhance the scenic beauty and tranquillity of the South Devon Area of Outstanding Natural Beauty, and the Undeveloped Coast. The proposed design by virtue of the level of glazing fails to have regard to the local pattern of development and does not represent good design, and the development conflicts with policies SPT12, DEV2, DEV20, DEV23, DEV24 and DEV25 of the Plymouth & South West Devon Joint Local Plan (2014- 2034); Paragraphs 3.45 – 3.48 of the Plymouth & South West Devon Joint Local Plan (2014-2034) Supplementary Planning Document 2020, South Devon AONB Management Plan and the National Planning Policy Framework, including but not limited to paragraphs 134 and 176.”
- 16 This is the only ground of refusal, and it establishes that the LPA is satisfied that all other matters are satisfactorily dealt with in the proposal. The considerations in the following sections do, however, summarise the Council's position as regards matters that have already been dealt with.



Principle of Development/Sustainability:

17 The principle of a replacement dwelling on the site has already been established. The certificate of lawfulness granted in 2020 confirmed that a material start had been made to the scheme approved in 2011. Furthermore, the Council has adjudged that the works of demolition constituted a commencement of development in issuing the Certificate of Lawfulness and that the owner can complete the development permitted in 2011 as amended by the later approved variation, subject to the discharge of relevant conditions.

Design/Landscape:

18 A starting point for a consideration of the amended design is the Council's deliberation on the application refused by committee in November 2023 (2268/23/VAR) which itself was influenced by the approved variation of the original design approved under 1411/21/VAR.

19 This established that a modern design for a house on this site which comprised a predominantly glazed east facing structure was acceptable. Whilst application 2268/23/VAR was refused it was not refused on design grounds that related to the substitution of the approved design with one of a more modular appearance. Officers therefore consider that the current design approach is acceptable and meets the requirements of DEV20 for a high quality of design.

20 The area of concern on this proposal is the extent of the glazing that is now proposed. In this respect the applicant has submitted area calculations for the extent of glazing for the approved scheme under 1411/21/VAR and that which is now proposed. Officers have undertaken their own calculations to compare the findings, and which are set out in the table below:

<b>Elevation</b>	<b>Approved Scheme</b>	<b>Proposed Scheme</b>	<b>Difference</b>
North	18m <sup>2</sup>	15.9m <sup>2</sup>	-2.1m <sup>2</sup>
South	43.3m <sup>2</sup>	34.7m <sup>2</sup>	-8.6m <sup>2</sup>
East	122.4m <sup>2</sup>	125.8m <sup>2</sup>	+3.4m <sup>2</sup>
West	26.55m <sup>2</sup>	30.6m <sup>2</sup>	+4.1m <sup>2</sup>
<b>TOTAL</b>	<b>210.25m<sup>2</sup></b>	<b>207.0m<sup>2</sup></b>	<b>-3.25m<sup>2</sup></b>

21 The calculations indicate that the scheme now submitted does not increase the overall area of glazing on the dwelling. There are minor changes to the area on each of the elevations which officers do not consider to be material to an overall consideration of the effects on light pollution. The major elevations that can be viewed from the sea, the east and south elevations reduce slightly the extent of glazing (-5.2m<sup>2</sup>). That which can be seen from the land, the north and the west, is increased by 2m<sup>2</sup>. However, the most significant change, that made to the west elevation is unlikely to be widely seen, being screened by the cliff and the vegetation.

22 Officers note that the variation, approved in 2021 did not condition the nature and type of glazing to be used. This scheme provides the opportunity for a suitable condition to be included in the decision (should the scheme be approved) to secure the use of triple, low reflective glazing to reduce the potential impact of glare and reflection.

- 23 Officers therefore conclude that the current scheme overcomes the committee's concerns with the previous application (2268/23/VAR). It also addressed the first point raised by the Parish Council. They also raise the matter of the glare and light emission from the swimming pool. This is a part of the scheme that was permitted under 1411/21/VAR. The officer considered the impact of the swimming pool to be acceptable. Their report concluded that the significant amount of local stone is also proposed in the elevations which help to blend the building into its surroundings. The swimming pool appears as a stone retaining wall; the use of tall stone retaining walls is a typical feature of coastal areas within the South Hams.
- 24 There is no consideration given to glare from the water. From the east the pool surface will not be seen, being screened by the pool wall. Reflections might, at times be seen on the back wall but otherwise there will be no direct glare noted from this view. Views of the site from the coastal path to the west are almost totally screened by intervening vegetation. Views from the steps down to the beach would look on the main bulk of the building which would be likely to screen the pool area. Officers therefore consider that glare from the water surface would mostly affect the occupiers of the dwelling itself and not cause wider issues.
- 25 External lighting is not shown on the current plans. Nor was it controlled by condition on the previous approval. This application gives the opportunity of requiring a detailed external lighting scheme to be submitted for approval in the event that the application is approved.
- 26 There are also two changes made to the previous submission referred to in the description of the proposal. The first includes a narrow upstand of 300mm on the southern portion of the roof at its eastern edge that is continued around the southern elevation to mask the solar panels marked on the roof plan. These panels are set at a shallow angle from the roof and are nearly flat. They replace an area of sedum roof. This issue is considered below.
- 27 The second alteration shows a roof terrace with balustrading around it on the northern part of the roof. It must be stressed that this is an alteration to the previous application (2268/23/VAR) but mirrors the proposal approved under 1411/21/VAR. As this was previously approved there is no justification for not accepting this element now.
- 28 One representation raised the issue of the extent of stonework and the notation on the drawing to render panels. All stonework is clearly shown on the drawings and the Council would require these areas to be of natural stone whose construction details are controlled by condition. A pre-fabricated stone panel would not provide a good enough quality of finish.
- 29 It is also worth restating the officer's views on the impact of the overall design of the building on the landscape that were set out in the previous application. In design terms, officers considered that the proposal represented no diminution in design quality from the approved variation and made the proposed changes acceptable. Officers concluded that the scheme accorded with the principles set out in DEV20. Whilst member refused the application they did not do so for reasons of design.
- 30 In landscape terms the similarity of the design between the approved design and the current scheme will not lead to a greater impact on the landscape or the character of the AONB and the changes therefore accord with DEV23, DEV24 and DEV25.

#### Neighbour Amenity:

31 The nearby property, Downsteps, is located to the north of the site and the impact of the proposed development has been assessed in the previous approved schemes and considered acceptable. This revised scheme does not raise any concerns regarding neighbour amenity.

#### Highways/Access:

32 One of the reasons previously put forward by the Parish Council in objecting to the scheme is the poor access for large vehicles delivering prefabricated material to the site. This applies to all development schemes along this section of coast with narrow road widths and often single lane widths through the nearby villages. However, the road is not width or weight restricted and abnormal loads have to be licensed by the County Highway Authority with set routes to and from the site. The matter is dealt with by them and is not a planning matter.

33 Access up Tor Church Road and into the site itself is also of a very restricted width. As with the extant permission, a construction management plan is requested via condition and to address the requirements the onus will be on the applicants to explain how the contractors would deal with the restricted access. It will also have to address a range of other issues including measures for the protection of the SSSI which abuts the site on the seaward side and protection to the trees lining the access which overhang the drive.

#### Flooding and Site Stability

34 Policy DEV36 states that inappropriate development, or any development that could add to the impacts of physical change to the coast, will not be permitted in the Coastal Change Management Area as designated on the Policies Map. The site falls within this designated area and the policy seeks to direct development to a less vulnerable area. DEV36.5 states that if it is a replacement proposal, the gross volume of the replacement building or structure is no larger than the one it is to replace. Whilst it may be that an application on a site with no previous history could be refused under this policy, this site has a permission for a larger dwelling which is not time restricted which is a material consideration that outweighs this policy consideration. This application does not make the situation worse and therefore there is no ground of refusal based on DEV36.

35 Within the Coastal Change Management Area, a shoreline management plan is operative. This identifies that in the vicinity of the site there is a hold the line policy that lies to the rear of the site. The 'Hold the Line' follows the predicted line of coastal erosion over the next 100 years estimated using a worst-case scenario. The shoreline management plan does not currently propose additional coastal protection in this vicinity. However, such matters do not influence consideration of the key factor in this case which is that a dwelling can be constructed on this site with no further control of the LPA.

36 The site falls within the Slapton Lines policy area where coastal erosion is an ongoing issue. A Slapton Line Partnership comprising a number of public and private official bodies was set up and they have produced a 'Strategy for Adaptation' (2019) which is currently in the process of being updated. The strategy document does not cover this site, concentrating on the coast between Torcross and Strete, north of the SW coastal path at Torcross. Coastal management initiatives appear to concentrate on this area rather than the protection of this site which Officers understand to be the responsibility of the owner.

- 37 The sea wall protecting the site has suffered some storm damage. From comments received from residents living nearby this appeared to come from the backwash of waves over the sea wall flowing back to the sea. There is some rock protection below the wall. The construction of the dwelling will create a platform that is part lifted above existing ground level and part cut into the lowest part of the cliff to the rear. Obviously, the platform created will to some degree protect the dwelling and the site. However, if the lower existing sea wall is compromised then the site could be affected in the medium to long term. This is a planning matter when examining new development but in this case the ability to build out a dwelling here is a major consideration and by granting permission for this variation there are no greater risks arising from the development.
- 38 In the light of previous comments from other parties the applicant has commissioned an engineer's report to review the condition of the sea wall and extracts are set out below. This found that the current sea wall comprises a masonry stone wall founded at various levels on either rock prominences or extended to a depth below the existing beach level. Where the existing wall extends to the beach, a concrete toe beam has been constructed to afford some additional protection to the wall. A section of the sea wall around the central section of the length of the wall has failed and there has been some limited scour of material behind this section of sea wall. Where the section of sea wall has failed, it is evident that the sea wall was originally founded on a promontory of gullied bedrock.
- 39 John Grimes Ltd has had previous involvement with this site in mid-2019, at which time a site visit was carried out to review the condition of the sea wall. At this time, the failure of the sea wall was present. The failure was also noted to coincide with a steep sided narrow fissure that extended through the rock promontory to beneath the original line of the wall. Given this coincidence, it is considered likely that the failure occurred due to the focussing of wave energy along this gully and the potential for wave cavitation facilitated by the gully geometry. In such circumstances it is possible that hydraulic wave forces up to 100 times the static wave height could be generated due to the collapsing wave. The scour of retained material behind the section of failed sea wall was also evident at the time and was similar to the current extent of scoured material.
- 40 The damage is most likely to have been caused during Storm Eleanor in 2019. Up to the end of 2022 there have been 33 additional named storms in the UK since Storm Eleanor. From the aerial photographic evidence, it is apparent that little further significant damage to the sea wall or loss of platform material behind the sea wall has resulted from these storms. Given the evidence provided above it is considered highly unlikely that the sea wall is at risk of imminent failure or loss of a significant building platform material behind the current breach. However, it is recommended that repair and maintenance of the sea wall is carried out to preserve the long-term protection of the land behind and to ensure that outflanking of the property to the north does not occur in the longer term. Such works, constituting repair will not require planning permission although, given the proximity of the SSSI would require the approval of Natural England to a Construction Management Plan that outlines how the SSSI will be safeguarded.
- 41 Comments received impute that the report is deficient in some way. However, it is clear that the report is an overview on the structural integrity of the seawall and is not intended to be a detailed assessment. As such the report provides sufficient information to confirm the structural integrity of the standing 'remains' which is all that it was required to do. Whilst officers consider this to be adequate to clarify the current situation

a condition relating to sea wall works has been added to the decision notice for clarification purposes.

42 A further concern, that relating to cliff stability, has also been addressed in a condition attached to the permission

### Climate Change

43 Policy DEV32 of the JLP explains that the need to deliver a low carbon future for the plan area should be considered in the design and implementation of all developments. In particular, the policy requires that developments should be considered in relation to the energy hierarchy and identify opportunities to minimise the use of natural resources in the development over its lifetime, such as water, minerals and consumable products, by reuse or recycling of materials in construction, and by making best use of existing buildings and infrastructure. This approach is complemented by the NPPF which indicates that local planning authorities should usually expect new development to comply with any development plan policies on local requirements for decentralised energy supply. In general, this could include for a single dwelling, as a matter of principle, to incorporate such matters as PV panels or heat pumps.

44 It was against the policies of the adopted JPL that the earlier 2021 approval to a variation of the design was approved. There is no indication whether there was any consideration of DEV32 or matters relating to climate change in the officer's report and there were no conditions requiring any details of renewable energy measures to be approved by the LPA. Thus the scheme that has been approved and could be built out could do so without adopting any climate change measures or other proposals to minimise scarce natural resources.

45 Commentary within the adopted SPD with regards to policy DEV32 requires the provision of a supporting energy statement for all major applications. This is not a major application and therefore does not require the submission of details. However, the Council does require a Climate Change Compliance form to accompany all applications and one has not been submitted by the applicant.

46 In addition to the adopted policy the Council adopted a Climate Emergency Planning Statement in November 2022. This set out a number of aims and policies that will be given additional consideration and increased emphasis which are summarised briefly below:

- CES01: To deliver development that contributes less to and mitigates the impacts of climate change and adapts to its current and future effects through a range of measures: *This scheme does seek to meet a number of the criteria set out in the policy. Most importantly it does reduce the carbon impacts over the approved scheme through measures incorporating renewable energy sources.*
- M1 – Onsite renewable energy generation. For major and minor planning applications, adopted JLP policy DEV32.5 will apply in order to secure an equivalent 20% carbon saving through onsite renewable energy generation: *No detailed evidence to confirm whether a 20% saving is achieved through the proposed measures. The only way to calculate the saving in this case is at the detailed working drawing stage to calculate the energy consumption of the approved development and compare it with the proposed energy consumption with the renewable sources of power in place. As there are no measures required on the previous approval officers consider that the saving will be more than 20% but that a*

*condition requiring a detailed calculation of the Target Emissions Rate based on the renewable sources of power to be installed would be appropriate.*

- M2 – Energy storage: *Details of this can be controlled in an overall condition requiring detailed of the solar panels and ASHP or water based Heat Pump*
- M3 – Low and zero carbon space and water heating systems: *Confirmed*
- M4 – Resilient and low carbon building materials: *Confirmed in part although concrete foundations and retaining structures will be required. These are already present on the approved scheme*
- M5- Not relevant
- M6 – Electric Vehicle Charging Points: *Confirmed*
- M7 – Active and Sustainable Travel: *This is not possible to achieve in this case However it should be remembered that the original approval was for a replacement dwelling*

47. This application is accompanied by a DEV32 compliance statement which states that the building will incorporate Solar PV and Thermal panels. In addition an air source or possibly water source (from the sea) heat pump. It is intended that the property would be installed with at least one or possibly two electric vehicle charging points immediately. It meets the requirements of DEV32 and the supplementary guidance and also meets many of the requirements of the Climate Emergency Planning Statement.

48. On one final point, it is noted that the current proposal intends the use of triple glazing which will ensure greater heat retention in the building than the approved development.

49. Given the lack of any conditions relating to this matter on the previous approvals and on the schemes that could be built out I have to conclude that the current scheme offers significant improvements over them and therefore they comply with policy requirements.

### Biodiversity

50. The original permission granted for the variation to the design added a condition requiring details of reptile mitigation to be submitted for approval. This ensured that the development accorded with policy DEV26 of the adopted JLP. There is no assessment of the contribution towards biodiversity that the sedum roof gave, nor whether it would successfully flourish in a marine environment combined with the extremes of a rooftop environment. Nevertheless, this proposal removes that element of the scheme to replace it with renewable energy technology. However, officers do not consider that this gives rise to a straight choice between the advantages of biodiversity initiatives against climate change mitigation.

51. Officers have the ability to require a wider range of biodiversity enhancements through a suitably worded condition and to ensure that landscaping proposals complement these initiatives. Officers therefore propose an amendment to the reptile mitigation strategy to also require other enhancements and also amending the landscaping condition to require the submission of a LEMP to secure coordination of the planting proposals with biodiversity enhancements.

## Other Matters

52. The PC do raise another point in relation to the type of dwelling to be built which refers directly to the construction of a Huff Haus. The applicant has made reference to this company who are renowned for their energy efficient products. The PC want any permission to require the construction of a Huff Haus either through condition or by S106 agreement.
- 53 It is not the purpose of a Planning Authority to require the use of any particular product, rather that the development meets standards. In this case the essential requirement is to ensure the compliance of the scheme with the Council's climate change policies which it can do by condition. Officers therefore consider the requirement to specify a particular manufacturer to be unreasonable and beyond the scope planning.
- 54 The South Hams Society raise a further point regarding the incorporation of the stair access to the roof terrace. They indicate that it may/will involve the removal of a tree or trees that that this will reduce the slope stability of the cliff. This part of the current variation has been previously approved. The landscaping condition requires details of all trees on site to be provided and the proposed landscaping will require compensation planting to mitigate any loss of cover.
- 55 As regards the effect on slope stability condition 2 satisfactorily deals with this matter which will require a report and details of any works necessary before any further works are carried out on site.

## Conclusions

56. The NPPF, at paragraph 12, states that the starting point for decision-making is the development plan. It goes on to state that where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.
57. Officers consider that it would be universally accepted that a new dwelling on an undeveloped site in this location would, as a matter of principle, today be refused as being contrary to policies SPT1, SPT2, TTV1, TTV26, DEV1, DEV2, DEV25 and DEV36. Policy TTV29 does provide for a replacement dwelling provided that it is not substantially larger than the dwelling it replaces. The development proposed is, almost certainly, much larger than the original and again as a matter of principle is contrary to the policy.
58. However, there are significant factors that are material to take into account. The first is that the principle of a dwelling on this site has been clearly set by the previous planning permissions and the fact that the development has been implemented. Officers attach very great weight to this in the planning balance.
59. Officers also give very great weight to the ability of the applicant to construct the dwelling approved under 1411/21/VAR in the style and appearance of the dwelling now under consideration. In design terms the development has no lesser merit in

architectural terms than the approved scheme. It therefore accords with DEV20 of the JLP.

60. Significant weight to the inclusion of renewable energy features that accord with DEV32 and a number of the policies in the Council's Climate Emergency Planning Policy and also to the likely carbon emissions reduction over the approved development that is capable of implementation. Weight is also given to the potential biodiversity benefits that arise over the approved scheme.
61. Officers conclude that although the development conflicts with a number of adopted policies its accordance with DEV20 and the weight given to material considerations and other benefits arising is sufficient to outweigh any policy contraventions and approval of the application is recommended.

***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 14<sup>th</sup> 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 5.39 years at end of March 2023 (the 2023 Monitoring Point).

[\*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  
SPT9 Strategic principles for transport planning and strategy  
SPT10 Balanced transport strategy for growth and healthy and sustainable communities  
SPT12 Strategic approach to the natural environment  
TTV1 Prioritising growth through a hierarchy of sustainable settlements  
TTV2 Delivering sustainable development in the Thriving Towns and Villages Policy Area  
TTV26 Development in the Countryside  
TTV29 Residential extensions and replacement dwellings in the countryside  
DEV1 Protecting health and amenity  
DEV2 Air, water, soil, noise, land and light  
DEV10 Delivering high quality housing  
DEV20 Place shaping and the quality of the built environment  
DEV23 Landscape character  
DEV24 Undeveloped coast and Heritage Coast  
DEV25 Nationally protected landscapes  
DEV26 Protecting and enhancing biodiversity and geological conservation  
DEV28 Trees, woodlands and hedgerows  
DEV29 Specific provisions relating to transport  
DEV32 Delivering low carbon development  
DEV35 Managing flood risk and Water Quality Impacts  
DEV36 Coastal Change Management Areas

### **No Neighbourhood Plan covers this area**

Other material considerations include the policies of the National Planning Policy Framework (NPPF) 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)**

**Plymouth and South West Devon Climate Emergency Planning Statement (2022)**

### **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.

The above report has been checked and the plan numbers are correct in APP and the officer's report. As Determining Officer I hereby clear this report and the decision can now be issued.

Name and signature: *David Stewart*

Date: 8th February 2024

Ward Member	Cllr Brazil
Date cleared	08.02.24
Comments made	Yes, happy to delegate conditional approval with these extra/reinforced conditions.