

# PLANNING APPLICATION OFFICERS REPORT



<b>Application Number</b>	23/01198/FUL	<b>Item</b>	01
<b>Date Valid</b>	29.08.2023	<b>Ward</b>	HONICKNOWLE
<b>Site Address</b>	24 Carew Gardens Plymouth PL5 3PB		
<b>Proposal</b>	Change of use of land from amenity land to residential garden land and the development of outbuilding for incidental residential use		
<b>Applicant</b>	Mr Roy Harris		
<b>Application Type</b>	Full Application		
<b>Target Date</b>	<b>24.10.2023</b>	<b>Committee Date</b>	<b>16.11.2023</b>
<b>Extended Target Date</b>	<b>N/A</b>		
<b>Decision Category</b>	Councillor Referral		
<b>Case Officer</b>	Cody Beavan		
<b>Recommendation</b>	Grant Conditionally		



The application has been referred to the Planning Committee by Cllr. Zoe Reilly

### **1. Description of Site**

24 Carew Gardens is a two-storey semi-detached dwelling located in the Honicknowle ward of the city.

The land to the rear of the garden was acquired in 2017 and the rear fence erected in April 2018. The development of the outbuilding was completed in October 2018. Therefore, Officers are considering this application retrospectively following enforcement investigations by the Local Planning Authority.

### **2. Proposal Description**

Change of use of land from amenity land to residential garden land and the development of outbuilding for incidental residential use(Retrospective).

### **3. Pre-application enquiry**

There was no pre-application enquiry.

### **4. Relevant planning history**

23/00714/FUL - Single storey rear extension. Granted conditionally.

23/00167/ENF - Officers note that there is currently an on-going enforcement case regarding business use of the rear outbuilding. Whilst this is an open enforcement matter which has been raised within letters of representation, this application is for use of the outbuilding as part of the residential dwelling and therefore the business use does not form part of the proposal and is not under consideration. The Local Planning Authority are unable to consider the use within this application.

82/00471/FUL - Warwick Orchard Carew Grove Plymouth Honicknowle erection of eighty-three dwellings together with associated road, garages, and parking areas. Granted Conditionally.

### **5. Consultation responses**

None consulted.

### **6. Representations**

The Local Planning Authority received four letters of representation which outlined the following concerns:

- Not in-keeping with area design and character
- Outbuilding use
- Overbearing
- Additional traffic - risk to emergency service vehicles
- Outbuilding constructed on raised land
- Impacts on privacy - significant reduction of privacy
- Overlooking
- Substantial visual interference
- Removal of boundary trees/hedges
- TPO removal
- Neighbours garden being surrounded/enclosed
- Raised platform allows vantage points into neighbouring garden

The Planning Authority have checked the Tree Preservation Order and can find no records regarding the trees which were removed, therefore must assume that these trees were not TPO registered.

### **7. 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 on 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 South Hams and West Devon within Dartmoor National Park).

Other material considerations include the policies of the National Planning Policy Framework (NPPF), Planning Practice Guidance (PPG), National Design Guidance, the scale and urgency of the climate change emergency, Plymouth City Council's Declaration on Climate Emergency (March 2019)

for a carbon neutral city by 2030 and the Climate Emergency Planning Statement 2022. Additionally, the following planning documents are also material considerations in the determination of the application: The Plymouth and South West Devon Supplementary Planning Document (SPD) (2020).

### **8. Key Issues/Material Considerations**

1. This application has been considered in the context of the development plan, the Framework and other material policy documents as set out in Section 7.
2. The relevant policies are: DEV1 (Protecting health and amenity) and DEV20 (Place shaping and the quality of the built environment) of the Plymouth and SW Devon Joint Local Plan.
3. The primary planning considerations in this application are: visual impact and impact on neighbouring amenity.

### **Principle of Development**

4. This application seeks retrospective consent for the change of use of land from amenity to residential garden and the development of an outbuilding for incidental residential use.

### **Negotiations Undertaken**

5. The original plans submitted were considered acceptable and the assessment has been based on the original plans. Officers raised concern regarding overlooking and suggested additional screening. A 2m in height and 2m in length fencing section was agreed on the western boundary to omit overlooking from the top of the steps into the garden.

### **Visual Impact**

6. Officers have considered the proposal's visual impact in line with policy DEV20 of the Joint local plan.
7. The change of use of land from amenity to residential located at the rear of 24 Carew Gardens is not considered to cause significant impact in terms of the visual character of the area. Prior to development, the land featured a small, grassed area, hedges and 2-3 trees. These elements have since been removed and a boundary fence has enclosed the area.
8. The outbuilding is situated in the rear garden at an angle located on the original residential land and former amenity land. The outbuilding measures 7.2m in length with one end measuring 3m in width and the other 1.9m in width. Due to topography levels, the following measurements have been taken from the highest level. The shallow mono-pitch roof will have a maximum height of 2.4m. The outbuilding is not visible from Carew Gardens due to it being situated to the rear of the property. The outbuilding is visible from Warwick Orchard Close, however due to the character of the section of the road including car parking spaces and existing garden boundary fencing, officers consider the proposal does not cause an adverse visual impact.
9. The outbuilding features a rubberised mono-pitch roof and is finished with Cedral fibre cladding. The door and windows are white PVC to match existing elements on the host dwelling. These finishes and materials are considered to compliment those of the main dwelling and are therefore considered to be in accordance with the guidance in the SPD.
10. Taking into consideration paragraphs 13.12, 13.56 and 13.58 of the SPD, officers are satisfied that the proposal does not represent a significant change to the dwellings overall aesthetic and character of the area within and surrounding Carew Gardens. Overall, officers conclude that from a design perspective, the plans do not conflict with policy DEV20 of the JLP.

## Amenity

11. Officers do not consider that the proposed works would have a significant detrimental impact on neighbouring amenity. The acquired land is not considered to have had high quality amenity value. Officers note that the area was small and therefore considered not to have significant public use.

12. At a maximum height of 3.0m, the single storey outbuilding is not considered to give rise to adverse impacts on neighbouring light or outlook. Due to the sloping garden and the orientation of the outbuilding, Officers have considered that the development could create vantage points into neighbouring gardens with specific focus on the area in front of the outbuilding door. Although, it is considered that users will not be using this space to be stationary Officers have negotiated additional screening in the form of a 2m in height fence panel which will be on the southern boundary. At the time of writing this report officers are awaiting details of the fence which will then be conditioned. This will be conditioned to mitigate overlooking and adverse privacy impacts.

13. Overall, officers do not consider that the proposal will have a detrimental impact on neighbouring amenity, and therefore complies with Policy DEVI of the Plymouth and South West Devon Joint Local Plan and guidance within the SPD.

## Climate Emergency Considerations

This Climate Emergency Planning Statement responds directly to the Climate Emergency declarations issued across Plymouth and South West Devon and identifies exactly what all new development should do to meet the challenge of climate change. It builds on existing planning policies set out within the Plymouth and South West Devon Joint Local Plan and its supplementary planning document, embraces new standards and proposes new requirements.

Officers have assessed the submitted Climate Emergency Compliance Form. Whilst there is little to no scope for achieving net gain on a development of this scale in this location, by virtue of the scale of the works and site-specific circumstances the details as submitted are acceptable in this instance.

## Intentional Unauthorised Development

The change of use of land and development of the outbuilding exceed the limits for permitted development. This is a retrospective application. Change of use of land must have continuous use for 10 years to be exempt from planning enforcement. The timeframe is 4 years for operational development. The rear fence and outbuilding have been erected since 2018. While this would exceed the 4 year timeframe for operational development, Officers consider that the outbuilding, fence and associated works facilitate the use of the land for residential use and on that basis a case for planning enforcement action could be made to remove the fence and outbuilding if the planning application were refused. However, this would need further consideration by the Local Planning Authority, including review or relevant case law, before any course of action is determined.

Since August 2015 national planning policy requires consideration to be given as to whether intentional unauthorised development has been carried out. The new policy applies to all relevant planning decisions made by Local Planning Authorities and Planning Inspectors. The policy has been introduced largely as a result of Government concerns about the harm caused by unauthorised developments in the Greenbelt, but applies equally elsewhere.

The policy does not indicate exactly how much weight should be afforded to this in relation to the weight to be given to other material planning considerations. Neither does the policy clarify exactly what evidence is required to demonstrate the unauthorised development has been carried out intentionally.

It is clearly highly undesirable for any development to take place before planning permission has been properly sought, and obtained, in any circumstances. However, it should be noted that this new policy only applies where unauthorised development has taken place with the full knowledge of the person(s) undertaking the work that it lacks the necessary consent. In reality, given the difficulties in interpreting these points, it is considered that little or no weight can be given to this aspect, unless the Council has clearly indicated to the applicant that unauthorised development is being carried out, and that works have then continued beyond that point, or where there is some other compelling evidence that such work has intentionally been carried out.

Neither of these factors appear to apply in this case, and so it is considered that no weight should be afforded to this particular point in the determination of this application.

### **9. Human Rights**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

### **10. Local Finance Considerations**

None.

### **11. Planning Obligations**

The purpose of planning obligations is to mitigate or compensate for adverse impacts of a development, or to prescribe or secure something that is needed to make the development acceptable in planning terms. Planning obligations can only lawfully constitute a reason for granting planning permission where the three statutory tests of Regulation 122 of the CIL Regulations 2010 are met.

No planning obligations have been sought in respect of this application.

### **12. Equalities and Diversities**

This planning application has had due regard to Section 149 of the Equality Act with regard to the Public Sector Equality Duty and the case officer has concluded that the application does not cause discrimination on the grounds of gender, race and disability.

### **13. Conclusions and Reasons for Decision**

Officers have taken account of the NPPF and S38(6) of the Planning and Compulsory Purchase Act 2004 and concluded that the proposal is acceptable and accords with policies DEVI and DEV20 of the Joint Local Plan, the guidance contained within the Plymouth and SW Devon SPD, and the NPPF. The application is therefore recommended for approval.

### **14. Recommendation**

In respect of the application dated 29.08.2023 it is recommended to Grant Conditionally.

### **15. Conditions / Reasons**

The development hereby permitted shall be carried out in accordance with the following approved plans:

## **1 CONDITION: APPROVED PLANS**

Garden Building Plans and Elevations 03 received 21/08/23  
Block Plan TQRQM23143202810952 received 29/08/23  
Garden Layout 05 received 03/11/23  
Garden Section 04 received 03/11/23

Reason:

For the avoidance of doubt and in the interests of good planning, in accordance with the Plymouth & South West Devon Joint Local Plan 2014–2034 (2019).

## **2 CONDITION: PRIVACY SCREEN**

The 2m high privacy screen on the western boundary as detailed on the approved plan shall be constructed within 3 months and remain in perpetuity unless otherwise agreed in writing with the LPA.

Reason:

To ensure privacy is provided to the neighbouring properties in accordance with Policy DEVI of the Plymouth and South West Devon Joint Local Plan 2014-2034 (2019) and Section 12 of the National Planning Policy Framework.

## **3 CONDITION: ANCILLARY USE ONLY**

The outbuilding hereby permitted shall not be used for purposes other than those ancillary to, and for the further enjoyment of the residential use of the dwelling house 24 Carew Gardens.

Reason:

To ensure the extension does not unacceptably intensify the use of the site, or lead to sub-standard accommodation, in accordance with policies DEVI (Protecting Health and Amenity), DEVI0 (Delivering high quality housing) and DEV29 (Specific provisions relating to transport) of the Plymouth and South West Devon Joint Local Plan 2014-2034 (2019) and the National Planning Policy Framework 2019.

## **INFORMATIVES**

### **0 INFORMATIVE: (NOT CIL LIABLE) DEVELOPMENT IS NOT LIABLE FOR A COMMUNITY INFRASTRUCTURE LEVY CONTRIBUTION**

The Local Planning Authority has assessed that this development, due to its size or nature, is exempt from any liability under the Community Infrastructure Levy Regulations 2010 (as amended).