

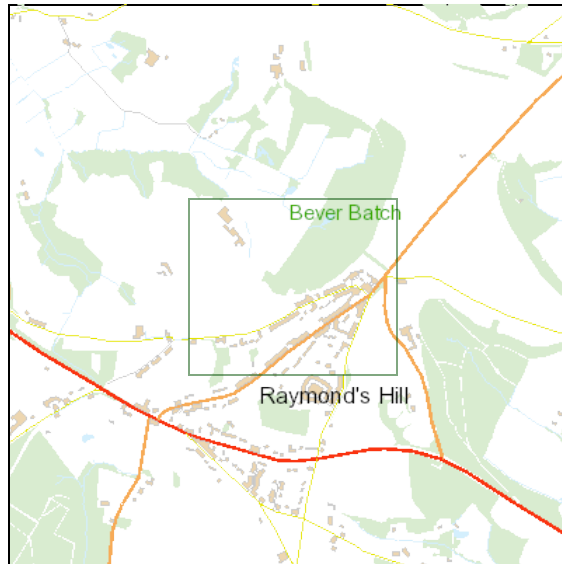
**Ward** Axminster

**Reference** 21/1690/FUL

**Applicant** Sadie Hardiman

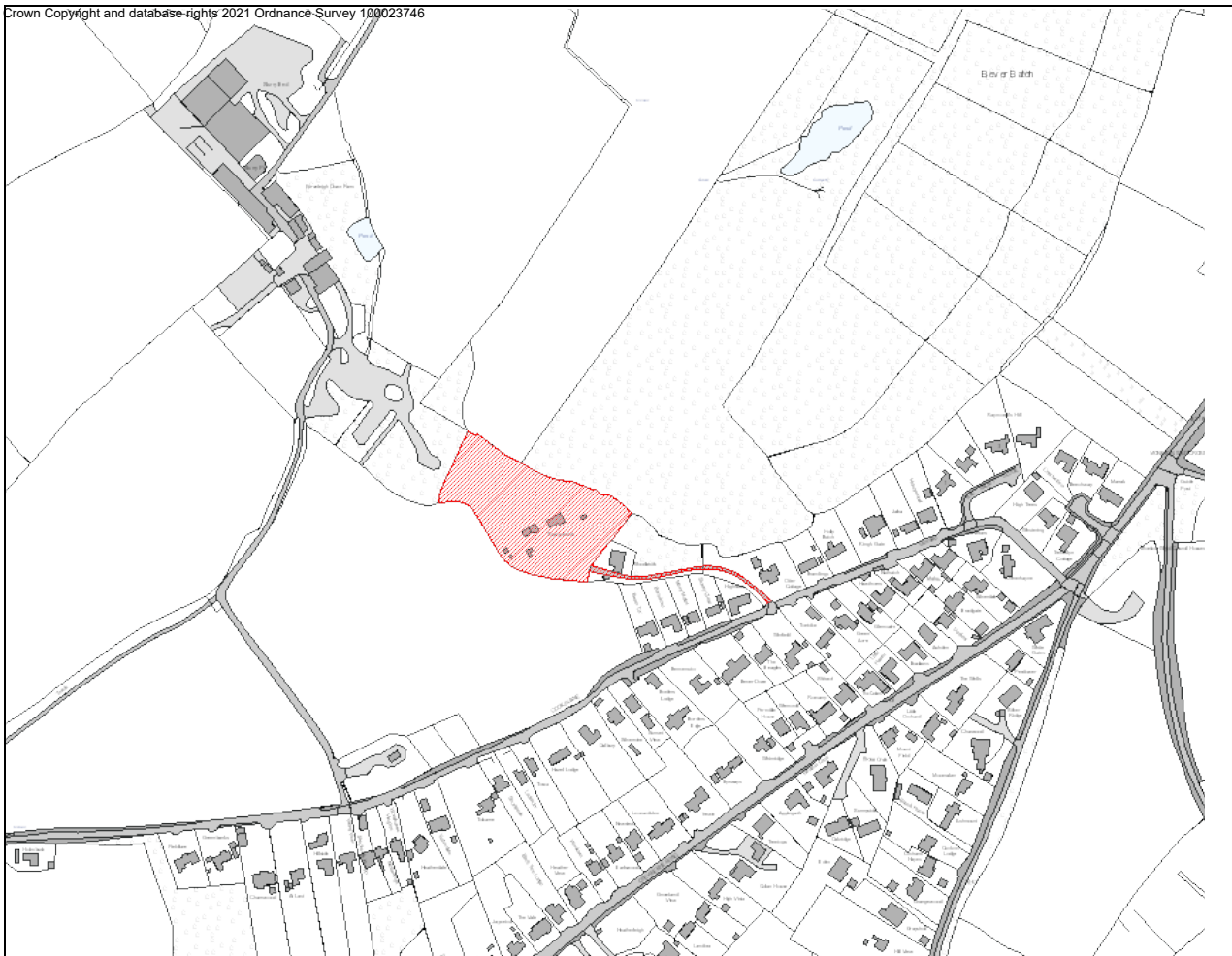
**Location** Steepyfields Cooks Lane Axminster  
EX13 5SQ

**Proposal** Construction of detached building  
(retrospective) and use as main  
dwelling with original dwelling to be  
used as an annexe.



**RECOMMENDATION: Approval subject to a legal agreement and conditions**

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		<b>Committee Date: 24.11.21</b>
<b>Axminster (Axminster)</b>	<b>21/1690/FUL</b>	<b>Target Date: 18.08.2021</b>
<b>Applicant:</b>	<b>Sadie Hardiman</b>	
<b>Location:</b>	<b>Steepyfields Cooks Lane</b>	
<b>Proposal:</b>	<b>Construction of detached building (retrospective) and use as main dwelling with original dwelling to be used as an annexe.</b>	

**RECOMMENDATION: Approval subject to a legal agreement and conditions**

#### **EXECUTIVE SUMMARY**

**This application is before Members because the recommendation is contrary to the view of a Ward Member.**

**The application seeks retrospective permission for a dwelling that has been constructed adjacent to the existing dwelling. Ordinarily this would be contrary to the provisions of the Local Plan because the site is not within a Built-up Area Boundary. However in this instance it is proposed to give up the lawful use of the existing dwelling and accept its use being limited as an annexe to the new dwelling. The annexe would be occupied by the applicant's adult son who is dependent on his mother.**

**Both buildings are modest in size although the new dwelling is slightly larger and provides two bedrooms compared to the one bedroom in the existing dwelling. The site is secluded and surrounded by trees and therefore the proposal does not raise any landscape or amenity concerns.**

**Given that both buildings occupy the same land, are well related to each other and would have a functional relationship, it is reasonable to accept the proposal to retain the new dwelling and restrict the original dwelling to use as an annexe.**

**If Members are minded to grant approval, given the unusual situation with the retention of the existing dwelling as an annexe, and given the site history detailed in the report, it is recommended that its ancillary use is secured via a legal agreement rather than a condition to ensure that there is no opportunity for the applicant to claim lawful use of the existing dwelling as a separate dwelling in the future. In addition, a condition requiring the submission of a drainage scheme is necessary because the site is in the Axminster Critical Drainage Area. Subject to these the proposal is recommended for approval.**

## **CONSULTATIONS**

### **Local Consultations**

#### **Axminster - Cllr Andrew Moulding**

I recommend that this application is refused. It appears that the original "Cabin" was built as an artist's studio and not as an additional dwelling on the site. In my opinion the building should be retained - but as an artist's studio as per the original intention.

Further comments:

I agree with the recommendations, particularly with the conditions appended.

#### **Axminster - Cllr Sarah Jackson**

I'm afraid I cannot support this application. Having viewed the plans, I am not entirely convinced that this construction was ever intended as an artists studio. Its footprint is greater than the primary dwelling which seems strange to me.

Even if the applicant was genuinely unaware that the new construction required planning consent as an artist studio, they should have ceased construction and submitted planning application at the point their circumstances changed, and the use of the building changed from ancillary to residential. I am therefore somewhat sceptical that the development was ever intended as anything other than a separate dwelling, either as an additional residence, or to facilitate a holiday let.

The site is outside the BUAB and in open countryside and therefore due consideration needs to be given with regards to the impact of new dwellings. Additionally, I have been unable to identify any detail within the application documents relating to either surface water or sewage treatment which is pertinent given the increased volumes of both by virtue of additional residential occupancy.

However, IF we are minded to approve this application, I would seek a condition that ties the old house to the new dwelling, that prohibits any commercial use of either building and which prevents the splitting of the site into two independent parcels of land, so that one building remains entirely ancillary to the primary dwelling - whichever the applicant chooses it to be.

#### **Parish/Town Council**

Axminster Town Council supports this application.

#### **Other Representations**

None received.

### **Technical Consultations**

None.

## **PLANNING HISTORY**

<b>Reference</b>	<b>Description</b>	<b>Decision</b>	<b>Date</b>
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17/1293/FUL	Retention of extension and decking	Approval - standard time limit	26.06.2017
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## **POLICIES**

### Adopted East Devon Local Plan 2013-2031 Policies

Strategy 3 (Sustainable Development)

Strategy 7 (Development in the Countryside)

D1 (Design and Local Distinctiveness)

EN22 (Surface Run-Off Implications of New Development)

TC2 (Accessibility of New Development)

TC7 (Adequacy of Road Network and Site Access)

TC9 (Parking Provision in New Development)

### Government Planning Documents

NPPF (National Planning Policy Framework 2021)

National Planning Practice Guidance

## **Site Location and Description**

Steepyfields is located on a secluded plot of land surrounded by trees which is accessed from a track off Cooks Lane that serves two other properties (Otter Cottage and Woodlands). The buildings on the application site occupy a position on the hillside overlooking a large level lawn to the north. Woodlands, the nearest neighbour, is well screened from the site by a belt of trees. The site is within the Critical Drainage Area for Axminster.

## **Proposal**

A second dwelling has been constructed at Steepyfields without planning permission and this application seeks to retain it whilst also keeping the original dwelling as an annexe. The supporting statement explains:

"The Cabin was originally intended to be a large artist studio but the applicant's family circumstances changed necessitating more living space so the building was redesigned during building to become residential."

It goes on to say that the original dwelling did not have sufficient space to accommodate the applicant's son, who is reliant on and needs to be close to his mother, or the applicant's granddaughter who often comes to stay.

## **ANALYSIS**

The main issues for consideration are the principle of development, visual impact and drainage.

### **Principle**

The original dwelling, including the extension approved retrospectively in 2017, has a floor area of 70 square metres and provides a living/kitchen/dining room, a shower room, a laundry room, a lounge and a bedroom with an en-suite bathroom. By reference to the Nationally Described Space Standard, a building of this size would be capable of accommodating two double bedrooms. Consequently it could reasonably be described as a comfortable one-bed dwelling.

The new dwelling has a floor area of 73 square metres and provides a living/kitchen/dining room, a utility room, a bathroom, and two double bedrooms. This slightly exceeds the Nationally Described Space Standard but is still a modest 2-bed dwelling.

In planning policy terms, there is no objection to the provision of annexes for existing dwellings and such annexes are common-place in order to allow people to care for family members at home, albeit often in accommodation detached from the main house, but reliant upon it such that they are not used as separate dwellings.

Whilst both buildings in this instance are capable of being occupied as independent dwellings having all the necessary rooms and facilities, case law (*Uttlesford District Council v Secretary of State for Environment and White* [1992]) indicates that even where accommodation within a domestic curtilage provides facilities for independent day-to-day living, it does not automatically become a separate planning unit from the main house. The key issue is whether functionally and physically, the two buildings are well related and form one unit. Usually the occupiers of the annexe will be reliant upon some sort of care or support from the occupiers of the main house, being this through providing medical/physical care or through reliance on sharing meals or other facilities.

In this instance, both buildings occupy the same parcel of land with no subdivision or separate curtilage. They also use the same access and parking area and the route from the parking area to the new building passes directly in front of the original dwelling. Given that the occupation of the two buildings would be by members of the same family and that there is a degree of dependence between the households (given the reliance by the son on the mother in this instance), it is accepted that the two buildings form one planning unit. On that basis the principle of the buildings being occupied as a dwelling and annexe is accepted.

In most cases, on reaching this conclusion planning permission would be granted for the annexe and a condition would be imposed restricting its use. However, in this case the application is for a newly built dwelling, not an annexe, and the application seeks to take away the lawful use of the existing dwelling so that it can only be occupied as an annexe.

An appeal decision from 2017 (APP/K5600/X/16/3161419) helpfully sets out the ways that lawful use rights can be lost. A lawful use may be lost in several ways. These include:

- by a material change to some other use;

- by the carrying out of acts inconsistent with the continuation of any existing use (including the destruction of the building or installations necessary for it to be carried out);
- by abandonment;
- by a discontinuance order under section 102, or in accordance with a planning obligation under section 106;
- by an express condition on a subsequent planning permission;
- by the implementation of an inconsistent permission; and
- following the issue of an enforcement notice where the notice is not challenged on appeal on grounds (b) or (c).

Having regard to this appeal decision, given the unusual circumstances of this case, history of retrospective applications and use of the dwelling as a holiday let (see below), the need to rescind the consent for the existing dwelling to be used independently, and given the possibility that the applicant's son or granddaughter who are proposed to occupy the annexe could occupy it independent of the main dwelling in the future, it is considered that a legal agreement is required to ensure that the original dwelling loses its lawful use as a dwelling and can only be used as an annexe to the new dwelling instead.

Subject to such a legal agreement, the proposal is acceptable in principle.

### **Visual impact**

In terms of its impact on the locality, the site is secluded and surrounded by trees and therefore the proposal does not raise any landscape or amenity concerns.

### **Critical Drainage Area**

The site lies within the Axminster Critical Drainage Area where all new development must contribute towards reducing current rainfall runoff rates. The guidance states:

"All off-site surface water discharges from development should mimic "Greenfield" performance up to a maximum 1 in 10 year discharge rate. On-site all surface water should be safely managed up to the "1 in 100+climate change" conditions. This will require additional water storage areas to be created thereby contributing to a reduction in flooding downstream."

Although the site is not at risk of flooding itself, a flood risk assessment has been submitted, as is required in a CDA. However, it does not demonstrate that the technical requirements set out above would be satisfied and there for further details of the surface water drainage system are needed. These can be secured by condition.

### **Other matters**

It was noted at the site visit that the original dwelling appeared to be in use as a holiday let rather than as an annexe. The agent explained:

"I have spoken with my client who has advised that the existing, lawful dwelling 'Steepfields' was let out on occasions over the summer as a holiday

let... I am advised by my client that this was a temporary arrangement while the applicant's son was away from the site. However, the renting out of the building for holiday purposes has now ceased."

If this application is approved subject to the recommended legal agreement then the original dwelling would become an annexe and could no longer lawfully be used as a holiday let.

Whilst the use as a holiday let last summer does cast some doubt over whether the need for an annexe is genuine, the applicant would risk enforcement action if the legal agreement is not complied with.

### **CONCLUSION**

Whilst in principle the construction of an additional dwelling on this plot would be contrary to policy because the site is not within a Built-up Area Boundary, the proposal to retain the original dwelling as an annexe removes that objection.

Given that both buildings are modest in size, occupy the same land, are well related to each other and would have a functional relationship at present, it is reasonable to accept the proposal to retain the new dwelling and restrict the original dwelling to use as an annexe. Consequently the proposal is recommended for approval.

### **RECOMMENDATION**

APPROVE subject to a legal agreement (to prevent the use of the original dwelling as a separate dwelling and to retain its use as ancillary accommodation to the new dwelling), and subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice.  
(Reason - For the avoidance of doubt.)
2. Within 3 months of the date of this decision details of a surface water drainage scheme for the dwelling hereby permitted, along with a timetable for its implementation, shall be submitted to and approved in writing by the Local Planning Authority. Such a scheme shall demonstrate compliance with the minimum drainage standards for the Axminster Critical Drainage Area. Development shall be carried out in accordance with the approved details.  
(Reason - To ensure the provision of suitable drainage infrastructure which contributes to reducing the risk of flooding in Axminster in accordance with Policy EN22 - Surface Run-Off Implications of New Development of the East Devon Local Plan 2013-2031.)

### **NOTE FOR APPLICANT**

Informative:

In accordance with the aims of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 East Devon District

Council works proactively with applicants to resolve all relevant planning concerns; however, in this case the application was deemed acceptable as submitted.

Plans relating to this application:

	Proposed Site Plan	17.06.21
HARDI.EX.E REV 1.1	Existing Elevation	17.06.21
HARDI.EX.FP	Combined Plans	17.06.21
	Location Plan	17.06.21

List of Background Papers

Application file, consultations and policy documents referred to in the report.