

**Application Number:** 25/11107 Variation / Removal of Condition  
**Site:** TALL OAKS, 1 CHURCH MEAD, LYMINGTON SO41 8FN  
**Development:** Removal or Variation of Condition 7 of Planning Permission 22/11134 to allow the garage to be used as ancillary accommodation  
**Applicant:** Mr Baker  
**Agent:**  
**Target Date:** 05/02/2026  
**Case Officer:** Julie Parry  
**Officer Recommendation:** Grant Subject to Conditions  
**Reason for Referral to Committee:** Town Council contrary view

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## 1 SUMMARY OF THE MAIN ISSUES

The key issues are:

- 1) The principle of the development
- 2) The impact on the character and appearance of the area
- 3) The impact on the residential amenities of the area
- 4) Highway matters including parking.
- 5) Ecology and habitat matters

## 2 SITE DESCRIPTION

The application site comprises a large detached 2-storey dwelling with a detached garage building which is located within the defined built-up area of Lymington. The site is located on Church Mead, which is a shared private drive that has access onto Woodside Lane. The site benefits from a fairly large garden incorporating on-site parking to the front and within the detached garage. A number of trees subject to Tree Preservation Orders are present on the site. The property has been extensively altered and extended following planning permission in 2022 and now also benefits from a two-storey outbuilding, incorporating a garage area and boat storage at ground floor and accommodation at first floor, which is the subject of this application.

## 3 PROPOSED DEVELOPMENT

The application seeks removal of Condition 7 of planning permission 22/11134 which restricts the use of the outbuilding to incidental use as follows:-

*"The building hereby approved shall only be used for the personal enjoyment of the occupier of the application site for incidental purposes and shall not be used as ancillary accommodation, commercial overnight holiday accommodation, short term residential let or other self-contained residential accommodation."*

The stated reason for this condition was:

*"in the interest of certainty regarding the intended uses, the amenities of the area and neighbours and the protection of protected New Forest and Solent habitats in accordance with ENV1 & ENV3 of the New Forest District Local Plan Part 1: Planning Strategy 2020."*

#### 4 PLANNING HISTORY

Proposal	Decision Date	Decision Description
22/11134 Two-storey extensions and alterations to existing dwelling, construction of ancillary garage outbuilding and associated landscaping works	11/01/2023	Granted Subject to Conditions

#### 5 PLANNING POLICY AND GUIDANCE

##### **Local Plan 2016-2036 Part 1: Planning Strategy**

Policy ENV1: Mitigating the impacts of development on International Nature Conservation sites

Policy ENV3: Design quality and local distinctiveness

Policy ENV4: Landscape character and quality

##### **Local Plan Part 2: Sites and Development Management 2014**

DM2: Nature conservation, biodiversity and geodiversity

##### **Supplementary Planning Guidance And Documents**

SPD - Lymington Local Distinctiveness

##### **Neighbourhood Plan**

The Lymington and Pennington Neighbourhood Plan has now been examined and, subject to minor modifications, was found to meet the Basic Conditions. The referendum to accept the Plan was held on 29th January 2026, with 92.5% of the people who voted being in support of the Plan. The Council will formally "make" the Plan at the next available opportunity, after which it will form part of the statutory Development Plan.

At this stage of the Plan making process (post referendum), national guidance indicates that such a plan must be given full weight in decision making, because its policies have been independently examined and confirmed as legally compliant and in general conformity with national policy. The National Planning Policy Framework (NPPF) confirms that following a successful referendum, a neighbourhood plan forms part of the development plan and planning applications should ordinarily accord with it unless material considerations indicate otherwise.

##### **National Planning Policy Framework**

Chapter 12 – achieving well designed places

##### **National Planning Policy Guidance**

## **Plan Policy Designations**

Built-up Area

### **6 PARISH / TOWN COUNCIL COMMENTS**

**Lymington and Pennington Town Council:** Recommend Refusal

The Committee considered there to be no material change in circumstances to justify varying the original condition. There may be some scope for amending Condition 7 but its removal would enable a substantial amount of independent or commercial letting of the outbuilding. This would be unreasonable given its exceptionally close position to neighbouring properties and the resultant more intense use of the constrained access via a narrow residential road.

### **7 COUNCILLOR COMMENTS**

No comments received

### **8 CONSULTEE COMMENTS**

None relevant

### **9 REPRESENTATIONS RECEIVED**

7 letters of objection received from neighbouring and nearby properties.

The reasons for these objections are:-

- Potential for greater noise, activity and disturbance.
- Use of the outbuilding as a commercial overnight holiday accommodation or other self-contained residential accommodation would be harmful to the area.
- Increase in traffic.
- Safeguard New Forest and Solent habitats.
- Lack of justification for the change in use.
- Size of outbuilding could accommodate a family.
- Degradation of local distinctiveness.

### **10 PLANNING ASSESSMENT**

#### **Principle of Development**

The site is located in the built-up area and so the principle of the development is acceptable subject to all other relevant material considerations as set out below. The principle of development in terms of the scale and design of the existing outbuilding has clearly been established following its planning permission in 2022 and subsequent construction.

This application seeks to remove a condition, under Section 73 of Town and Country Planning Act 1990, which was placed on the former permission in relation to the outbuilding. Section 73A of the same Act enables an application to be made in retrospect. It is clear from the existing condition, as set out above, that the outbuilding

*"... shall only be used for the personal enjoyment of the occupier of the application site for incidental purposes".*

An incidental use would essentially support the enjoyment of the property. Such a supporting use may be a gym, hobby space or a studio. An ancillary use supports the functioning of a home and this could be via extra living space and domestic accommodation, but this must remain subservient to the main residential use of the plot.

The application submits that the proposed removal of condition 7 is to allow for the use of the outbuilding as ancillary residential accommodation in association with the main residential dwelling:-

Paragraph 57 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. These are referred to in this guidance as the 6 tests, and each of them need to be satisfied for each condition which an authority intends to apply.

#### Impact on local character and appearance of area

Policy ENV3 of the Local Plan Part 1 requires new development to achieve high quality design that contributes positively to local distinctiveness, quality of life and the character and identity of the locality.

The first floor of the garage has been assessed on site. It has an area of 38 square metres and is accessed by an external staircase. The internal space has been laid out to include a small bedroom with ensuite bathroom, along with a living area with a kitchenette. The ground floor of the building is used as a garage and storage area along with a boat store. Neither what currently exists nor what is being applied for amounts to a separate planning unit or a severance of the plot to form a new self-contained dwelling in its own right. The applicant has confirmed in writing that the use of the first floor above the garage is simply for family and friends in conjunction with the main dwelling, that it does not have its own services or Council Tax, and therefore is part of the main C3 use of the plot. There is no indication that the accommodation would be used separately to the main dwelling as any type of self-contained commercial or holiday let; nor would there be any severance of the plot, which would all require an express planning permission in their own right in any event.

Therefore, Condition 7's preclusion of commercial overnight holiday accommodation, short term residential let or other self-contained residential accommodation is no longer considered relevant or necessary, as this part of the condition does not pass the test the Government has given for the application of conditions on a planning permission.

A representative of some of the neighbours has suggested that they would withdraw their objection if the condition was to be varied instead of being removed. They have requested that in the interests of clarity, and of safeguarding the amenities of neighbours, that the condition should be altered so that no part of the outbuilding shall be used for purposes such as holiday lets, short term letting, AirBnB, or similar, and its use for personal accommodation shall be limited to the upper level of the building.

First, the applicant has not sought to vary the condition. The application expressly seeks relief from the condition. Secondly, as detailed in the paragraphs above, the suggested variations would not pass the tests for conditions given that express planning permission would be required for the change of use suggested. Furthermore, it would not be reasonable to subdivide the building to allow for

separate use, given that internal changes are not development and the use of the building is considered to be part of the C3 use of the plot.

To allay neighbour concern regarding the future use of the building, an informative can be added to the decision notice to advise future owners that planning permission will be required should they wish to pursue a change of use of the outbuilding to a self-contained holiday let, commercial let or as a separate planning unit.

It is recognised that the previously imposed condition required the outbuilding to be used for incidental and not ancillary purposes, which have distinct meanings in planning law. As set out above, an ancillary use would allow the outbuilding to be used for a wider range of purposes than an incidental use, including habitable living accommodation. It is of note that homeowners increasingly use outbuildings for a range of domestic purposes for family members.

Having carefully reviewed the proposal, it is not considered the ancillary use accommodated within the outbuilding would intensify the residential function of the main dwelling to such an extent as to be harmful to the character of the local area. As such, the proposal to remove the condition to allow for an ancillary use would comply with Policy ENV3 of the Local Plan Part 1 in terms of character and design related considerations.

#### Residential amenity

Policy ENV3 of the Local Plan Part 1 states that new development will be required to avoid unacceptable effects by reason of visual intrusion or overbearing impact, overlooking, shading, noise and light pollution or other adverse impacts on residential amenity.

The proposed relief from the condition to allow for accommodation in association with the main dwellinghouse would not cause an unacceptable increase in the potential for noise over and above the previously approved incidental use. The building remains part of the residential use on the site and is part and parcel of a domestic planning unit comprising one dwellinghouse.

The original planning permission for the outbuilding included a condition for a screen to be provided at the top of the external staircase in order to protect neighbour privacy. This condition required the screening to be retained in perpetuity, and this condition requirement should be reapplied to any subsequent approval to protect neighbour amenity.

The proposal has been assessed on site and, as set out above, the use is not of a scale or nature that amounts to a separate planning unit or a severance of the plot. The proposal would not cause unacceptable noise effects to the adjacent neighbours. As such, the proposed removal of the Condition to allow an ancillary use would comply with Policy ENV3 of the Local Plan Part 1 in terms of amenity considerations.

#### Highway safety, access and parking

Policy ENV3 of the Local Plan Part 1 requires the integration of sufficient car parking spaces so that realistic needs are met in a manner that is not prejudicial to the character and quality of the street or highway safety.

The access to the property from Woodside Lane is owned by the applicant and is relatively narrow. However, the use of the first floor as ancillary accommodation would not increase the potential for additional traffic to the property to such an extent

as to be considered as a highway safety concern. As such, it is considered that highway and pedestrian safety will be preserved, and the proposals would comply with Policy ENV3 in relation to parking provision.

#### Ecology and Habitat matters

Policy ENV1 of the Local Plan Part 1 requires mitigation, management or monitoring measures on International Nature Conservation sites when considering the provision of residential development and overnight visitor accommodation.

Policy ENV4 of the Local Plan Part 1 seeks to retain and or enhance landscape features to successfully integrate new development into the local landscape.

Policy DM2 of the Local Plan Part 2 seeks features to encourage biodiversity and to retain or where possible enhance existing features of nature conservation value within a site.

The outbuilding was granted permission with a bathroom at first floor. Given that the removal of the condition would not create a new dwelling, there would not be a requirement for habitat mitigation or further ecological enhancements. Therefore, there are no requirements for mitigation as set out within Policy ENV1 or Policy DM2.

The removal of condition 7 would not result in any removal of trees or changes to the landscaping of the garden, and therefore overall the proposal would be in accordance with Policy ENV4.

#### Developer Contributions

Type	Proposed Floorspace (sq/m)	Existing Floorspace (sq/m)	Net Floorspace (sq/m)	Chargeable Floorspace (sq/m)	Rate	Total
Self Build (CIL Exemption in place)	333.5	185.7	147.8	147.8	£80/sqm	£16,144.31 *

Subtotal:	£16,144.31
Relief:	£16,144.31
Total Payable:	£0.00

*\*The formula used to calculate the amount of CIL payable allows for changes in building costs over time and is Index Linked using the RICS CIL Index (<https://www.rics.org/uk/products/data-products/rics-community-infrastructure-levy-index/>) and is:*

*Net additional new build floor space (A) x CIL Rate (R) x Inflation Index (I)*

## **11 CONCLUSION / PLANNING BALANCE**

The relief from the condition to enable the provision of ancillary accommodation, as detailed above, would still result in a building that would be subordinate to the main dwelling and within the same planning unit. To limit the use as purely incidental is no longer considered justified and therefore does not pass the test for a condition on a planning permission. In the event that the use of the outbuilding as a self-contained

commercial let, holiday let or as a separate planning unit were to occur, such a use would require an express planning permission in its own right and therefore applying a condition in this regard would not be necessary. Therefore, the removal of the condition is considered to be acceptable and the application is recommended for approval.

## 12 RECOMMENDATION

### GRANT the VARIATION of CONDITION

#### Proposed Conditions:

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

- ST800-01a Site & Location Plan (amended 9th January 2026)
- ST800-02b Topographical Site Survey
- ST800-03 Existing Floor Plans
- ST800-04 Existing Elevations 1 of 2
- ST800-05 Existing Elevations 2 of 2
- ST800-06D Proposed Site Plan
- ST800-07B Proposed Floor Plans
- ST800-08B Proposed Elevations
- ST800-09B Proposed Elevations
- ST800-10E Proposed Outbuilding
- ST800-11C Proposed Outbuilding
- ST800-15 Daylight Assessment

Reason: To ensure satisfactory provision of the development.

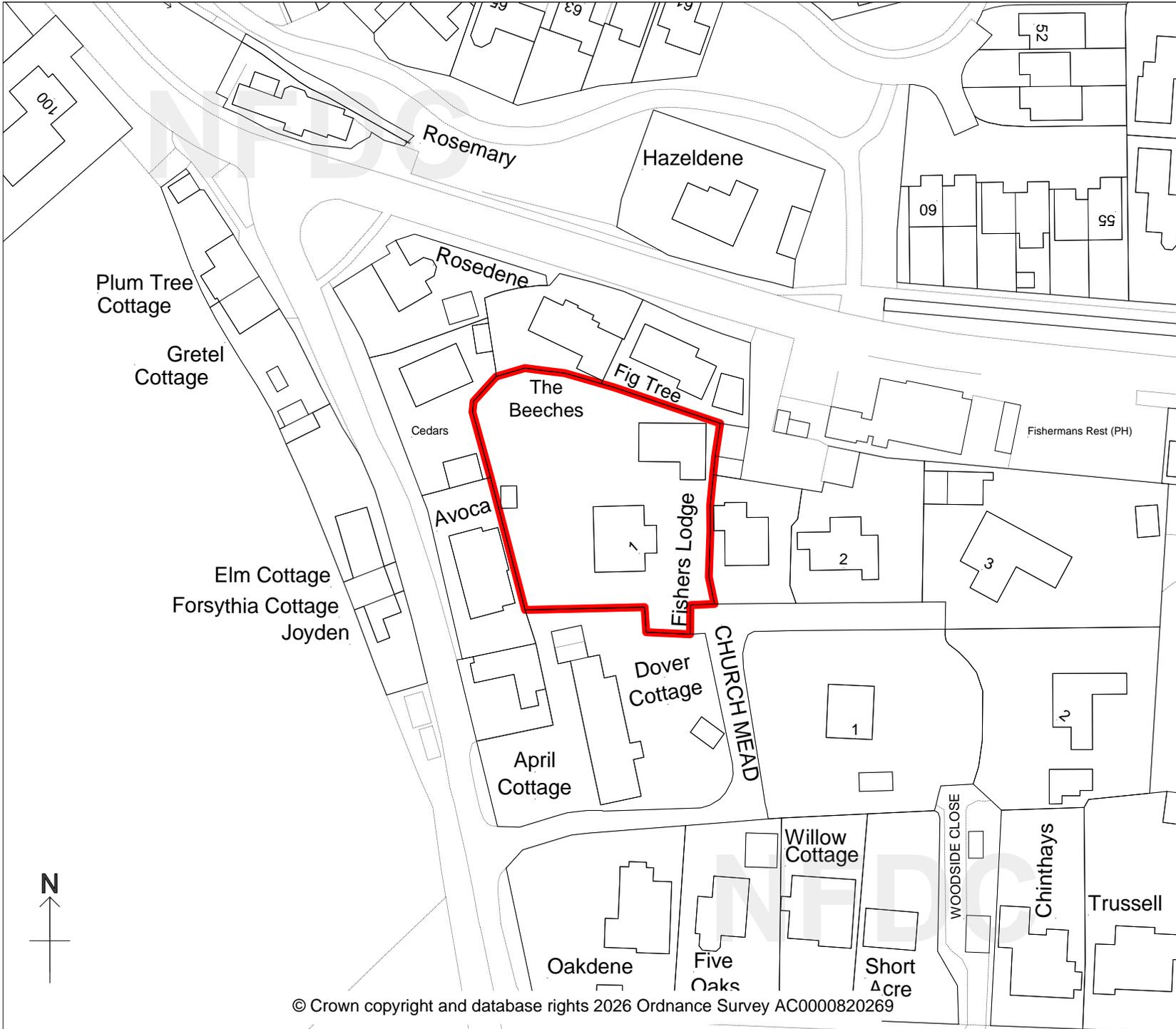
2. The 1.8m high privacy screen on the north elevation of the external staircase of the outbuilding shall be retained in perpetuity in accordance with the approved details (those details approved through the Local Planning Authority's decision to discharge Condition 4 of Planning Permission 22/11134 on 6th March 2023).

Reason: To protect the amenities of neighbouring properties in accordance with Policy ENV3 of the Local Plan 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

#### Further Information:

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**New Forest**  
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**PLANNING COMMITTEE**

**February 2026**

Tall Oaks  
1 Church Mead  
Lymington  
25/11107

Scale 1:1000

N.B. If printing this plan from the internet, it will not be to scale.