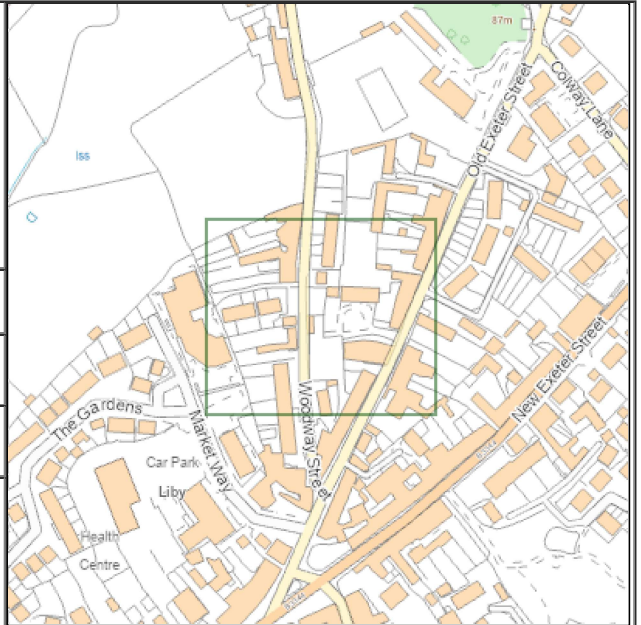


**Planning Committee Report**

**Chairman: Cllr Colin Parker**

<b>Date</b>	23 January 2024
<b>Case Officer</b>	Niki Warner
<b>Location</b>	49 Old Exeter Street Chudleigh Devon TQ13 0JX
<b>Proposal</b>	Variation of condition 3 on application 19/00994/FUL (Conversion of barn (to be used for storage/parking with ancillary accommodation over) to change the terms of the ancillary use restriction
<b>Applicant</b>	Mr & Mrs M Sanders
<b>Ward</b>	Chudleigh
<b>Member(s)</b>	Cllr Suzanne Sanders, Cllr Richard Keeling
<b>Reference</b>	22/02060/VAR



[Online Details and Documents](#)

**RECOMMENDATION: null**

Crown Copyright and database rights 2024 Ordnance Survey 100024292



## 1. REASON FOR REPORT

This application is reported to Committee because the applicant is a Member of the Council.

## 2. RECOMMENDATION

**Resolution to Approve subject to:**

**i) completion of a S106 agreement drafted with the objective of:**

*ensuring that once this planning permission is granted, the building shall be used only as ancillary floorspace to the new dwelling (as sought through this permission) and no longer to 49 Old Exeter St as previously permitted, and*

**ii) those conditions attached to 19/00994/FUL that continue to apply, and**

**iii) a revised condition replacing condition 3 of original permission 19/00994/FUL worded as follows:**

*The application building shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling granted planning permission by planning permissions 20/02181/FUL or 22/02145/VAR (or any Non-Material Amendment made to either permission using Section 96A of the Town and Country Planning Act 1990), and shall not be used, let, leased or otherwise disposed of as a separate unit of accommodation.*

*REASON: In order to restrict the use of the building such that it is not used as a self-contained dwelling without permission.*

## 3. DESCRIPTION

### The Application Site

- 3.1 49 Old Exeter Street is a Grade II Listed Heritage Asset within the Chudleigh Conservation Area with the site described as making an outstanding contribution to the Conservation Area. The site has an extant application for a new dwelling (20/02181/FUL as amended by 22/02145/VAR) within its walled garden. The new dwelling has not yet been built.
- 3.2 This application relates to a curtilage listed barn running along the western boundary within the grounds of 49 Old Exeter Street, that benefits from a permission (19/00994/FUL) to convert the barn to provide ancillary accommodation to 49 Old Exeter Street.
- 3.3 19/00994/FUL granted Planning Permission on 20.11.2020 for development described as: 'Conversion of barn (to be used for storage/parking with ancillary accommodation over)'. The application initially proposed a new dwelling plus conversion of the barn to provide ancillary floorspace, but the house was found unacceptable and was withdrawn from the application proposals. As such, the application site was reduced in size and is limited to the barn itself and a small area of land surrounding it on the west side of the site adjoining Woodway St.

- 3.4 19/00994/FUL was granted subject to seven conditions, including condition 3 which reads:

*3. The application building shall not be occupied at any time other than for purposes ancillary to the residential use of the host dwelling known as 49 Old Exeter Street and shall not be used, let, leased or otherwise disposed of as a separate unit of accommodation.*

*REASON: In accordance with the application submission and as a separate unit of accommodation would be contrary to the Development Plan.*

Proposal:

- 3.3 The application seeks variation of condition 3 on application 19/00994/FUL to change the terms of the ancillary use restriction to be ancillary to the new dwelling (approved but not yet constructed). The application is made under Section 73 of the Town and Country Planning Act 1990 which allows for planning conditions to be removed or varied. In this case, no physical changes to the development are proposed.
- 3.4 In their supporting statement, the applicant's agent proposed amendment of Condition 3 to the following revised wording:

*The application building shall not be occupied at any time other than for purposes ancillary to the residential use of the new dwelling granted under reference 20/02181/Ful or any subsequent amendment and shall not be used, let, leased or otherwise disposed of as a separate unit of accommodation.*

Principle of the development/sustainability

- 3.4 Officers consider the use of the building ancillary to a dwelling at the site to be acceptable. 19/00994/FUL granted permission for use of the building 'for storage/parking with ancillary accommodation over'. The use was to be ancillary to the existing house and this was considered acceptable. Planning permission would not have been required to use the building for car parking, as the building already fell within the curtilage of 49 Old Exeter St and as such uses *incidental* to it do not require permission. Planning permission was only required because external works were proposed, and because the use of the building as *ancillary* accommodation (ie as an annexe including sleeping accommodation) is not considered *incidental*.
- 3.5 The law is such that if approved, this application would give rise to a second planning permission that would sit alongside 19/00994/FUL it. Generally, once variations to a planning permission are granted under Section 73 of the Town and Country Planning Act 1990, multiple planning permissions exist in parallel and the applicant can choose which of those permissions they wish to implement. Once implemented, a permission will generally become 'extant' meaning that it can be carried out at any time even if the date by which it must be commenced has passed.
- 3.6 Condition 1 attached to 19/00994/FUL required the development to begin before the expiry of three years from 20 November 2020, so prior to 20 November 2023. The current application was submitted on 25 October 2022, but the date for implementation passed during the course of the application.

- 3.7 Section 73 of the Act states explicitly that its powers cannot be used to extend the period of time in which a planning permission must be implemented. As such, a 'variation' permission granted by Section 73 must be commenced within the same period as that of the original permission in order to be lawful.
- 3.8 In some circumstances, therefore, it would not be lawful for the applicant to implement a permission granted following the current application.
- 3.9 However in this case the applicant has opted to dig trenches to implement the permission and the LPA understands that this work was commenced prior to 20<sup>th</sup> November 2023. As such, officers consider that 19/00994/FUL could still be lawfully implemented despite the fact that the date of 20<sup>th</sup> November 2023 has passed. A 'variation' permission granted under Section 73, such as a permission which would arise from the approval of this application, could also be implemented lawfully.
- 3.10 Whilst the Local Planning Authority has previously approved the use of the barn as ancillary to the old dwelling, and would similarly find its use ancillary to the new dwelling acceptable, challenges arise in planning terms where its use could be ancillary to either the old dwelling or the new dwelling. This is the situation which would arise from the granting of this planning application as a result of the fact that permission 19/00994/FUL can lawfully be implemented at any time because it has already commenced, and the new permission will also be capable of being lawfully implemented once granted.
- 3.11 To address the challenges arising from this unusual situation, officers advised the applicant to allow the permission 19/00994/FUL to lapse and apply for a new permission tying the barn to the new dwelling. However, the applicant preferred to keep their existing planning permission 'extant' and instead chose to implement it.
- 3.12 The only way to prevent the implementation or reliance upon a planning permission is for the applicant/land owner to enter into a S106 agreement. As a legal agreement entered into under S106 of the TCPA 1990 would become a charge on the land reflected in the title deeds it is the only way to remove a planning permission from the land effectively and robustly.
- 3.13 Whilst a legal agreement under S106 does appear onerous for a minor proposal such as this, and government advice is that planning conditions should be used in preference to a S106 where possible, officers do not consider that a planning condition can address this issue adequately.
- 3.14 Officers consider therefore that a S106 is needed alongside changes to the wording of condition 3. Officers therefore recommend that condition 3 should be reworded as follows:

*The application building shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling granted planning permission by planning permissions 20/02181/FUL or 22/02145/VAR (or any Non-Material Amendment made to either permission using Section 96A of the Town and Country Planning Act 1990), and shall not be used, let, leased or otherwise disposed of as a separate unit of accommodation.*

*REASON: In order to restrict the use of the building such that it is not used as a self-contained dwelling without permission.*

- 3.15 In addition, the applicant will be required to enter into a S106 agreement, the purpose of which will be:

*to ensure that once this planning permission is granted, that the building shall be used only as ancillary floorspace to the new dwelling (as sought through this permission) and no longer to 49 Old Exeter St as previously permitted.*

- 3.16 The revised condition proposed is similar to that sought by the applicant but differs in one key way: it does not allow for the building to be used ancillary to 'the new dwelling granted under reference 20/02181/FUL or any subsequent amendment' This is because there is potential for the new dwelling to be significantly revised through Section 73 'variation' applications (particularly in light of recent case law), and in the event of a significantly revised proposal, use of the barn ancillary as proposed may not necessarily be acceptable. However, the condition recommended by officers would allow for more minor amendments to the house made as 'Non-Material Amendments' under S96A.
- 3.17 In addition, a S106 will be needed to transfer the use of the barn from being ancillary to 49 Old Exeter St to being ancillary to the new house (as well as removing the potential for it to be ancillary to either).

#### Conclusion

- 3.16 Whilst the development proposed is seemed acceptable, complexities have arisen as a result of the nature of the original permission, the timing of the variation application, and the request to allow the building to be used ancillary to a building which has not yet been constructed. However, the wording recommended for a revised condition 3, alongside a S106 agreement designed to withdraw permission reference 19/00994/FUL would together address this issue adequately. In accordance with usual practice, other conditions attached to 19/ Other conditions attached to 19/00994/FUL will be reattached, alongside the revised condition 3, and on this basis officers recommend that planning committee approve the application.

## **4. POLICY DOCUMENTS**

- 4.1 Teignbridge Local Plan 2013-2033

S1A Presumption in favour of Sustainable Development

S1 Sustainable Development Criteria

S2 Quality Development

S21 Villages

WE8 Domestic Extensions, Ancillary Domestic Curtilage Buildings and Boundary Treatments

EN5 Heritage Assets

- 4.2 National Planning Policy Framework
- 4.3 National Planning Practice Guidance
- 4.4 Chudleigh Conservation Area Appraisal
- 4.5 Chudleigh Neighbourhood Plan

## 5. CONSULTEES

5.1. No consultation responses sought

## 6. REPRESENTATIONS

6.1. 1 representation was received with the following summarised points:

- Assurance sought over there being no future plan to make a vehicle or pedestrian entrance onto the outer wall opening into Woodway Street
- Protection and monitoring sought for the mature trees on the site
- Would like assurances around noise and light pollution from the development

## 7. TOWN / PARISH COUNCIL'S COMMENTS

7.1 Councillors considered this application at a meeting of the planning committee on 23 November [2022].

When the original application for the conversion of the barn was submitted councillors considered it imperative that a condition was attached to the consent making the barn ancillary to the main dwelling. Since then the applicant has received consent for the creation of a new dwelling in the grounds of the main house. This application to make the barn ancillary to the new dwelling rather than the main house is acceptable to councillors.

## 8. PLANNING HISTORY

**07/00466/PE Residential Development PE RESPONSE SENT**

**15/02339/PE Proposed Dwelling PE RESPONSE SENT**

**18/01014/PE Proposed single dwelling in walled garden of main house and conversion of adjacent barn to provide ancillary accommodation PE RESPONSE SENT**

**19/0994/FUL Conversion of barn (to be used for storage/parking with ancillary accommodation over) PERMISSION GRANTED**

**19/0095/LBC Conversion of barn (to be used for storage/parking with ancillary accommodation over) APPROVED**

**20/02181/FUL Dwelling PERMISSION GRANTED**

**22/00986/VAR Variation of condition 2 on application 20/02181/FUL (dwelling) minor changes to design REFUSED**

**22/00987/VAR Variation of condition 2 and 3 on application 19/00994/FUL (Conversion of barn (to be used for storage/parking with ancillary accommodation**

over)) to include solar panels and change the terms of the ancillary use restriction  
**WITHDRAWN**

**22/00988/VAR** Variation of condition 2 on planning permission 19/00995/LBC (Conversion of barn to be used for storage/parking with ancillary accommodation over) to vary condition 2 of 19/00995/LBC to substitute drawings to include solar panels and variation of condition 3 of 19/00994/FUL to change the terms of the ancillary use restriction **APPLICATION RETURNED**

**22/01064/LBC** Solar panels and timber steps (in addition to works approved under 19/00995/LBC) **WITHDRAWN**

**22/02145/VAR** Variation of condition 2 on application 20/02181/FUL(dwelling) to amend floor plans and elevation design **APPROVED**

## **9. COMMUNITY INFRASTRUCTURE LEVY**

The development is not liable for CIL because it is less than 100m<sup>2</sup> of new build that does not result in the creation of a dwelling.

## **10. ENVIRONMENTAL IMPACT ASSESSMENT**

Due to its scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA Development.

## **11. CARBON/CLIMATE IMPACT**

The development is the conversion and preservation of a historic building, with the associated embodied carbon gains.

## **11 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.

## **Head of Place and Commercial Services**