17 May 2024

The South Hams Society Interest

For the last 60 years, the South Hams Society has been stimulating public interest and care for the beauty, history and character of the South Hams. We encourage high standards of planning and architecture that respect the character of the area. We aim to secure the protection and improvement of the landscape, features of historic interest and public amenity and to promote the conservation of the South Hams as a living, working environment. We take the South Devon Area of Outstanding Natural Beauty very seriously and work hard to increase people's knowledge and appreciation of our precious environment. We support the right development - in the right places - and oppose inappropriate development.

A Response to the Enforcement Appeal Statement submitted by Sutherland Property & Legal Services Limited in respect of Land at Butterford – SX719548 – North Huish, Devon, TQ9 7NL

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Section 2 – The Appeal Site

According to Paragraph 2.1 of the Enforcement Appeal Statement:

> *The appeal site comprises of an existing agricultural field in use as part of an agricultural enterprise by the appellant and his wife. They have an established farming operation and the appeal site is proposed to create an organic arm to the existing business. The appeal site has consent for the erection of an agricultural building which was granted under reference 3808/21/AGR. A copy of this prior notification and accompanying plans is attached to this appeal as appendix 2.*

However no consent for the erection of an agricultural building was given by the LPA. Application 3808/21/AGR was made under Schedule 2, Part 6 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as an:

> *Application **to determine if prior approval is required for a proposed: Erection**, Extension or Alteration **of a Building for Agricultural** or Forestry use.*

To quote from the Case Officer report:

> ***Development:** Application to determine if prior approval is required for a proposed agricultural storage building*
>
> ***Recommendation**: Prior approval not required*
>
> ***Key issues for consideration:** Whether or not the siting, design, and external appearance of the proposed agricultural building are acceptable, or whether or not the Local Planning Authority requires further details of these elements of the development to be submitted through the prior approval process.*

Based on the information provided by the applicant the Case Officer concluded prior approval would not be required. Her report continued:

> ***Conclusion:** The Planning Statement sets out a reasoned justification for the building, which is considered to be sited in an appropriate location considering the site context. **Sufficient detail has been provided** to allow Officers to ascertain that the building would be of an appropriate design and external appearance, and prior approval is therefore not required.*

However the information provided was not correct. In submitting the Prior Notification Statement to accompany application 3808/21/AGR in September 2021 the appellants' agent had written:

> *The site for the building has been chosen to serve this 22 acre block of land as it is in a level corner of the field **with an access track leading directly to it**, with access to the whole of the site… The site chosen is also away from residential dwellings and is not visible from any footpath/public vantage points.*

It was on this basis that the case officer concluded in her report:

> *The Planning Statement sets out a reasoned justification for the building, which is considered to be sited in an appropriate location considering the site context.*

However, as David Fairbairn, the Council's Head of Legal Services acknowledged in an email to the Society on 06 February 2023:

> *the Council accepts that the decision to issue the prior approval was unsound in the sense that the decision-making process was flawed because there was no assessment of whether the works for the erection of the proposed building were reasonably necessary for the purposes of agriculture within the agricultural unit; there was no express consideration of the proposed development in the context of the AONB and **the Council***

...Continued page 3

proceeded on the basis that there was an existing access track when there was no such access track.

In addition the prior notification process as outlined in Part 6 (Classes A, B and E) of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended) does not require an assessment of the proposal against the permitted development criteria of Part 6 (Classes A, B and E). Confirmation of whether or not the proposed works constitute permitted development can only be given following the submission of a certificate of lawful development application under Section 192 of the Town and Country Planning Act 1990.

The Decision Notice for application 3808/21/AGR reiterates the point:

> *INFORMATIVES: 1. This decision relates only to the question of whether prior approval would be needed, this decision does not confirm that the proposal is permitted development. Prior to any works being commenced, you should satisfy yourself that the development falls within the permitted development criteria identified in Schedule 2 Part 6 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). For a formal confirmation as to whether the proposal is permitted development a certificate of lawful development application can be submitted under Section 192 of the Town and Country Planning Act 1990.*

In other words, provided there is compliance with the GPDO, the LPA would be unable to take enforcement action but, even were prior approval to be given, and contrary to the claim made by the appellants, it does not mean that planning consent for the agricultural building was given by the LPA.

To quote https://www.localgovernmentlawyer.co.uk/planning/318-planning-features/45637-prior-approval-consents:

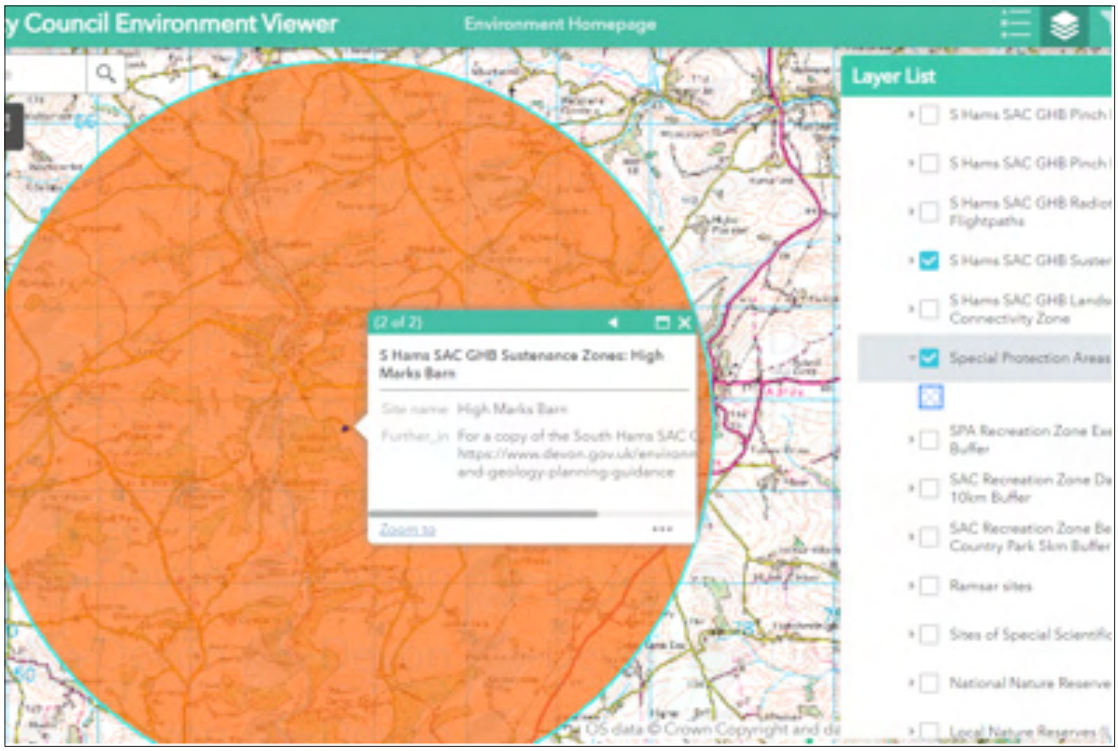
> *There is a common misconception that, for enforcement purposes, planning decisions in relation to the application of Prior Approval are interpreted in the same way as other planning permissions granted by an LPA, i.e. that all terms and conditions are contained within the four corners of the decision notice. Not so for Prior Approval consents.*
>
> *Prior Approval is not a permission in itself. The permission is contained in the GPDO. The GPDO makes it a condition of the permission that Prior Approval is obtained (or confirmed not necessary as appropriate). The act of securing a Prior Approval consent is effectively a discharge of a pre-commencement condition. To be lawful, the development must still comply with the relevant terms and conditions of the GPDO. Granting of Prior Approval does not necessarily mean that the development complies with the GPDO. If it doesn't comply, it doesn't comply and granting prior approval does not alter that. Granting Prior Approval simply means that the condition is satisfied.*

As a result the claim made in Paragraph 2.3 of the Enforcement Appeal Statement is incorrect:

> *The site is not affected by any other statutory designations that would be a material consideration in this appeal.*

Special Areas of Conservation (SAC) are statutory designations and, as can be seen on the following page, the site falls well within the High Marks Barn Greater Horseshoe Bat Sustenance Zone.

...Continued page 4



The High Marks Barn Sustenance Zone

Similarly, and for the reason that prior approval is not a permission in itself, the claim made in Paragraph 3.1 of the Enforcement Appeal Statement that:

> *consent was granted by the LPA in relation to the erection of the agricultural building*

is also incorrect. That same Paragraph then continues:

> *no application was made in relation to creating a vehicle access to serve the building. The appellants started creating a basic agricultural track by removing topsoil to create a cut out track and laying hardcore/rubble to create the surface. The appellants were unaware of any need for a separate planning consent in order to lay the track to serve the building.*

This would appear to contradict what is then stated in Paragraph 4.7:

> *the appellants considered that applying under prior approval was not required because there had been evidence of a historic track on the land, hence not making an application for the track as part of the prior notification for the erection of the building*

And it is important to note that the claim of evidence of a historic track, although much repeated, has never been substantiated. According to the Design & Access Statements submitted by the appellants' agent to accompany both 1592/22/FUL (dated April 2022) and 4012/22/FUL (dated October 2022):

> *The Applicants did not submit a Prior Notification application as they believed that the works they were carrying out were restoring and resurfacing an existing track according to the historic maps.*

This was despite the fact that according to the LPA's Specialist-Planning Enforcement (in an email to the Society dated 24 February 2022) the appellants were previously informed on 10 February that:

> *The deeds provided by yourself do not show a track in the position that is currently being formed.*

...Continued page 5

and

> *The council, without further evidence provided, cannot agree with your assessment that the works are simply resurfacing existing tracks.*

In other words, were the 'historic maps' to actually exist, it is not unreasonable to assume that the LPA would have been provided with copies to substantiate the claim repeated by the appellants' agent in both Design & Access Statements. Yet that evidence has never been forthcoming.

It therefore follows that if the appellants now acknowledge that no track existed and they had to start creating a basic agricultural track by removing topsoil to create a cut out track then, by virtue of the ground area to be covered, the development fails to be permitted development.

According to Paragraph 2.4 of the Enforcement Appeal Statement:

> *The agricultural track is 800 metres in length running from the highway vehicle access on the eastern corner and follows the line of the hedge bank field boundary on the southern and western side before leading directly along the northern boundary to connect to the site where the approved building is to be constructed. The track is 3.5 metres in width to allow sufficient room for farm vehicles and machinery.*

The total area of the site is said to be 22 acres (8.9 hectares) and, by the appellant's own admission, the track occupies a ground area of 2,800 square metres.

Schedule 2 Part 6 part A of The Town and Country Planning (General Permitted Development) (England) Order 2015 states:

> *The carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of— (a) works for the erection, extension or alteration of a building; or (b) any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit.*

But:

> *A.1 Development is not permitted by Class A if— (e) the ground area which would be covered by— (i) any works or structure (other than a fence) for accommodating livestock or any plant or machinery arising from engineering operations; would exceed [1,000 square metres], calculated as described in paragraph D.1(2)(a) of this Part*
>
> > *D1 (2) For the purposes of Classes A, B and C— (a) an area "calculated as described in paragraph D.1(2)(a)" comprises the ground area which would be covered by the proposed development, together with the ground area of any building (other than a dwelling), or any structure, works, plant, machinery, ponds or tanks within the same unit which are being provided or have been provided within the preceding 2 years and any part of which would be within 90 metres of the proposed development;*

Consequently the area covered by the track is clearly more than 1,000 square metres. The Society therefore refers the Inspector to Appeal Ref: APP/X1925/W/20/3256050: Millbury Farm, Mill End, Sandon, Buntingford SG9 0RN in which the Inspector concludes:

> *The provision of an access track could be described as works for the purposes of paragraph D.1(2)(a) and indeed an engineering operation for the purposes of Class A.*

On this precedent alone the appellants' claim that the construction of the track would have benefited from permitted development rights is incorrect. But had the development been assessed correctly, now it is accepted that there was no previously existing track, then because applications 3808/21/AGR and 1592/22/FUL were both submitted within six months of each other and are clearly linked, then the proposal again fails to be permitted development. •

The removal of the stone surface and relocation of topsoil

Paragraph 3.5 of the Enforcement Appeal Statement asks the inspector to:

> *be aware, and it is recited within the enforcement notice justification, that the council recognise that the stone surfacing to the track had been removed and deposited in piles on the land as shown in the photographs annexed to the notice, voluntarily and prior to service of the notice. Accordingly, the appellant had already achieved compliance with part 1 in relation to the enforcement notice requirements and this gives rise to a ground F claim. The inspector is asked to note that the enforcement notice specifically refers to the creation of a "stone surfaced track" which of course, was not in place at the point of service as the notice contents attest.*

To begin with it is not recognised by the council in the enforcement notice that 'the stone surfacing to the track had been removed'. What the enforcement notice actually says is:

> *a site visit by the Council revealed the stone surfacing to the track had been largely removed and deposited in piles on the Land, as shown in the photographs annexed to this Notice.*

And, as the photograph below (taken 6 May 2024) shows, some stone still remains on the track, so the claim that 'the appellant had already achieved compliance with part 1' is clearly incorrect.

In Paragraph 4.8 the claim is made that:

> *the appellant removed the topsoil along the proposed route of the track and this was relocated to the building development site…*

This is incorrect. No topsoil was relocated to the building development site. Instead it was banked up alongside the length of the track while a small amount was scattered over the flat ground at the bottom of the site. •

Impact of the track on the rural environment

Paragraph 4.16 of the Enforcement Appeal Statement goes on to challenge the assertion by the LPA that:

> *The track together with the associated increase in vehicular movements has a negative impact on the existing tranquil character of the Land and the wider South Devon National Landscape*

on the grounds that:

> *The erection of the agricultural building may create an associated increase in vehicle movements to and from the land to access that building, the track merely facilitates these movements. The track, cannot and does not increase vehicle movements.*

Then, in paragraph 6.5 the appellant goes on to argue:

> *The barn is lawful and access to it will be required. Accordingly, this requirement exceeds what is required to mitigate the asserted harm to the AONB.*

However, because the Council has accepted that issuing a decision notice that prior approval for the barn was not required was unsound, that decision may not be lawful. But more pertinently, had the case officer assessing the application to determine if prior approval was required been aware that there was no existing track, then the Council would in all probability have issued a decision notice concluding that prior approval was required, and the appellants could well have been asked why it was not possible to site the barn, supposedly necessary for agricultural purposes, in the south east corner of the field, close to the point at which access is gained from the public highway.

And, had the barn been sited there, then by definition there would be no need for vehicle movements travelling back and forth across the land from the public highway in order to access the barn whenever anyone arrives at or leaves the site, machinery would not then have to be driven back from the barn to wherever it was to be used, nor would any vehicles have always to be driven in immediate proximity to the ancient hedgerow on the northern border and beside the hedgerow and trees dividing the two fields.

Earlier Paragraph 4.2 of the Enforcement Appeal Statement raised the question:

> *whether any harm arises from the retention of the access track, either in its extant form, or if it were to be resurfaced with hardcore/rubble as has been proposed.*

The High Marks Barn SSSI, which supports the second largest maternity roost of Greater Horseshoe Bats in England is a mere 2.6km from site, well within the 4km Sustenance Zone in which critical Foraging Habitats and Commuting Routes are to be found.

Consequently it is entirely possible that the presence of the track across cattle grazed pasture and in immediate proximity to trees and tall thick hedges will cause loss, damage and/or disturbance to a potential foraging habitat or potential commuting route.

Here the Society would draw the attention of the Inspector to the concerns expressed by the LPA Ecologist Tom Whitlock in respect of a separate application for the provision of agricultural tracks (attached) elsewhere within the High Marks Barn Sustenance Zone and the resulting loss of foraging habitat.

Similarly Local Plan Policy DEV28 makes the point that ‘development that would result in the loss or deterioration of the quality of important hedgerows including Devon hedgebanks will not be permitted unless the need for, and benefits of, the development in that location clearly outweigh the loss and this can be demonstrated’, crucially adding that ‘development should be designed so as to avoid the loss or deterioration of woodlands, trees or hedgerows’.

...Continued page 8

That 'need for, and benefits of' has never been demonstrated, and it is here also worth noting the Preliminary Ecological Appraisal, undertaken by Western Ecology in July 2022 on behalf of the appellant accompanying application 4012/22/FUL. It recommended:

> *Hedgerows should be protected from accidental damage by a 2 metre protection zone for the duration of the construction phase.*

The Appraisal also recognised:

> *There is potential for Dormice to be associated with habitats bounding and within the Site. The provision of a 2 metre protection zone running adjacent to these habitats will ensure that Dormice are not deterred from using this habitat during the construction phase.*

Unfortunately the Appraisal was only undertaken after much of the track construction work had been completed and so, without any further appraisal, it is impossible to say what if any damage may have occurred. What is certain is that any movement of vehicles along those sections of track immediately abutting the hedgerows will inevitably disturb any wildlife within, while headlights at dusk will disturb any foraging or commuting bats.

Nor has any mitigation been provided. Contrary to the statement made in Paragraph 4.13 that:

> *Hedgerows were created in relation to the consented building and officers determined that this was a net gain in terms of biodiversity on the land*

no hedgerows as yet have ever been created.

If a barn is genuinely required for agricultural purposes, re-siting it on level ground close to the entrance from the public highway in the south-east corner of the site would not only noticeably reduce vehicle movements across the site and arguably eliminate any requirement for the track (given that no previous owner of the land has ever had the need), but it would also significantly limit any disturbance to wildlife. •

The impact on the protected landscape

In Paragraph 4.4 of the Enforcement Appeal Statement the appellants claim the LPA considered the development would have no adverse impact on the protected landscape, explaining in paragraph 4.4:

> *The Inspector is asked to note that there was not an objection from the AONB / landscape officer and that a careful consideration by the officer of the proposal concluded that there was no adverse impact arising on the AONB from the proposal*

Here it is worth noting what the Landscape Officer actually wrote when responding to 4012/22/FUL:

> *In relation to the Application 3808/21/AGR, to determine if prior approval would be required for a proposed agricultural storage building, which determined that Prior Approval was not required, my comments are made on the basis that the decision relating to the principle and the siting of the agricultural storage barn was sound.*

The decision relating to the principle and the siting of the agricultural storage barn is now known not to have been sound with the result that the appellants can no longer rely on any comments the Landscape Officer may have made. And while a farming track may, as the appellants say, be a natural part of the rural landscape when it leads to a farmstead, typically with barns around the farm in close proximity to the farmhouse, isolated barns with their own tracks leading to them remain very much the exception rather than the rule.

...Continued page 9

There would also have been no objection from the Landscape Officer in respect of application 3808/21/AGR because, as the Case Officer report made clear:

> *No consultations required for this type of application.*

The appellants then go on to say in Paragraph 4.5:

> *in the interest of completeness, the appellant has considered the AONB management plan that the LPA enforcement team rely upon in reaching the conclusion that there is harm contrary to their landscape officer opinion. A copy of the AONB Management plan is provided at appendix 4 to this appeal. The inspector is asked to note that one of the special qualities that applies here within the South Devon AONB is recognition that parts of the landscape designation include "a deeply rural rolling patchwork agricultural landscape". It is recognised that within the AONB, partnerships with agricultural landowners help to deliver AONB aims and that 74% of the AONB is farmed. Indeed, theme five of the AONB management plan specifically refers to farming and land management and the fact that this is a traditional practice remaining at the heart of our rural communities. The document recognises that farmers are under considerable pressure and the agricultural sector should be supported.*

In the interests of completeness the Society would also ask the Inspector to note that on page 104 of the South Devon AONB Planning Guidance states that:

> *Proposals for agricultural building development that have potential to harm the AONB include: Development that results in historic features including… traditional hedgerows and hedgebanks being damaged or lost; or Damages or disturbs important wildlife habitats and protected species, directly or indirectly.*

8.6 Agricultural Buildings

181. The farmed landscape of small fields, hedges, walls, hedgerow trees, woods, orchards and farmsteads, and the farm economy of crops and livestock, are a distinctive and central feature of the AONB.

182. There is a range of exclusions[103] which apply to permitted development rights for agricultural buildings in England. These covers protected areas known as article 2(3) land: which includes; conservation areas, Areas of Outstanding Natural Beauty, National Parks, the Broads and World Heritage Sites.

[103] http://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/3/crossheading/class-q-agricultural-buildings-to-dwellinghouses/made

Proposals for agricultural building development that have potential to harm the AONB include:

- New industrial scale agricultural buildings that are located in prominent or sensitive locations, particularly where these are visually intrusive on skylines and ridges and as a result impact negatively on the special landscape character of the AONB area;
- Conversions of existing farm buildings that damage their architectural character and historic significance or impact on nesting sites for protected species;
- Development that results in historic features, including archaeological remains, traditional hedgerows and hedgebanks being damaged or lost; or Damages or disturbs important wildlife habitats and protected species, directly or indirectly;
- Development that creates additional loadings of storm water, silts and pollutants into watercourses.

An agricultural building development that conserves and enhances South Devon AONB will:

- Be located with existing farmsteads and buildings unless site constraints or operational requirements clearly dictate that this is not possible;
- Where a new farm building in open countryside is the only available practical option, clearly demonstrate in the planning application how a location has been selected to minimise visual impact and best set the building into its landscape;
- Involve the careful use of materials, colour, landform, screening and external landscape works to assimilate the buildings into their setting;

...Continued page 10

Were the appellants have been prepared to consider alternative sites for the proposed agricultural storage building the track would not have been necessary, some 2,800m2 of foraging habitat would not need to be lost, and no hedgerows, wildlife habitats and protected species damaged or disturbed. And given alternative sites do exist covering so much agricultural land in stone might be thought less than sensible. •

The agricultural usage of the site

Paragraph 4:10 of the Enforcement Appeal Statement asks the question:

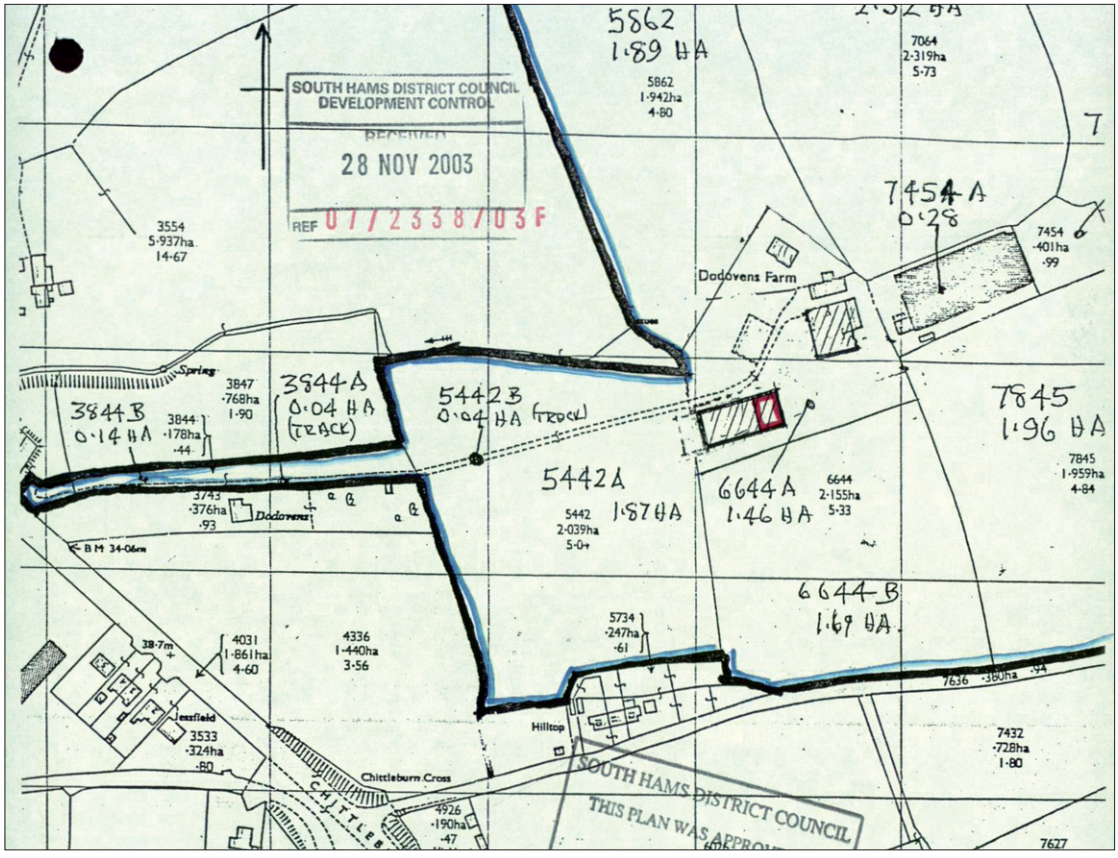
> *It is unknown how the LPA have reached the conclusion that the site is not in agricultural use as part of an agricultural undertaking, as was cited on the enforcement notice.*

with Paragraph 4.14 going on to explain:

> *Mr. Staddon operates as a VAT registered farmer. He farms and maintains an additional 180 acres at Dodoven's farm with his brother (which formerly belonged to his father and has passed to him and his brother following his father's recent death). This land has always been used for cattle and sheep grazing.*

While it is true that the 22 acre block of land at Butterford has been used for the grazing of both sheep and cattle while it has been in the appellants' ownership the sheep, according to local residents, are the property of Richard Winzer, who farms locally at Higher Coarsewell Farm, while the cattle belong to David Merrin of Hendham View Farm. Both Mr Winzer and Mr Merrin have also previously employed the services of the appellants' planning agent.

The precise location of Dodovens Farm is as shown on the site plan submitted with SHDC planning application 07/2338/03/F:



...Continued page 11

However the Google Earth view of the site, dated 22 June 2022, would not suggest there is now any agricultural activity in the 'farmyard' at that location.

Similarly there is no evidence of livestock to be seen in any of the fields in the locality, either in 2022 or in any of the earlier historic Google Earth images dating back to January 2002.

A South Hams Society member has also visited the immediate area and spoke to two people living in houses overlooking the site. Both said the same thing:

> *"Staddon senior owned the land, but he now didn't farm it himself and hadn't for some years, and it was let out. It was all arable. Once a year some sheep and a few cattle were put on the land for 3-4 weeks and fed on big round bales, but the animals didn't belong to Staddon senior. They didn't know who owned the animals, or where they went for the rest of the year. They both said that there were several sons, and none of them were farmers."*

The fact that the land was let out, used as arable, and not farmed by any member of the Staddon family was confirmed by a third person, who was working on a vehicle in one of the workshops at Dodovens Farm.

Consequently, to avoid the possibility of any confusion or misunderstanding, the appellants can no doubt provide copies of the relevant cattle passports so as to clarify matters, given that

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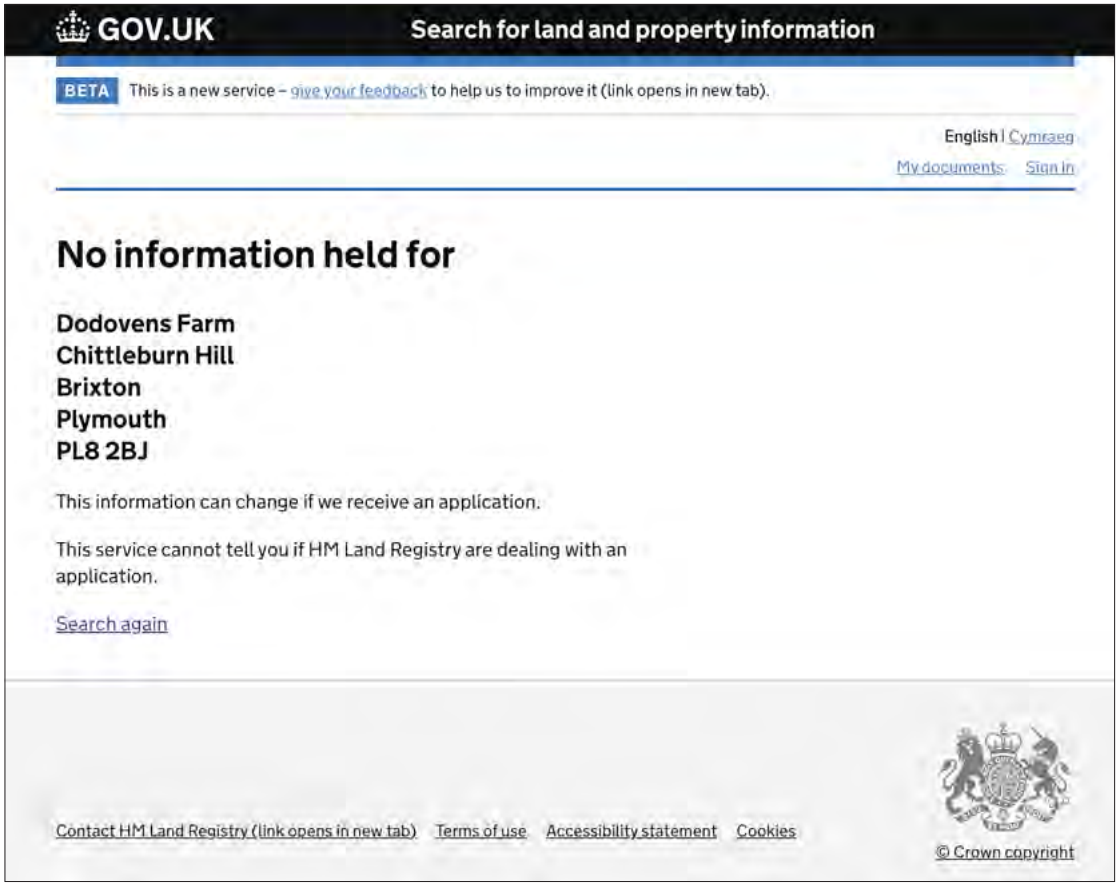
the Society has also been unable to obtain clarification from the Land Registry (see below) as to the ownership and extent of Dodovens Farm. •



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Brixton
Plymouth
PL8 2BJ

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The Main Planning Issues

According to Paragraph 2.1 of the Enforcement Appeal Statement:

> *The main planning issues in this appeal are considered to be whether the works carried out to facilitate surfacing for the creation of the track have;*
>
> *- adverse impact on the AONB as asserted by the LPA,*
>
> *- whether the site and development benefits from an agricultural justification,*
>
> *- whether any harm arises from the retention of the access track, either in its extant form, or if it were to be resurfaced with hardcore/rubble as has been proposed.*

However there is arguably a further issue the Society has also raised that the Inspector may need to consider, separate from those already discussed, namely can the development proposal be considered permitted development if it also requires an 800m access track?

Finally, were this appeal to be allowed, the appellants would effectively have been able to achieve planning consent by providing the LPA with information that they must have known to be incorrect.

As Kerr J concluded in R (Thornton Hall Hotel Ltd) v Wirral MBC (2018) EWHC 560 (Admin):

> *29. The grant of planning permission takes effect on written notification of the decision. ...*
>
> *30. There is no power to withdraw a planning permission once granted, on the basis of an administrative error in the decision making process ...*
>
> *31. Nor can an effective planning permission, once issued in error, be altered by issuing an amended notice of planning permission ...*
>
> *32. On the other hand, a planning permission issued in error and without proper authority is invalid and may be declared so or quashed: ..."*

He did so because he believed that allowing the permission to stand would subvert the public interest in the integrity of the planning process. The Society believes the same principle should apply here. •

From: **David Fairbairn** David.Fairbairn@swdevon.gov.uk
Subject: Land at Butterford, SX719 548, North Huish, TQ9 7NL
Date: 6 February 2023 at 11:52
To: South Hams Society southhamssociety@gmail.com
Cc: Cllr Judy Pearce cllr.judy.pearce@southhams.gov.uk, Cllr Peter Smerdon cllr.peter.smerdon@southhams.gov.uk, Cllr Guy Pannell cllr.guy.pannell@southhams.gov.uk, Cllr Richard Foss cllr.richard.foss@southhams.gov.uk, North Huish Parish Clerk clerk@northhuishparishcouncil.co.uk, Helen Smart Helen.Smart@swdevon.gov.uk, Trevor Pearce Trevor.Pearce@swdevon.gov.uk, Charlotte Howrihane Charlotte.Howrihane@swdevon.gov.uk

Dear Mr Howells

I refer to my e-mail dated 14 December 2022.

Having considered the matter again and notwithstanding what was said in our letter dated 23 November 2022, the Council accepts that the decision to issue the prior approval was unsound in the sense that the decision-making process was flawed because there was no assessment of whether the works for the erection of the proposed building were reasonably necessary for the purposes of agriculture within the agricultural unit; there was no express consideration of the proposed development in the context of the AONB and the Council proceeded on the basis that there was an existing access track when there was no such access track.

As for the other matters that you raise:

1. I do not accept that Regulations 7-8 of the Openness of Local Government Bodies Regulations 2014 apply to the Council's letter dated 23 November 2022, and the same goes for any common law duty to give reasons for planning decisions. The reason why is simply that the officer was not making a decision involving "the grant of a permission or licence", irrespective of how wide that phrase may be drawn. There was therefore no requirement to comply with Regulations 7-8 and to give reasons for why the officer agreed with the decision made by another colleague. The decision to grant prior approval and the officer's explanation why she decided to do so, were clearly, if erroneously, set out in the report published on the Council's website.

2. Article 8 of the Town and Country (Development Management Procedure) (England) Order 1995 was repealed in 2012. If you intended to refer to the Town and Country (Development Management Procedure)(England) Order 2015 and in particular to Article 15(2)(c) which requires applications for planning permission affecting certain rights of way to be publicised in a specified way, then I do not accept that you are correct. An application for prior approval is not an application for planning permission and while the proposed development might or might not be visible from a public footpath, that does not mean that the public footpath is affected. Equally, and on a substantially similar basis, I do not accept that the Council was obliged to publish the application in accordance with Regulation 5A of the Planning (Listed Buildings and Conservations Areas) Regulations 1990. Regulation 5A only applies to applications for planning

permission which, as I have said, an application for prior approval is not. Furthermore, it only applies where the local planning authority think that the development would affect the setting of a listed building or the character of a conservation area. It has nothing to do with development affecting a public footpath.

As for the prior approval decision itself:

(a) it is valid in law unless and until quashed by a Court;

(b) the Council does not have the power to withdraw or revoke it (and, moreover, it has no intention of seeking to do so);

(c) although the Council will not initiate any judicial review claim for an order quashing the prior approval decision, were such a claim to be filed by the Society the Council would not resist it (if legitimate grounds of challenge are identified). However while the Council would not resist a claim by the Society, the applicants might; and

(d) in the determination of the extant planning application, the Council intends to give the 4 November 2021 decision either no weight or very limited weight.

I trust that this sets out the Council's position clearly and addresses the issues that you raised. Apologies once again for the delay in our doing so.

Yours sincerely

DF
David Fairbairn BSc(Hons) MA Solicitor | Head of Legal Services and Monitoring Officer
South Hams District Council | West Devon Borough Council
Email: david.fairbairn@swdevon.gov.uk
DD: 01803 861359

From: **Trevor Pearce** Trevor.Pearce@swdevon.gov.uk
Subject: Unauthorised Track Case ref 026853
Date: 24 February 2022 at 11:06
To: South Hams Society southhamssociety@gmail.com

TP

Dear Mr Howell,
Case ref 026853

I am the Enforcement officer dealing with the case, I can answer question 2.
2. whether the planning authority has contacted the agent concerning the incorrect assertion in their application that a permanent track already existed to the site of the barn's location when, as historic aerial photographs publicly available on Google Earth Pro (attached) clearly show, it did not?

I have been in contact with the owner and their agent and have sent the very same google earth image, the following is a snip of part of the email that was sent to the owner and their agent, on the 10th February
Further to receiving the complaint of a breach of planning regulations at the above property, and receipt of your Email of the 7th February, we are still of the opinion that the works that have been done would need Planning permission.

The deeds provided by yourself do not show a track in the position that is currently being formed.
I have taken a snip of the fields from Google earth from 1999, which I have attached, and can accept that there appears that there are tyre tracks along the south boundary of the field nearest the road.
I can see no evidence of a track running up the western boundary of the field nearest the road nor is a track apparent on the northern boundary of the field which is the site of the barn which prior approval was sought.

I have made a site visit to the land, and was able to witness the work that had taken place to scrape out a track along the southern boundary, and the laying of a bed of hard core 1500mm-200mm thick, with the resulting waste soil material spread out on the land immediately adjacent to the track.

I was able to observe the extensive works that have taken place to create the track running up the West hand boundary of the field, nearest to the road.
There is evidence of large Bunds alongside the track, being created by the soil that has been piled during the excavations.

The council, without further evidence provided, cannot agree with your assessment that the works are simply resurfacing existing tracks.

it is for these reasons, the council believes that these works would need planning permission, and therefore unauthorised.

The Owner replied on the 10th February stating that all works would stop.

I have had further correspondence from the owners agent, today 24th February stating that the owner has stopped work and will not be moving forward with any further work on the track or the erection of the building until this issue is sorted.

The agent has also stated that they will now be submitting an application to deal with the track.

Please do not hesitate to contact me, if you have any questions regarding the above complaint.
Yours sincerely,

Trevor Pearce
Specialist-Planning Enforcement
South Hams & West Devon
Email: Enforcement.team@swdevon.gov.uk
Tel: 01803 861159

The Planning Inspectorate

Appeal Decision

Site visit made on 27 January 2021

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2021

Appeal Ref: APP/X1925/W/20/3256050
Millbury Farm, Mill End, Sandon, Buntingford SG9 0RN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Mr J Sapsed against the decision of North Hertfordshire District Council.
- The application Ref 20/01078/AG, dated 22 May 2020, was refused by notice dated 18 June 2020.
- The development proposed is an agricultural building for housing cattle, storage of machinery and feed.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed development would comply with the provisions of Schedule 2, Part 6, Class A of the GPDO with specific regard to the amount of new development.

Reasons

3. The appeal scheme proposes the erection of a new agricultural building, a hardstanding apron in front of it and a three metre wide access track running to it from and existing access adjacent to Mill End.

4. Part 6 of the GPDO defines permitted development under its provisions as the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more (as is the unit subject of the appeal) in area of a) works for the erection, extension or alteration of a building; or b) any excavation or engineering operations. It seems sufficiently clear from this that such works could be either a building or excavation or engineering operations. It could also conceivably be both as there is nothing explicit in the provision of Part 6 that says it could not be.

5. Indeed, Part 6 goes on to say that development is not permitted if the ground area which would be covered by (i) any works or structure (other than a fence) for accommodating livestock or any plant or machinery arising from engineering operations; or (ii) any building erected or extended or altered by virtue of Class A, would exceed 1000 square metres, calculated as described in

paragraph D.1(2)(a). Paragraph D.1(2)(a) defines ground area as that which would be covered by the proposed development, together with the ground area of any building (other than a dwelling), or any structure, works, plant, machinery, ponds or tanks within the same unit which are being provided or have been provided within the preceding 2 years and any part of which would be within 90 metres of the proposed development.

6. For me, this is explicit that permitted development can be both a building and works and sufficiently implicit, based on the fact it is defined as to what can make up the 1000 square metres, that it should be concerned with a sum total of a given proposal. Or indeed any such that has been carried out within the preceding two years and be within 90 metres of the given proposal. By fault or design, I feel this is sufficiently clear by a common sense understanding of the wording of Part 6.

7. The ground area of the building proposed as part of this submission for prior approval would fall well below the 1000 square metre allowance. However, the scheme also includes the provision of a three metre wide access track of substantial length. Such that it would take the combined total over the permitted 1000 square metres. The provision of an access track could be described as works for the purposes of paragraph D.1(2)(a) and indeed an engineering operation for the purposes of Class A.

8. I note the appellant's comments regarding the allowances for works and engineering operations (hardstanding in this case) in the relevant section of Part 6 concerning units under 5 hectares. However, the submission before me concerns Class A. It has been accordingly considered under its specific provisions.

Conclusion

9. Taking the above into account, it seems sufficiently clear to me that the appeal scheme would not comply with the description of permitted development as it is set out by Schedule 2, Part 6, Class A of the GPDO. The appeal is therefore dismissed.

John Morrison

INSPECTOR

LPA Ecology Comments

Date: 28/10/2022

Current headline response: **Further Information Required**

LPA Ecologist: Tom Whitlock on behalf of South Hams District Council

LPA: South Hams **Application reference:** 3184/22/PAA **Applicant / Agent:** Mrs Amanda Burden - Luscombe Maye

Application received by the LPA: 08 September 2022

Weblink: http://apps.southhams.gov.uk/PlanningSearchMVC/Home/Details/223184

Location: Hendham View Woodleigh TQ7 4DP **Applicant's consultant ecologist:** Butler Ecology

LPA Planning Officer: Clare Stewart

Brief description of the proposal: Prior Approval Application for provision of Agricultural tracks following application 2385/22/AGR

Relevant documents supplied as part of the application and date documents written: Wildlife Survey

Date and headline summary of any pre-application advice given: N/A

Habitats / species Amber= lack of information at this stage Green = Information sufficient, conditions/s106 may be required	**Overview of Impacts (survey, results, impact assessment)** LPA ecologist comments / questions in red.	**Overview of mitigation proposals** (avoidance, mitigation, compensation and enhancement/net gain measures) LPA ecologist comments / questions in red.	**Condition / S106**
Phase 1 Habitat Survey/Preliminary Bat Roost and Nesting Bird Assessment			
Wildlife Survey	The site was inspected in August 2022 following national guidelines.		
Statutory designated sites - SAC, SPA (HRA requirements), SSSI, NNR, LNR			
South Hams SAC	The development site lies within the South Hams SAC Sustenance Zone. The development as proposed will lead to the loss of 0.97ha of current cattle grazed pasture. All linear features across the land holding will be retained and protected by a 2m buffer, and no artificial lighting will be deployed onsite. DCC Ecology Comments: It is noted by the LPA ecologist that the onsite habitats do not provide optimum foraging habitats for GHBs and the ultimate need for this application is appreciated. However, given the current land use (i.e. cattle grazed pasture) and proximity of the proposal area to a designated SAC roost, it is unclear how the conclusion has been		Further Conditions may be required on receipt of requested further information.

Habitats / species Amber= lack of information at this stage Green = Information sufficient, conditions/s106 may be required	Overview of Impacts (survey, results, impact assessment) LPA ecologist comments / questions in red.	Overview of mitigation proposals (avoidance, mitigation, compensation and enhancement/net gain measures) LPA ecologist comments / questions in red.	Condition / S106
	drawn the land does not offer any GHB foraging habitat at all in the absence of bat survey data confirming this. For example, it is unclear why the species richness of the grassland impacted by the development will have an impact on the abundance of the GHB prey items which are present within the presumably already present cattle dung? The South Hams SAC guidance is clear that any loss of foraging habitat within a sustenance zone requires mitigation/compensation and a HRA is required to be agreed with Natural England. It needs to be justified further why the site does not offer any GHB foraging habitat at all (other than just sub-optimum foraging habitat) – if this justification cannot be provided then mitigation for the loss of foraging habitat will need to be compensated for elsewhere within the blue line.		
Other Protected Species			
Cirl Bunting	The habitats onsite are unsuitable in	N/A	
Habitats / species Amber= lack of information at this stage Green = Information sufficient, conditions/s106 may be required	**Overview of Impacts (survey, results, impact assessment)** LPA ecologist comments / questions in red.	**Overview of mitigation proposals** (avoidance, mitigation, compensation and enhancement/net gain measures) LPA ecologist comments / questions in red.	**Condition / S106**
	supporting Cirl Bunting. No impacts.		
Nesting birds	No loss of potential nesting habitat.	Hedgerow creation will provide a benefit to nesting birds.	Condition: A Landscape and Ecological Management Plan will be submitted. This will include details relating to habitat creation, species specification and management. This will need to be agreed with the LPA.

7th February 2022

LETTER OF OBJECTION FROM THE SOUTH HAMS SOCIETY

The South Hams Society interest

For the last 60 years, the South Hams Society has been stimulating public interest and care for the beauty, history and character of the South Hams. We encourage high standards of planning and architecture that respect the character of the area. We aim to secure the protection and improvement of the landscape, features of historic interest and public amenity and to promote the conservation of the South Hams as a living, working environment. We take the South Devon Area of Outstanding Natural Beauty very seriously and work hard to increase people's knowledge and appreciation of our precious environment. We support the right development - in the right places - and oppose inappropriate development.

LETTER OF CONCERN REGARDING Application to determine if prior approval is required for a proposed agricultural storage building, land at Butterford SX 719 548 North Huish TQ9 7NL (3808/21/AGR).

The Society would like to bring to the attention of the District Council one of the recommendations that emerged follow a planning application process failure review regarding case officer reports, namely:

Development Management and Licensing Committee

Date: 27 October 2020

Title: **Review of the process followed in connection with Planning Application 3614/18/OPA - Land at SX482725 Plymouth Road Tavistock**

'5.0 Recommendations - The Way Ahead

5.11 ***Reports.***

A clearer framework is required to ensure that reports provide ***a crisp technically accurate legally compliant analysis of an application****. It should be clear from the report what has been taken into account and what has not.* ***The officer report template should therefore****:*

> *5.11.1* ***be reviewed and revised so that it encourages more analysis and questioning and rather less copying of representations into the report body****. A summary of such representations will suffice in most cases. If the full consultation response is required, links to the website can be incorporated into the report.*
>
> *5.11.2* ***identify relevant provisions of the development plan at the beginning and the subsequent analysis should lead to a logical and balanced conclusion.***
>
> *5.11.3 show version/date of clearance by officer and in the case of significant or complex applications, clearance by the Head of Planning or another Senior Planning Specialist. This will aid understanding by members of the public when more than one version of the officer report is published on the Council's planning application pages.*
>
> (Emphasis Added)

The Society has reviewed the planning documentation contained in the planning application 3808/21/AGR submitted for a prior approval request for a barn.

The Society is concerned to find that Permitted Development consent was given to this application on the basis of wrong information provided to the LPA by the applicants or their agent.

The case officer report repeats the errors of fact provided by the planning agent to the extent that it must be a fact that the case officer has not complied with the recommendations of the planning procedure review and, in particular, the requirement for '***more analysis and questioning and rather less copying of representations'.***

For example on page 3 of their Planning statement the applicants' agent states:

'The site chosen** is also away from residential dwellings and **is not visible from any footpath/public vantage points'.

No doubt as a consequence the **case officer's report also erroneously suggests** '*The building would be sited in a field to the North West of the holding, approximately 200m away from the closest residential building **and not visible from any footpath or public vantage points'.***

Both are incorrect.

The photograph below, taken from a point on the PRoW immediately to the west, would clearly show the barn, although partially screened, will still be visible.

In the planning application form, question no. 6 *'Can the site be seen from a public road, public footpath, bridle way or other public land',* the applicant's agent answered ***'No'.***

6. Site Visit

Can the site be seen from a public road, public footpath, bridleway or other public land? ○ Yes ◉ No

If the planning authority needs to make an appointment to carry out a site visit, whom should they contact?

◉ The agent
○ The applicant
○ Other person

Although we did not expect to, because of the type of application, the Society have checked the local paper adverts and can find no advertisement for this application.

The Society therefore informs the local planning authority that the authority has failed to comply with the following planning legislation:

Legislation (Article 8 of the Planning (General Development Procedure) Order 1995 and regulation 5A of the Planning (Listed Buildings and Conservation Areas) Regulations) **requires all local planning authorities (LPAs) to publicise certain applications** (i.e. applications accompanied by an environmental statement; where a proposal departs from the development plan; **for development affecting public right of way** and for major development) **in local newspapers**.

We believe that the planning authority should contact the agent concerning their inaccurate completion of the application form, and inform them the proposal does require a planning application submission.

Similarly the applicants' agent also misinformed the LPA that '*The site for the building has been chosen to serve this 22 acre block of land as it is in a level corner of the field* ***with an access track leading directly to it****, with access to the whole of the site'*.

The satellite image below shows the location of the barn in relation to North Huish Footpath No. 5

Again this statement was incorrect. As the aerial photograph shows, there is no track leading anywhere on the field (The PRoW route and the location of the proposed barn is shown on the image).

Had the case officer been aware of the fact, the applicants might well have been asked why it was not possible to site the barn, supposedly necessary for agricultural purposes in the south east corner of the field, close to the point at which access is gained from the public highway.

Instead the applicants are now excavating a track across the field from the south east to the north west corner, laying down hardcore, and destroying good agricultural land in the process.

The new track being engineered across the field.

The field is steep until it reaches a plateau where the barn is sited at a peak of 95 metres.

The failure to record no track existed to the location of the proposed barn for the application now means the applicant does not have a planning consent in place to permit the construction of this track. Given the LPA's requirement to both conserve and enhance the AONB and the apparent availability of an alternative site that would not have necessitated the destruction of this protected landscape, it is hard to imagine consent would have been forthcoming.

As Bob Neill, the then Parliamentary Under-Secretary of State for Communities and Local Government told the House of Commons on 17 October 2011: *The planning application process relies on people acting in good faith. There is an expectation that applicants and those representing them provide decision makers with true and accurate information upon which to base their decisions.*

Priti Patel subsequently tabled a question on 21 June 2018:

'To ask the Secretary of State for Housing, Communities and Local Government, if he will revise Planning Policy and Planning Guidance to enable decision-makers to refuse planning applications on grounds where (a) an applicant provides misleading and inaccurate information in a Statement of Community involvement submitted with a planning application and (b) an applicant proposing a major development who deliberately circumvents a local planning authorities' stated expectations of the pre-application consultation process'.

The then Minister Dominic Raab responded:

'The Government recognises that it is important that local planning authorities, communities and Planning Inspectors can rely on the information contained in planning applications, and applicants or those representing them are asked to confirm that the information provided is, to the best of their knowledge, truthful and accurate. *There are no current plans to amend existing planning policy and guidance in this regard.*

Local planning authorities are encouraged to provide pre-application advice to applicants. Pre-application engagement by prospective applicants offers significant potential to improve both the efficiency and effectiveness of the planning application system and improve the quality of planning applications and their likelihood of success. It is possible for an applicant to suggest changes to an application before the local planning authority has determined the proposal. It is equally possible after the consultation period for the local planning authority to ask the applicant if it would be possible to revise the application to overcome a possible objection. It is at the discretion of the local planning authority whether to accept such changes, to determine if the changes need to be re-consulted upon, or if the proposed changes are so significant as to materially alter the proposal such that a new application should be submitted.

An application for planning permission is not valid unless it is accompanied by a certificate which applicants must complete that provides certain details about the ownership of the application site and confirms that an appropriate notice has been served on any other owners (and agricultural tenants). It is an offence to complete a false or misleading certificate, either knowingly or recklessly, with a maximum fine of £5,000.

A person who makes a false or misleading statement in connection with a planning application, knowing that it was or might be untrue or misleading, with the intent to make a gain for himself may be prosecuted under the Fraud Act 2006'.

Similarly, in *R (Thornton Hall Hotel Ltd) v Wirral MBC (2018) EWHC 560 (Admin)* unconditional and permanent planning permission for the erection of three marquees on a green belt site was quashed where it had been granted on an erroneous basis.

The Society would argue that because the LPA was misinformed, consent was issued in error and, as Kerr J said it the case cited above, *a planning permission issued in error and without proper authority is invalid and may be declared so or quashed: …"*

The Society recognises that the local planning authority has not given a planning permission in this case, but the authority has however failed to comply with statutory requirements for advertising planning applications, presumably because it was accepted that the applicant's agents had given factually correct information.

The Society wish to know how you will resolve this failure, again look at the inadequacy of planning staff to do *more analysis and questioning and rather less copying of representations* which appears to be the case with this decision.

Richard Howell
Chair - for and on behalf of the South Hams Society

PLANNING REF: 1592/22/FUL

DESCRIPTION: A part retrospective application to regularise & retain an agricultural access track

ADDRESS: Land at Butterford, North Huish, Totnes, TQ9 7NL

LETTER OF OBJECTION FROM THE SOUTH HAMS SOCIETY **06 June 2022**

The South Hams Society interest

For the last 60 years, the South Hams Society has been stimulating public interest and care for the beauty, history and character of the South Hams. We encourage high standards of planning and architecture that respect the character of the area. We aim to secure the protection and improvement of the landscape, features of historic interest and public amenity and to promote the conservation of the South Hams as a living, working environment. We take the South Devon Area of Outstanding Natural Beauty very seriously and work hard to increase people's knowledge and appreciation of our precious environment. We support the right development - in the right places - and oppose inappropriate development.

Introduction

When evaluating application 3808/21/AGR to determine whether prior approval was required for a proposed agricultural storage building on land at Butterford South Hams District Council concluded:

> *'prior approval is not required for the siting, design, and external appearance of the proposed development at the address shown above, as described by the description shown above and in accordance with the information that the developer provided to the local planning authority'*

In reaching this conclusion the Council had to consider:

> *'Whether or not the siting, design, and external appearance of the proposed agricultural building are acceptable, or whether or not the Local Planning Authority requires further details of these elements of the development to be submitted through the prior approval process.'*

However, and as the decision notice states:

> *This decision relates only to the question of whether prior approval would be needed, this decision does not confirm that the proposal is permitted development.'*

More pertinently, the decision notice also made clear:

> *'Prior to any works being commenced, you should satisfy yourself that the development falls within the permitted development criteria identified in Schedule 2 Part 6 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). For a formal confirmation as to whether the proposal is permitted development a certificate of lawful development application can be submitted under Section 192 of the Town and Country Planning Act 1990.'*

Crucially this decision was only arrived at 'in accordance with the information that the developer provided to the local planning authority'. And, critically, not all of that information was correct.

For example, on page 3 of their Planning statement for that application, the applicants' agent stated:

> *'The site chosen is also away from residential dwellings and is not visible from any footpath/public vantage points'.*

Almost certainly as a consequence the case officer's report repeated the same error: 'The building would be sited in a field to the North West of the holding, approximately 200m away from the closest residential building and not visible from any footpath or public vantage points'.

Both officer and applicant are incorrect.

The photograph below, taken from a point on the PRoW immediately to the west, shows the building, although partially screened, will still be clearly visible.

A further photograph again shows the site of the building will also be visible from the lane to the east that runs between Diptford Cott and Broadley.

And a third photograph shows the track, although partially screened throughout the summer, and which is now the subject of application 1592/22/FUL, will again be visible from the lane to the east that runs between Diptford Cott and Broadley.

Had the case officer been aware of the site being visible from public viewpoints to both the east and the west, Article 8 of the Planning (General Development Procedure) Order 1995 and regulation 5A of the Planning (Listed Buildings and Conservation Areas) Regulations) would have required the LPA to publicise the application in the local newspaper.

Were this to have happened local residents would have been aware of the application and so able to alert the case officer to the fact that a further claim by the applicant's agent, that 'the site for the building has been chosen to serve this 22 acre block of land as it is in a level corner of the field with an access track leading directly to it, with access to the whole of the site' was also incorrect.

The Google Earth photographs that follow below and on the next pages again contradict this claim, showing no discernible evidence of any track, only the marks made in various places by vehicle tyres in some years.

This is important because, had the case officer known there was no existing track, the applicants might well have been asked why the building, supposedly necessary for agricultural purposes, could not be sited more sustainably in the south east corner of the field, close to the point at which access is gained from the public highway, where it would also be invisible from any public viewpoints.

It is also worth noting that the fields have been used successfully for purely agricultural purposes for many years, without any previous owner having thought it necessary to construct a track. The steepness of the gradient from north to south is such that the land drains both quickly and easily, almost certainly enabling a tractor to traverse it without difficult throughout the year.

Because the applicants provided incorrect information to the Local Planning Authority, the conclusion reached by the Council in determining application 3808/21/AGR, that prior approval was not required, is arguably invalid.

The fields in 1999 (above) and 2004 (below)

The fields in 2006 (above), 2011 (below), and 2017 (bottom)

The fields in 2021

Errors in Application 1592/22/FUL

Description

Please describe details of the proposed development or works including any change of use

A PART-RETROSPECTIVE APPLICATION TO REGULARISE AND RETAIN AN AGRICUTURAL ACCESS TRACK

This new application (1592/22/FUL) is, to quote the application from submitted by the applicants, "a part-retrospective application to regularise and retain an agricultural access track". This is in itself incorrect. No record of any track exists, and none has been provided by the applicants. Consequently it is impossible to regularise something that has never previously existed.

Nor is this the only error on the form.

According to the applicants the site area of the track is 0.10 hectares. In fact it is 0.208 hectares, before including the hardstanding on which the building is to be located. The calculation is the length of the track 800 metres multiplied by the width of the track 3.5 metres, which equals 2,800 square metres, or 0.208 hectares.

Site Area

What is the measurement of the site area? (numeric characters only).

0.10

Unit

Hectares

Similarly, on their application form, the applicants have answered "No" to the question "Are there trees or hedges on land adjacent to the proposed development site that could influence the development or might be important as part of the local landscape character?"

Trees and Hedges

Are there trees or hedges on the proposed development site?

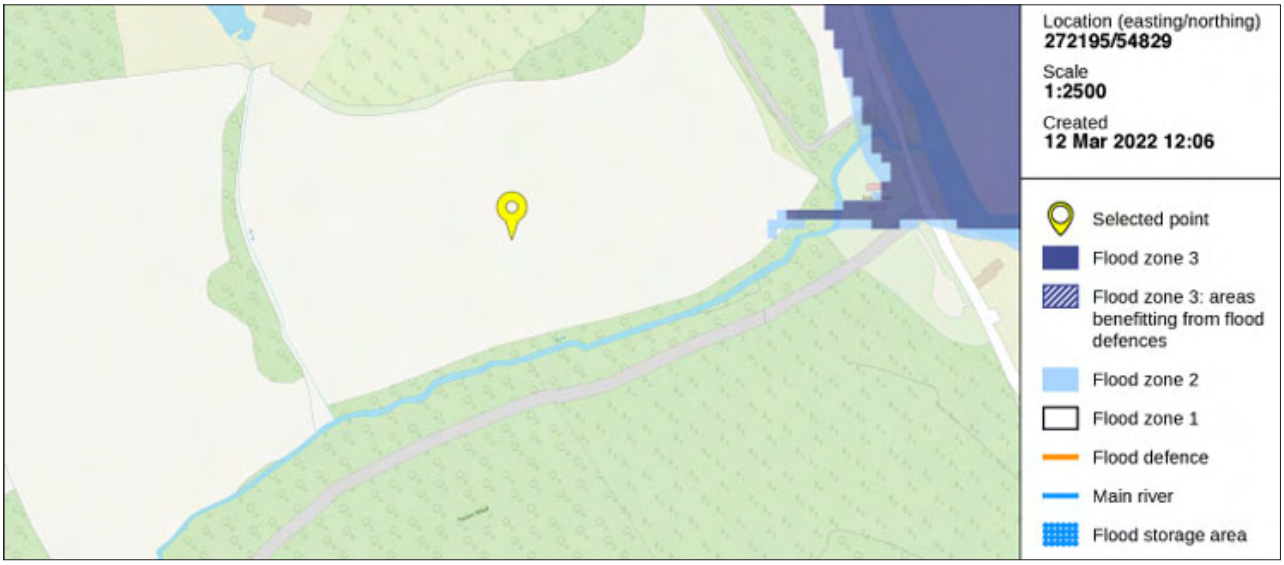
○ Yes
⊘ No

And/or: Are there trees or hedges on land adjacent to the proposed development site that could influence the development or might be important as part of the local landscape character?

○ Yes
⊘ No

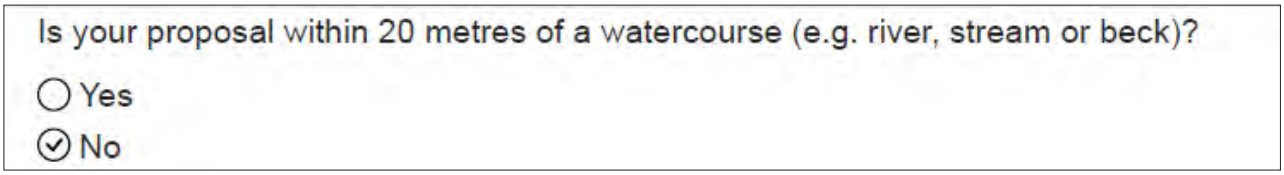
As the photographs above show the track has been constructed without planning permission to a minimum depth of 150mm and immediately adjacent to both trees and hedgerows.

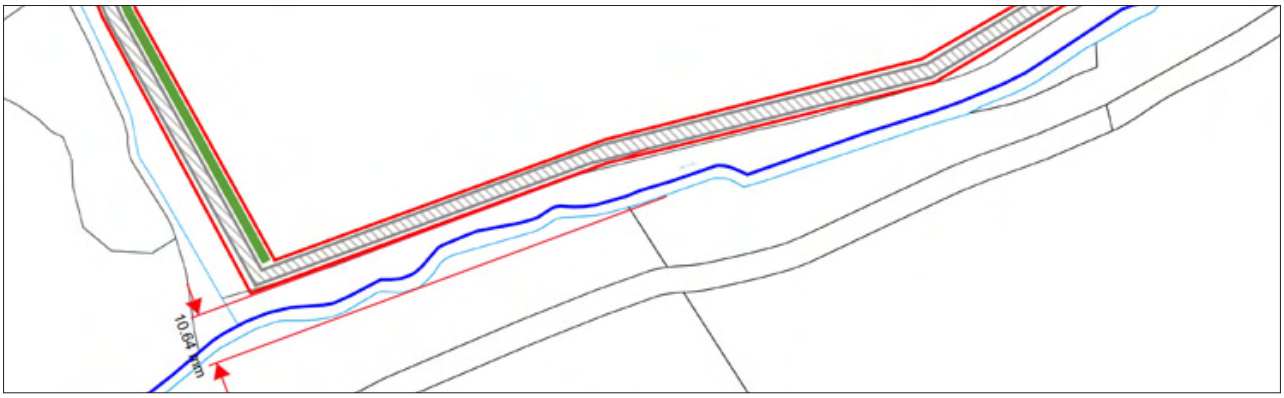
Again, the application form asks whether the site is within an area at risk of flooding. Once again on their application form the applicants have incorrectly answered 'No'. The Environment Agency Flood Map for Planning clearly demonstrates that the entrance to the site, at the point where the track meets the public highway, falls within Flood Zone 3.



The Environment Agency Flood Map for Planning

The next question on the form asks: 'Is your proposal within 20 metres of a watercourse (e.g. river, stream or beck), is again answered incorrectly. As the applicants' submitted Site Location Plan shows, the location of the track is less than 13.5 metres away from the stream that runs in to the River Avon.





The site location plan shows the track is less than 13.5 metres from the stream

Wildlife and Geology Trigger Table

PART A - TRIGGERS FOR A WILDLIFE REPORT	Yes (Wildlife Report required)	No
1a. The application site (red line) is greater than 0.1 hectares*		✓

Again, because the site area of the track is more than 0.1 hectares it triggers the need for a Wildlife Report which the applicants have failed to provide, presumably because they have previously understated the area of the site.

Biodiversity and Geological Conservation

Is there a reasonable likelihood of the following being affected adversely or conserved and enhanced within the application site, or on land adjacent to or near the application site?

To assist in answering this question correctly, please refer to the help text which provides guidance on determining if any important biodiversity or geological conservation features may be present or nearby; and whether they are likely to be affected by the proposals.

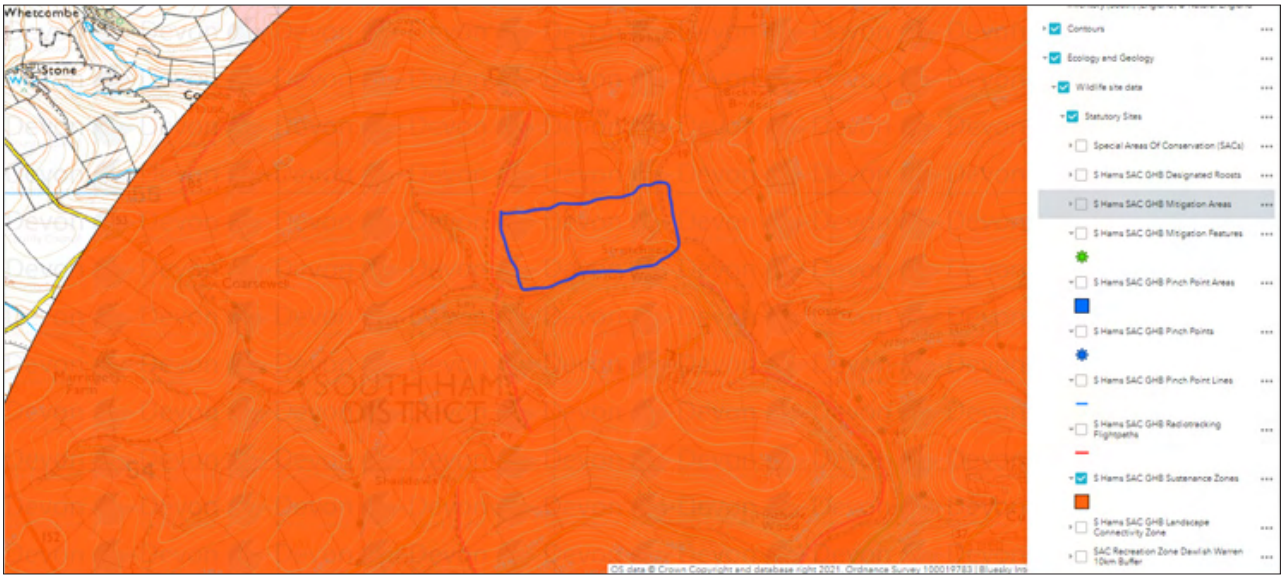
a) Protected and priority species

- ○ Yes, on the development site
- ○ Yes, on land adjacent to or near the proposed development
- ⊘ No

b) Designated sites, important habitats or other biodiversity features

- ○ Yes, on the development site
- ○ Yes, on land adjacent to or near the proposed development
- ⊘ No

Finally the applicants were asked whether 'any important biodiversity or geological conservation features may be present or nearby; and whether they are likely to be affected by the proposals'. Yet again they have incorrectly answered 'No'. High Marks Barn SSSI, which supports the second largest maternity roost of Greater Horseshoe Bats in England is a mere 2.6km from site, well within the 4km Sustenance Zone in which critical Foraging Habitats and Commuting Routes are to be found.



The case officer will therefore have to consider whether the construction of the track, across cattle grazed pasture and in immediate proximity to trees and tall thick hedges might cause loss, damage or disturbance to a potential foraging habitat or potential commuting route.

Consequently the development of the track may well be in conflict with both DEV26 and DEV28.

DEV26 requires the LPA to prevent 'harmful impact on locally designated sites, their features or their function as part of the ecological network, (and) will only be permitted where the need and benefits of the development clearly outweigh the loss and where the coherence of the local ecological network is maintained'.

Given no track previously existed, and given the building could be more sustainably located adjacent to the public highway, the benefits of permitting its development clearly cannot outweighs the loss.

Similarly DEV28 makes the point that 'development that would result in the loss or deterioration of the quality

of important hedgerows including Devon hedgebanks will not be permitted unless the need for, and benefits of, the development in that location clearly outweigh the loss and this can be demonstrated', crucially adding that 'development should be designed so as to avoid the loss or deterioration of woodlands, trees or hedgerows."

It is hard to believe that in locating the track so close to both trees and hedgerows no damage will have been caused to their root systems. And nowhere have the applicants been able to demonstrate how the need for, let alone the benefits of the development in its current location can, in any way, outweigh the almost certain loss.

Crucially the applicants have failed to demonstrate that the site for their new building, for which arguably prior approval was erroneously not required under planning reference 3808/21/AGR, needed to be located in the north west corner of their land. Without evidence being provided that any track previously reached that location, any building or barn needed for agricultural purposes would have been located in the south east corner of the property, adjacent to and well hidden from the public highway.

As a result the applicants cannot argue in their Design & Access statement that

> *'a Prior Notification application would have been supported as the works being carried out would be considered necessary for agricultural purposes. The Applicants did not submit a Prior Notification application as they believed that the works they were carrying out were resorting and resurfacing an existing track according to the historic maps.'*

Significantly no copy of any historic map has been provided and given the number of erroneous statements made by the applicants in both this and their previous application, it would be unwise of the LPA to automatically give credence to this particular claim, particularly given that it is contradicted by the evidence offered by the Google Earth images.

The applicants go on to state:

> *'It is considered that the proposal is in line with the criteria set-out in local and national planning policy. Schedule 2, Part 6 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) grants permitted development rights for agricultural tracks.'*

Schedule 2 A(b) permits:

> *'any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit'.*

However, unless there was no other option but to locate the building in the north west corner of the property, the track cannot be said to be reasonably necessary.

The applicants also quote DEV15 which states (6) 'Development will be supported which meets the essential needs of agriculture or forestry interests.', however it caveats that by saying (8.iv) 'Development proposals should avoid incongruous or isolated new buildings'. By permitting a track where none previously existed the LPA will unnecessarily enable the imposition of an isolated new building in the AONB.

Noticeably the applicants fail to address the requirements of both DEV23 and DEV25.

DEV23 requires development to 'conserve and enhance landscape, townscape and seascape character and scenic and visual quality, avoiding significant and adverse landscape or visual impacts' and 'development proposals should: (1) be located and designed to respect scenic quality and maintain an area's distinctive sense of place and reinforce local distinctiveness.' This requirement can only be achieved if the track were to be removed and the building relocated on the south east corner of the site.

The same policy also requires development to (2) 'conserve and enhance the characteristics and views of the area along with valued attributes and existing site features such as trees, hedgerows and watercourses that contribute to the character and quality of the area.' Given the reservations that have been expressed earlier there is no certainty that existing site features such as trees, hedgerows and watercourses will have been conserved and enhanced by the construction of the track.

Similarly development is required to (3) 'be located and designed to prevent erosion of relative tranquility and intrinsically dark landscapes, and where possible use opportunities to enhance areas in which tranquility has been eroded'. By permitting a track to be constructed immediately to the south of Lower Clunkamoor the tranquility of residents there will be disturbed by tractors and other machinery having to travel back and forward along the track in order to access the barn, again a problem that could be avoided or at least mitigated were the barn to have been located in the south east corner of the property.

Policy DEV25 unequivocally states that the key test for any development proposal is the need to 'conserve and enhance' natural beauty. As a consequence the LPA must (2) 'give great weight to conserving landscape and

scenic beauty'. The other considerations against which this application must be measured and against which the application has already been shown to conflict are as below:

Policy DEV25
Nationally protected landscapes

The highest degree of protection will be given to the protected landscapes of the South Devon AONB, Tamar Valley AONB and Dartmoor National Park. The LPAs will protect the AONBs and National Park from potentially damaging or inappropriate development located either within the protected landscapes or their settings. In considering development proposals the LPAs will:

2. Give great weight to conserving landscape and scenic beauty in the protected landscapes.

4. Assess their direct, indirect and cumulative impacts on natural beauty.

5. Encourage small-scale proposals that are sustainably and appropriately located and designed to conserve, enhance and restore the protected landscapes.

8. Require development proposals located within or within the setting of a protected landscape to:

i. Conserve and enhance the natural beauty of the protected landscape with particular reference to their special qualities and distinctive characteristics or valued attributes.

iv. Be designed to prevent impacts of light pollution from artificial light on intrinsically dark landscapes and nature conservation interests.

v. Be located and designed to prevent the erosion of relative tranquility and, where possible use opportunities to enhance areas in which tranquility has been eroded.

vi. Be located and designed to conserve and enhance flora, fauna, geological and physiographical features, in particular those which contribute to the distinctive sense of place, relative wildness or tranquillity, or to other aspects of landscape and scenic quality.

ix. Avoid, mitigate, and as a last resort compensate, for any residual adverse effects.

Before this application is determined the applicant should provide a 'Drainage (Surface Water) Assessment - Non-Major Applications' if the surface of the track, 'surfaced with Road Planing/Rolled Stone to create hard level surface', is impermeable and/or if it can be shown to increase flood risk or pollution elsewhere, given that the track could both increase the amount of water entering the stream as previously detailed, and that pieces of the track surface could be both washed in to that stream as well as being brought on to the public highway beside the Avon by the tyres of vehicles leaving the site. The public highway at this point is prone to flooding

The steepness of the slope ensures it drains quickly and surfacings from the track could wash in to the stream to the right

following heavy rain, and any rolled stone or road planings deposited on the road are likely to be washed in to the river.

It is worth noting that asphalt planings can contain a high level of contaminants and that rainwater running through planings can pick up contaminants and transport them into the groundwater or nearby watercourses.

The application could also require a Flood Risk Assessment, as part of the track is within Flood Zone 3, as well as to satisfy DEV35 and ensure that water quality and amenity/habitat value have been taken into account, are not impacted upon and are positively promoted within the proposals in accordance with current best practice guidance.

Conclusion

Had application 3808/21/AGR not been erroneously given Permitted Development consent as a result of incorrect information provided by the applicants or their agent, local residents would have had the opportunity to alert the LPA to the fact that before the track that is the subject of this application was constructed, no track previously existed.

As a consequence, given a more sustainable and less damaging alternative exists, Local Plan Policies make it highly improbable that consent would have been given for the construction of a building in the north west corner of the site. The environmental damage that has occurred as a consequence of the construction of the track is considerable, not merely in terms of the excavation and destruction of agricultural land, but also in the transport of the rolled stone to the site where it has since been deposited.

As Bob Neill, the then Parliamentary Under-Secretary of State for Communities and Local Government told the House of Commons on 17 October 2011:

> *'The planning application process relies on people acting in good faith. There is an expectation that applicants and those representing them provide decision makers with true and accurate information upon which to base their decisions.'*

Pritti Patel subsequently tabled a question on 21 June 2018:

> *'To ask the Secretary of State for Housing, Communities and Local Government, if he will revise Planning Policy and Planning Guidance to enable decision-makers to refuse planning applications on grounds where (a) an applicant provides misleading and inaccurate information in a Statement of Community involvement submitted with a planning application and (b) an applicant proposing a major development who deliberately circumvents a local planning authorities' stated expectations of the pre-application consultation process'.*

The then Minister Dominic Raab responded:

> *'The Government recognises that it is important that local planning authorities, communities and Planning Inspectors can rely on the information contained in planning applications, and applicants or those representing them are asked to confirm that the information provided is, to the best of their knowledge, truthful and accurate.'*

Yet notwithstanding such expectations, this latest application also contains a number of incorrect assertions.

If the LPA decides to approve this application they will be both rewarding the applicants and/or their agent for their failure to provide accurate information and setting a precedent that others may attempt to exploit.

Instead, if the integrity of the planning system is to be protected, this application should be refused and the applicants required to remove the track already constructed, make good the damage they have caused to a protected landscape, and resubmit an application to either construct both a building and a track, or else to construct a building in a more sustainable and less damaging location.

Richard Howell
Chair – for and on behalf of the South Hams Society

PLANNING REF: 4012/22/FUL

DESCRIPTION: Application to regularise & retain an agricultural access track (part retrospective)

ADDRESS: Land at Butterford, North Huish, Totnes, TQ9 7NL

LETTER OF OBJECTION FROM THE SOUTH HAMS SOCIETY **22 December 2022**

The South Hams Society interest

For the last 60 years, the South Hams Society has been stimulating public interest and care for the beauty, history and character of the South Hams. We encourage high standards of planning and architecture that respect the character of the area. We aim to secure the protection and improvement of the landscape, features of historic interest and public amenity and to promote the conservation of the South Hams as a living, working environment. We take the South Devon Area of Outstanding Natural Beauty very seriously and work hard to increase people's knowledge and appreciation of our precious environment. We support the right development - in the right places - and oppose inappropriate development.

Planning History

When evaluating application 3808/21/AGR to determine whether prior approval was required for a proposed agricultural storage building on land at Butterford South Hams District Council concluded:

> *'prior approval is not required for the siting, design, and external appearance of the proposed development at the address shown above, as described by the description shown above and in accordance with the information that the developer provided to the local planning authority'*

In reaching this conclusion the Council had to consider:

> *'Whether or not the siting, design, and external appearance of the proposed agricultural building are acceptable, or whether or not the Local Planning Authority requires further details of these elements of the development to be submitted through the prior approval process.'*

However, and as the decision notice states:

> *This decision relates only to the question of whether prior approval would be needed, this decision does not confirm that the proposal is permitted development.'*

More pertinently, the decision notice also made clear:

> *'Prior to any works being commenced, you should satisfy yourself that the development falls within the permitted development criteria identified in Schedule 2 Part 6 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). For a formal confirmation as to whether the proposal is permitted development a certificate of lawful development application can be submitted under Section 192 of the Town and Country Planning Act 1990.'*

Crucially this decision was only arrived at 'in accordance with the information that the developer provided to the local planning authority'. And, critically, not all of that information was correct.

For example, on page 3 of their Planning statement for that application, the applicants' agent stated:

> *'The site chosen is also away from residential dwellings and is not visible from any footpath/public vantage points'.*

Almost certainly as a consequence the case officer's report repeated the same error:

> *'The building would be sited in a field to the North West of the holding, approximately 200m away from the closest residential building and not visible from any footpath or public vantage points'.*

Both officer and applicant were incorrect.

The photograph below, taken from a point on the PRoW immediately to the west, shows the building, although partially screened, will still be clearly visible.

A further photograph again shows the site of the building will also be visible from the lane to the east that runs between Diptford Cott and Broadley.

And a third photograph shows the track, although partially screened throughout the summer, and which is now the subject of application 4012/22/FUL, will again be visible from the lane to the east that runs between Diptford Cott and Broadley.

Had the case officer been aware of the site being visible from public viewpoints to both the east and the west, Article 8 of the Planning (General Development Procedure) Order 1995 and regulation 5A of the Planning (Listed Buildings and Conservation Areas) Regulations) would have required the LPA to publicise the application in the local newspaper.

Were this to have happened local residents would have been aware of the application and so able to alert the case officer to the fact that a further claim by the applicant's agent, that 'the site for the building has been chosen to serve this 22 acre block of land as it is in a level corner of the field with an access track leading directly to it, with access to the whole of the site' was also incorrect.

The publicly available Google Earth photographs that follow below and on the next pages again contradict this claim, showing no discernible evidence of any track, only the marks made in various places by vehicle tyres in some years.

The fields in 1995 (above) and 2004 (below)

The fields in 2006 (above), 2011 (below), and 2017 (bottom)

The fields in 2020

This is important, as *7.62 Considerations For Decision-Taking On Development Proposals In Or Affecting AONBs* on page 122 of the JLP Supplementary Planning Document July 2020 requires twelve questions that appear on page 87 of the South Devon AONB Planning Guidance Checklist to be answered. Questions 2, 4 and 12 ask:

> *2. For any development, could it be located on land of lesser environmental value, with less harm to the AONB?*
>
> *4. Has the application taken all reasonable opportunities to avoid and to mitigate harm?*
>
> *12. Will the development conserve the AONB's landscape and scenic beauty?*

The AONB Planning Guidance then states:

> *If any of the answers are negative ('No') then those AONB matters indicate that the development should be refused owing to the likelihood of material harm to the AONB*

The Supplementary Planning Document echoes this conclusion advising officers:

> *'Proposal is unlikely to be acceptable in AONB terms' and to 'Weigh all material considerations giving great weight to the conservation of landscape and scenic beauty of the AONB and applying the s85 CROW Act duty to the decision'*

Consequently, had the case officer known there was no existing track, the applicants should have been asked why the building, supposedly necessary for agricultural purposes, could not be sited more sustainably in the south east corner of the field, close to the point at which access is gained from the public highway, where it would also be invisible from any public viewpoints.

Here it is worth noting that the applicants no longer claim 'the site for the building has been chosen to serve this 22 acre block of land as it is in a level corner of the field with an access track leading directly to it'. Instead, in their latest Design & Access Statement (4012/22/FUL) they now only suggest:

> *they believed that the works they were carrying out were resorting and resurfacing an existing track according to the historic maps*

echoing the claim made in their Design & Access Statement for application 1592/22/FUL, in which they wrote:

> *The Applicants did not submit a Prior Notification application as they believed that the works they were carrying out were resorting and resurfacing an existing track according to the historic maps.*

Significantly, no evidence has ever been provided as to the existence of any historic map showing an existing track. Unless that evidence can be provided, and the applicants have had every opportunity to do so, it is only possible to conclude the LPA was intentionally provided with incorrect information in order to ensure prior approval would not be required for the proposed agricultural storage building.

On 02 August 2022 the Council's Planning Business Manager informed the Society:

> *I have discussed this site with both Trevor Pearce and Charlotte Howrihane and we have reviewed the additional information which has been brought to our attention particularly information which contradicts the assertion in the Planning Statement saying that the site of the proposed building had an existing access track leading*

to it. The prior notification application was determined in accordance with the information submitted and provided to Officers at the time. In reviewing the information provided and historic aerial photographs the Council now considers that the proposed building no longer has a lawful access track leading to it.

Given these concerns we are seeking the opinion of the Council's Lawyers regarding the validity of the application and decision reached by the Council.

We will update you once we have received a response from our Legal Team.

On 23 November, some 16 weeks later, the Council's solicitor finally confirmed that, in her opinion, the application was valid. The decision that Prior Approval was not required for the proposed building, she wrote, was 'sound'. The Council', she declared, 'does not intend to take any further action'.

Unfortunately, and notwithstanding both a request from the Society and the fact that the Council has a statutory duty to give reasons for decisions set out in Regs 7 and 8 of the Openness of Local Government Bodies Regulations 2014, she failed to provide her reasoning.

Logically the Council's solicitor could only arrive at her conclusion on the basis that the planning officer was not to know the information provided by the applicant was incorrect. And, as a result, when evaluated against the information as provided, the decision reached by the officer was 'sound'.

However, had the officer known the information was incorrect, it is hard to see how she could have arrived at the same decision. s327A of the Town & Country Planning Act 1990 provides that:

"1) This section applies to any application in respect of which this Act or any provision made under it imposes a requirement as to–

(a) the form or manner in which the application must be made;

(b) the form or content of any document or other matter which accompanies the application.

(2) The local planning authority must not entertain such an application if it fails to comply with the requirement."

Unless the Council is of the view that there is no requirement for the form or content of any document or other matter accompanying applications to be accurate, then any application that contains incorrect information that could be a material consideration affecting its determination ought not to be entertained.

Indeed, had a Prior Notification application for the track been submitted and advertised before construction works began, as should have been required, and given how other and more sustainable sites for an agricultural storage building clearly existed, coupled with the ecological and environmental damage that the construction of the track would cause, it is extremely hard to see how consent for the track would have been given without alternative locations being considered.

To quote The Hon. Mrs Justice Thornton (Holocaust Memorial Case, Neutral Citation Number: [2022] EWHC 829 (Admin)):

130. The principles on whether alternative sites are an obviously material consideration which must be taken into account are well established. Where there are clear planning objections to development then it may well be relevant and indeed necessary to consider whether there is a more appropriate alternative site elsewhere. This is particularly so when the development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it (Trusthouse Forte v Secretary of State for the Environment (1987) 53 P & CR 293 at 299-300).

Kimberley Ziya of Landmark Chambers summarised the Planning Inspector's conclusions referred to by Mrs Justice Thornton as follows:

- *If there are alternative locations for a proposal that would avoid an environmental cost, these should be taken into account*
- *Particularly if there are viable alternative sites that could accommodate the proposal without harm*
- *BUT, while it may be relevant and necessary to consider alternative proposals:*

  "in order that it may garner significant weight, the merits of such alternatives must, logically, be underpinned by a good measure of evidence demonstrating their viability and credibility as such an alternative."

The failure to take possible alternatives in to account was also referred to in [272]: Derbyshire Dales District Council v SSCLG [2010] 1 P&CR 19, where Carnwath LJ identified two distinct categories of legal error:

1. *DM erred by taking alternatives into account*
2. *DM erred by failing to take alternatives into account*

- *2nd error can only arise if:*
  - *– There is a legal or policy requirement to take alternatives into account; OR*
  - *– Alternatives were an "obviously material" consideration in the case and it was -> irrational not to take them into account*

Consequently it is clear that consent should not have been given to 3808/21/AGR, that alternatives to the consented site should have been considered, and that consent was only given as a result of the applicant having provided the LPA with information that they either knew or should have known to be incorrect.

Errors in Application 4012/22/FUL

A PART-RETROSPECTIVE APPLICATION TO REGULARISE AND RETAIN AN AGRICUTURAL ACCESS TRACK (RESUBMISSION OF 1592/22/FUL)

This new application (4012/22/FUL) is, to quote the application form submitted by the applicants, "a part-retrospective application to regularise and retain an agricultural access track". This is in itself incorrect, and repeats the same error made in 1592/22/FUL. No record of any track exists, and none has been provided by the applicants. Consequently it is impossible to regularise something that has never previously existed.

Nor is this the only error on the form.

According to the applicants the site area of the track is 0.10 hectares. In fact it is 0.208 hectares, before including the hardstanding on which the building is to be located. The calculation is the length of the track 800 metres multiplied by the width of the track 3.5 metres, which equals 2,800 square metres, or 0.208 hectares. Again this repeats the same error made in 1592/22/FUL.

Site Area

What is the measurement of the site area? (numeric characters only).

0.10

Unit

Hectares

Similarly, on their application form, the applicants have again answered "No" to the question "Are there trees or hedges on land adjacent to the proposed development site that could influence the development or might be important as part of the local landscape character?" This repeats the same error made in 1592/22/FUL

Trees and Hedges

Are there trees or hedges on the proposed development site?

○ Yes
⊘ No

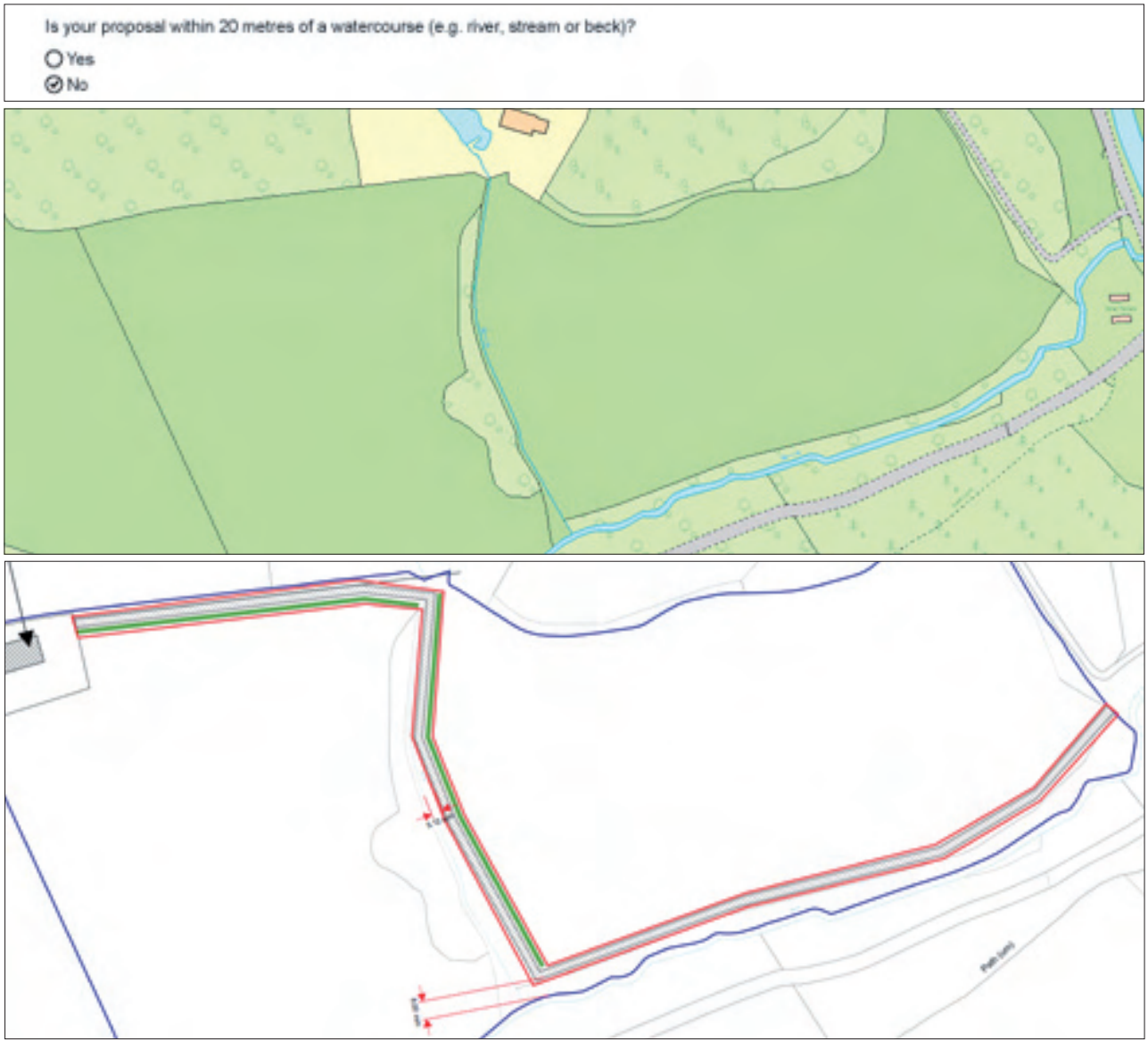
And/or: Are there trees or hedges on land adjacent to the proposed development site that could influence the development or might be important as part of the local landscape character?

○ Yes
⊘ No

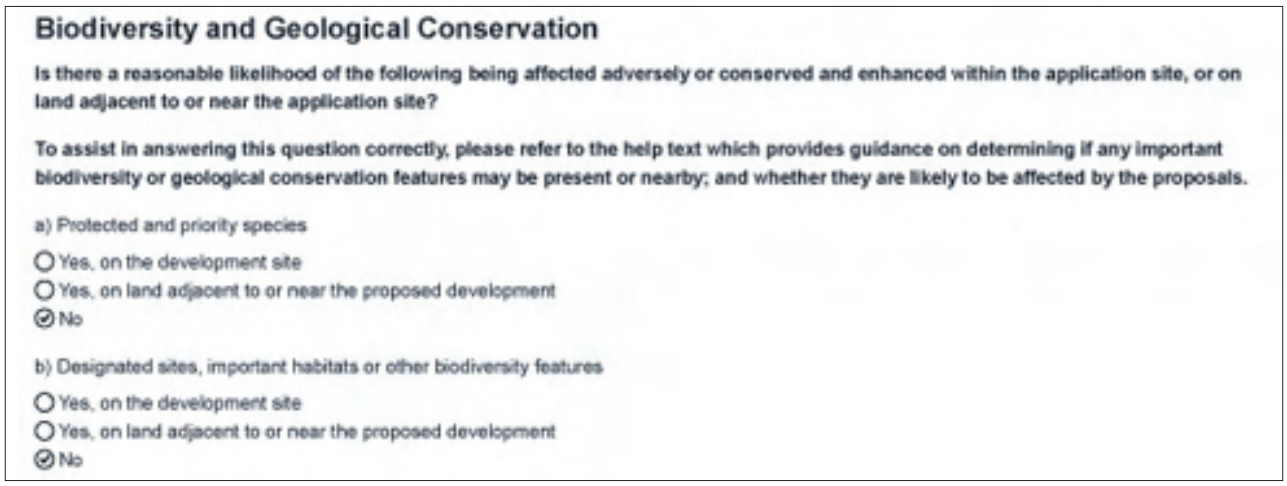
As the photographs above show the track has been constructed without planning permission to a minimum depth of 150mm and immediately adjacent to both trees and hedgerows.

Again, the application form asks whether the site is within an area at risk of flooding. Once again on their application form the applicants have incorrectly answered 'No'. The Environment Agency Flood Map for Planning below clearly demonstrates that the entrance to the site, at the point where the track meets the public highway, falls within Flood Zone 3.

The next question on the form asks: 'Is your proposal within 20 metres of a watercourse (e.g. river, stream or beck), is again answered incorrectly. As the applicants' submitted Site Location Plan shows, the location of the track is less than 10 metres away from the stream that runs in to the River Avon.



Finally in response to the three questions concerning Biodiversity and Geological Conservation the applicant's agent has again answered 'No' to two key questions, stating that there is no reasonable likelihood of either 'Protected and priority species' or 'Designated sites, important habitats or other biodiversity features' being affected adversely or conserved and enhanced within the application site, or on land adjacent to or near the application site. This is clearly incorrect but, on this occasion, a Preliminary Ecological Appraisal does at least accompany the application.



Biodiversity and Geological Conservation

Is there a reasonable likelihood of the following being affected adversely or conserved and enhanced within the application site, or on land adjacent to or near the application site?

To assist in answering this question correctly, please refer to the help text which provides guidance on determining if any important biodiversity or geological conservation features may be present or nearby; and whether they are likely to be affected by the proposals.

a) Protected and priority species

- ○ Yes, on the development site
- ○ Yes, on land adjacent to or near the proposed development
- ⊘ No

b) Designated sites, important habitats or other biodiversity features

- ○ Yes, on the development site
- ○ Yes, on land adjacent to or near the proposed development
- ⊘ No

However, in all of the above instances, it is noticeable that the applicant's agent again repeats the errors made in 1592/22/FUL, which she has since had every opportunity to correct. Her failure to do so, and the fact she has confirmed in her declaration dated 15 November 'that, to the best of my/our knowledge, any facts stated are true and accurate and any opinions given are the genuine options of the persons giving them', might make it unwise to rely on any other claims she might make on behalf of this application.

The Applicant's Ecological Appraisal

A Preliminary Ecological Appraisal, undertaken by Western Ecology in July 2022 accompanies the application.

Unfortunately it was only undertaken after much of the construction work on the track was already complete. For example it states:

> *Hedgerows should be protected from accidental damage by a 2 metre protection zone for the duration of the construction phase.*

As the photographs earlier on page 7 clearly demonstrate, no 2 metre protection zone was left between the hedgerows and the track. Similarly, according to the Appraisal:

> *There is potential for Dormice to be associated with habitats bounding and within the Site. The provision of a 2 metre protection zone running adjacent to these habitats will ensure that Dormice are not deterred from using this habitat during the construction phase.*

Given the potential for impact it is perhaps unfortunate that the Appraisal does not appear to have established whether dormice, 'a species "of principal importance for the purpose of conserving biodiversity', were still present in the hedgerows following the construction work that had already taken place. As a result, and because the necessary protection zone was not in place, further surveys will be required. According to the Appraisal:

> *This will involve placing Dormouse nesting tubes within suitable habitats at the Site and monitoring over a period sufficient to score a survey effort of 20.*

What is certain is that starting construction without those mitigation measures being in place was at best irresponsible and it is surprising the Appraisal omits to say so, while the failure to do so conflicts with JLP Policy DEV28, Trees, woodlands and hedgerows:

> *Development that would result in the loss or deterioration of the quality of:*
>
> - *Ancient woodland, aged or veteran trees or impact on their immediate surroundings;*
> - *Other woodlands or high amenity trees including protected trees;*
> - *Important hedgerows including Devon hedgebanks; will not be permitted unless the need for, and benefits of, the development in that location clearly outweigh the loss and this can be demonstrated.*
>
> *Development should be designed so as to avoid the loss or deterioration of woodlands, trees or hedgerows.*

The development that has taken place was clearly not designed to avoid the loss of trees or hedgerows, and it is hard to believe that in locating the track so close to both trees and hedgerows no damage will have been caused

to their root systems. And nowhere have the applicants been able to demonstrate how the need for, let alone the benefits of the development in its current location can, in any way, outweigh the almost certain loss.

Again, while the Appraisal acknowledges:

The hedgerow habitat is a Habitat of Principal Importance (JNCC & Defra, 2012) but…

it goes on to suggest it:

…does not qualify as Ecologically Important for the purposes of the Hedgerow Regulations 1997.

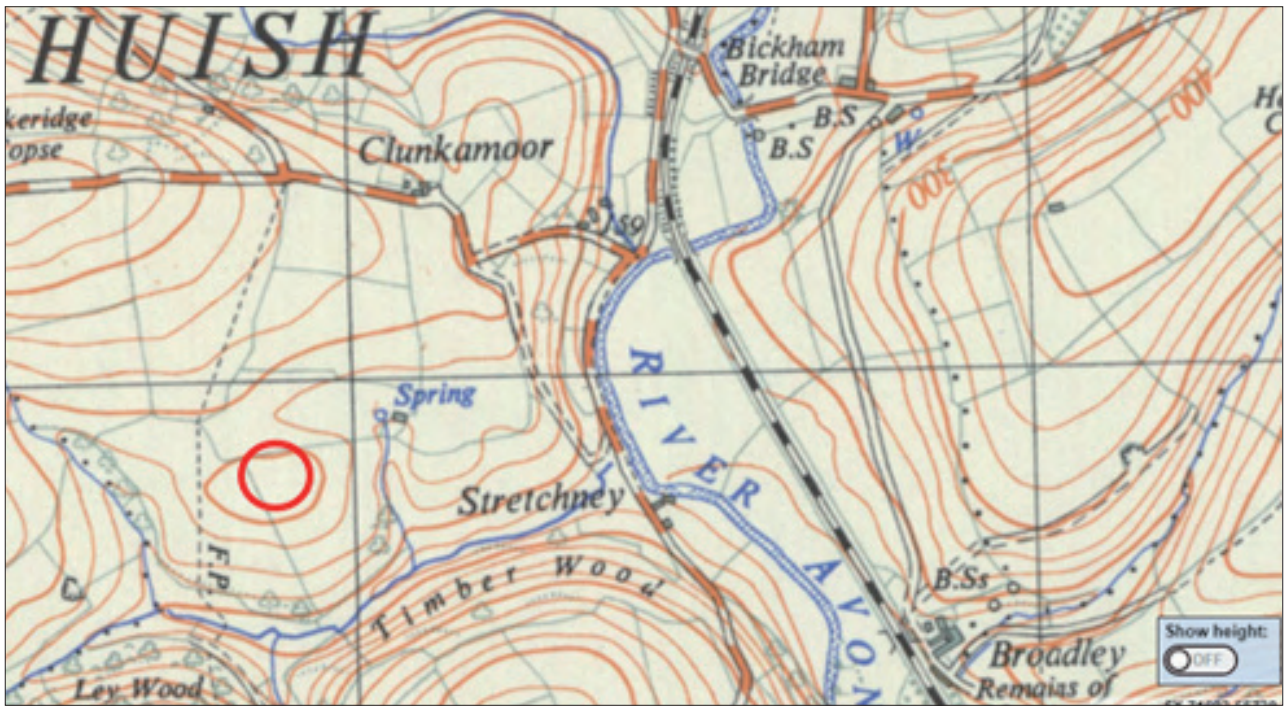
In The Hedgerows Regulations 1997 the criteria for determining "important" hedgerows, a hedgerow is "important" if it, or the hedgerow of which it is a stretch,—

has existed for 30 years or more; and

(b) satisfies at least one of the criteria listed in Part II of Schedule 1.

Given there can be no doubt the hedgerow has existed for considerably more than 30 years (it is there on both the 1886 Ordnance Survey Map and 1839 tithe map) and is almost certainly an integral part of a field system pre-dating the Inclosure Acts (Part II of Schedule 1 5(a)).

The map above is OS Six Inch Series 1888-1913, that below OS 1:25000 1931-1967 series – note no track!



The 1839 Tithe Map shows the field boundaries remain unchanged to this day

The hedgerow also contains (Part II of Schedule 1 6(a)) Ash (Fraxinus excelsior), Blackthorn (Prunus spinosa), Hawthorn (Crataegus monogyna), Hazel (Corylus avenella) and Oak, pedunculate (Quercus robur), along with some Maple (Acer campestre) and Spindle (Euonymus europaeus).

The hedgerow is also joined by others at right angles and abuts areas of woodland.

As a result the hedgerow should be considered an 'important' hedgerow, and The Hedgerow Regulations 1997 require the LPA to proceed on the presumption that it should be protected unless there are circumstances strong enough to justify removal.

The Appraisal merely states the 'dominant species within the hedgerow were hawthorn, blackthorn and bramble'. However it omits to mention that by far the dominant species is Hazel (Corylus avellana), and dormice need hazel.

As well as dormice, amongst Natural England's 'Definition of Favourable Conservation Species for Hedgerows' the 'threatened priority species significantly associated with hedgerows' recorded in the immediate proximity of the site, the Society has been told, are: common toad, grass snake, slow worm, common lizard, cuckoo, lesser spotted woodpecker, marsh tit, starling, tree sparrow, greenfinch, linnet, barbastelle bat and serotine bat.

The Google Earth image overleaf dated June 2022 shows that much of the track is largely hidden under the canopies of both the mature trees and the trees in the hedgerow. It is therefore inevitable that the root systems will also have extended beneath the track to at least the same extent as the canopy cover, so it is impossible to believe no damage will have occurred. The fact that this is not spelt out in the Appraisal is unfortunate.

Nonetheless the Appraisal does correctly note the close proximity of the development to High Marks Barn SSSI and the consequent requirement for the LPA to consult Natural England, as well as the possible need to screen the potential of the development to impact the Plymouth Sound and Estuaries SAC and Tamar Estuaries Complex SPA, and the requirement for an appropriate assessment as per Article 6(3) and (4) of the Habitats Directive 92/43/EEC (as amended).

The site lies well within the 4km Sustenance Zone for Greater Horseshoe Bats

This Google Earth image, dated June 2022, clearly shows much of the track lies beneath the tree and hedgerow canopies. By being constructed so close to both, with no 2 metre protection zone, it is probable significant ecological damage will have occurred.

High Marks Barn SSSI supports the second largest maternity roost of Greater Horseshoe Bats in England and is a mere 2.6km from site, well within the 4km Sustenance Zone in which critical Foraging Habitats and Commuting Routes are to be found.

To quote from page 21 of the Appraisal:

> *The proposed development will not result in loss, damage or disturbance to: a designated roost; potential foraging habitat; potential commuting roost; pinch point; or existing mitigation features. There will be no increased risk of collisions.*

No evidence is provided for this initial assertion, and the destruction of 2,800m2 of pasture farmland to accommodate the track has, by definition, resulted in the loss of more than two-thirds of an acre of potential foraging habitat.

Indeed this assertion is later qualified on page 26 of the Appraisal, where it states:

> *The grassland habitat comprising the development footprint has been assessed as being of limited value for foraging and commuting bats: however, there is potential for light-averse bat species such as greater horseshoe bats to be associated with adjacent hedgerow, tree and woodland boundary habitats.*
>
> *Due to the limited scale of the development footprint, and limited value to foraging bats of the habitat to be lost to the development in relation to the wider landscape, bat activity transects are not considered proportionate to the very low level of risk to foraging and commuting bats posed by this development.*

Natural England may well disagree. And what the Appraisal omits to acknowledge is the impossibility of preventing light spill continuing long after any construction work is finally completed. The track lies immediately alongside both a hedgerow and a line of mature trees and, unless no light ever leaks from the barn or no vehicles are ever driven to or from the barn after dusk or before sunrise, negative impacts will prove impossible to prevent. In such circumstances it is simply not possible to ensure 'Lighting (is) directed into the site, away from boundary and wooded habitats', given that much of the track runs beneath as well as immediately alongside those habitats.

To reiterate the Guidance in Paragraph 180 of the National Planning Policy Framework:

> *When determining planning applications, local planning authorities should apply the following principles:*
>
> *a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*
>
> *b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;*

The only 'benefit' provided by the proposed development is to enable the applicant's agricultural storage building to be located in the north-west corner of their property. It is also worth noting that the fields have been used successfully for purely agricultural purposes for many years, without any previous owner having thought it necessary to construct a track. The steepness of the gradient from north to south is such that the land drains both quickly and easily, almost certainly enabling a tractor to traverse it without difficult throughout the year.

JLP Policy DEV26, Protecting and enhancing biodiversity and geological conservation, echoes the NPPF:

> *Development should support the protection, conservation, enhancement and restoration of biodiversity and geodiversity across the Plan Area. Specific provisions are identified below:*
>
> *3. Development likely to have a harmful impact on locally designated sites, their features or their function as part of the ecological network, will only be permitted where the need and benefits of the development clearly outweigh the loss and where the coherence of the local ecological network is maintained.*
>
> *4. Harmful impacts on European and UK protected species and Biodiversity Action Plan habitats and species must be avoided wherever possible, subject to the legal tests afforded to them where applicable, and unless the need for, or benefits of the development clearly outweigh the loss.*

Given the failure to ensure a two-metre gap between hedgerows and trees and the loss of more than two-thirds of an acre of pasture grassland there is no doubt the development has already had an adverse impact on biodiversity.

On page 126 of the JLP Supplementary Planning Document July 2020 the question is asked: 'is the proposal likely to have an effect on biodiversity?', adding if yes: 'is there a less harmful site/layout?'. To which the answer is

also 'yes'.

On biodiversity grounds alone the LPA should refuse this application, require the applicant to relocate the site of their proposed agricultural building to the south-east corner of the site, adjacent to and well hidden from where access is gained from the public highway, remove the track, and make good the damage already done.

The Applicant's Landscape And AONB Statement

Paragraph 1.4 of the applicant's Landscape and AONB Statement accepts:

> *Both the JLP and the NPPF place great weight on the conservation and enhancement of the AONB. Whilst the site is not particularly visible from public viewpoints, the impact on the physical landscape can also result in harm to the AONB setting. The hard landscaping and engineering resulting from the track, as well the associated increase in vehicle movements would have a negative impact on the existing tranquil character of the site and wider AONB.*

The Statement continues:

> *2.17 The site and the immediate landscape have a high degree of tranquillity owing to it being sparsely settled with steep wooded valleys and coombes and served by few roads.*
>
> *2.19 In conclusion and having appraised the above factors it is judged that the site and the immediate landscape is of High Landscape Value consistent with the high value of the wider designated landscape.*
>
> *The issue of tranquility is subsequently addressed and its impact modified as follows:*
>
> *3.3 With regard to the 'strong sense of tranquillity' of the character type, the occasional movements of farm vehicles are unlikely to be perceived by visual receptors. The route of the track following well treed field boundaries will provide a high level of visual containment for any vehicle movements on the track. As there are few publicly accessible points in the area it is unlikely that noise will be experienced by receptors.*

Significantly the Statement fails to acknowledge the existence of the Public Right of Way immediately to the west of the site, from where the noise from vehicle movements along the track and in and around the proposed agricultural storage building will be clearly audible, while some movements may also be visible through gaps in the hedgerow. Any noise will also disturb the tranquility of the residents of Lower Clunkamoor.

Similarly the presence of the PRoW is also ignored in that section of the Statement addressing Visibility From Public Viewpoints. This omission is surprising, given the Statement includes no fewer than five versions of the relevant Ordnance Survey Map, on all of which the Footpath is clearly shown. However the Statement does accept:

> *Further study however would be required to fully assess the visual effects.*

The photographs on pages 2 showing views from such public viewpoints as the PRoW and the lane from Diptford Cott to Broadley, both of which were available to the applicants and their agent in the Society's objection to 1592/22/FUL, could suggest further study would indeed have been useful.

The Statement concludes by confirming 'the site and immediate context have a high landscape value' although 'the effects in relation to the AONB would be Neutral in the long-term as the mitigation planting matures.'

Nonetheless, the Statement has previously accepted that while:

> *'the site is not particularly visible from public viewpoints, the impact on the physical landscape can also result in harm to the AONB setting. The hard landscaping and engineering resulting from the track, as well the associated increase in vehicle movements would have a negative impact on the existing tranquil character of the site and wider AONB.*

That has to be weighed against the requirements of Joint Local Plan Policy DEV25, relating to Nationally protected Landscapes, spelt out overleaf.

This application arguably fails against all of these requirements, while the JLP Supplementary Planning Document July 2020 additionally makes clear:

> *7.57 The key test for any development proposal is the need to 'conserve and enhance' natural beauty.*

Self-evidently the imposition of this track on a previously unspoilt landscape does nothing to conserve and enhance natural beauty. Instead it needs to be judged:

> *7.58 …on the basis of a series of factors including special qualities, natural heritage, local distinctiveness, historic and cultural heritage, dark skies and natural nightscapes, tranquillity, and the delivery of management plan objectives.*

As nobody can argue that unnecessary and unwarranted damage of the AONB is a management plan objective, the application again fails against all of the specified criteria.

Policy DEV25
Nationally protected landscapes

The highest degree of protection will be given to the protected landscapes of the South Devon AONB, Tamar Valley AONB and Dartmoor National Park. The LPAs will protect the AONBs and National Park from potentially damaging or inappropriate development located either within the protected landscapes or their settings. In considering development proposals the LPAs will:

2. Give great weight to conserving landscape and scenic beauty in the protected landscapes.

4. Assess their direct, indirect and cumulative impacts on natural beauty.

5. Encourage small-scale proposals that are sustainably and appropriately located and designed to conserve, enhance and restore the protected landscapes.

8. Require development proposals located within or within the setting of a protected landscape to:

i. Conserve and enhance the natural beauty of the protected landscape with particular reference to their special qualities and distinctive characteristics or valued attributes.

iv. Be designed to prevent impacts of light pollution from artificial light on intrinsically dark landscapes and nature conservation interests.

v. Be located and designed to prevent the erosion of relative tranquility and, where possible use opportunities to enhance areas in which tranquility has been eroded.

vi. Be located and designed to conserve and enhance flora, fauna, geological and physiographical features, in particular those which contribute to the distinctive sense of place, relative wildness or tranquillity, or to other aspects of landscape and scenic quality.

ix. Avoid, mitigate, and as a last resort compensate, for any residual adverse effects.

The application satisfies none of the criteria listed above

The Applicant's Design & Access Statement

According to the applicants:

> *The track is required to facilitate the safe movements of tractors and agricultural machinery especially during the winter months when the ground conditions worsen. Due to the topography of the land, in wet weather the Applicants will be unable to travel across the land to feed the livestock and carry out essential welfare checks on the animals. Therefore the track is vital for getting the agricultural machinery around the land and supporting this agricultural enterprise.*

However, were the storage building to be located in the south-east corner of the site, tractors and agricultural machinery could still move safely along the level southern boundary of the site from east to west throughout the year, so enabling the movement of agricultural machinery and livestock between the fields, as well as making it possible to feed livestock and carry out essential welfare checks on the animals.

Whether the applicants look up at their fields from the south or down from the north visibility will remain the same, and stock will be just as happy coming downhill to feed as they will going up. The need to get agricultural machinery around the land will also vary according to the seasons. The point has already been made that the steepness of the gradient from north to south is such that the land drains both quickly and easily, almost certainly enabling a tractor to traverse it without difficult throughout the year, and any grass cutting would of necessity involve machinery travelling over pasture and not the track.

The Design & Access Statement states:

> *The track will provide a hard-surfaced access route from the gateway to the agricultural building which was approved under 3808/21/AGR and will provide a much safer and more accessible access across the Applicants land.*

In other words, if the agricultural building is not constructed in the north-west corner, access to it will not be required and the track is unnecessary.

Conversely, were it to be constructed in the south-east corner the number of vehicle movements beneath and alongside both trees and hedgerows would be reduced very significantly, minimising the danger of light pollution and disturbance to bats and other wildlife species, along with the residents of Lower Clunkamoor.

Other points raised in the applicants' Design & Access Statement that have not previously been addressed include the claim:

> *The construction of the track would have benefitted from permitted development rights under Schedule 2, Part 6 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).*

Schedule 2 A(b) permits:

> *'any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit'.*

However, unless there was no other option but to locate the building in the north west corner of the property, the track cannot be said to be reasonably necessary.

The applicants also quote DEV15 which states (6) 'Development will be supported which meets the essential needs of agriculture or forestry interests.', however that is caveated by (8.iv) 'Development proposals should avoid incongruous or isolated new buildings'. By permitting a track where none previously existed the LPA would unnecessarily enable the imposition of an isolated new building in the AONB.

Referring to DEV23, the applicants say:

> *It is confirmed within the LVA that there will be no severe detrimental impact on the landscape character as agricultural tracks/green lanes are found typically in the local landscape. It also confirms that the position of the track is most appropriate within the setting and is well contained in the wider landscape.*

DEV23 requires development to 'conserve and enhance landscape, townscape and seascape character and scenic and visual quality, avoiding significant and adverse landscape or visual impacts' and 'development proposals should: (1) be located and designed to respect scenic quality and maintain an area's distinctive sense of place and reinforce local distinctiveness.' This requirement can only be achieved if the track were to be removed and the building relocated on the south east corner of the site.

The same policy also requires development to (2) 'conserve and enhance the characteristics and views of the area along with valued attributes and existing site features such as trees, hedgerows and watercourses that contribute to the character and quality of the area.' Given the reservations that have been expressed earlier there is no certainty that existing site features such as trees, hedgerows and watercourses will have been conserved and enhanced by the construction of the track.

Similarly development is required to (3) 'be located and designed to prevent erosion of relative tranquility and intrinsically dark landscapes, and where possible use opportunities to enhance areas in which tranquility has been eroded'. By permitting a track to be constructed immediately to the south of Lower Clunkamoor the tranquility of residents there will be disturbed by tractors and other machinery having to travel back and forward along the track in order to access the barn, again a problem that could be avoided were the barn to be located in the south east corner of the property.

Why both 3808/21/AGR and 4012/22/FUL should be considered as one application

In October 2021 the application to determine whether prior approval was required for a proposed agricultural storage building was submitted to the LPA. No more than three months later, construction of the track began. And, as the applicant's Design & Access Statement makes clear, the purpose of the track is to 'provide a hard-surfaced access route from the gateway to the agricultural building'.

As a result the LPA now needs to consider whether the proposed development would comply with the provisions of Schedule 2, Part 6, Class A of the GPDO with specific regard to the amount of new development.

Here the Society would refer officers to the decision reached by the planning inspector (Appeal Ref: APP/X1925/W/20/3256050) in the case of Millbury Farm. In dismissing that appeal, the inspector gave as his reasons:

> *3. The appeal scheme proposes the erection of a new agricultural building, a hardstanding apron in front of it and a three metre wide access track running to it from and existing access adjacent to Mill End.*
>
> *4. Part 6 of the GPDO defines permitted development under its provisions as the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more (as is the unit subject of the appeal) in area of a) works for the erection, extension or alteration of a building; or b) any excavation or engineering operations. It seems sufficiently clear from this that such works could be either a building or excavation or engineering operations. It could also conceivably be both as there is nothing explicit in the provision of Part 6 that says it could not be.*

5. Indeed, Part 6 goes on to say that development is not permitted if the ground area which would be covered by (i) any works or structure (other than a fence) for accommodating livestock or any plant or machinery arising from engineering operations; or (ii) any building erected or extended or altered by virtue of Class A, would exceed 1000 square metres, calculated as described in paragraph D.1(2)(a). Paragraph D.1(2)(a) defines ground area as that which would be covered by the proposed development, together with the ground area of any building (other than a dwelling), or any structure, works, plant, machinery, ponds or tanks within the same unit which are being provided or have been provided within the preceding 2 years and any part of which would be within 90 metres of the proposed development.

6. For me, this is explicit that permitted development can be both a building and works and sufficiently implicit, based on the fact it is defined as to what can make up the 1000 square metres, that it should be concerned with a sum total of a given proposal. Or indeed any such that has been carried out within the preceding two years and be within 90 metres of the given proposal. By fault or design, I feel this is sufficiently clear by a common sense understanding of the wording of Part 6.

7. The ground area of the building proposed as part of this submission for prior approval would fall well below the 1000 square metre allowance. However, the scheme also includes the provision of a three metre wide access track of substantial length. Such that it would take the combined total over the permitted 1000 square metres. The provision of an access track could be described as works for the purposes of paragraph D.1(2)(a) and indeed an engineering operation for the purposes of Class A.

8. I note the appellant's comments regarding the allowances for works and engineering operations (hardstanding in this case) in the relevant section of Part 6 concerning units under 5 hectares. However, the submission before me concerns Class A. It has been accordingly considered under its specific provisions.

Taken together, the ground area occupied by both the proposed agricultural storage building (3808/21/AGR) and the track (4012/22/FUL) comfortably exceeds 1,000 square metres. Consequently the conclusion reached by the inspector, namely:

9. Taking the above into account, it seems sufficiently clear to me that the appeal scheme would not comply with the description of permitted development as it is set out by Schedule 2, Part 6, Class A of the GPDO. The appeal is therefore dismissed.

would also apply here.

Quite simply, the agricultural storage building can no longer be considered permitted development.

Conclusion

As the Decision Notice issued by the LPA for application 3808/21/AGR makes clear, the reason why prior approval would not be needed for the construction of the applicants' agricultural storage building was the declaration by the applicants themselves that 'the development falls within the permitted development criteria identified in Schedule 2 Part 6 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)'.

In support of that declaration the applicant or their agent offered the LPA information they must have known to be incorrect. Had they not done so, and for the reasons detailed on page 3, local residents would have been able to alert the LPA to the fact that before the track that is the subject of this application was constructed, no track previously existed.

As a consequence, and given a more sustainable and less damaging alternative exists, Local Plan Policies make it highly improbable that consent would have been given for the construction of a building in the north west corner of the site. The environmental damage that has occurred as a consequence of the construction of the track is considerable, not merely in terms of the excavation and destruction of agricultural land, but also in the transport of the rolled stone to the site where it has since been deposited.

As Bob Neill, the then Parliamentary Under-Secretary of State for Communities and Local Government told the House of Commons on 17 October 2011:

'The planning application process relies on people acting in good faith. There is an expectation that applicants and those representing them provide decision makers with true and accurate information upon which to base their decisions.'

Pritti Patel subsequently tabled a question on 21 June 2018:

'To ask the Secretary of State for Housing, Communities and Local Government, if he will revise Planning Policy and Planning Guidance to enable decision-makers to refuse planning applications on grounds where

(a) an applicant provides misleading and inaccurate information in a Statement of Community involvement submitted with a planning application and (b) an applicant proposing a major development who deliberately circumvents a local planning authorities' stated expectations of the pre-application consultation process'.

The then Minister Dominic Raab responded:

'The Government recognises that it is important that local planning authorities, communities and Planning Inspectors can rely on the information contained in planning applications, and applicants or those representing them are asked to confirm that the information provided is, to the best of their knowledge, truthful and accurate.'

Yet notwithstanding those expectations, this latest application also contains a number of incorrect assertions.

Consequently, were the LPA to decide to approve this application they would effectively be both rewarding the applicants and/or their agent for their failure to provide accurate information and setting a precedent that others may attempt to exploit.

In R (Thornton Hall Hotel Ltd) v Wirral MBC (2018) EWHC 560 (Admin) Kerr J concluded:

29. The grant of planning permission takes effect on written notification of the decision. …

30. There is no power to withdraw a planning permission once granted, on the basis of an administrative error in the decision making process …

31. Nor can an effective planning permission, once issued in error, be altered by issuing an amended notice of planning permission …

32. On the other hand, a planning permission issued in error and without proper authority is invalid and may be declared so or quashed: …"

He did so because he believed that allowing the permission to stand would subvert the public interest in the integrity of the planning process.

For whatever reason the LPA has opted not to quash or declare application 3808/21/AGR invalid. However, and for the reasons outlined earlier, now that this application (4012/22/FUL) has come forward, the agricultural storage building should no longer be considered permitted development.

Similarly, if the integrity of the planning system to be protected, this application (4012/22/FUL) should be refused and the applicants required to remove the track already constructed, and make good the damage they have caused to a protected landscape.

After that, and should they then wish, they can submit a fresh application to construct their building in a more sustainable and less damaging location.

We urge officers to refuse this application.

Richard Howell

Chair – for and on behalf of the South Hams Society

Newsletter / 17

The never ending saga of Butterford

Long-time readers of this Newsletter will recall our making mention of a series of applications on land at Butterford in the parish of North Huish, featuring as it did in all five of our issues published between April 2022 and April 2023 – all of which remain available on our website.

Fortunately not every inappropriate development with which the Society has to contend proves quite so time consuming. But in addition to the various letters of representation and concern that our planning team found it necessary to submit, we also wrote to the LPA on a further 37 occasions.

And that was just to convince the LPA their decision to approve the original application was 'unsound'.

Since then we have added to our initial correspondence by sending another 35, attempting to first 'encourage' enforcement officers to take action and then, following their decision to prematurely close their investigation, to subsequently undertake a full case review, the outcome of which is that a new enforcement case has now been opened.

That is very much the shortened version of what has happened to date. Bear with us and a fuller version follows.

Our tale begins on 9 February 2022, when the Society submitted a Letter of Concern in respect of application 3808/21/AGR that sought to determine whether prior approval was required for a proposed agricultural storage building, on land at Butterford in the parish of North Huish.

Significantly there were important errors of fact in the

The track carved across the landscape and up the hill

documentation submitted on behalf of the applicant, and the case officer had simply repeated those errors in determining the application. Amongst those was the claim there was already existing track leading to the intended location for the building.

Had either a site visit been undertaken or, alternatively, nothing more onerous than checking Google Earth prior to the application being determined, it would have been immediately obvious that the claimed track was a fiction. In our letter we took the opportunity to remind officers of the words of Kerr J: 'a planning permission issued in error and without proper authority is invalid and may be declared so or quashed'. The judge was speaking during R (Thornton Hall Hotel Ltd) v Wirral MBC (2018) EWHC 560 (Admin). We also pointed out that the construction of a track had since begun, for which no planning consent was in place.

An Enforcement Case was immediately opened, only to be closed once the landowner submitted a retrospective application to retain the track. Our objection to 1592/22/FUL followed on 6 June. The application was then withdrawn on 03 July after the applicant had been told it would not receive consent. A further retrospective application 4012/22/FUL was subsequently submitted in November, with our objection being sent in just before Christmas. That application in turn was eventually withdrawn in April 2023.

However, while all this was going on, the Society continued to challenge the LPA on the determination of the original application 3808/21/AGR. Back in February of 2022, shortly after submitting our Letter of Concern, we also wrote to the Council's Head of Development Management Practice asking him to respond to three specific questions. An answer to one of those questions was received from a Planning Enforcement Officer.

In his response, and contrary to the claim made by the applicant, he confirmed there was no existing track. He also confirmed 'the owner has stopped work and will not be moving forward with any further work on the track or the erection of the building until this issue is sorted.'

Further was to follow until, at the start of August, the LPA's Planning Business Manager told the Society:

> we have reviewed the additional information which has been brought to our attention particularly information which contradicts the assertion in the Planning Statement saying that the site of the proposed building had an existing access track leading to it. The prior notification application was determined in accordance with the information submitted and provided to Officers at the time. In reviewing the information provided and historic aerial photographs the Council now considers that the proposed building no longer has a lawful access track leading to it.
>
> Given these concerns we are seeking the opinion of the Council's Lawyers regarding the validity of the application and decision reached by the Council.

It was to be a further four months before that opinion was finally received, on this occasion from the Council's Locum Planning Lawyer:

> I write further to your letter dated 7 February 2022 in respect of the application for prior notification as to whether Prior Approval was required for a proposed agricultural storage building at the above site.
>
> I have now given full consideration not only to the content of your letter but also the application

...Continued page 18

Soil heaped next to where the track has been cut in to the field

The track being excavated immediately next to the hedgerow

… The never ending saga of Butterford

The digger on the track through the trees

that was submitted and the subsequent decision made by the planning officer.

The Council is satisfied that the decision is sound and the Council does not intend to take any further action. I can also confirm that consideration was also properly given to the question of the siting of the barn and any impact it might have on the AONB.

Replying to the Locum Planning Lawyer we again itemised the misinformation provided by the applicant on which the planning officer had relied in order to reach her decision, before asking for confirmation:

that, had the information submitted by the applicant been factually correct, the planning officer would still have reached her decision that prior approval was not required, and provide the basis on which you reach that conclusion.

No response was received, so we decided to submit a Freedom of Information Request to the Council's Head of Legal Services on 08 December 2022, in which we noted that the Council has both a statutory duty to give reasons for decisions, as set out in Regs 7 and 8 of the Openness of Local Government Bodies Regulations 2014, as well as a common law duty to give reasons for planning decisions. We also posed three questions that followed on from the Locum Planning Lawyer's decision, namely:

a) whether she concluded the decision was sound on the basis of the information provided by the applicant

b) whether she concluded the decision was sound even though, and notwithstanding the information provided by the applicant:

i) the site of the proposed building was actually visible from both the PRoW to the west and the lane running down from Diptford Cott to Broadley to the east and, as a consequence, Article 8 of the Planning (General Development Procedure) Order 1995 and regulation 5A of the Planning (Listed Buildings and Conservation Areas) Regulations) should have required the LPA to publicise the application in the local newspaper.

ii) that as there was no existing track to the site of the proposed building, and given that the LPA has a statutory duty to both conserve and enhance the AONB, it was unnecessary for the planning officer to question whether the building could not be sited more sustainably in the south east corner of the field, close to the point at which access is gained from the public highway, where it would also be invisible from any public viewpoints.

c) whether any decision can be considered 'sound' if it is taken on the basis of information that subsequently turns out to be incorrect

Two months later, on 06 February 2023, the Council's Head of Legal Services acknowledged:

Having considered the matter again and notwithstanding what was said in our letter dated 23 November 2022, the Council accepts that the decision to issue the prior approval was unsound in the sense that the decision-making process was flawed because there was no assessment of whether the works for the erection of the proposed building were reasonably necessary for the purposes of agriculture within the agricultural unit; there was no express consideration of the proposed development in the context of the AONB and the Council proceeded on the basis that there was an existing access track when there was no such access track.

As for the prior approval decision itself:

although the Council will not initiate any judicial review claim for an order quashing the prior approval decision, were such a claim to be filed by the Society the Council would not resist it (if legitimate grounds of challenge are identified).

It goes without saying that, as a small charity, the Society lacks the funds to fight expensive court cases and, even were it to be otherwise, there is a six week window within which a judicial review claim can be made, facts of which the Council's Head of Legal Services might well have been aware.

However, although the Society had been vindicated in its efforts, there was still the question of the track, and whether that should be allowed to remain.

On 02 May 2023 the Society had been told by the Council's Specialist-Planning Enforcement:

the owner is aware that if permission is not granted they will need to remove the track, and restore the land to its previous condition.

Just over a month later, in a further email, he wrote:

In areas where the track has been cut into the slopes of the field, the owner will be either breaking down the edge or filling in to restore the track area to a more natural slope.

Yet despite these commitments some months and a good many emails later the Society received notification from the Enforcement Team on 03 November that:

Enquiries have been carried out into the alleged breach of planning control and a site visit was carried out on the 3rd October 2023.

It was clear on the previous visit of the 6th June 2023 that a lot of the track had been cleared, I can confirm that following the site visit of the 3rd October, it was confirmed that further track clearance had taken place.

The council is now satisfied that the track has been cleared, to a satisfactory standard.

The case was accordingly closed. A further flurry of emails followed, the Society refuting some of the statements made by the Enforcement Team and providing written and photographic evidence in support.

Not only had the track not been removed and the land restored to its previous condition, but the route it had followed remained scarred across the landscape, with the soil removed in its construction piled in banks beside it. Most but not all of the stone that had been spread on its surface had gone, heaped in a pile elsewhere on the site, from where we feared it could all too easily be replaced at some point in the future.

We had also previously reminded the Council's Specialist-Planning Enforcement that according to the applicant's Design & Access Statement that accompanied the second of the retrospective applications submitted to retain the track (4012/22/FUL):

The track is also required to facilitate the safe movements of tractors and agricultural machinery, especially during the winter months when the ground conditions worsen and the ground becomes poached/damaged. Due to the topography of the land the Applicants needed to create a safer access to get the machinery and equipment across the land as in wet weather the Applicants will be unable to travel across the land to feed the livestock and carry out essential welfare checks on the animals.

In other words without the track the viability of the proposed building in its preferred location, and for which planning permission remains in place, would be doubtful, while the choice of that location was far from immediately obvious.

Indeed, asked why anyone would choose to build an agricultural storage building on top of a hill at almost the furthest point from the public highway and the entrance to the site, a local farmer could only suggest 'the view is better from there'.

…Continued page 19

Newsletter / 19

Conserving in (and out of) Lockdown

Whilst joining together to stay home, protect the NHS and help save lives, we are hearing of an improving our air quality as we travel less in our cars etc. But, with extra time on our hands and some lovely sunny spring weather, many of us are spring cleaning, washing, painting and dusting … everything! Hands up if you've hand washed the car … that's going nowhere fast?!

This is going to have some environmental impacts – it may well be very small but now consider how many other people are doing the very same thing? This is the point.

Whilst Climate Change, Water Quality and Wildlife Conservation might not be our top immediate priority at the moment, even locked-down, we are all still making and leaving footprints on our natural environment, our life-support-system.

When I give talks about the nature and management of our estuaries, and their water catchment areas, people are knocked sideways by the incredible beauty of our wildlife and ecology - found right bang on our doorstep. Following my talk question #1 is invariably, "What can we all do to play our part?"

There is obviously an expectation that I will come out with a big project that everyone can sign up to, donate to, sponsor, whatever … and close the door on that big nasty for evermore – put to bed, done and dusted! Unfortunately, in the real non-magic world of muggles, the real answer is the boring one … not so much an elephant-in-the-room as a nest full of ants … it really is the small stuff we all already knew.

Keep wet-wipes out of sewers, streams and rivers

It's not about beating ourselves up about every single item of plastic we end up buying or bit of food we waste (or for that matter others around you that haven't woken up yet) – it's about trying - trying to do our best ourselves … yep, all those little things that actually we did already know.

- Reduce > Reuse > Repurpose > Recycle > Refuse re'sponsibly [sic]
- Only the 4Ps down the toilet … Paper, Pee, Poo & Puke
- Reduce FOG down the sink … Fats, Oils and Greases
- Food waste should be composted where possible and not disposed of down the sink
- Flushable wipes rarely are … and shouldn't be anyway!
- Read the packet instructions for garden chemicals … more often does more harm than good (check your slug pellets – avoid metaldehyde pellets)
- Road drains normally drain to the nearest natural watercourse – Only Rain Down the Drain!
- Streams are vital wildlife corridors – leave them wild and don't treat them as compost bins
- Our waste water disposal system has its limitations – it can suffer from overload with clean rainwater during rainwater events – check your drainage for misconnections and see if you can retrofit a Sustainable Drainage System to fill a pond, water butt or soakaway naturally
- Out of date medicines should never be flushed away – take them back to a pharmacy for responsible disposal – some active chemicals don't breakdown within the normal rural system
- Modern engines and oils don't need warming up to work and if it's cold, wear more

etc. etc.

… pretty much, all common sense stuff! All of it easy, none of it individually life changing or challenging … maybe a little boring BUT (and it's a really BIG BUT), the more that we all do these stupidly simple things, the bigger and the positive the impact will be on our air quality, our countryside, our streams, our rivers, our beaches and seas … our health and wellbeing, our very life support system – our lovely plant! This is the concept of 'cumulative impacts', all together we can make a positive difference.

And sorry, this isn't just for one day, one week or one year – probably like the coronavirus, this is something that we all need to live and work with – but unlike the coronavirus, there is even less of a chance of a vaccination-like solution, so again, it's up to all of us.

Live sustainably to save your quality of life. •

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… The never ending saga of Butterford

Then finally, on 13 November, the Council's Planning Business Manager wrote to the Society:

> I can advise that in light of the concerns which you have raised we have undertaken a full case review. The outcome of which is that a new case will be opened with our Senior Enforcement Officer taking the lead. I will be closely overseeing the investigation and you will be provided with further updates once the case has been progressed.

Of course, given the facts of the case are well-known, you might have thought any update would be quickly forthcoming. So as we wrote in correspondence number 38 to the Council's Planning Business Manager on 14 December:

> It is now more than a month since you kindly informed me that a new case was being reopened.
>
> Although I appreciate you cannot report on its progress the facts are well established, and it is hard to envisage why it should take very much time for officers to establish what action needs to be taken.
>
> I was therefore wondering whether as yet you have any idea as to when a further update might be forthcoming?

A reminder of the damage the track has caused

The Council's Planning Business Manager replied just before Christmas on 22 December. She wrote:

> I can confirm that the investigation is progressing and I anticipate you being provided with an update when the next steps in the investigation process are taken.

So we replied by return, repeating the point we had made previously:

> Very many thanks for getting back to me, although I have to confess to bemusement that any 'investigation' should take this length of time. The facts of the case are both well-known and well-established. In an email of 02 May (sent at 12:05pm) the Council's Specialist-Planning Enforcement made a commitment that 'the owner is aware that if permission (for the track 1592/22/FUL) is not granted they will need to remove the track, and restore the land to its previous condition.'
>
> And in a further email on 07 June he then went on to state: 'In areas where the track has been cut into the slopes of the field, the owner will be either breaking down the edge or filling in to restore the track area to a more natural slope.
>
> Although some but certainly not all of the stone on the track surface has since been removed the track itself remains where it has been cut in. It has not been filled in and the land has not as yet been restored to its previous condition.
>
> Surely all that remains to happen is for the LPA to ensure the commitments made by your colleague are undertaken?

No doubt this saga will one day reach a conclusion. And we trust officers will not find it 'expedient' to renege on their commitments and take no further action. For the planning system to retain credibility it is important that enforcement should be seen to be both proactive and effective.

The fear with Butterford as it stands is that it will prove to be neither. •