

PLANNING APPLICATION REPORT

Case Officer: Chloe Allen

Parish: Stokenham **Ward:** Stokenham

Application No: 2455/23/AGR

Agent:

Mr James Wotton
Greenslade Taylor Hunt
8 Erme Court
Leonards Road
Ivybridge
PL21 0SZ

Applicant:

Mr & Mrs I Foale
LT Foale & Son
Higher Kellaton Farm
Kellaton
TQ7 2ES

Site Address: Land At Sx 800 396, Kellaton

Development: Application to determine if prior approval is required for a proposed extension for a general purpose agricultural building measuring 41.1m (L) x 24.3m (B) x 7.5m height to ridge

Recommendation: Agricultural determination refused.

1. Article 3(1)(5)(a) of the Town and Country (General Permitted Development)(England) Order 2015 (as amended) (GPDO) states that *'The permission granted by Schedule 2 does not apply if— (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful;...'*

The proposed development is for an extension to an existing building, part of which was constructed after May 2020 and is unlawful. Therefore, the permission granted by Class A, Part 6, Schedule 2 of the GPDO does not apply.

2. Insufficient information has been provided for the Local Planning Authority to be satisfied that the extension, which is of a large size measuring 41.1m (length) x 24.3m (breadth) x 7.5m (height), is reasonably necessary for the purposes of agricultural with the agricultural unit as required by Class A(A), Part 6, Schedule 2 of the GPDO.
3. Notwithstanding the points made in parts 1 and 2, were the development considered to be permitted by Class A, Part 6, Schedule 2 of the GPDO, prior approval would be required for the siting, design and external appearance of the development, and the following information would be requested:
 - Justification for the siting of the proposal in this location and the design of the building (including its size), with reference to the agricultural/forestry needs of the holding and how the development is reasonably necessary for the purposes of agricultural within the agricultural unit.
 - Details of existing and proposed levels, including a site layout plan and section drawings. Levels must be shown relative to a fixed and identifiable datum point which is identified on the plan (the datum point must not be taken from any structure which are to be demolished or can be moved). The site layout plan must show the points at which the cross-section(s) have been taken and the cross sections should extend beyond the site boundary to show how the proposal relates to surrounding surface features, vegetation and topography and how they fit into the landscape context.
 - Landscape and visual impact assessment of the proposal, including any ground works, along with any mitigation in the form a landscaping scheme, and a comparison to other potential sites within the holding in order to ascertain whether the proposed siting represents the least visually intrusive site within the holding.

4. Notwithstanding the points made in parts 1 and 2, Regulation 9 of the Conservation of Habitats and Species Regulations 2010 states that 'competent authority must exercise their functions which are relevant to nature conservation.... so as to secure compliance with the requirements of the Directives.' Accordingly, competent authorities must consider the Directives in making decisions relating to any of their planning functions.

The site lies within the open countryside and there are existing landscape features and buildings which could provide habitat for protected species. In the absence of an ecology report assessing the potential impacts of the development and identifying any required mitigation measures, the Local Planning Authority cannot be satisfied that the development would not harm protected species/habitats.

Key issues for consideration:

Whether or not the proposal accords with Part 6, Class A (agricultural development on units of 5 hectares or more) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and whether prior approval required in relation to siting, design and external appearance of the proposed extension.

Site Description:

The site is within the open countryside, north of Kellaton. The site is accessed from Dunstone Cross to Kellaton Cross (C Road) down a private track which leads to Higher Kellaton Farm. An agricultural building was constructed on the site sometime between 2002 and 2006. Since being erected, the building also appears to have been extended, with google earth satellite imagery showing a number of extensions completed by 2017, and further extensions/alterations sometime between 05/2020 and 06/2022. No planning permission can be found for such extensions/alterations. The extensions/alterations which were substantially completed over 4 years ago would be immune from enforcement action and lawful, however those carried out within the past 4 years are considered to be unauthorised.

There are existing hedgebanks/landscaping along the south west, North West and north east boundaries and along part of the south east boundary.

The site is within Flood Zone 1, the AONB and Landscape Character Type 1B – Open Coastal Plateaux.

The Proposal:

The application is to determine if prior approval is required for a proposed extension for a general purpose agricultural building measuring 41.1m (L) x 24.3m (B) x 7.5m height to ridge.

The building would be constructed in Yorkshire boarding and concrete panels to the external walls, and grey fibre cement roof sheets.

Consultations:

- Highways Department – No statutory consultation.
- Landscape Officer – Informal discussion. Site is within Landscape Character Type 1B – Open Coastal Plateaux. The majority of development appears to be contained within the coastal combe (associated with Higher Kellaton Farm), whereas the proposed development would be located on a site which is more prominent in the landscape. The proposal would increase the amount of development on the open coastal plateaux, potentially being more visually prominent and altering the character of the area. Proportionate LVIA should be submitted to assess the impacts of the proposal and any required mitigation, as well as demonstrating that the site is the most appropriate, least visually impactful location for the development.

Representations:

South Hams Society – Objection. Concerns regarding increasing numbers of large agricultural buildings being constructed under the umbrella of permitted development legislation in sensitive landscapes. To date, 20 applications have been submitted for AGR development within South Hams so far this year. No obvious to the society that the development complies with Part 6, Class A of the GPDO. The total area is 998.73sqm. It is the second change to the existing building originally permitted by planning application 53/1482/05/AG. Society cannot locate a planning application for recent changes to the original building (google satellite images provided). Development exceeds the 1000sqm threshold of PD (including area around the development).

Relevant Planning History

53/1482/05/AG – Agricultural determination for the erection of an agricultural building. Details not required.

ANALYSIS

The Local Planning Authority are required to consider the application against Schedule 2, Part 6, Class A, of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended), which permits the carrying out of certain development on agricultural land comprising an agricultural unit of 5 hectares or more, providing the development is reasonably necessary for the purposes of agriculture and subject to meeting the relevant criteria/conditions listed under Paragraph A.1 and A.2. As the proposal is for the erection of an extension to an existing building, as required by A.2(2)(i) the LPA must then determine whether prior approval is required for the siting, design and external appearance of the extension.

In this case, insufficient information has been provided to satisfy the LPA that the extension, which is of a large size measuring 41.1m (L) x 24.3m (B) x 7.5m height, is reasonably necessary for the purposes of agricultural with the agricultural unit.

Additionally, Google Earth Satellite Imagery shows that the original building was extended sometime between May 2020 and June 2022. There is no record of planning permission or prior approval having been granted for the extension and therefore such is considered to be unauthorised. 3(1)(5)(a) states:

(5) The permission granted by Schedule 2 does not apply if—

(a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful;

As such, as the proposal is for an extension to an existing unauthorised building/extension permission granted by Schedule 2 does not apply.

Whilst the LPA do not consider that the development can benefit from permitted development under Class A, Part 6, for the sake of clarity and in the case of an appeal, the criteria/conditions listed under Paragraph A.1 and A.2(a) will be taken in turn before moving on to the substantive assessment under the prior approval process required by A.2(2)(i).

Consideration of Paragraph A.1 and A.2(a):

A.1 Development is not permitted by Class A if –	Evaluation
(a) the development would be carried out on a separate parcel of land forming part of the unit which is less than 1 hectare in area;	Criteria met. The application form confirms the area of the parcel of land where the development is to be located is 1 or more hectares
(b) it would consist of the erection or extension of any agricultural building on an established agricultural unit (as defined in paragraph X of Part 3 of this Schedule) where development under Class Q or S of Part 3 (changes of use) of this Schedule has been carried out within a period of 10 years ending with the date on which development under Class A(a) begins;	Criteria met. No evidence of development under Class Q or S (Part 3) being carried out on the site.
(c) it would consist of, or include, the erection, extension or alteration of a dwelling;	Criteria met.
(d) it would involve the provision of a building, structure or works not designed for agricultural purposes;	Criteria met. The building has the layout/appearance of a typical agricultural building, although the LPA have concerns regarding the lack of justification for the size of the development, as discussed in this report.
<p>(e) the ground area which would be covered by—</p> <p>(i) any works or structure (other than a fence) for accommodating livestock or any plant or machinery arising from engineering operations; or</p> <p>(ii) any building erected or extended or altered by virtue of Class A,</p> <p>would exceed 1,000 square metres, calculated as described in paragraph D.1(2)(a) of this Part;</p> <p><i>D.1(2)(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;</i></p>	<p>There does not appear to be any works/structures for accommodating livestock or any plant or machinery arising from engineering operations, and no building has been erected, extended or altered by virtue of Class A within the preceding 2 years.</p> <p>It is acknowledged that the original building has been extended sometime between 2020 and 2022, however, this aspect is covered above, relating to 3(1)(5)(a) of the GPDO.</p> <p>An objection has been received which raises concerns regarding the 1000sqm limitation being exceeded where the area around the development is included. However, the description of development does not include any engineering operations and the red outline does not include the area around the proposed extension. Therefore, the area around the extension/existing building is not incorporated within the 1000sqm calculation. An informative note would be added to the applicant to advise that, if this application were permitted, it would</p>

	not grant permission for engineering operations to create a yard around the proposed extension.
(f) the height of any part of any building, structure or works within 3 kilometres of the perimeter of an aerodrome would exceed 3 metres;	Criteria met.
(g) the height of any part of any building, structure or works not within 3 kilometres of the perimeter of an aerodrome would exceed 12 metres;	Criteria met.
(h) any part of the development would be within 25 metres of a metalled part of a trunk road or classified road;	Criteria met.
(i) it would consist of, or include, the erection or construction of, or the carrying out of any works to, a building, structure or an excavation used or to be used for the accommodation of livestock or for the storage of slurry or sewage sludge where the building, structure or excavation is, or would be, within 400 metres of the curtilage of a protected building;	Criteria met. Application form confirms not to be used for livestock.
(j) it would involve excavations or engineering operations on or over article 2(4) land which are connected with fish farming	Criteria met.
(k) any building for storing fuel for or waste from a biomass boiler or an anaerobic digestion system— (i) would be used for storing waste not produced by that boiler or system or for storing fuel not produced on land within the unit; or (ii) is or would be within 400 metres of the curtilage of a protected building.	Criteria met.
A.2— (1) Development is permitted by Class A subject to the following conditions—	
(a) where development is carried out within 400 metres of the curtilage of a protected building, any building, structure, excavation or works resulting from the development are not used for the accommodation of livestock except in the circumstances described in paragraph D.1(3) of this Part or for the storage of slurry or sewage sludge, for housing a biomass boiler or an anaerobic digestion system, for storage of fuel or waste from that boiler or system, or for housing a hydro-turbine; (b) where the development involves—	Condition met. Application form confirms not to be used for livestock.

<p>(i) the extraction of any mineral from the land (including removal from any disused railway embankment); or</p> <p>(ii) the removal of any mineral from a mineral-working deposit,</p> <p>the mineral is not moved off the unit;</p> <p>(c) waste materials are not brought on to the land from elsewhere for deposit except for use in works described in Class A(a) or in the provision of a hard surface and any materials so brought are incorporated forthwith into the building or works in question.</p>	
--	--

Consideration of whether prior approval is required for the siting, design and external appearance of the proposed building (A.2(a))

The extension would protrude into the open countryside, being to the north west of the existing development within the site. The site is within Landscape Character Type 1B – open coastal plateaux. The majority of development associated with Higher Kellaton Farm appears to be contained within the coastal combe, whereas the proposed development would be located on a site which is more prominent in the landscape, and where engineering operations/changes in land levels would likely be required to erect the building. The proposal would increase the amount of development on the open coastal plateaux, potentially being more visually prominent and altering the character of the area.

Additional information would be required in respect of the following, in order for the LPA to fully assess the impacts of the proposal:

- Justification for the siting of the proposal in this location and the design of the building (including its size), with reference to the agricultural/forestry needs of the holding and how the development is reasonably necessary for the purposes of agricultural within the agricultural unit.
- Details of existing and proposed levels, including a site layout plan and section drawings. Levels must be shown relative to a fixed and identifiable datum point which is identified on the plan (the datum point must not be taken from any structure which are to be demolished or can be moved). The site layout plan must show the points at which the cross-section(s) have been taken and the cross sections should extend beyond the site boundary to show how the proposal relates to surrounding surface features, vegetation and topography and how they fit into the landscape context.
- Landscape and visual impact assessment of the proposal, including any ground works, along with any mitigation in the form a landscaping scheme, and a comparison to other potential sites within the holding in order to ascertain whether the proposed siting represents the least visually intrusive site within the holding.

Other Matters: Ecology

Whilst A.2(2)(i) of Class A, Part 6 does not specifically require the impacts of the proposed development on protected habitats/species to be considered, Regulation 9 of the Conservation of Habitats and Species Regulations 2010 states that '*competent authority must exercise their functions which are relevant to nature conservation... so as to secure compliance with the requirements of the Directives.*' Accordingly, competent authorities must consider the Directives in making decisions relating to any of their planning functions.'

The site lies within the open countryside and there are existing landscape features and buildings which could provide habitat for protected species. In the absence of an ecology report assessing the potential impacts of the development and identifying any required mitigation measures, the LPA cannot be satisfied that the development would not harm protected species/habitats.

Summary:

The proposed development is not considered to be permitted development under Class A, Part 6, Schedule 2 of the GPDO, as 3(1)(5)(a) of the GPDO clearly states that permission granted by Schedule 2 does not apply if, in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful. The proposed involves an extension to an existing unlawful building.

Additionally, insufficient information has been provided for the LPA to be satisfied that the proposed development is reasonably necessary for the purposes of agricultural within the agricultural unit.

Finally, were the proposal considered to be permitted development, prior approval would be required for the siting, design and external appearance of the building, as set out in this report, and an ecology report would be required.

As such, this agricultural determination is refused.

Planning Policy

The planning merits of the proposal as appurtenant to the development plan are not relevant to prior approval applications

This application has been considered in accordance with Class A, Part 6 of Schedule 2 of the Town and Country Planning (General permitted development)(England) Order 2015 (as amended).

Considerations under Human Rights Act 1998 and Equalities Act 2010

The provisions of the Human Rights Act 1998 and Equalities Act 2010 have been taken into account in reaching the recommendation contained in this report.

The above report has been checked and the plan numbers are correct in APP and the officers report. As Determining Officer I hereby clear this report and the decision can now be issued.

Name and signature:

Chloe Allen

Date:

09.08.2023

