



**PLANNING REF: 2331/22/PDM**

**DESCRIPTION:** Application to determine if prior approval is required for proposed change of use of agricultural buildings to 5 No. dwelling houses (Class C3) and for associated operational development (Class Q (a+b)).

**ADDRESS:** Higher Pasture Farm East Allington TQ9 7QA

26<sup>th</sup> July 2022

## **LETTER OF OBJECTION FROM THE SOUTH HAMS SOCIETY**

### **The South Hams Society interest**

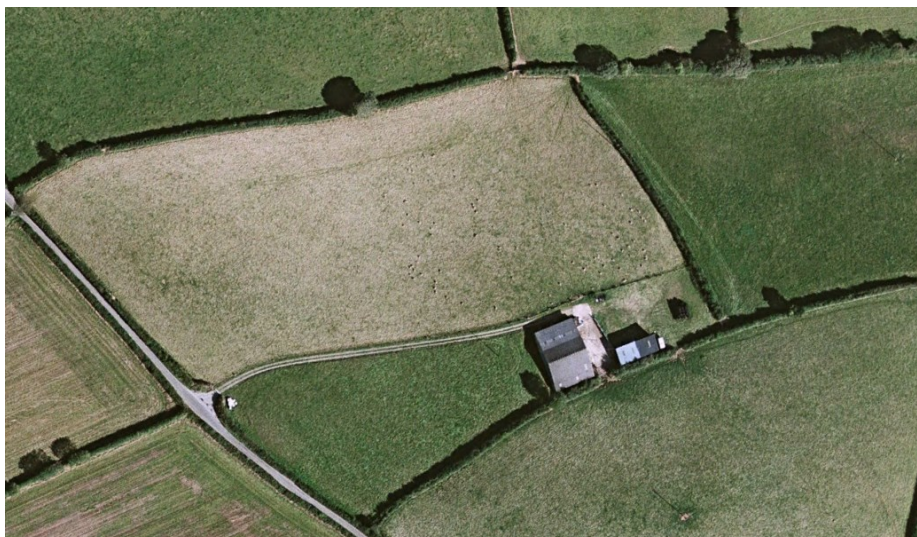
For the last 60 years, the South Hams Society has been stimulating public interest and care for the beauty, history and character of the South Hams. We encourage high standards of planning and architecture that respect the character of the area. We aim to secure the protection and improvement of the 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.

The South Hams Society **objects** to this prior approval request for permitted development rights approval.

### **Planning history of the site**

Twenty five years ago, this location was undeveloped countryside.

In 1997 two applications were approved for farm buildings 06/1085/97/3 and 06/1084/97/3, both on the 4<sup>th</sup> August. They can be seen in the satellite image below, shortly after being constructed.



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The site then remained the same until 2007 when the current owners submitted a planning application 06/0934/07/F for the 'Erection of livestock building and agricultural storage building' which received approval 19<sup>th</sup> June 2007.

In this satellite image, the two new barns are either side of the earlier barns.



It is obvious from these two images that the Applicant also extended the earlier barn with planning approval 06/2142/09/AG (Agricultural determination for prior notification of extension of agricultural building).

A number of other buildings can be seen to the west of the Barns.

#### **Planning Applications of additional buildings on site**

A further planning permission was granted for a 'Change of use of land for siting of mobile home for agricultural worker' with the approval of planning application 06/1069/07/F on the 4<sup>th</sup> July 2007.

The approval was subject to the following condition(s):

- '1. The mobile home hereby permitted shall be removed and the land restored to its former condition on or before 3rd July 2010.'*

*Reason: In order to enable the Local Planning Authority to maintain control of development which is temporary in character and to safeguard the amenities of the locality.*

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2. *The occupation of the mobile home shall be limited to a person solely or mainly working, or last working, in the locality in agriculture as defined in Section 336 of the Town and Country Planning Act, 1990, or in forestry, or a widow or widower of such a person, and to any resident dependants.*

*Reason: To ensure that the mobile home is occupied by persons connected with agriculture or forestry, as the site is located where residential development would not normally be permitted.'*

A later planning application for a second mobile home was received (9<sup>th</sup> June 2008) for 'Retrospective application for the retention of two mobile homes to house agricultural worker & family and retention of porta-cabin for storage'.

There is no decision notice online to view, but according to the Case Officer's report, conditions were to be as follows:

**Conditions**

RES33 – Agricultural Occupancy

USE6 – Use

The mobile home hereby permitted shall be removed and the land restored to its former condition on or before 3<sup>rd</sup> July 2010.

Reason: In order to enable the Local Planning Authority to maintain control of development which is temporary in character and to safeguard the amenities of the locality.

N/S – Porta-Cabin Use

The porta-cabin as detailed on drawing No.1 shall only be used for the storage of tools, feed and agricultural chemicals, tractor oils associated with the agricultural holding and shall not be used for any other business purposes or to form a separate unit of habitation.

Reason: To safeguard the amenity and character of the surrounding area.

DRN6 – Hazardous Substances

IND8 – External Storage

In both instances these temporary mobile homes were to be removed by 3<sup>rd</sup> July 2010.

A planning application 06/1141/10/O was subsequently submitted 'Outline application for provision of agricultural dwelling', application date of 27<sup>th</sup> May 2010. The application received approval on the 13<sup>th</sup> August 2010.

It is of note that this is an agricultural workers dwelling as is conditioned by planning condition 6.

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6. The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture as defined in Section 336 of the Town and Country Planning Act, 1990, or in forestry, or a widow or widower of such a person, and to any resident dependants.

Reason: To ensure that the dwelling is occupied by persons connected with agriculture or forestry, as the site is located where residential development would not normally be permitted.

The Applicant justified the proposal on the following grounds:

#### **PLANNING POLICY**

Annexe A of Planning Policy Statement 7 (PPS7) gives guidance in relation to the provision of new houses in the countryside which are essential for agricultural, forestry and other occupations which require special justification in a countryside location. It is confirmed that since this application and indeed the farm unit at Higher Pasture Farm comprises a beef and sheep unit that a permanent dwelling can be justified to allow the applicants Mr and Mrs Steve Hubbard, both full time workers on the holding, to live in close proximity to their farm buildings and their farming enterprise. Annexe A gives the criteria that need to be met in relation to permanent agricultural dwellings which are summarised below:-

**1. There is an essential functional need.**

The farm business based at Higher Pasture Farm is based around 165 acres of owned land together with 40 acres of rented land. The business has 45 head of suckler cows together with 100 breeding ewes and all the respective progeny which creates an annual labour requirement of 1.85 man years. It is confirmed that with cows calving throughout the entire year and ewes lambing in April and May that there is an essential need for somebody to live on site throughout the whole year.

**2. The need relates to a full time worker.**

The proposed agricultural dwelling is to house both the applicants Mr and Mrs Steve Hubbard who are both full time workers at Higher Pasture Farm and run this farming enterprise on a daily basis.

**3. The agricultural business and the activity concerned have been established for at least three years, have been profitable for at least one of those, are clearly financially sound and have a clear prospect of remaining so.**

It is confirmed that the applicants have owned Higher Pasture Farm since 2006 but they have been farming in the area for in excess of the last 10 years. The applicants have, with significant investment, created a viable farming unit giving themselves an adequate agricultural wage to live on. A copy of the applicants' financial accounts for the year end 31<sup>st</sup> December 2009 and previous accouts are available for the Agricultural Appraisal Officer to assess.

**4. There is no other accommodation on the site or other suitable accommodation in the area which is available and suitable for occupation by the workers concerned.**

Higher Pasture Farm is situated in a truly rural location approximately 1.5 miles from East Allington and 3 miles from Halwell and there are no other dwellings on the site or close by that are available either for rent or to purchase as the majority of houses in the immediate vicinity comprise high value farmhouses, barn conversion or other rural dwellings which are not affordable to the applicants. The crux of the matter is that the applicants have a herd of suckler cows and a flock of breeding ewes all of which are housed in the buildings at Higher Pasture Farm and graze the land and therefore there is a need to live on site.

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**5. Other normal planning requirements e.g. on siting and access are satisfied.**

It is our view that the proposed dwelling to be sited close to the existing mobile homes – partially on a site that is already levelled will ensure that the proposed dwelling will have minimal impact on this countryside location. The dwelling will be sited with immediate viewing of the adjacent farm building and the surrounding grazing land.

Reserved matters application 06/0998/11/RM '*Resubmission of reserved matters application 06/2648/10/RM seeking consent for access, appearance, landscaping, layout and scale (Outline planning consent 06/1141/10/O for provision of agricultural dwelling)*' was approved on the 6<sup>th</sup> June 2011. Condition 4 again conditions this dwelling to agricultural use.

4. The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture as defined in Section 336 of the Town and Country Planning Act, 1990, or in forestry, or a widow or widower of such a person, and to any resident dependants.

Reason: To ensure that the dwelling is occupied by persons connected with agriculture or forestry, as the site is located where residential development would not normally be permitted.

The landscaping condition 06/0791/12/DIS was discharged on the 10<sup>th</sup> May 2012. The new agricultural dwelling appears to have been built between 2012 / 2013.



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There remains one final planning application 3583/21/CLE 'Certificate of Lawfulness for existing use and erection of two agricultural barns without planning consent'.

It is obvious that **both buildings were and are built with planning consent** but they were not built fully in compliance with the plans submitted.

**The Planning Applications Applicant's statements in the application form.**

It is not clear why the LPA accepted a Certificate of Lawful Development application form with this description 'ERECTION OF TWO AGRICULTURAL BUILDINGS WITHOUT PLANNING CONSENT'.

**That statement is a false statement.** This is supported by the Statutory Declaration submitted (para 5).

5. WE gained planning approval (reference 06/0934/07/F) on 19<sup>th</sup> June 2007 for a livestock building and agricultural storage building to serve Higher Pasture Farm. The planning approval and approved plans for these 2 buildings are contained within Appendix SH1.

For the application form question, 'Please state why a Lawful Development Certificate should be granted', the Applicant answered:

*'THE TWO BUILDINGS WERE ERECTED UNLAWFULLY IN EXCESS OF 4 YEARS AGO  
EVIDENCE ATTACHED IN FORM OF GOOGLE EARTH IMAGES AND STATUTORY DECLARATION.'*

**It is obvious that both buildings were and are built with planning consent but did not comply with the planning Condition/s in the planning decision notice.**

The Case Officer report correctly stated.

*'Key issues for consideration:*

***Whether, on the balance of probabilities, the Applicant's claim that the agricultural barns, given their position, have not been constructed in accordance with the 2007 planning permission but as they have been erected more than 4 years prior to the date of this application they are lawful for planning purposes and immune from enforcement action'.***

But it is unclear how the District Council could have issued a Lawful Development Certificate in this instance.

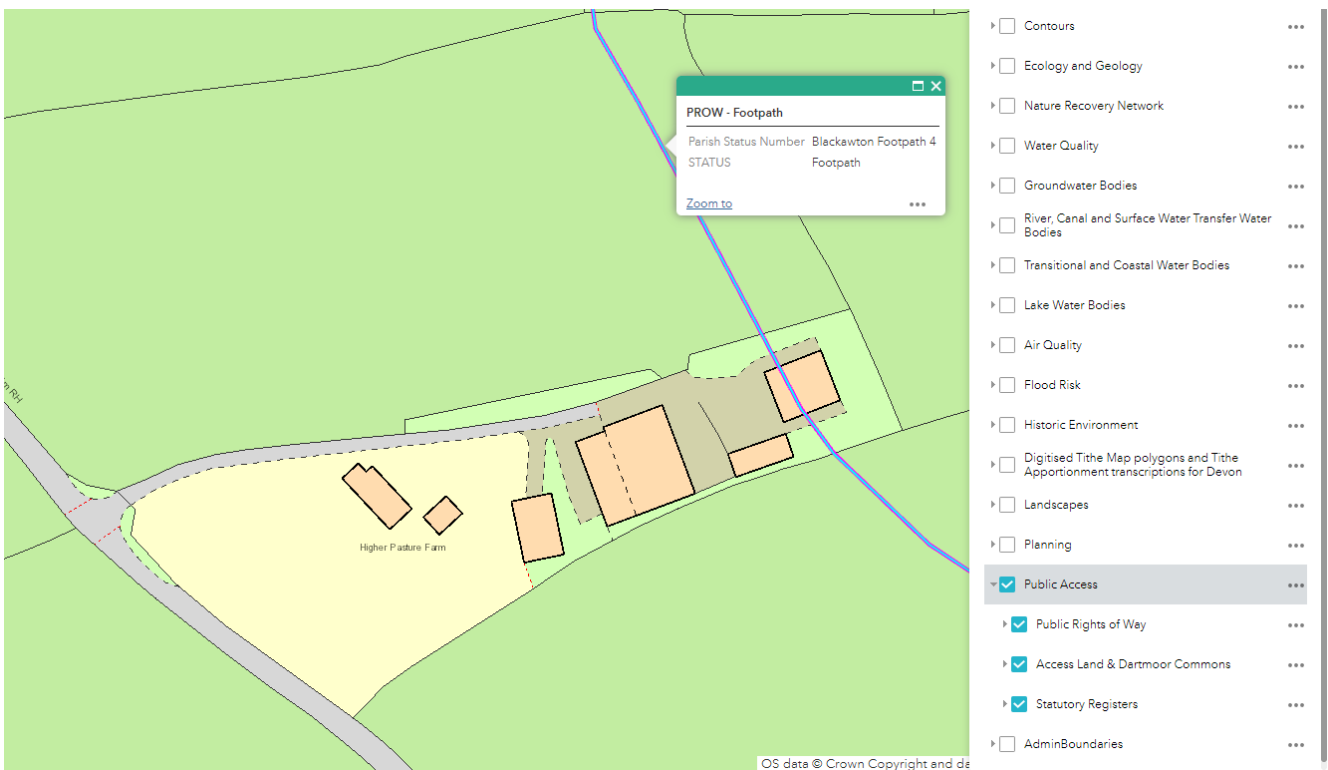
The Society refer the LPA to the DCC Public Rights of Way map for Blackawton FP No. 4



By building the east barn, identified as Building No 2 in the current location rather than at the approved location, the owners have built upon the legal line of the Public Right of Way thereby obstructing its historic and legal route.

The PRow should have been diverted lawfully if the owners wished to build their barn in its current location.

A Planning permission does not grant the right to close, alter or build over a right of way in any way, even temporarily. This includes, for example, a change in the surface, width or location.



OS 25 Inch Map 1873-1888 (SW England) with satellite overlay.



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*'It is a criminal offence to obstruct a right of way unless the necessary legal order has been made, confirmed and brought into effect. Unauthorised obstructions may result in an injunction being served to stop development and/or criminal proceedings being brought against the offender. The court could impose a fine and rule that the obstruction be removed or a building demolished'.*

This leads the Society to ask, how can the District Council issue a Certificate of Lawfulness for a development when the development has obstructed the route of a PRow and a criminal offence has occurred?

In the same way that the 4 year or 10 year requirement does not apply to Listed Building, it cannot apply when a PRow has been obstructed because the development has unlawfully been obstructing a PRow.

The land owner should have notified the LPA of the existence of the PRow across their land (and the District Council LPA should have checked for any constraints).

**It is the Society's opinion that the District Council will have to revoke the Lawful Development Certificate issued.**

#### **Permitted Development Rights.**

It is also necessary to check that permitted development rights have not been excluded.

Article 3(5), which provides that the 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, or in the case of permission granted in connection with an existing use, that use is unlawful.

There can be no doubt that the building is unlawful. It is currently obstructing the legal route of a PRow, Blackawton FP 4.

PD Rights may also have been removed by a condition on the planning permission for the development. Article 3(4) of the Order provides that nothing in the GPDO permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Town and Country Planning Act 1990 ("the 1990 Act") otherwise than by the GPDO.

#### **Planning Conditions**

Planning Decision Notice for approval 06/0934/07/F contains the following Condition:

10. The development hereby permitted shall be used solely for the purposes of agricultural or horticulture as defined under Section 336 of the Town and Country Planning Act 1990.

Reason: To ensure that the development hereby permitted is used solely for the purposes of agriculture and horticulture.

The Society concludes that units 4 & 5 do not have PDR's.

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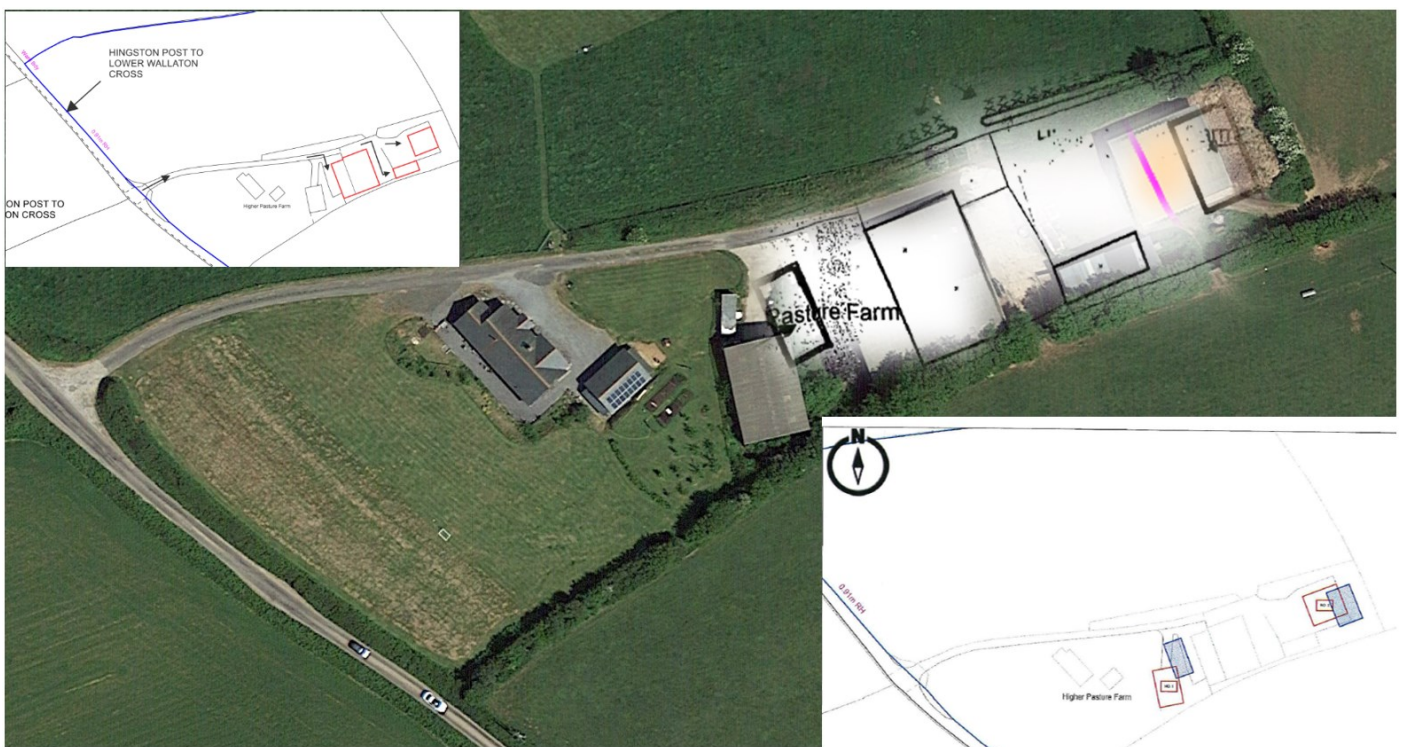




The 2012 / 2013 dwelling is also an agricultural tied dwelling justified by the agricultural business plans.

The satellite image below shows various plan overlays correctly located to the boundary features and the two central correctly located barns along with two plans, one in the top left corner and one in the bottom right corner. The plans concur with the overlays.

The overlays also includes the PRow legal route (in pink) which the west barn has been built upon and is obstructing. **It also illustrates that if the barn was built in accordance with its planning approval, the PRow would not be obstructed.**



The Society requests that the local planning authority resolve the following issues:

- A building obstructing a public footpath.
- The Certificate of Lawful Development Certificate issued in error to an Applicant who has and continues to obstruct a PRow by constructing a building in the wrong location.
- The issue of a planning condition that has removed PDR's and whether the agricultural tie will lose its purpose with the breakup of the farming enterprise that justified its existence.

The planning permissions' history have been consistently clear that the location is not a suitable location for housing development.

For and on behalf of the South Hams Society

Richard Howell

Chairman.

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