



PLANNING REF: Ref 3861/23/FUL

DESCRIPTION: Retrospective application for agricultural access tracks

ADDRESS: Hendham View, Woodleigh, Kingsbridge, TQ7 4DP

LETTER OF OBJECTION FROM THE SOUTH HAMS SOCIETY

11 January 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.

In June 2022 the applicants' agent initially submitted a Prior Notification application (2217/22/AGR) for agricultural access tracks totalling some 3,355m in length and 5m wide to serve the newly established dairy business at Hendham View Farm.

Less than two weeks later at the start of July the Society wrote to the LPA, objecting to the application on the grounds the agent had made an error in understanding the General Permitted Development Rights Order, Part 6, Class B relating to the provision of a private way.

We also expressed our surprise that despite the track surfacing shown to end 30 metres from the classified road, the remainder of the track was clearly part of the development. The track for livestock and machinery led to the barn complex and, without that section, the track would lead to nowhere.

Of course, had the track been shown to link up with or terminated within 25 metres of the classified road, the application would also have failed to satisfy permitted development requirements.

A few days later that application was withdrawn and a new application submitted (2385/22/AGR) this time to determine whether prior approval was required for a proposed road' measuring 1,940m in length by 5m wide.

In our objection submitted early in August we noted that there had been a considerable reduction in the area of access track required between the two prior approval applications.

Providing aerial photographs in evidence we pointed out that ground works had already commenced for the formation of track that had been removed from the original application. The landscape was now heavily scarred and, if confirmed, this was no longer permitted development.

Similarly the southern hedgerow of the southern track had piles of material spaced beside the field hedgerow, suggesting the applicant had not bothered to wait for prior approval. Were that material to be used in the construction of the track it would not appear to be compatible with the information provided by the applicant. The piles of material also extended further than delineated by the submitted plan.

Further photos showed that construction had also begun on the western track.

Surprisingly the case officer chose to ignore the evidence that work on the tracks had already begun. Nor did she choose to question why the track south of the Hendham Barns was shown as terminating more than 25 metres before it reached the classified road. Instead she decided prior approval was needed as officers considered

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insufficient information had 'been provided in relation to siting having regard to the location within the South Devon AONB and potential ecological impacts (which require further assessment).'

That decision was issued at the start of August. A month later a further prior application (3184/22/PAA) 'for provision of Agricultural tracks following application 2385/22/AGR' was submitted.

In our initial letter of representation we acknowledged that although the additional supporting evidence that had been asked for had now been provided, because the development had already commenced, the prior approval process could not be employed.

But it was not until March of the following year (2023) that officers finally undertook a site visit. The following day the Authority wrote to the applicants' agent:

As you are aware the Case Officer visited the site yesterday (21/03/23) where it became apparent that works have commenced to implement the development. Sections of the access track/private way for which prior approval was being sought are clearly visible. On this basis the development is not permitted under Part 6 as prior approval has not yet been given. In order to seek to regularise the development which has already taken place a retrospective planning application will need to be made.

'Retrospective application for agricultural access tracks' (3861/23/FUL) was finally submitted towards the end of November, coincidentally only after the Society had been questioning the enforcement team as to what action they had taken since opening case reference 027288 & 027289 in August 2022.

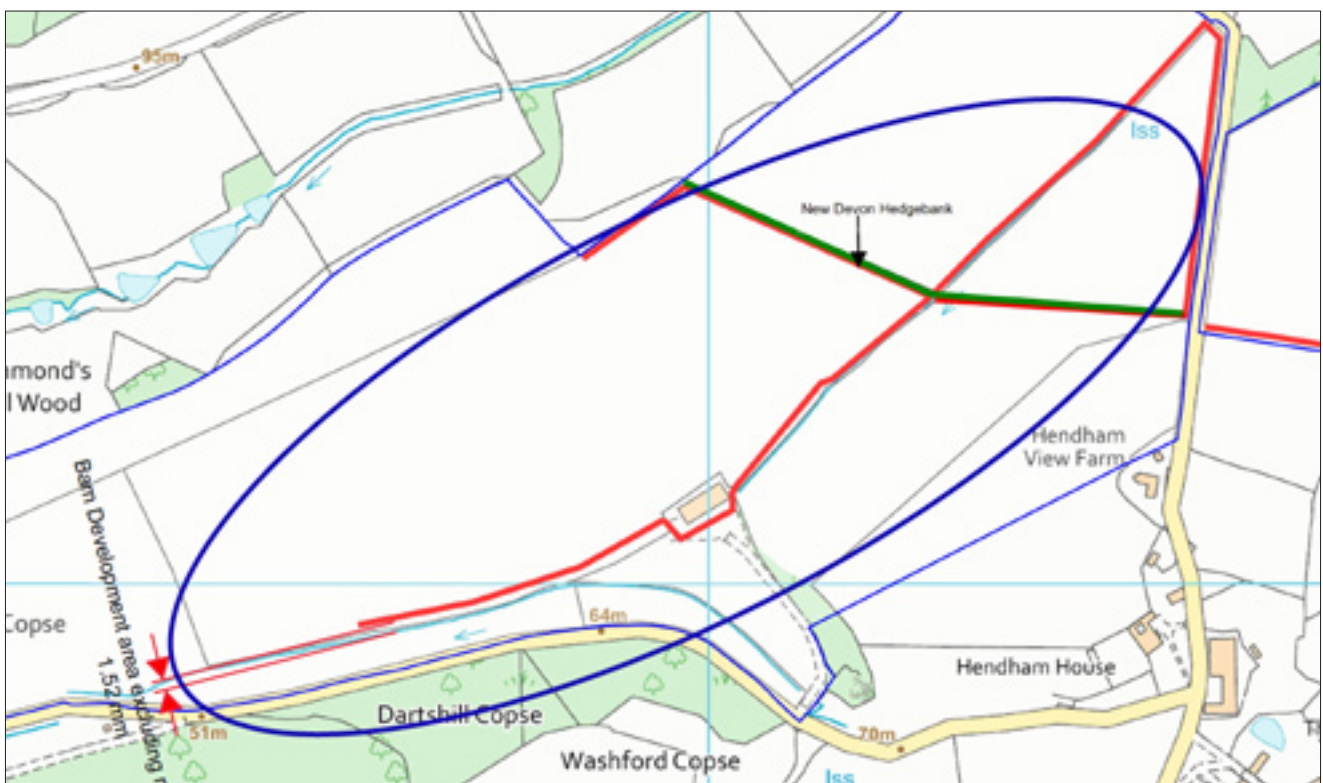
Strangely the site location plan submitted with the application has not only reinstated those sections of track that were removed from application 2217/22/AGR in application 2385/22/AGR but has in fact added further sections, but no section now stops short of any classified road.

This raises the obvious question, were the applicants trying to 'game' the planning system by trying to obtain consent by way of permitted development?

And even if the applicants were unaware that having begun construction permitted development was no longer available and instead a full planning application would need to be submitted, the same cannot be said for their agent, who either failed to inform her clients of the requirement or else did so, only for that advice to be ignored.

Officers might also like to note that the latest application form for (3861/23/FUL) submitted by the applicants' agent contains a number of notable factual errors.

As this section taken from the Site Location Plan shows, the northwest track from Preston Farm abuts a stream that is a tributary of the Avon.



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High intensity cow slurry is an issue for the Avon. Consequently the following Assessment of Flood Risk is incorrect:

Assessment of Flood Risk

Is the site within an area at risk of flooding? (Check the location on the Government's [Flood map for planning](#). You should also refer to national [standing advice](#) and your local planning authority requirements for information as necessary.)

Yes
 No

Is your proposal within 20 metres of a watercourse (e.g. river, stream or beck)?

Yes
 No

Again, the second part of this answer is also incorrect:

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

If Yes to either or both of the above, you may need to provide a full tree survey, at the discretion of the local planning authority. If a tree survey is required, this and the accompanying plan should be submitted alongside the application. The local planning authority should make clear on its website what the survey should contain, in accordance with the current 'BS5837: Trees in relation to design, demolition and construction - Recommendations'.

And obviously the first two parts of this question are again factually inaccurate – the site is within the South Hams SAC Greater Horseshoe Bat Sustenance Zone:

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

c) Features of geological conservation importance

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

Supporting information requirements

Where a development proposal is likely to affect features of biodiversity or geological conservation interest, you will need to submit, with the application, sufficient information and assessments to allow the local planning authority to determine the proposal.

Failure to submit all information required will result in your application being deemed invalid. It will not be considered valid until all information required by the local planning authority has been submitted.

Your local planning authority will be able to advise on the content of any assessments that may be required.

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There can therefore be no doubt that the applicants' agent has submitted a false declaration:

Declaration

I/We hereby apply for Full planning permission as described in the questions answered, details provided, and the accompanying plans/drawings and additional information.

I/We confirm that, to the best of my/our knowledge, any facts stated are true and accurate and any opinions given are the genuine opinions of the person(s) giving them.

I/We also accept that, in accordance with the Planning Portal's terms and conditions:

- Once submitted, this information will be made available to the Local Planning Authority and, once validated by them, be published as part of a public register and on the authority's website;
- Our system will automatically generate and send you emails in regard to the submission of this application.

I / We agree to the outlined declaration

Signed

Amanda Burden

Date

2023/11/20

Officers might therefore like to examine some of the other documentation submitted with this latest application in greater detail.

For example, the Design & Access Statement written by the applicants' agent makes the claim:

The Landscape Visual Impact report from Greenerth Landscape confirms that the sites chosen for the tracks will be barely visible and the fact that they have been located adjacent to the hedgebank/fence is very positive.

However whether this is so positive ecologically is open to question. The 'Preliminary Ecological Appraisal' written by Western Ecology that accompanied a separate application 4012/22/FUL recommended that:

Hedgerow habitat bounding the Site that has potential to be impacted during the construction phase should be protected from accidental damage by suitable fencing providing a 2 metre protection zone along any hedgerow near (i.e. is within 5 metres of any construction area) to the development footprint. This protection zone should be maintained for the duration of the works, and include:

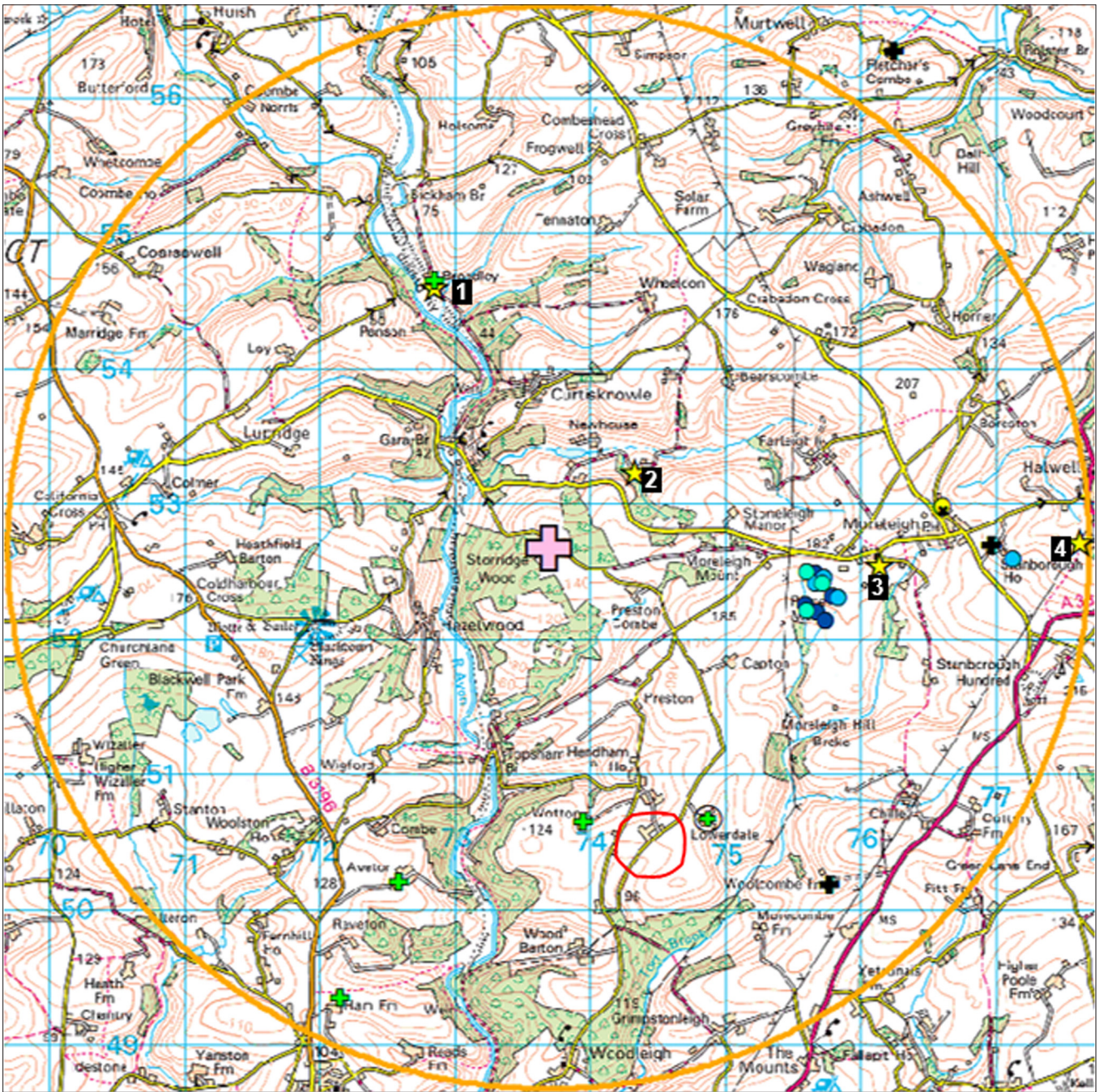
- *A temporary fence situated along the outer edge of the protection zones, to protect the zones and the adjacent habitat, during the entire construction phase;*
- *No storage of machinery, chemicals or other materials, within the protection zones;*
- *No ground disturbance or burning within the protection zones;*
- *No vehicles tracking across, and no vehicles parking in, these zones;*
- *Construction practices ensuring that no dust deposition, disturbance, noise, or pollution risks impact adjacent hedgerow habitats. This includes mitigation for light-averse wildlife species including greater horseshoe bats;*
- *Construction staff briefed during induction as to the purpose of these protection zones.*

The photographs on pages 13 and 14 that accompany South West Ecology's Report for this current application show the Hendham tracks having been constructed directly adjacent to the hedgerows and the Report makes no suggestion that any protection was provided during the construction process and any possible impact on bats and Cirl Bunting should have been assessed before construction began.

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As can be seen below, the site itself is within the South Hams SAC Greater Horseshoe Bat Sustenance Zone and Landscape Connectivity Zone, and within the Impact Risk Zone for the High Marks Barn SSSI, designated for its maternity colony of greater horseshoe bats. The location of Hendham is circled in red.



Although section 4.2 of South West Ecology’s Report claims:

The grassland is of low ecological value. Although the grassland may be used by foraging bats such use would be negligible with abundant habitat suitable for bats found throughout the area.

and 5.2 suggests

The loss of modified and ley grassland habitat, which is abundant in this region, is not ecologically significant.

Yet the fact remains that by the applicants’ own calculations some 27,000m² of what was previously grassland habitat is now occupied by track. And that in itself may be another understatement. From measurements of the Site Plan made by the Society the figure is closer to 28,300m². It is therefore open to question as to whether the likes of Devon Wildlife Trust or the Devon County Council Ecology Team would consider a loss of this magnitude to be ecologically insignificant.

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Almost certainly a Habitat Regulations Assessment should be required. To quote Devon County Council's Habitats Regulations Assessment Guidance October 2019:

1.1. 3 This legislation requires Local Planning Authorities (LPAs), and other competent authorities, to assess plans or projects which may have a likely significant effect on a European Site, alone or in-combination with other plans or projects. Such plans or projects can only proceed if the competent authority is convinced they will not have an adverse effect on the integrity of a European Site, other than in exceptional circumstances [3]. These requirements are known as Habitats Regulations Assessment (HRA) requirements

and as the County Council's July 2020 HRA Template Part D: Appropriate Assessment makes clear:

*In undertaking the appropriate assessment, the LPA must ascertain whether the project would adversely affect the integrity of the European Site. **The Precautionary Principle applies, so to be certain, the authority should be convinced that no reasonable scientific doubt remains as to the absence of such effects.***

Again, Section 180 of the NPPF requires:

Planning policies and decisions should contribute to and enhance the natural and local environment by:

- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);*
- b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;*
- d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;*
- e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans;*

It is hard to envisage how this development protects and enhances the South Devon National Landscape or the High Marks Barn SSSI; or whether it recognises the intrinsic character and beauty of the countryside; or whether it has actually minimised impacts on and provided net gains for biodiversity; or whether and increased surface water run-off from the tracks, when combined with bovine excrement, might adversely impact local watercourses.

In addition Section 186 is unequivocal:

When determining planning applications, local planning authorities should apply the following principles:

- 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;*

By now acknowledging that the amount of grassland being lost to this development is far greater than that originally suggested by any of the three permitted development applications the adverse impact on the High Marks Barn SSSI will, by definition, be that much the greater. And it remains open to question whether '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'.

It also may be worth noting that 6.0 of the applicants' submitted Ecology Report dated 20 September 2023 states:

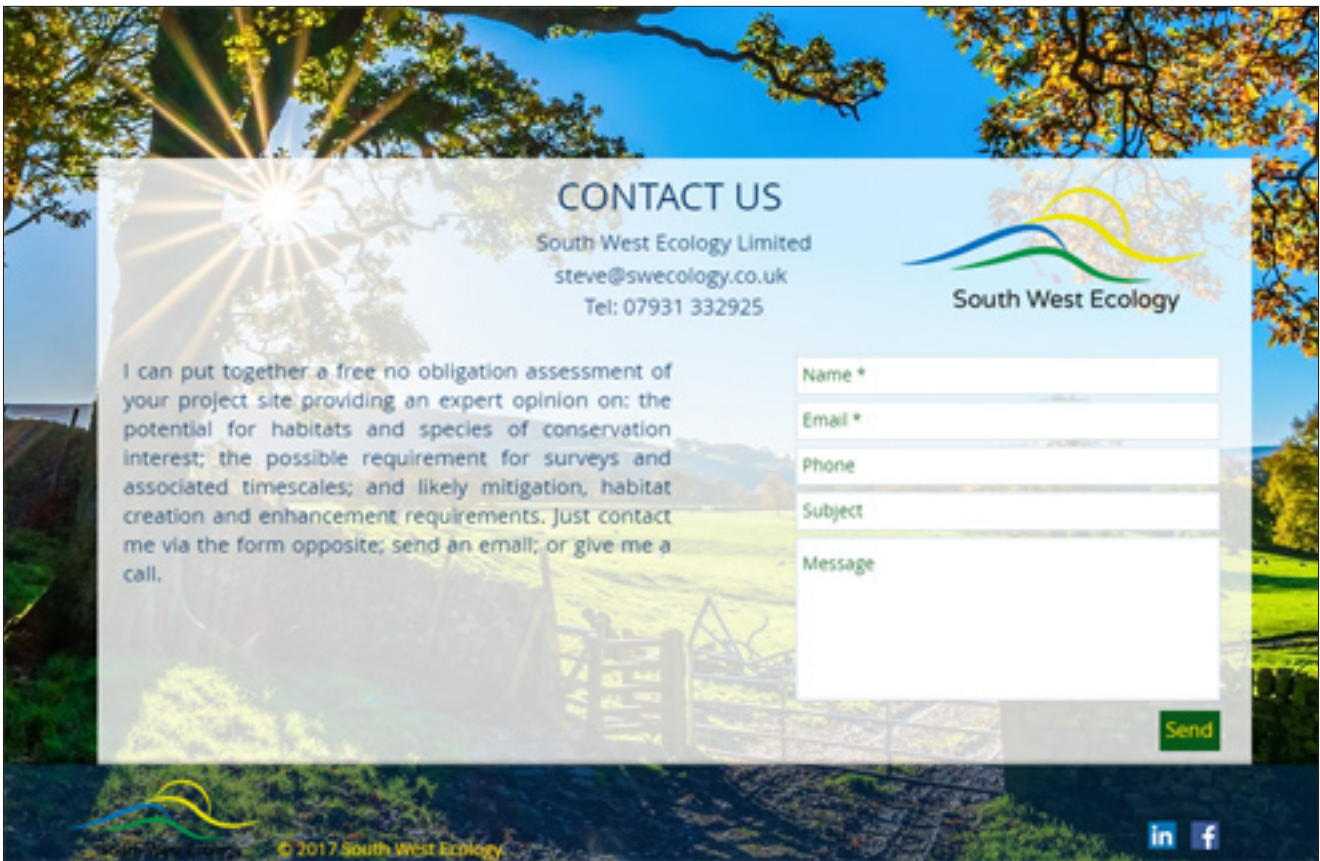
This report has been prepared by SWE Limited with all reasonable skill, care, and diligence, and taking account of the manpower and resources devoted to it by agreement with the client. Information reported herein is based on the interpretation of data collected and has been accepted in good faith as being accurate and valid.

The information presented in this report provides guidance to reduce the risk of offences under UK law. However, SWE is not a legal practice and disclaims any responsibility to the client and others for actions that lead to offences being caused, whether or not the guidance contained in this report is followed. Interpretation of UK legislation is presented in good faith; however, for the avoidance of doubt, we recommend that specialist legal advice is sought.

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The ecologist's website also leads you to believe it is a registered company:



However the company itself was would up two months earlier:

SOUTH WEST ECOLOGY LIMITED

Company number **10915565**

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Accounts Confirmation statements / Annual returns
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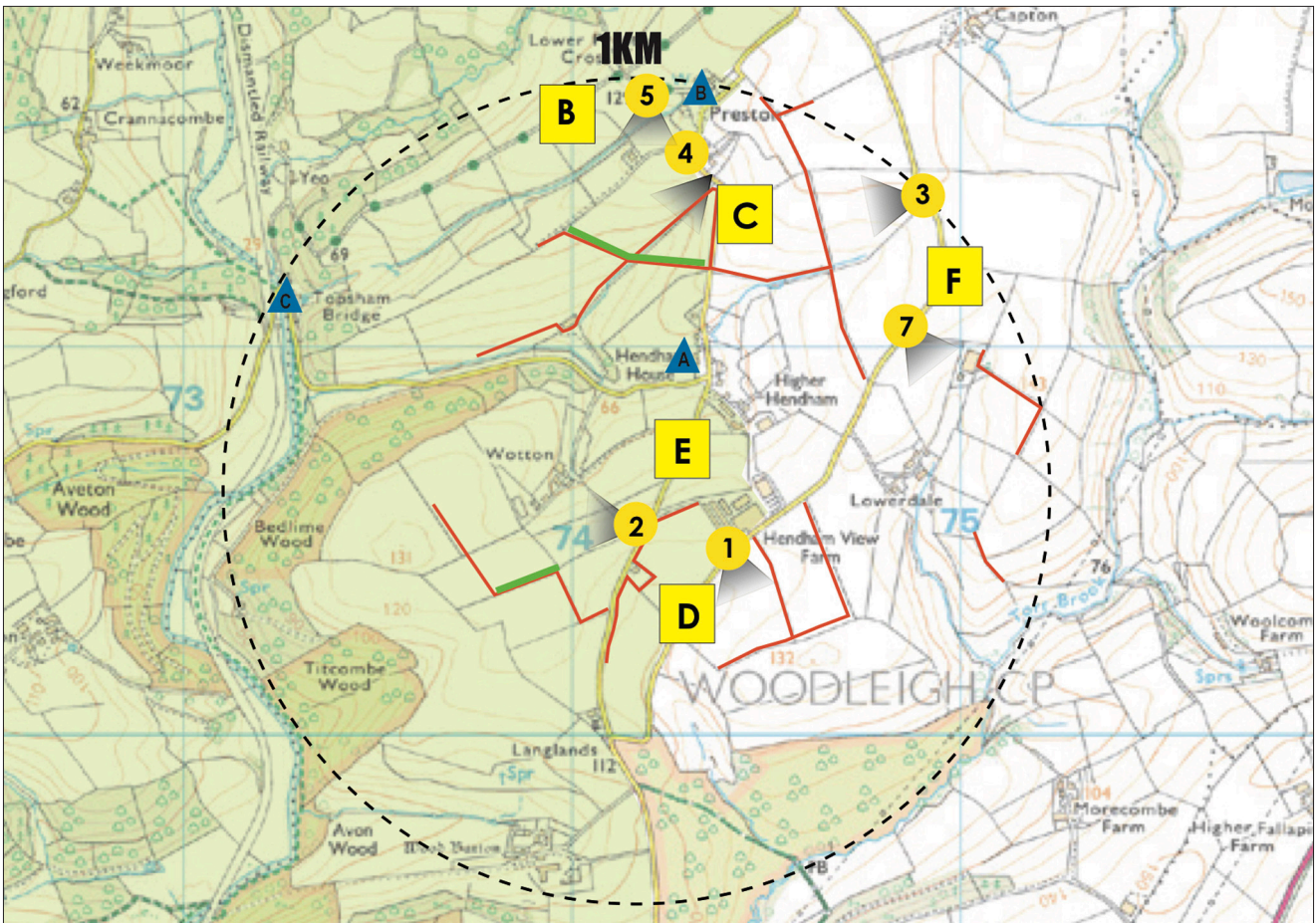
Date	Description	View / Download
25 Jul 2023	Final Gazette dissolved via voluntary strike-off	View PDF (1 page)
09 May 2023	First Gazette notice for voluntary strike-off	View PDF (1 page)
28 Apr 2023	Application to strike the company off the register	View PDF (3 pages)
18 Aug 2022	Confirmation statement made on 14 August 2022 with no updates	View PDF (3 pages)

It is perhaps a small matter, but it does raise the question of whether the ecologist's report can be entirely relied upon.

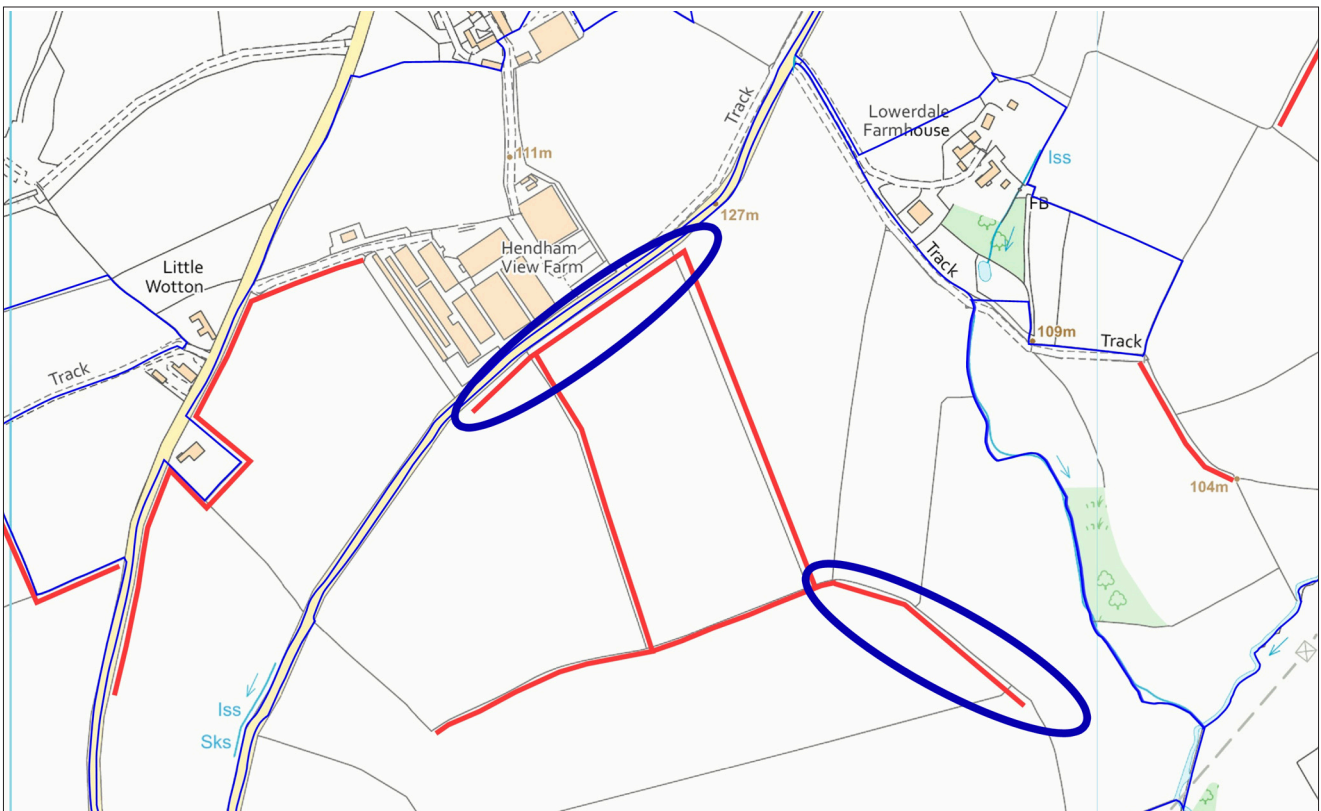
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Similarly the submitted Landscape and AONB Statement is also less than accurate.



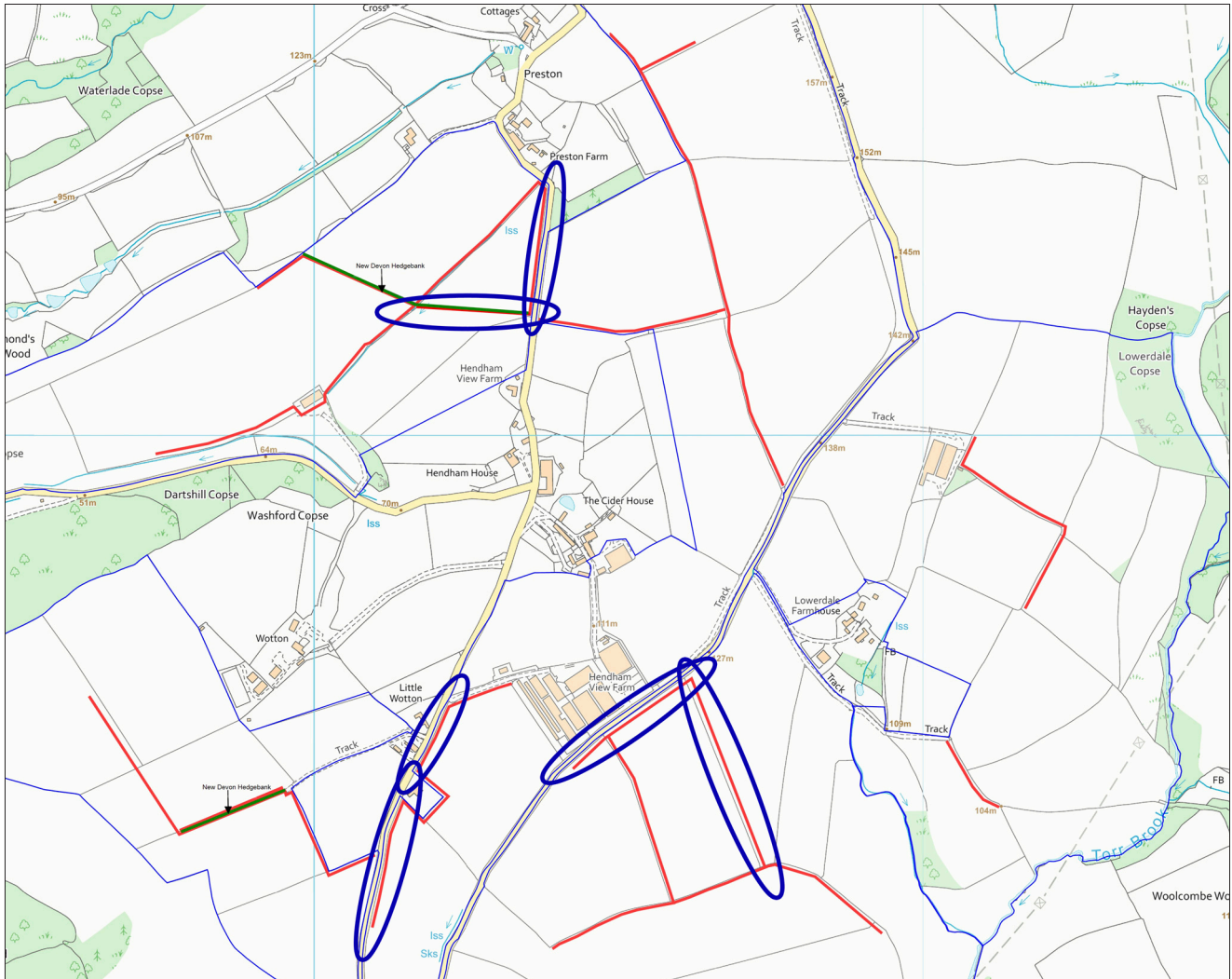
It noticeably omits two sections of track, shown circled in blue below:



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And it also fails to question whether all the lengths of track are actually necessary, in particular those directly abutting the lanes (again shown circled in blue below), given that no track is shown as being required to reach the milking parlour from any of the tracks to the north. Consequently it can only be assumed that use of the lanes will be made for that part of their journey and, if that is the case, why not elsewhere? Removing both those sections of the tracks that abut the lanes and also those that effectively 'duplicate' other sections would substantially reduce and help mitigate the damage this development has already caused.



To conclude, were officers to now approve this application the applicants and their agent will not only be obtaining considerably more than they originally claimed was required, but beyond having to submit a multiplicity of applications, they will have suffered no obvious penalty for being other than entirely accurate in the information they have previously and continue to provide.

Unfortunately, even though this is unacceptable and does nothing to maintain confidence in the integrity of the planning system, it is unlikely to offer grounds for refusal.

Instead the Society would ask the LPA to refuse this application on the grounds that it fails to comply with the requirements of NPPF 180.

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