



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)

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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.

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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.



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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.

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The Society would argue that because the LPA was misinformed, consent was issued in error and, as Kerr J said in 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



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