



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.

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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.



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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)



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Butterford 2006

Legend

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



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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 AGRICULTURAL 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

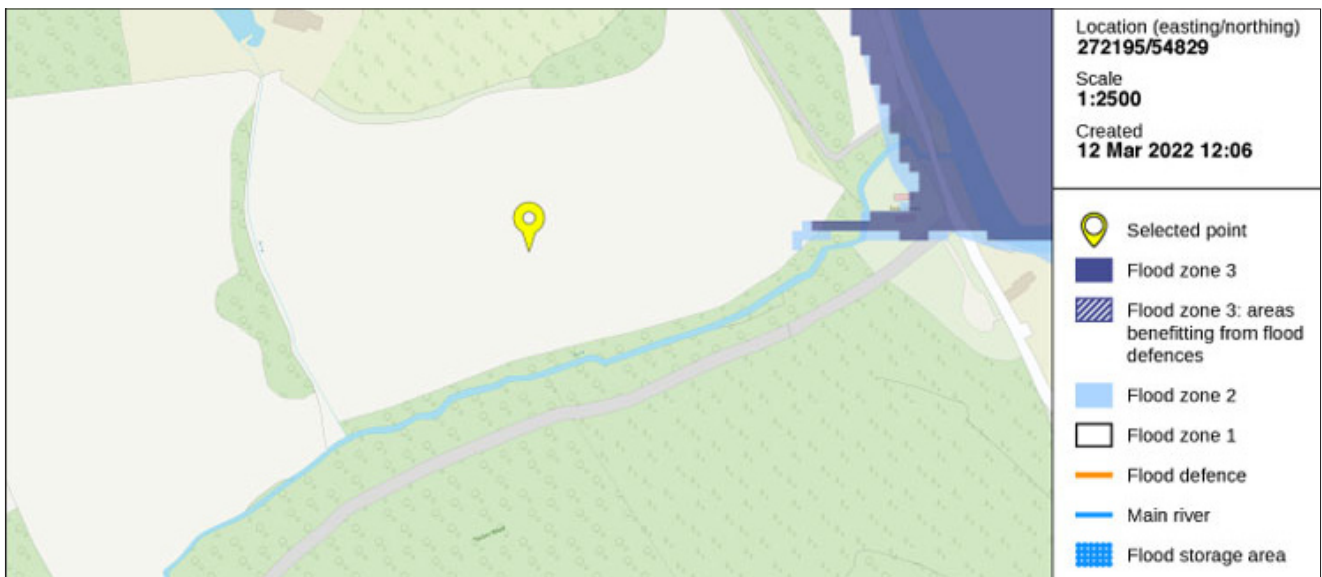
Similarly, on their application form, the applicants have answered “No” to the question “Are there trees or hedges on land adjacent to the proposed development site that could influence the development or might be important as part of the local landscape character?”

Trees and Hedges
Are there trees or hedges on the proposed development site?
<input type="radio"/> Yes
<input checked="" type="radio"/> 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?
<input type="radio"/> Yes
<input checked="" type="radio"/> 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.



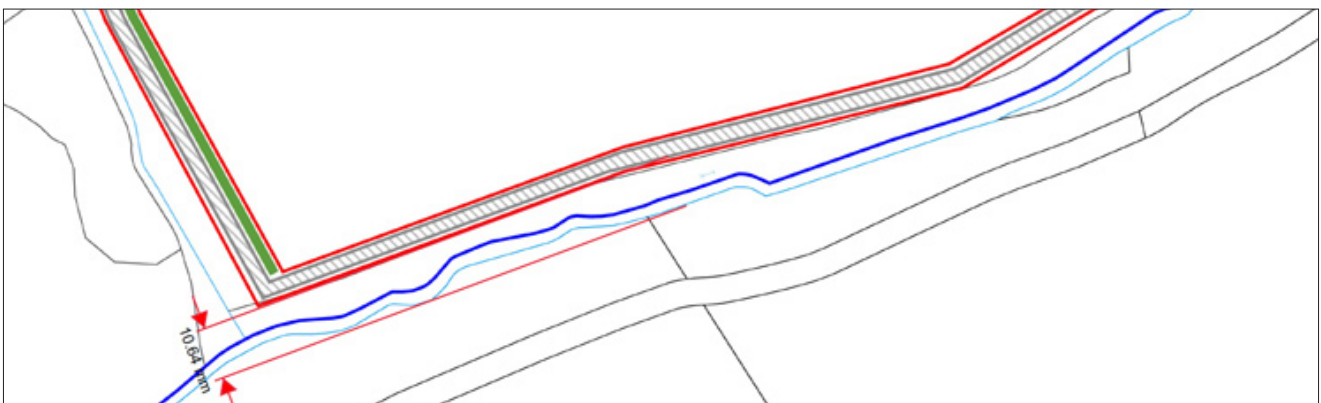
The Environment Agency Flood Map for Planning

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.

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

Yes

No



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

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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

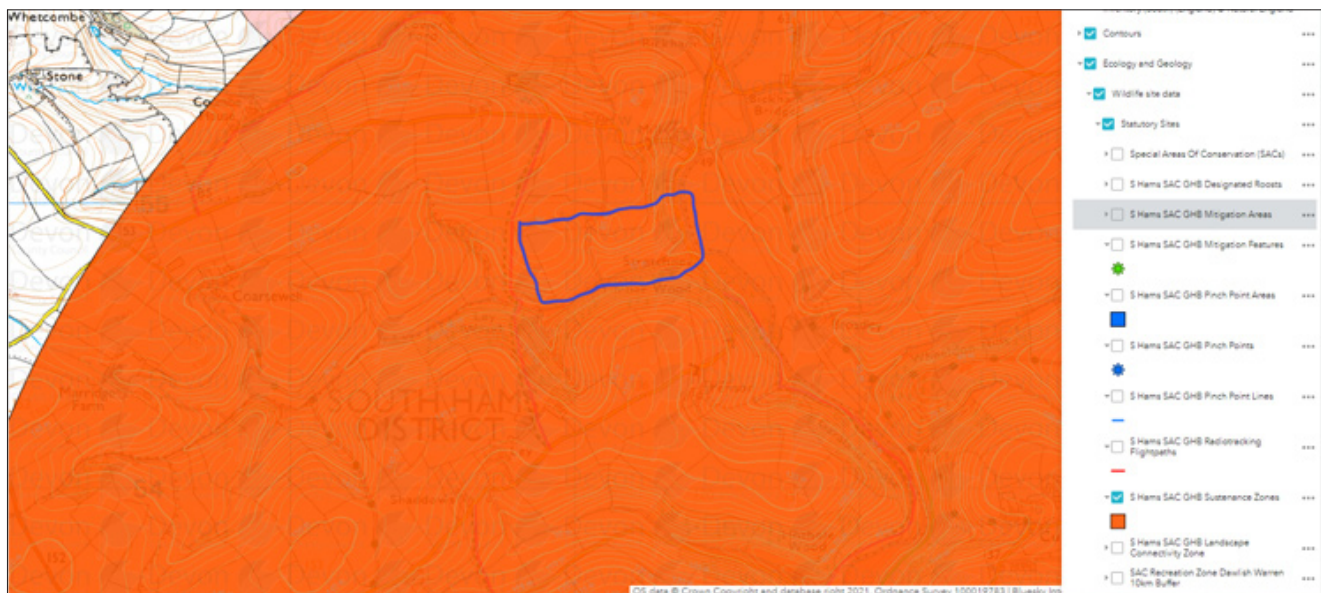
b) Designated sites, important habitats or other biodiversity features

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 Sustainance 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

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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

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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

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