PLANNING REF: 4012/22/FUL

DESCRIPTION: Application to regularise & retain an agricultural access track (part retrospective)

ADDRESS: Land at Butterford, North Huish, Totnes, TQ9 7NL

LETTER OF OBJECTION FROM THE SOUTH HAMS SOCIETY **22 December 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.

Planning History

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 were incorrect.

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 4012/22/FUL, will again be visible from the lane to the east that runs between Diptford Cott and Broadley.

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 publicly available 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.

The fields in 1995 (above) and 2004 (below)

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

The fields in 2020

This is important, as *7.62 Considerations For Decision-Taking On Development Proposals In Or Affecting AONBs* on page 122 of the JLP Supplementary Planning Document July 2020 requires twelve questions that appear on page 87 of the South Devon AONB Planning Guidance Checklist to be answered. Questions 2, 4 and 12 ask:

> *2. For any development, could it be located on land of lesser environmental value, with less harm to the AONB?*
>
> *4. Has the application taken all reasonable opportunities to avoid and to mitigate harm?*
>
> *12. Will the development conserve the AONB's landscape and scenic beauty?*

The AONB Planning Guidance then states:

> *If any of the answers are negative ('No') then those AONB matters indicate that the development should be refused owing to the likelihood of material harm to the AONB*

The Supplementary Planning Document echoes this conclusion advising officers:

> *'Proposal is unlikely to be acceptable in AONB terms' and to 'Weigh all material considerations giving great weight to the conservation of landscape and scenic beauty of the AONB and applying the s85 CROW Act duty to the decision'*

Consequently, had the case officer known there was no existing track, the applicants should 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.

Here it is worth noting that the applicants no longer claim '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'. Instead, in their latest Design & Access Statement (4012/22/FUL) they now only suggest:

> *they believed that the works they were carrying out were resorting and resurfacing an existing track according to the historic maps*

echoing the claim made in their Design & Access Statement for application 1592/22/FUL, in which they wrote:

> *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 evidence has ever been provided as to the existence of any historic map showing an existing track. Unless that evidence can be provided, and the applicants have had every opportunity to do so, it is only possible to conclude the LPA was intentionally provided with incorrect information in order to ensure prior approval would not be required for the proposed agricultural storage building.

On 02 August 2022 the Council's Planning Business Manager informed the Society:

> *I have discussed this site with both Trevor Pearce and Charlotte Howrihane and we have reviewed the additional information which has been brought to our attention particularly information which contradicts the assertion in the Planning Statement saying that the site of the proposed building had an existing access track leading*

to it. The prior notification application was determined in accordance with the information submitted and provided to Officers at the time. In reviewing the information provided and historic aerial photographs the Council now considers that the proposed building no longer has a lawful access track leading to it.

Given these concerns we are seeking the opinion of the Council's Lawyers regarding the validity of the application and decision reached by the Council.

We will update you once we have received a response from our Legal Team.

On 23 November, some 16 weeks later, the Council's solicitor finally confirmed that, in her opinion, the application was valid. The decision that Prior Approval was not required for the proposed building, she wrote, was 'sound'. The Council', she declared, 'does not intend to take any further action'.

Unfortunately, and notwithstanding both a request from the Society and the fact that the Council has a statutory duty to give reasons for decisions set out in Regs 7 and 8 of the Openness of Local Government Bodies Regulations 2014, she failed to provide her reasoning.

Logically the Council's solicitor could only arrive at her conclusion on the basis that the planning officer was not to know the information provided by the applicant was incorrect. And, as a result, when evaluated against the information as provided, the decision reached by the officer was 'sound'.

However, had the officer known the information was incorrect, it is hard to see how she could have arrived at the same decision. s327A of the Town & Country Planning Act 1990 provides that:

"1) This section applies to any application in respect of which this Act or any provision made under it imposes a requirement as to–

(a) the form or manner in which the application must be made;

(b) the form or content of any document or other matter which accompanies the application.

(2) The local planning authority must not entertain such an application if it fails to comply with the requirement."

Unless the Council is of the view that there is no requirement for the form or content of any document or other matter accompanying applications to be accurate, then any application that contains incorrect information that could be a material consideration affecting its determination ought not to be entertained.

Indeed, had a Prior Notification application for the track been submitted and advertised before construction works began, as should have been required, and given how other and more sustainable sites for an agricultural storage building clearly existed, coupled with the ecological and environmental damage that the construction of the track would cause, it is extremely hard to see how consent for the track would have been given without alternative locations being considered.

To quote The Hon. Mrs Justice Thornton (Holocaust Memorial Case, Neutral Citation Number: [2022] EWHC 829 (Admin)):

130. The principles on whether alternative sites are an obviously material consideration which must be taken into account are well established. Where there are clear planning objections to development then it may well be relevant and indeed necessary to consider whether there is a more appropriate alternative site elsewhere. This is particularly so when the development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it (Trusthouse Forte v Secretary of State for the Environment (1987) 53 P & CR 293 at 299-300).

Kimberley Ziya of Landmark Chambers summarised the Planning Inspector's conclusions referred to by Mrs Justice Thornton as follows:

- *If there are alternative locations for a proposal that would avoid an environmental cost, these should be taken into account*
- *Particularly if there are viable alternative sites that could accommodate the proposal without harm*
- *BUT, while it may be relevant and necessary to consider alternative proposals:*

  "in order that it may garner significant weight, the merits of such alternatives must, logically, be underpinned by a good measure of evidence demonstrating their viability and credibility as such an alternative."

The failure to take possible alternatives in to account was also referred to in [272]: Derbyshire Dales District Council v SSCLG [2010] 1 P&CR 19, where Carnwath LJ identified two distinct categories of legal error:

1. *DM erred by taking alternatives into account*
2. *DM erred by failing to take alternatives into account*

- *2nd error can only arise if:*
  - *– There is a legal or policy requirement to take alternatives into account; OR*
  - *– Alternatives were an "obviously material" consideration in the case and it was -> irrational not to take them into account*

Consequently it is clear that consent should not have been given to 3808/21/AGR, that alternatives to the consented site should have been considered, and that consent was only given as a result of the applicant having provided the LPA with information that they either knew or should have known to be incorrect.

Errors in Application 4012/22/FUL

A PART-RETROSPECTIVE APPLICATION TO REGULARISE AND RETAIN AN AGRICUTURAL ACCESS TRACK (RESUBMISSION OF 1592/22/FUL)

This new application (4012/22/FUL) is, to quote the application form submitted by the applicants, "a part-retrospective application to regularise and retain an agricultural access track". This is in itself incorrect, and repeats the same error made in 1592/22/FUL. 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. Again this repeats the same error made in 1592/22/FUL.

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 again 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?" This repeats the same error made in 1592/22/FUL

Trees and Hedges

Are there trees or hedges on the proposed development site?

○ Yes
⊘ No

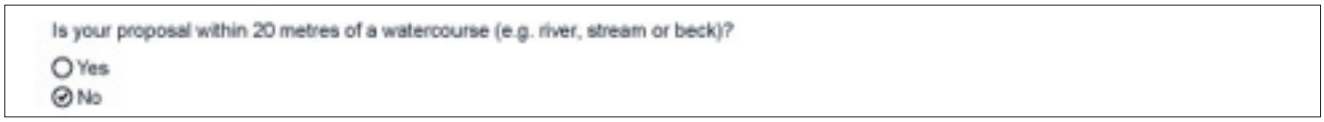
And/or: Are there trees or hedges on land adjacent to the proposed development site that could influence the development or might be important as part of the local landscape character?

○ Yes
⊘ No

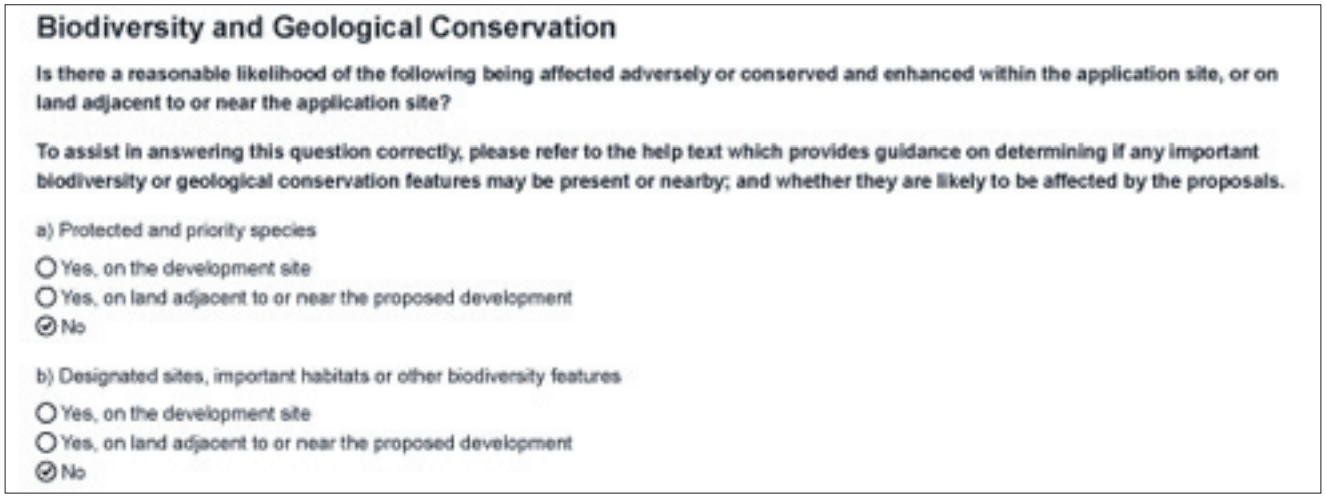
As the photographs above show the track has been constructed without planning permission to a minimum depth of 150mm and immediately adjacent to both trees and hedgerows.

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 below clearly demonstrates that the entrance to the site, at the point where the track meets the public highway, falls within Flood Zone 3.

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 10 metres away from the stream that runs in to the River Avon.



Finally in response to the three questions concerning Biodiversity and Geological Conservation the applicant's agent has again answered 'No' to two key questions, stating that there is no reasonable likelihood of either 'Protected and priority species' or 'Designated sites, important habitats or other biodiversity features' being affected adversely or conserved and enhanced within the application site, or on land adjacent to or near the application site. This is clearly incorrect but, on this occasion, a Preliminary Ecological Appraisal does at least accompany the application.



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

However, in all of the above instances, it is noticeable that the applicant's agent again repeats the errors made in 1592/22/FUL, which she has since had every opportunity to correct. Her failure to do so, and the fact she has confirmed in her declaration dated 15 November 'that, to the best of my/our knowledge, any facts stated are true and accurate and any opinions given are the genuine options of the persons giving them', might make it unwise to rely on any other claims she might make on behalf of this application.

The Applicant's Ecological Appraisal

A Preliminary Ecological Appraisal, undertaken by Western Ecology in July 2022 accompanies the application.

Unfortunately it was only undertaken after much of the construction work on the track was already complete. For example it states:

> *Hedgerows should be protected from accidental damage by a 2 metre protection zone for the duration of the construction phase.*

As the photographs earlier on page 7 clearly demonstrate, no 2 metre protection zone was left between the hedgerows and the track. Similarly, according to the Appraisal:

> *There is potential for Dormice to be associated with habitats bounding and within the Site. The provision of a 2 metre protection zone running adjacent to these habitats will ensure that Dormice are not deterred from using this habitat during the construction phase.*

Given the potential for impact it is perhaps unfortunate that the Appraisal does not appear to have established whether dormice, 'a species "of principal importance for the purpose of conserving biodiversity', were still present in the hedgerows following the construction work that had already taken place. As a result, and because the necessary protection zone was not in place, further surveys will be required. According to the Appraisal:

> *This will involve placing Dormouse nesting tubes within suitable habitats at the Site and monitoring over a period sufficient to score a survey effort of 20.*

What is certain is that starting construction without those mitigation measures being in place was at best irresponsible and it is surprising the Appraisal omits to say so, while the failure to do so conflicts with JLP Policy DEV28, Trees, woodlands and hedgerows:

> *Development that would result in the loss or deterioration of the quality of:*
>
> - *Ancient woodland, aged or veteran trees or impact on their immediate surroundings;*
> - *Other woodlands or high amenity trees including protected trees;*
> - *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.*
>
> *Development should be designed so as to avoid the loss or deterioration of woodlands, trees or hedgerows.*

The development that has taken place was clearly not designed to avoid the loss of trees or hedgerows, and 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.

Again, while the Appraisal acknowledges:

The hedgerow habitat is a Habitat of Principal Importance (JNCC & Defra, 2012) but…

it goes on to suggest it:

…does not qualify as Ecologically Important for the purposes of the Hedgerow Regulations 1997.

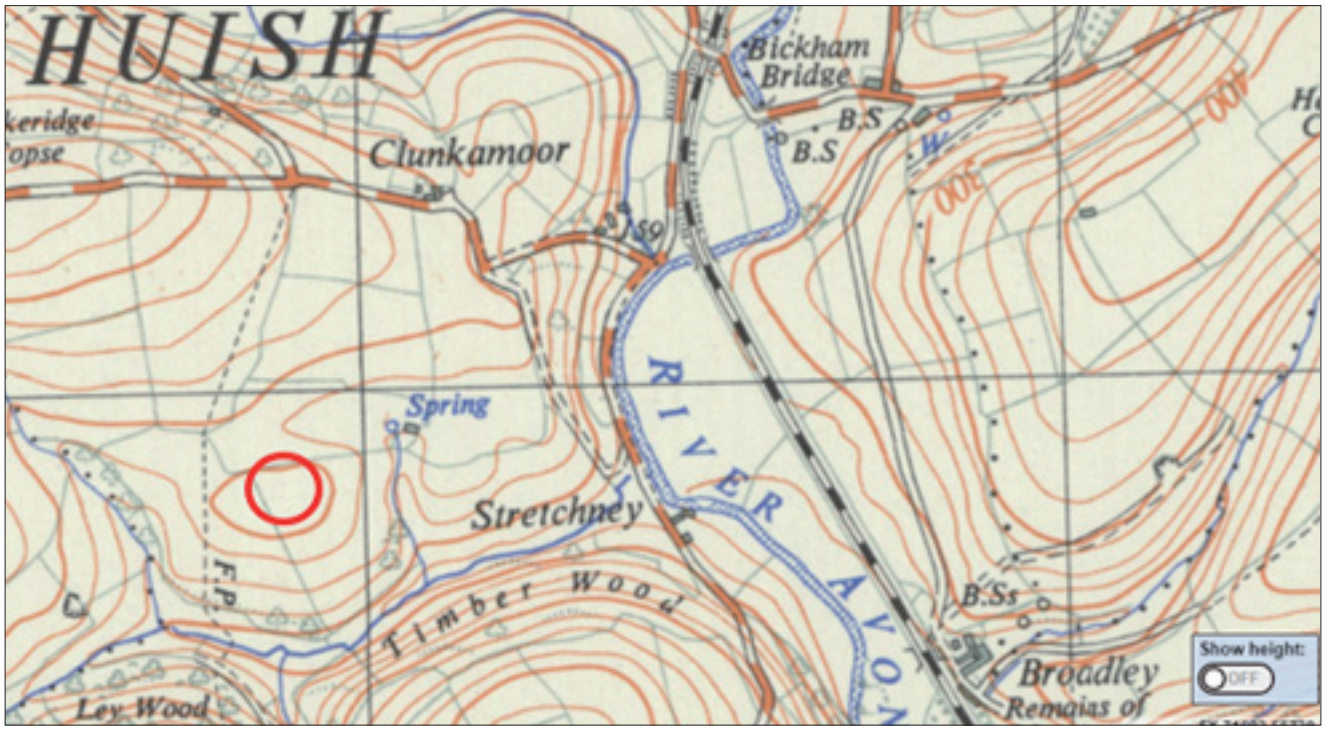
In The Hedgerows Regulations 1997 the criteria for determining "important" hedgerows, a hedgerow is "important" if it, or the hedgerow of which it is a stretch,—

has existed for 30 years or more; and

(b) satisfies at least one of the criteria listed in Part II of Schedule 1.

Given there can be no doubt the hedgerow has existed for considerably more than 30 years (it is there on both the 1886 Ordnance Survey Map and 1839 tithe map) and is almost certainly an integral part of a field system pre-dating the Inclosure Acts (Part II of Schedule 1 5(a)).

The map above is OS Six Inch Series 1888-1913, that below OS 1:25000 1931-1967 series – note no track!



The 1839 Tithe Map shows the field boundaries remain unchanged to this day

The hedgerow also contains (Part II of Schedule 1 6(a)) Ash (Fraxinus excelsior), Blackthorn (Prunus spinosa), Hawthorn (Crataegus monogyna), Hazel (Corylus avenella) and Oak, pedunculate (Quercus robur), along with some Maple (Acer campestre) and Spindle (Euonymus europaeus).

The hedgerow is also joined by others at right angles and abuts areas of woodland.

As a result the hedgerow should be considered an 'important' hedgerow, and The Hedgerow Regulations 1997 require the LPA to proceed on the presumption that it should be protected unless there are circumstances strong enough to justify removal.

The Appraisal merely states the 'dominant species within the hedgerow were hawthorn, blackthorn and bramble'. However it omits to mention that by far the dominant species is Hazel (Corylus avellana), and dormice need hazel.

As well as dormice, amongst Natural England's 'Definition of Favourable Conservation Species for Hedgerows' the 'threatened priority species significantly associated with hedgerows' recorded in the immediate proximity of the site, the Society has been told, are: common toad, grass snake, slow worm, common lizard, cuckoo, lesser spotted woodpecker, marsh tit, starling, tree sparrow, greenfinch, linnet, barbastelle bat and serotine bat.

The Google Earth image overleaf dated June 2022 shows that much of the track is largely hidden under the canopies of both the mature trees and the trees in the hedgerow. It is therefore inevitable that the root systems will also have extended beneath the track to at least the same extent as the canopy cover, so it is impossible to believe no damage will have occurred. The fact that this is not spelt out in the Appraisal is unfortunate.

Nonetheless the Appraisal does correctly note the close proximity of the development to High Marks Barn SSSI and the consequent requirement for the LPA to consult Natural England, as well as the possible need to screen the potential of the development to impact the Plymouth Sound and Estuaries SAC and Tamar Estuaries Complex SPA, and the requirement for an appropriate assessment as per Article 6(3) and (4) of the Habitats Directive 92/43/EEC (as amended).

The site lies well within the 4km Sustenance Zone for Greater Horseshoe Bats

This Google Earth image, dated June 2022, clearly shows much of the track lies beneath the tree and hedgerow canopies. By being constructed so close to both, with no 2 metre protection zone, it is probable significant ecological damage will have occurred.

High Marks Barn SSSI supports the second largest maternity roost of Greater Horseshoe Bats in England and is a mere 2.6km from site, well within the 4km Sustenance Zone in which critical Foraging Habitats and Commuting Routes are to be found.

To quote from page 21 of the Appraisal:

> *The proposed development will not result in loss, damage or disturbance to: a designated roost; potential foraging habitat; potential commuting roost; pinch point; or existing mitigation features. There will be no increased risk of collisions.*

No evidence is provided for this initial assertion, and the destruction of 2,800m2 of pasture farmland to accommodate the track has, by definition, resulted in the loss of more than two-thirds of an acre of potential foraging habitat.

Indeed this assertion is later qualified on page 26 of the Appraisal, where it states:

> *The grassland habitat comprising the development footprint has been assessed as being of limited value for foraging and commuting bats: however, there is potential for light-averse bat species such as greater horseshoe bats to be associated with adjacent hedgerow, tree and woodland boundary habitats.*
>
> *Due to the limited scale of the development footprint, and limited value to foraging bats of the habitat to be lost to the development in relation to the wider landscape, bat activity transects are not considered proportionate to the very low level of risk to foraging and commuting bats posed by this development.*

Natural England may well disagree. And what the Appraisal omits to acknowledge is the impossibility of preventing light spill continuing long after any construction work is finally completed. The track lies immediately alongside both a hedgerow and a line of mature trees and, unless no light ever leaks from the barn or no vehicles are ever driven to or from the barn after dusk or before sunrise, negative impacts will prove impossible to prevent. In such circumstances it is simply not possible to ensure 'Lighting (is) directed into the site, away from boundary and wooded habitats', given that much of the track runs beneath as well as immediately alongside those habitats.

To reiterate the Guidance in Paragraph 180 of the National Planning Policy Framework:

> *When determining planning applications, local planning authorities should apply the following principles:*
>
> *a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*
>
> *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;*

The only 'benefit' provided by the proposed development is to enable the applicant's agricultural storage building to be located in the north-west corner of their property. 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.

JLP Policy DEV26, Protecting and enhancing biodiversity and geological conservation, echoes the NPPF:

> *Development should support the protection, conservation, enhancement and restoration of biodiversity and geodiversity across the Plan Area. Specific provisions are identified below:*
>
> *3. Development likely to have a harmful impact on locally designated sites, their features or their function as part of the ecological network, 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.*
>
> *4. Harmful impacts on European and UK protected species and Biodiversity Action Plan habitats and species must be avoided wherever possible, subject to the legal tests afforded to them where applicable, and unless the need for, or benefits of the development clearly outweigh the loss.*

Given the failure to ensure a two-metre gap between hedgerows and trees and the loss of more than two-thirds of an acre of pasture grassland there is no doubt the development has already had an adverse impact on biodiversity.

On page 126 of the JLP Supplementary Planning Document July 2020 the question is asked: 'is the proposal likely to have an effect on biodiversity?', adding if yes: 'is there a less harmful site/layout?'. To which the answer is

also 'yes'.

On biodiversity grounds alone the LPA should refuse this application, require the applicant to relocate the site of their proposed agricultural building to the south-east corner of the site, adjacent to and well hidden from where access is gained from the public highway, remove the track, and make good the damage already done.

The Applicant's Landscape And AONB Statement

Paragraph 1.4 of the applicant's Landscape and AONB Statement accepts:

> *Both the JLP and the NPPF place great weight on the conservation and enhancement of the AONB. Whilst the site is not particularly visible from public viewpoints, the impact on the physical landscape can also result in harm to the AONB setting. The hard landscaping and engineering resulting from the track, as well the associated increase in vehicle movements would have a negative impact on the existing tranquil character of the site and wider AONB.*

The Statement continues:

> *2.17 The site and the immediate landscape have a high degree of tranquillity owing to it being sparsely settled with steep wooded valleys and coombes and served by few roads.*
>
> *2.19 In conclusion and having appraised the above factors it is judged that the site and the immediate landscape is of High Landscape Value consistent with the high value of the wider designated landscape.*
>
> *The issue of tranquility is subsequently addressed and its impact modified as follows:*
>
> *3.3 With regard to the 'strong sense of tranquillity' of the character type, the occasional movements of farm vehicles are unlikely to be perceived by visual receptors. The route of the track following well treed field boundaries will provide a high level of visual containment for any vehicle movements on the track. As there are few publicly accessible points in the area it is unlikely that noise will be experienced by receptors.*

Significantly the Statement fails to acknowledge the existence of the Public Right of Way immediately to the west of the site, from where the noise from vehicle movements along the track and in and around the proposed agricultural storage building will be clearly audible, while some movements may also be visible through gaps in the hedgerow. Any noise will also disturb the tranquility of the residents of Lower Clunkamoor.

Similarly the presence of the PRoW is also ignored in that section of the Statement addressing Visibility From Public Viewpoints. This omission is surprising, given the Statement includes no fewer than five versions of the relevant Ordnance Survey Map, on all of which the Footpath is clearly shown. However the Statement does accept:

> *Further study however would be required to fully assess the visual effects.*

The photographs on pages 2 showing views from such public viewpoints as the PRoW and the lane from Diptford Cott to Broadley, both of which were available to the applicants and their agent in the Society's objection to 1592/22/FUL, could suggest further study would indeed have been useful.

The Statement concludes by confirming 'the site and immediate context have a high landscape value' although 'the effects in relation to the AONB would be Neutral in the long-term as the mitigation planting matures.'

Nonetheless, the Statement has previously accepted that while:

> *'the site is not particularly visible from public viewpoints, the impact on the physical landscape can also result in harm to the AONB setting. The hard landscaping and engineering resulting from the track, as well the associated increase in vehicle movements would have a negative impact on the existing tranquil character of the site and wider AONB.*

That has to be weighed against the requirements of Joint Local Plan Policy DEV25, relating to Nationally protected Landscapes, spelt out overleaf.

This application arguably fails against all of these requirements, while the JLP Supplementary Planning Document July 2020 additionally makes clear:

> *7.57 The key test for any development proposal is the need to 'conserve and enhance' natural beauty.*

Self-evidently the imposition of this track on a previously unspoilt landscape does nothing to conserve and enhance natural beauty. Instead it needs to be judged:

> *7.58 …on the basis of a series of factors including special qualities, natural heritage, local distinctiveness, historic and cultural heritage, dark skies and natural nightscapes, tranquillity, and the delivery of management plan objectives.*

As nobody can argue that unnecessary and unwarranted damage of the AONB is a management plan objective, the application again fails against all of the specified criteria.

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.

The application satisfies none of the criteria listed above

The Applicant's Design & Access Statement

According to the applicants:

> *The track is required to facilitate the safe movements of tractors and agricultural machinery especially during the winter months when the ground conditions worsen. Due to the topography of the land, in wet weather the Applicants will be unable to travel across the land to feed the livestock and carry out essential welfare checks on the animals. Therefore the track is vital for getting the agricultural machinery around the land and supporting this agricultural enterprise.*

However, were the storage building to be located in the south-east corner of the site, tractors and agricultural machinery could still move safely along the level southern boundary of the site from east to west throughout the year, so enabling the movement of agricultural machinery and livestock between the fields, as well as making it possible to feed livestock and carry out essential welfare checks on the animals.

Whether the applicants look up at their fields from the south or down from the north visibility will remain the same, and stock will be just as happy coming downhill to feed as they will going up. The need to get agricultural machinery around the land will also vary according to the seasons. The point has already been made that 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, and any grass cutting would of necessity involve machinery travelling over pasture and not the track.

The Design & Access Statement states:

> *The track will provide a hard-surfaced access route from the gateway to the agricultural building which was approved under 3808/21/AGR and will provide a much safer and more accessible access across the Applicants land.*

In other words, if the agricultural building is not constructed in the north-west corner, access to it will not be required and the track is unnecessary.

Conversely, were it to be constructed in the south-east corner the number of vehicle movements beneath and alongside both trees and hedgerows would be reduced very significantly, minimising the danger of light pollution and disturbance to bats and other wildlife species, along with the residents of Lower Clunkamoor.

Other points raised in the applicants' Design & Access Statement that have not previously been addressed include the claim:

> *The construction of the track would have benefitted from permitted development rights under Schedule 2, Part 6 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).*

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 that is caveated by (8.iv) 'Development proposals should avoid incongruous or isolated new buildings'. By permitting a track where none previously existed the LPA would unnecessarily enable the imposition of an isolated new building in the AONB.

Referring to DEV23, the applicants say:

> *It is confirmed within the LVA that there will be no severe detrimental impact on the landscape character as agricultural tracks/green lanes are found typically in the local landscape. It also confirms that the position of the track is most appropriate within the setting and is well contained in the wider landscape.*

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 were the barn to be located in the south east corner of the property.

Why both 3808/21/AGR and 4012/22/FUL should be considered as one application

In October 2021 the application to determine whether prior approval was required for a proposed agricultural storage building was submitted to the LPA. No more than three months later, construction of the track began. And, as the applicant's Design & Access Statement makes clear, the purpose of the track is to 'provide a hard-surfaced access route from the gateway to the agricultural building'.

As a result the LPA now needs to consider whether the proposed development would comply with the provisions of Schedule 2, Part 6, Class A of the GPDO with specific regard to the amount of new development.

Here the Society would refer officers to the decision reached by the planning inspector (Appeal Ref: APP/X1925/W/20/3256050) in the case of Millbury Farm. In dismissing that appeal, the inspector gave as his reasons:

> *3. The appeal scheme proposes the erection of a new agricultural building, a hardstanding apron in front of it and a three metre wide access track running to it from and existing access adjacent to Mill End.*
>
> *4. Part 6 of the GPDO defines permitted development under its provisions as the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more (as is the unit subject of the appeal) in area of a) works for the erection, extension or alteration of a building; or b) any excavation or engineering operations. It seems sufficiently clear from this that such works could be either a building or excavation or engineering operations. It could also conceivably be both as there is nothing explicit in the provision of Part 6 that says it could not be.*

5. Indeed, Part 6 goes on to say that development is not permitted if the ground area which would be covered by (i) any works or structure (other than a fence) for accommodating livestock or any plant or machinery arising from engineering operations; or (ii) any building erected or extended or altered by virtue of Class A, would exceed 1000 square metres, calculated as described in paragraph D.1(2)(a). Paragraph D.1(2)(a) defines ground area as that 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.

6. For me, this is explicit that permitted development can be both a building and works and sufficiently implicit, based on the fact it is defined as to what can make up the 1000 square metres, that it should be concerned with a sum total of a given proposal. Or indeed any such that has been carried out within the preceding two years and be within 90 metres of the given proposal. By fault or design, I feel this is sufficiently clear by a common sense understanding of the wording of Part 6.

7. The ground area of the building proposed as part of this submission for prior approval would fall well below the 1000 square metre allowance. However, the scheme also includes the provision of a three metre wide access track of substantial length. Such that it would take the combined total over the permitted 1000 square metres. The provision of an access track could be described as works for the purposes of paragraph D.1(2)(a) and indeed an engineering operation for the purposes of Class A.

8. I note the appellant's comments regarding the allowances for works and engineering operations (hardstanding in this case) in the relevant section of Part 6 concerning units under 5 hectares. However, the submission before me concerns Class A. It has been accordingly considered under its specific provisions.

Taken together, the ground area occupied by both the proposed agricultural storage building (3808/21/AGR) and the track (4012/22/FUL) comfortably exceeds 1,000 square metres. Consequently the conclusion reached by the inspector, namely:

9. Taking the above into account, it seems sufficiently clear to me that the appeal scheme would not comply with the description of permitted development as it is set out by Schedule 2, Part 6, Class A of the GPDO. The appeal is therefore dismissed.

would also apply here.

Quite simply, the agricultural storage building can no longer be considered permitted development.

Conclusion

As the Decision Notice issued by the LPA for application 3808/21/AGR makes clear, the reason why prior approval would not be needed for the construction of the applicants' agricultural storage building was the declaration by the applicants themselves 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)'.

In support of that declaration the applicant or their agent offered the LPA information they must have known to be incorrect. Had they not done so, and for the reasons detailed on page 3, local residents would have been able 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, and 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 those expectations, this latest application also contains a number of incorrect assertions.

Consequently, were the LPA to decide to approve this application they would effectively 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.

In R (Thornton Hall Hotel Ltd) v Wirral MBC (2018) EWHC 560 (Admin) Kerr J concluded:

29. The grant of planning permission takes effect on written notification of the decision. …

30. There is no power to withdraw a planning permission once granted, on the basis of an administrative error in the decision making process …

31. Nor can an effective planning permission, once issued in error, be altered by issuing an amended notice of planning permission …

32. On the other hand, a planning permission issued in error and without proper authority is invalid and may be declared so or quashed: …"

He did so because he believed that allowing the permission to stand would subvert the public interest in the integrity of the planning process.

For whatever reason the LPA has opted not to quash or declare application 3808/21/AGR invalid. However, and for the reasons outlined earlier, now that this application (4012/22/FUL) has come forward, the agricultural storage building should no longer be considered permitted development.

Similarly, if the integrity of the planning system to be protected, this application (4012/22/FUL) should be refused and the applicants required to remove the track already constructed, and make good the damage they have caused to a protected landscape.

After that, and should they then wish, they can submit a fresh application to construct their building in a more sustainable and less damaging location.

We urge officers to refuse this application.

Richard Howell

Chair – for and on behalf of the South Hams Society