

# PLANNING APPLICATION REPORT

**Case Officer:** Wendy Ormsby

**Parish:** Diptford **Ward:** South Brent

**Application No:** 2267/17/VAR

**Agent/Applicant:**

Mr Barry James  
6 Lee Park  
West Buckland  
Wellington  
TA21 9PX

**Applicant:**

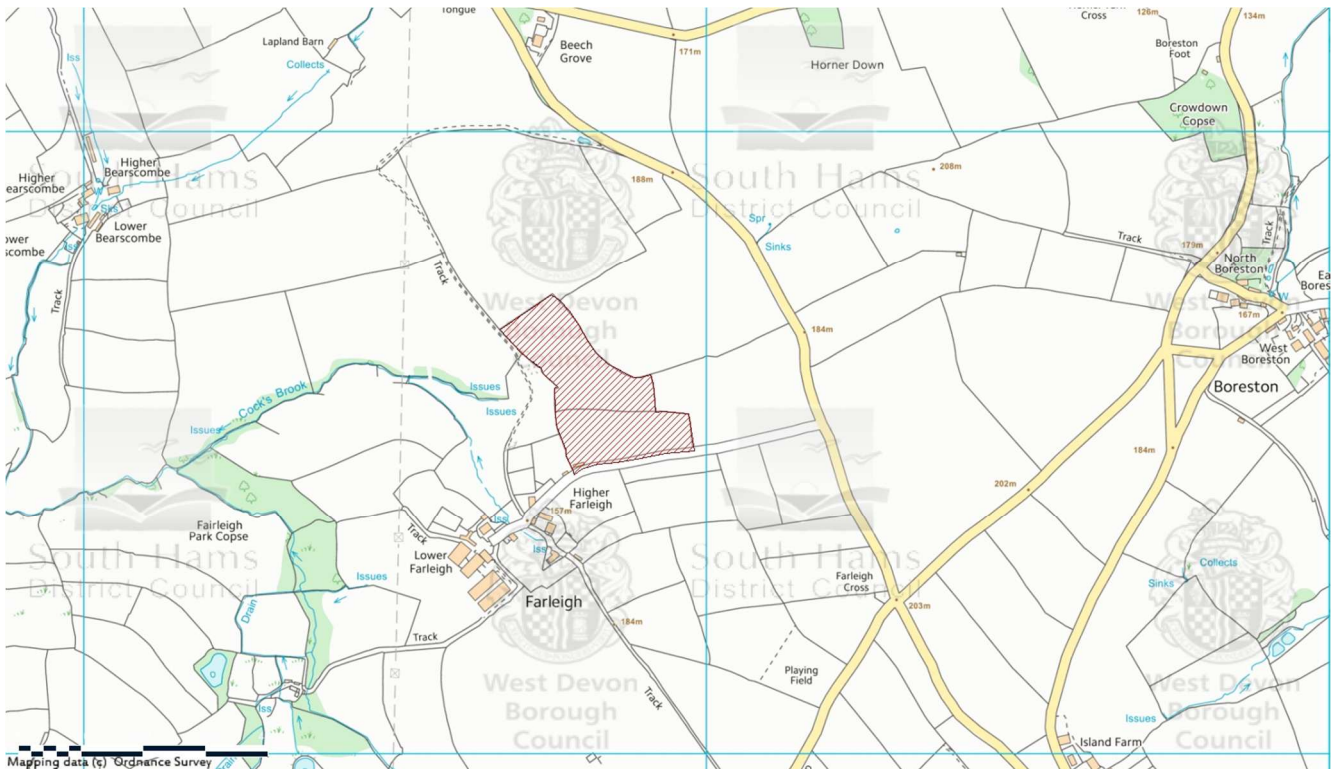
Ms C Furini  
294 Dean Cross Road  
Plymstock  
Plymouth  
PL9 7AZ

**Site Address:** Farleigh Meadows, Totnes, TQ9 7JW

**Development:** Variation of condition 3 of planning consent 17/1854/11/F to allow stables to be used for an equine business

**Reason item is being put before Committee:** At the request of Ward Members for the following reasons:

- The applicant's business case, which is key to supporting this application, is considered to be flawed
- Highways have underestimated the potential amount of traffic to the site, for example vet visits, the applicant's assertion that all sales will be dealt with online is unrealistic.
- Is there sufficient land available to support the numbers of horses planned.



**Recommendation:** Conditional approval subject to Section 106 Undertaking such that:

- No customers of the horse breeding business shall visit the site
- CCTV shall record the comings and goings of all vehicles to the site
- A log of the name, address and purpose of visit of the drivers of all vehicles entering the site shall be kept by the applicant and shall be made available to the LPA on request.

### **Conditions**

Development to be carried out in accordance with approved drawings

Use restricted to breeding of horses

No floodlighting or other external lighting

Retention of hedged to south and west of stables, maintained at a height of 4m to 5m

Drainage

Manure/dung heaps not to cause pollution

Comprehensive scheme of management for ancillary structures to accord with details previously agreed

Business use allowed for 3 year period only

### **Key Issues for consideration:**

The application seeks to remove a planning condition imposed upon the previous planning permission for the erection of a barn to be used as stables. The condition subject of the application restricts the use of the stables so that they cannot be used for business or commercial use. The reason for the imposition of the condition is to restrict the character and volume of traffic attracted to the site. The key considerations are therefore whether the condition complies with the relevant tests for planning conditions as set out in the NPPG and whether the use of the stables for business purposes would result in an unacceptable increase in traffic to and from the site.

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### **Site Description:**

The site is situated to north west of the village of Moreleigh on agricultural land to the north east of Farleigh Farm. The land currently has a stable building as approved under application 17/1854/11/F, measuring 27m in length by 9m wide and to ridge 4.5m sloping to 4m. This comprises of 10 internal stables and barn for the storage of feed, hay and tack. The building is constructed with timber ship lap boarding for the walls and green corrugated sheeting forming the roof.

It also benefits from a sand school that was approved under planning application 17/0507/13/F that is located to the south of the site and adjacent to access road and parking area.

### **The Proposal:**

The proposal is for the removal of condition 3 of planning approval 17/1853/11/F to allow business/commercial use of the stables for the breeding of horses. The applicant has stated that sales would be via the internet and that no customers would visit the site. The applicant suggest this could be controlled by planning condition or through a Section 106 Obligation. The application is supported by a Unilateral Undertaking.

### **Consultations:**

- County Highways Authority                      No objection subject to a legal agreement/planning condition to prevent customers from visiting the site
- Parish Council    Objection

*'Unsuitable location on steep slope with no basic services to support a breeding business, such as electricity or water; Increased traffic along narrow lanes for visiting vets, farriers, feed deliveries etc; Unenforceable agreement with DCC Highways that customers would not visit the site; One of a series of applications with the aim of enabling the applicant to live on the site.'*

- Agricultural advisor                                      no objection

### **Representations:**

2 letters, one of which contains 12 signatures, have been submitted raising objections to the application for reason which include the following:

Unsuitable land, location and acreage for proposed use.  
 Increased traffic will adversely impact on highway safety  
 Traffic movements are underestimated – eg vets and farriers  
 Potential for contamination from manure  
 No mains water  
 No electricity  
 Unenforceable legal agreement  
 Question viability of the business

### **Relevant Planning History**

2012/17/FUL: Use of land for siting a timber chalet as accommodation for a key worker in support of an equine breeding business for an initial period of 3 years. Current

0355/17/FUL: Use of land for siting a timber chalet for key worker accommodation in support of equine breeding business – Withdrawn

0354/17/VAR: Variation of condition 4 of 17/0507/13/F to allow business use of sand school. Withdrawn

0353/17/VAR: Removal of condition 6 of planning permission 17/1854/11/F to allow barn to be used for equine business. Withdrawn

17/1334/14/F – Installation of key workers chalet for equestrian business – Refused

17/1332/14/F – Variation of condition 3 of approval 17/1854/11/F to allow business use of the stables – Refused

17/0420/14/F – Temporary retention of mobile home for equestrian purposes and installation of timber chalet for key worker - Withdrawn

17/0507/13/F – Resubmission of 17/2889/12/F erection of sand

School for private use - Conditional approval

17/2889/12/F — Erection of a Sand School at SX 7579.5346- Withdrawn

17/1854/11/F– Demolition of existing barns and erection of replacement barn for use as stables – Conditional Approval

17/0176/06/F – Barn and field shelters for storage and shelter for sheep/horses – conditional approval

17/1497/05/F – Erection of two field shelters for horses – conditional approval

## **ANALYSIS**

### **Principle of Development/Sustainability:**

This application seeks the variation of a planning condition 3 of planning consent 17/1854/11/F which states that

*The stables hereby permitted shall not be used for business or commercial uses.*

*Reason: To restrict the character and volume of traffic attracted to the site.*

Advice to Local Planning Authorities on the imposition of planning conditions is set out with the National Planning Practice Guidance (NPPG) and within the National Planning Policy Framework (NPPF) in particular the NPPG gives advice on the application of the six tests in paragraph 216 of the NPPF. It sets out that all conditions imposed on planning permissions must satisfy all of the six tests. The six tests are as set out below:

1. **Necessary:** A condition must only be imposed if it is needed to make the development acceptable in planning terms. If the condition is wider in scope than is necessary to achieve the desired objective it will fail this test.
2. **Relevant to planning:** A condition must not be used to control matters that are the subject of other legislation.
3. **Relevant to the development to be permitted:** It is not sufficient that a condition is related to planning objectives; it must also be justified by the nature or impact of the development. A condition cannot be imposed to remedy a pre-existing problem or issue not created by the proposed development.
4. **Enforceable:** Unenforceable conditions include those for which it would, in practice, be impossible to detect a breach of the condition or are concerned with matters over which the applicant has no control.
5. **Precise:** The condition must be written in a way that makes it clear what is required and within what timescale.
6. **Reasonable in all other aspects:** Conditions which place unjustifiable and disproportionate burdens on an applicant will fail this test.

It is considered that Condition 3, which is the subject of this application, does clearly satisfy the tests as set out above, it is clear and precise, it was imposed to ensure that the development

would not harm the character of the area or adversely impact on highway safety by increasing traffic volumes and is relevant and reasonable.

It is relevant therefore to continue to consider the merits of the proposed variation to this condition.

The principle of supporting the rural economy is supported by local and national planning policy

Policy CS13 states, inter alia that:

- 1. Development to enable diversification of the rural economy is acceptable where it is compatible with its location and setting and will cause no unacceptable harm to the surrounding landscape or historic and cultural heritage.*
- 2. Development must re-use or adapt existing buildings where possible. If this is not possible, any new replacement buildings must be well related to existing buildings, of an acceptable scale and blend satisfactorily into the landscape...*

Policy DP18 states that:

*Horse related development should only be permitted where:*

- a. there is adequate land and, for commercial uses, adequate off-road riding facilities available for the number of horses to be kept on the land;*
- b. existing buildings are reused where possible but where new buildings are necessary, these are well-related to existing buildings, commensurate in size with the number of horses to be kept on the land and the amount of land available for use by those horses;*
- c. there is an agreed comprehensive scheme of management for any ancillary development including hardstanding, access roads, parking, fencing, lighting, storage, waste disposal, ménages and sub division of fields; and*
- d. the proposal, either on its own or cumulatively, with other horse related uses in the area, is compatible with its surroundings and adequately protects water courses, groundwater and the safety of all road users.*

Policy DP18 is carried forward into the emerging JLP as part of policy TTV31

Para 28 of the NPPF states, inter alia that

*Planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should:*

- support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings;*
- promote the development and diversification of agricultural and other land-based rural businesses;*

The principle of facilitating a business use of this rural building is therefore in accordance with local and national planning policy subject to all other material planning considerations.

Previous applications (17/1332/14/VAR and 17/1333/14/VAR) to allow a variation to conditions to allow the business use of the site for livery has been refused and dismissed at appeal on grounds of highway safety. This remains the key issue in the consideration of the current application.

### **Highways/Access:**

In considering the appeals mentioned above the Inspector noted that the site access joins the public highway on an unclassified road, visibility of oncoming traffic at the junction is very limited and should the proposed business use of the stables intensify use of the site access onto the unclassified road highway safety would be adversely affected.

The unclassified road then joins the wider highway network at a T junction with the C43 road. The Inspector also found visibility to be restricted at this junction.

The Inspector found that there would be no control of the type of livery offered or the intensity of business use of the stables and sand school, as a consequence vehicle movements could considerably increase. A Unilateral Undertaking had been suggested by the appellant to provide controls however none was submitted to the Inspector at the time who proceeded to determine the appeal based on the evidence available.

The Inspector concluded that a business use of the stables would allow traffic levels to increase beyond the current safe point and dismissed the appeal on the grounds that it would demonstrably harm highway safety.

The site currently accommodates a stable block with 10 stables, there is a sand school and paddocks. The owner currently has 8 mares and a stallion on site. The owner lives off site and travels daily to the site to tend to the horses. There are associated visits from vets, farriers and feed/hay deliveries.

The business proposal is now for the breeding of horses, it is stated that sales would be online and customers would not be permitted to visit the site with the only associated movements being the occasional delivery of a foal. As mares will have no more than one foal per year this level of additional movement would be limited. This application is linked to a further application for a rural workers dwelling on the site (a log cabin), proposed initially for 3 years as the business establishes. The applicant argues that living on site will reduce the amount of vehicle movements to the site from her and that overall even with the possibility of some increased visits from the vet there will be no net increase in visits. A Transport Statement is submitted in support of the application. The applicant also points out that there is nothing to prevent the horses breeding at the site as part of the current private use.

The Highway Authority have raised no objection to the application subject to a Section 106 legal agreement to prevent customers from visiting the site and a condition to the same effect.

Noting that the Highway Authority do not object to this business use proposal subject to the 106 agreement and condition it is relevant to consider if these controls would meet the necessary tests and be enforceable.

It would not be necessary or appropriate to have a Section 106 Obligation and a planning condition that seek to enforce the same controls, one or the other should be applied. In this case the applicant has submitted a Unilateral Undertaking.

The NPPF sets out that:

Planning obligations should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms
- directly related to the development
- fairly and reasonably related in scale and kind to the development.

It is considered that the terms of the Obligation as submitted meet these tests, however also relevant is to consider is whether or not the terms are enforceable. How would the authority know if customers have been visiting the site, rather than, for example, friends making a social visit? This matter has been raised with the applicant who has suggested a further undertaking to install CCTV to record comings and goings from the site, the applicant would record the details of visitors relevant to vehicle registration numbers and the CCTV records and vehicle records would be available for inspection by the LPA upon request.

Officers consider that this approach could be successful and should not be to be unduly onerous. Nevertheless there remains an element of uncertainty as to the traffic levels that will arise and how they are uncontrolled. As such it is proposed that if the condition is varied to allow business use for the breeding of horses it is granted for a temporary 3 year period; this will tie in with the temporary consent sought for the linked application for a rural workers dwelling on the site and will allow the nature and impacts of the business to be assessed and reviewed.

### **Design/Landscape:**

The proposed variation of the condition to allow business use for breeding will have no visual impact on the site

### **Neighbour Amenity:**

The proposed business use for the breeding of horse will have no material impact on neighbouring properties subject to there being no material increase in traffic movements to the site

### **Other Matters:**

Objections have been raised on the grounds that the site is not suitable for the breeding of horses as the site does not have running water or electricity and there is insufficient land. The site already allows for 10 horses to be stabled and the applicant already keeps 9 horses at the site; there is nothing to suggest that the horses are not properly cared for on the site due to lack of infrastructure. The Agricultural consultant has raised no objection to the proposed use.

Objections also question the viability of the business and the enforceability of the legal obligation. The three year temporary consent will allow for these matters to be fully tested.

## **The Planning Balance**

The principle of the establishment of rural businesses in existing buildings is supported by local and national planning policy.

The key concern with regard to the proposed business use of Farleigh Meadows relates to ensuring that there will be safe and suitable access for all users of the highway. A use that would materially increase traffic movements to and from the site would not be acceptable due to inadequate visibility at junctions.

Measures to control traffic movements have been put forward which appear likely to be satisfactory, however it is appropriate to allow the variation of this condition on a 3 year temporary basis only to allow the impact to be fully assessed.

On this basis the proposed variation of condition is considered to be acceptable.

***This application has been considered in accordance with Section 38 of the Planning & Compulsory Purchase Act 2004.***

## **Planning Policy**

Section 70 of the 1990 Town and Country Planning Act requires that regard be had to the development plan, any local finance and any other material considerations. Section 38(6) of the 2004 Planning and Compensation Act requires that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise.

The relevant development plan policies are set out below:

### ***South Hams LDF Core Strategy***

CS1 Location of Development  
CS7 Design  
CS9 Landscape and Historic Environment  
CS10 Nature Conservation  
CS11 Climate Change

### ***Development Policies DPD***

DP1 High Quality Design  
DP2 Landscape Character  
DP3 Residential Amenity  
DP7 Transport, Access & Parking  
DP15 Development in the Countryside  
DP16 Conversion and Reuse of Existing Buildings in the Countryside  
DP18 Horse related uses and structures

## **Emerging Joint Local Plan**

The Plymouth and South West Devon Joint Local Plan (the JLP) will replace the above as the statutory development plan once it is formally adopted.



Annex 1 of the National Planning Policy Framework (the Framework) provides guidance on determining the weight in relation to existing and emerging development plan policies.

- For current development plan documents, due weight should be given to relevant policies according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
- For the JLP, which is an emerging development plan, the weight is to be determined by the stage of its preparation, the extent to which there are unresolved objections, and its degree of consistency with the Framework.

The JLP is at a relatively advanced stage of preparation. The precise weight to be given to policies within the JLP will need to be determined on a case by case basis, having regard to all of the material considerations as set out on the analysis above.

### **PLYMOUTH AND SOUTH WEST DEVON JOINT LOCAL PLAN -: PUBLICATION (as considered by the Full Councils end Feb/Early March 2017)**

TTV31 Development in the Countryside  
DEV1 Protecting amenity and the environment  
DEV2 Air, water, soil, noise and land  
DEV15 Supporting the rural economy  
DEV24 Landscape character  
DEV28 Protecting and enhancing biodiversity and geological conservation  
DEV30 Trees, woodlands and hedgerows  
DEV31 Specific provisions relating to transport

#### **Considerations under Human Rights Act 1998 and Equalities Act 2010**

The provisions of the Human Rights Act 1998 and Equalities Act 2010 have been taken into account in reaching the recommendation contained in this report.

#### **Proposed conditions in full**

1. The development hereby approved shall in all respects accord strictly with drawing numbers SHLP, SHDC 1 to 3, PC/LPA/393-01, Landscape and Visual Impact Assessment dated July 2011 and Design and Access Statement received by the Local Planning Authority on 20th July 2011 and submitted in support of planning application 17/1854/11/F.

Reason: To ensure that the proposed development is carried out in accordance with the drawings forming part of the application to which this approval relates.

2. There shall be no floodlighting or other external lighting at the site.

Reason: To safeguard the appearance and character of the area.

3. If any trees or plant is removed, felled, uprooted, destroyed or dies which forms part of the native hedge and trees as shown on drawing PC/LPA/393 - 01 submitted as part of planning application 17/1854/11/F, another tree or plant shall be planted at the same place and that tree(s)/ plant (s) shall be of such a size and species, and shall be planted at such time as may be specified in writing by the Local Planning Authority.

Reason: In the interests of public amenity and local landscape character.

4. The hedges to south and west of the stables at the site shall be maintained at a height of 4m to 5m.

Reason: In the interests of public amenity and local landscape character

5. The site shall be drained on a separate system with all clean roof and surface water being kept separate from foul drainage. All foul drainage, including foul surface water run-off, shall be disposed of in such a way as to prevent any discharge to any well, spring or watercourse including dry ditches with connection to a watercourse.

Reason: In the interests of the prevention of pollution.

6. Manure/dung heaps should be sited in an area where it/they will not cause pollution of any watercourse or water source by the release of contaminated run-off.

Reason: To prevent pollution of the water environment.

7. The application site shall be used for the keeping of horses/ponies for the private enjoyment of the land owner only and for no business or commercial use except for the commercial breeding of horses.

Reason: To restrict the character and volume of traffic attracted to the site.

8. The Comprehensive Scheme of Management for any ancillary development within the site, submitted and approved pursuant to condition 9 of planning permission 17/1854/11/F by the Local Planning Authority, which included details of proposed hardstandings, access roads, parking, fencing, lighting, storage, waste disposal, ménages and sub division of fields shall be strictly adhered to and maintained.

Reason: In the interests of public amenity and local landscape character.

9. The business use hereby approved shall cease within 3 years of the date of this decision.

Reason: To allow the impacts of the commercial use to be fully assessed and understood, in the interests of highway safety and the amenity of the area.