

PLANNING APPLICATION REPORT

Case Officer: Adam Williams

Parish: Ashprington **Ward:** West Dart

Application No: 1021/19/PDM

Agent/Applicant:

Luscombe Maye
59 Fore Street
Totnes
Devon
TQ9 5NJ

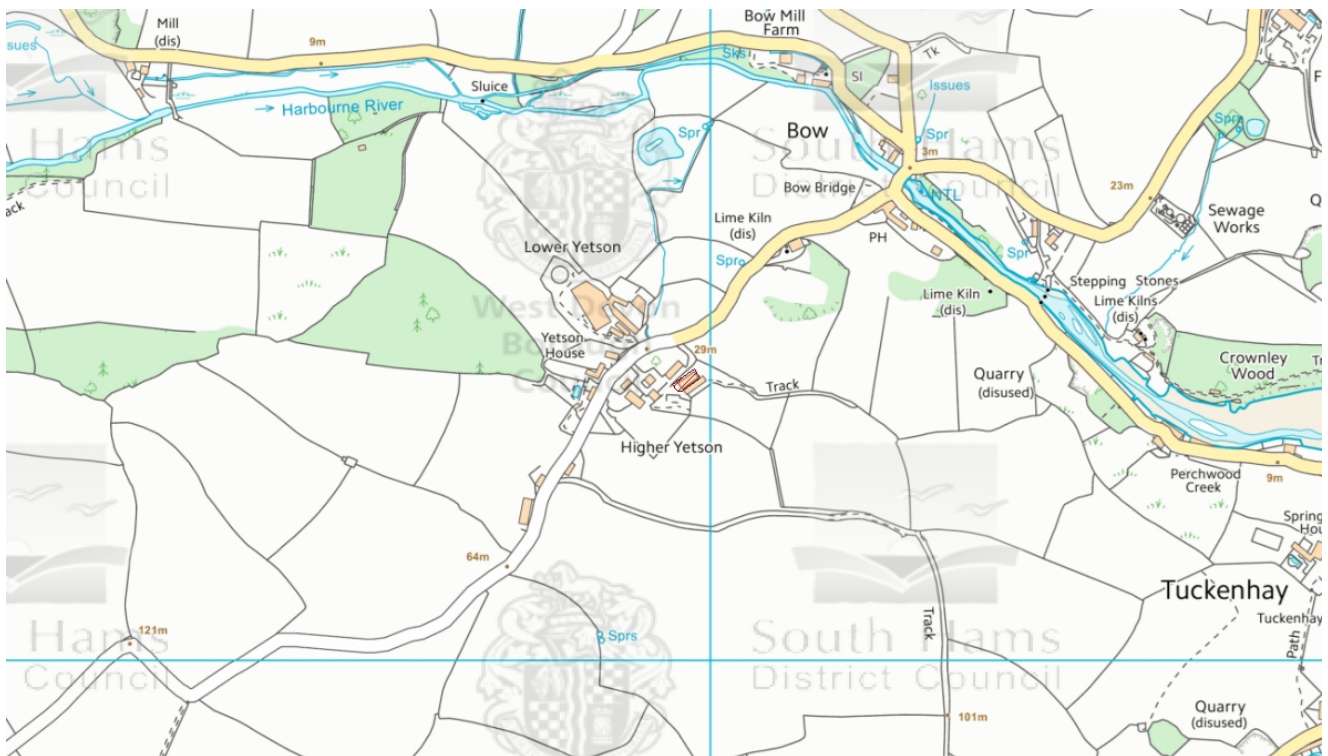
Applicant:

Mrs J Soper

Site Address: Barn At Higher Yetson Farm, Ashprington, Totnes, TQ9 7EG

Development: Notification for prior approval for proposed change of use of agricultural building to dwellinghouse (Class C3) and for associated operational development (Class Q(a+b))

Reason item is being put before Committee: Applicant is related to Council Employee



Recommendation: Prior Approval required and given

Conditions

1. Accord with plans
2. Unexpected Land Contamination
3. Foul Drainage
4. Surface Water Drainage
5. accord with ecology report

Key issues for consideration:

Whether the proposal complies with the criteria set out within Schedule 2, Part 3, Class Q (a & b) of The Town and Country Planning (General Permitted Development) Order, 2015 (as amended) and if so whether prior approval of the authority will be requires as to :

- (a) transport and highways impacts of the development,
 - (b) noise impacts of the development,
 - (c) contamination risks on the site,
 - (d) flooding risks on the site,
 - (e) whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, and
 - (f) the design or external appearance of the building,
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Site Description:

The site is located at Higher Yetson Farm which is within the hamlet of Yetson where there are a number of dwellings, converted barns and agricultural buildings. The barn is an open fronted silage store built in the 1970s and has since been used for low key agricultural storage.

The Proposal:

The application seeks a determination as to whether prior approval is required for the change of use of an existing agricultural barn to a single dwelling together with the associated operational development comprising the installation of windows, doors and replacement roof. A small low barn adjacent to the barn in question will also be removed.

It is therefore considered under Schedule 2, Part 3, Class Q (A&B) of The Town and Country Planning (General Permitted Development), Order, 2015 (as amended).

Paragraph W applies to applications submitted for prior approval whereby

Consultations:

County Highways Authority – no comments to make

As the determination of the application does not rest on planning merit, the Town/Parish Council are sent a notification for information only.

Representations:

None

ANALYSIS

The main considerations with the application are whether the proposal is permitted development as assessed under Class Q parts (a) and (b) and if so whether prior approval is required for the matters outlined within Q.2 of Schedule 2, Part 3 of the Order.

The application seeks prior approval for development that falls within both parts (a) and (b).

Development not permitted:

Q.1 Development is not permitted by Class Q if—

(a) the site was not used solely for an agricultural use as part of an established agricultural unit—

(i) on 20th March 2013, or

(ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use, or

(iii) in the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date development under Class Q begins;

Q.1 (a) Information provided with the application confirms that the site was in full agricultural use on 20 March 2013. The applicant confirms that the barn was built for the purposes of storing silage and has always been used in association with the surrounding land and is confirmed with an Agricultural Holding Number. Since then it has been in use for low key agricultural machinery storage

The council has no reasons nor evidence before it to dispute this claim. The council has not received any information from third parties which supports nor refutes that claim. The site visit provided officers with comfort that the building is and not deviated from its agricultural use

(b) in the case of—

(i) a larger dwellinghouse, within an established agricultural unit—

(aa) the cumulative number of separate larger dwellinghouses developed under Class Q exceeds 3; or

(bb) the cumulative floor space of the existing building or buildings changing use to a larger dwellinghouse or dwellinghouses under Class Q exceeds 465 square metres;

Q.1 (b) The proposed building to be converted has a footprint of 216sqm and will be converted into 1 'larger' dwellings and no other buildings have been converted and the floor space will not exceed 465sqm

(c) in the case of—

(i) a smaller dwellinghouse, within an established agricultural unit—

(aa) the cumulative number of separate smaller dwellinghouses developed under Class Q exceeds 5; or

(bb) the floor space of any one separate smaller dwellinghouse having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeds 100 square metres;

Q.1 (c) no smaller dwellings are proposed

(d) the development under Class Q (together with any previous development under Class Q) Within an established agricultural unit would result in either or both of the following—

- (i) a larger dwellinghouse or larger dwellinghouses having more than 465 square metres of floor space having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order;
- (ii) the cumulative number of separate dwellinghouses having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeding 5;

Q.1 (d) The proposal within the agricultural unit would not result in a larger dwellinghouse or larger dwellinghouses having more than 465sqm of floor space with a C3 use nor would amount to a cumulative number of separate dwellinghouses with a C3 exceeding 5.

The applicant is advised that if permitted, this application would amount to a cumulative total of: 1 larger dwellinghouse. The cumulative number of separate dwellings having a use falling within Class C3 would therefore not exceed 5.

Reviewing the planning history for the holding indicated no other Class Q applications, the dwelling known as 'The Stables' is within the ownership line and was converted in 1993 but this was through a full application as opposed to through permitted development (01/1294/93/3: FUL)

- (e) the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;

Q.1 (e) it has been confirmed by the agent that the site is not currently occupied under an agricultural tenancy agreement.

- (f) less than 1 year before the date development begins—
 - (i) an agricultural tenancy over the site has been terminated, and
 - (ii) the termination was for the purpose of carrying out development under Class Q,

Q.1 (f) The agent has confirmed that no agricultural tenancy over the site has been terminated for the purposes of carrying out development under Class Q less than one year before the development begins.

- (g) development under Class A(a) or Class B(a) of Part 6 of this Schedule (agricultural buildings and operations) has been carried out on the established agricultural unit—
 - (i) since 20th March 2013; or
 - (ii) where development under Class Q begins after 20th March 2023, during the period which is 10 years before the date development under Class Q begins;

Q.1 (g) The Council does not have a record of any recent development under Class A(a) or Class B(a) of Part 6 of this Schedule (agricultural buildings and operations) elsewhere within the unit.

- (h) the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point;

Q.1 (h) The proposed development would not result in the external dimensions of the building extending beyond external dimensions of the existing building at any given point.

- (i) the development under Class Q(b) would consist of building operations other than—

(i) the installation or replacement of—
(aa) windows, doors, roofs, or exterior walls, or
(bb) water, drainage, electricity, gas or other services,
to the extent reasonably necessary for the building to function as a dwellinghouse; and
(ii) partial demolition to the extent reasonably necessary to carry out building operations
allowed by paragraph Q.1(i)(i);

Q.1 (i) The proposed building works would include the conversion of the barn within the existing structure; and the insertion of windows and doors. The agent has confirmed in its statement that the barn will be converted in accordance with the Class Q legislation,

The applicant is also reminded of the advice contained within the NPPF and the Hibbit decision. The agent confirms in its statement that the accompanying plans and structural report demonstrate that the barn can be converted without any significant alterations to the structure, the block walls, steel frame and roof are all in good structural order and can be retained as existing. The front of the Barn is open so it will require the insertion of new windows and doors within a new elevation to the open front to enclose the conversion.

This is in line with precedent established by *Hibbitt v Secretary of State for Communities and Local Government* [2016] EWHC 2853 (Admin) where it was deemed that the balance to be struck is where the line falls on what is a conversion and what is a rebuild. The case considered by the courts was a fully open sided barn with a metal sheet roof, as more elevations were needed to the provided in the construction than not, this was considered rebuild. More enclosed barns (those with 3 or 4 sides enclosed) are acceptable as the conversion also means leaving more of the original building intact.

It is also confirmed that the windows and doors to be inserted will comprise powder-coated aluminium frames which will utilise the vertical design and will be inserted into the elevations of the building to create a contemporary look.

The applicant recognises that a Class Q application needs to be a “conversion” and therefore the structure, external cladding and box profile roof will be retained and utilised with only the insertion of windows and doors in accordance with Class Q legislation.

The accompanying structural report confirms that the existing structure appears sound and in good overall condition.

The applicant confirms that the proposal involves changing the use of an existing building; therefore, A suitable condition will be attached to any permission granted requiring the submission and consideration if surface and foul drainage given the absence of details on submitted plans.

Q.1 (j) (k) (l) (m) – N/A. The site is not on article 2(3) land. The site is not nor forms part of a safety hazard area nor a military explosives storage area. The site is not nor contains a Scheduled Ancient Monument. The building is not a listed building.

Conditions:

Q.2— (1) Where the development proposed is development under Class Q(a) together with

development under Class Q(b), development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—

- (a) transport and highways impacts of the development
- (b) noise impacts of the development.

There are no significant transport and highways impacts or noise impacts resulting from the proposed development. The proposal will be access via an existing track that leads from nearby county highway which runs all the way to Harberton. This access track concrete and of a good width leading directly up to the barn is considered suitable for domestic use. The building is well positioned within the farmstead. A modest garden and parking for 2 cars is proposed within the curtilage for the unit is shown

- (c) contamination risks on the site

There are no significant contamination or flooding risks associated with the site, however a condition will be attached to cover unsuspected contamination that may be apparent resulting from its former agricultural use.

- (d) flooding risks on the site

There are no flooding risks associated with the site and the site is not located within a Critical Drainage Area.

- (e) whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, and

Paragraph 109 of the Planning Practice Guidance advises that: Impractical or undesirable are not defined in the regulations, and the local planning authority should apply a reasonable ordinary dictionary meaning in making any judgment. Impractical reflects that the location and siting would “not be sensible or realistic”, and undesirable reflects that it would be “harmful or objectionable”.

When considering whether it is appropriate for the change of use to take place in a particular location, a local planning authority should start from the premise that the permitted development right grants planning permission, subject to the prior approval requirements

Paragraph 109 contains some non-exhaustive examples;

“ local planning authorities may for example, consider that because an agricultural building on the top of a hill with no road access, power source or other services its conversion is impractical”

Its location is not undesirable or impractical for a change of use from an agricultural building to a Class C3 dwellinghouse. It has appropriate access off the county highway to the north east.

(f) the design or external appearance of the building, and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

The design and external appearance of the building is acceptable and the application complies with the requirements set out In paragraph W of Part 3.

(2) Where the development proposed is development under Class Q(a) only, development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the items referred to in sub-paragraphs (1)(a) to (e) and the provisions of paragraph W (prior approval) of this Part apply in relation to that application. This application is for Class Q (a) and (b)

(3) Development under Class Q is permitted subject to the condition that development under Class Q(a), and under Class Q(b), if any, must be completed within a period of 3 years starting with the prior approval date. This application is for Class Q (a) and (b).

Conclusions

On the basis of the information submitted, it is considered that the proposal is in accordance with the rights afforded by Class Q (a & b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and the associated advice contained within the National Planning Policy Practice. As such, prior approval is not required and the application is deemed lawful development.

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.

Conditions -

1. The development hereby approved shall in all respects accord strictly with drawing number(s)

Bat, Barn Owl & Nesting Bird Survey by Butler Ecology dated 20th March 2019 – received 27/03/2019

Existing Ground Floor Plan – Drawing Number: 210518/01 - received 27/03/2019

Existing Site Plan – Drawing Number: 210518/03 - received 27/03/2019

Proposed Site Plan – Drawing Number: 210518/06 - received 27/03/2019

Proposed Elevations – Drawing Number: 210518/05 - received 27/03/2019

Proposed Ground Floor Plan – Drawing Number: 210518/04 - received 27/03/2019

Existing Elevations – Drawing Number: 210518/02 - received 27/03/2019

HB Surveying Limited – Barn at Higher Yetson, Ashprington - received 27/03/2019

Planning Statement: Ref: AMB – Date: March 2019 – Amanda Burden (Hons), FAV, MBIAC– Received: 27/03/2019

Site location plan – Drawing Number: SHDC1 - received 27/03/2019

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. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with.

Following completion of measures identified in the approved remediation strategy and verification plan and prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority.

Reason: No site investigation can completely characterise a site. This condition is required to ensure that any unexpected contamination that is uncovered during remediation or other site works is dealt with appropriately.

3. Notwithstanding the submitted details, prior to the installation of any part of the foul drainage scheme or before development continues above slab level, whichever is the sooner, full details of the works for the disposal of sewage shall be submitted to and approved in writing by the Local Planning Authority (LPA), and the dwelling shall not be occupied until the approved works have been completed to the satisfaction of the Local Planning Authority. Please note that a treatment plant should be used rather than a septic tank.

Reason: In the interests of the prevention of pollution.

4. Notwithstanding the submitted details, prior to the installation of any part of the surface water management scheme or before development continues above slab level, whichever is the sooner, full details of the most sustainable drainage option shall be submitted to and approved in writing by the Local Planning Authority (LPA). Design steps as below:

a. Soakaway testing to DG 365 to confirm the use of soakaways or to support an alternative option. Three full tests must be carried out and the depth must be representative of the proposed soakaway. Test results and the infiltration rate to be included in the report.

b. SuDS to be designed for a 1:100 year event plus 40% for climate change.

c. If the Local Planning Authority concludes that the method of drainage approved as part of this permission is undermined by the results of the percolation tests, a mitigating drainage alternative shall be agreed with the Local Planning Authority

d. The drainage scheme shall be installed in strict accordance with the approved plans, maintained and retained in accordance with the agreed details for the life of the development.

Reason: To ensure surface water runoff does not increase to the detriment of the public highway or other local properties as a result of the development.

5. The recommendations, mitigation and enhancement measures of the Ecological Report, by Butler Ecology on 20th March shall be fully implemented prior to the commencement of the

use hereby approved and adhered to at all times. In the event that it is not possible to do so all work shall immediately cease and not recommence until such time as an alternative strategy has been agreed in writing with the local planning authority.

Reason: To safeguard the interests of protected species

INFORMATIVES

1. The responsibility for ensuring compliance with the terms of the approval rests with the person(s) responsible for carrying out the development. The Local Planning Authority uses various means to monitor implementation to ensure that the scheme is built or carried out in strict accordance with the terms of the permission. Failure to adhere to the approved details can render the development unauthorised and vulnerable to enforcement action.
2. Attention is drawn to the Conditions contained within Class Q.2 of Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). In particular condition (3) which requires the development to be completed within a 3 year period from the date of prior approval being granted.
3. The applicants attention is drawn to the advice contained within paragraph 105 of the Planning Practice Guidance which states that the proposed works are only considered to benefit from the permitted development right on the understanding that no new structural elements are proposed. The existing building should be structurally strong enough to take the loading which comes with the external works to provide for the proposed residential use. If any new structural works are required then the proposal will not benefit from permitted development afforded by Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
4. The development shall be carried out in accordance with the details submitted to the local planning authority, unless the local planning authority and the developer agree otherwise in writing.