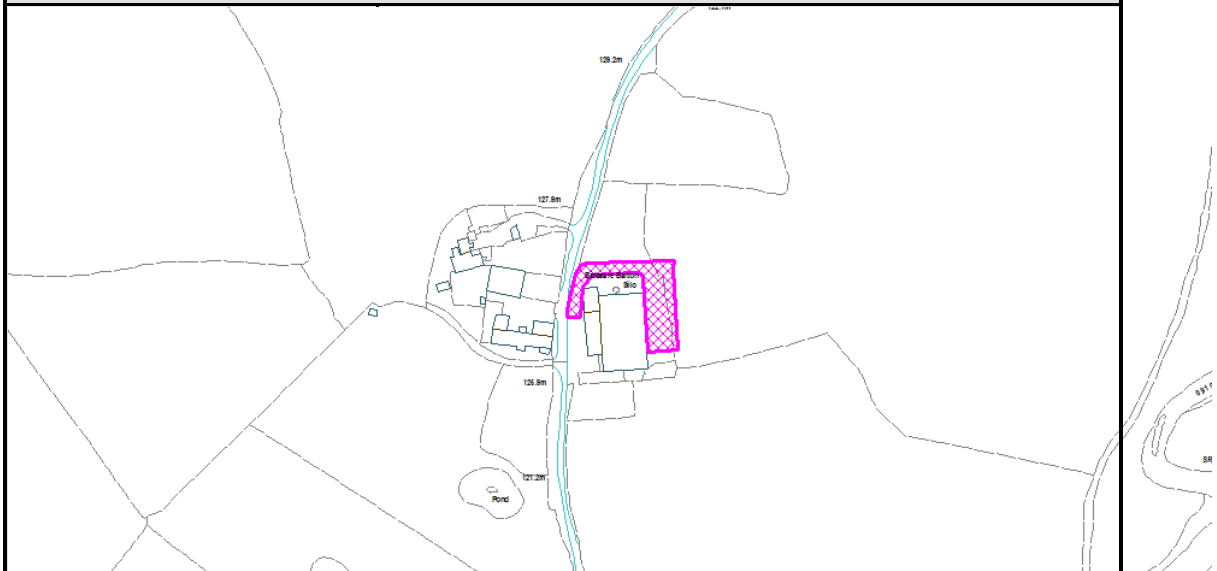


Committee Report Addendum – 03.10.2024

Application Number:	1/0277/2024/FUL
Registration date:	25 March 2024
Expiry date:	20 May 2024
Applicant:	Mr and Mrs J Seabridge
Agent:	Acorus
Case Officer:	Mr Peter Stapley
Site Address:	Buildings And Land At Grid Reference 266213 105908, Bondleigh, Devon,
Proposal:	Provision of a new agricultural livestock building
Recommendation:	Grant



Background:

This Committee Addendum Report seeks to address a number of matters raised by neighbouring objectors, Mr and Mrs Ward, in the subsequent three written representations received since the publishing of the original Committee Report on the 25th of July 2024.

Mr and Mrs Ward object to the application, reference: 1/0277/2024/FUL. They are the owners and occupants of Berry Hill Barn, which neighbours the application site and is located approximately 19 metres from the existing barns and approximately 52 metres from the proposed building (building to building).

This report will address the following matters:

- Fall-back Position.
- Disbenefits.
- Impact on Residential Amenity and Environmental Management Plan (EMP).
- Impact on Site of Special Scientific Interest (SSSI).
- Other Matters.

This addendum should be read in conjunction with the original Committee Report, which is appended.

Fall-back Position:

Mr and Mrs Ward have raised concerns about the Council's approach to existing development which your Officer considers would still take place if the application is refused.

A *fall-back* (i.e. development which an applicant could undertake without a further grant of planning permission) is capable of being a material consideration in favour of granting planning permission.

The key considerations for Members are: -

- i. Does the applicant have a lawful ability to undertake the fall-back development?
- ii. Can the applicant show that there is at least a *real prospect* that it will undertake the fall-back development if planning permission is refused? This does not have to be probable or likely: a possibility will suffice.
- iii. If a fall-back development should be treated as a material consideration, how much weight should be afforded to the consideration. This will involve an assessment of the *degree* of probability of the fall-back occurring and a comparison between the planning implications of the fall-back and the planning implications of the Proposed Development.

In the case of *R (Ward) v Torridge District Council* [2023] EWHC 2629 (KB), the Council's decision to grant planning permission to the applicants for development at the Site was successfully challenged by Mr and Mrs Ward by way of judicial review. The Judgment of Mr Justice Jay has been made available for Members to read.

One of the grounds of challenge in the case was that the Council unlawfully concluded that the applicants had a fall-back position of being able to operate the Site as a dairy farm without unauthorised development.

In paragraph 28 of the Judgment, Mr Justice Jay found that the officer "*was required to consider not merely what was achievable or "doable" as permitted development under overarching planning law principles, but also whether there was a real prospect in practice that without planning permission the Interested Party would act in this fashion. There is no indication that the planning officer proceeded beyond the Deputy High Court Judge's stage (a) to stage (b).*"

The Judge also found that the inferences “clearly pointed in the other direction: namely, that without planning permission on the main application the dairy operation could not be sustained.” These inferences included the following:

- i. *‘The first planning officer said that the unauthorised operations were “fundamental” to use as a dairy farm.*
- ii. *The Interested Party never sought to contradict that conclusion.*
- iii. *In the planning statement submitted in connection with all four applications, the Interested Party were inviting the Defendant to consider the proposal on a composite basis. I have said that this did not happen, for reasons which are not clear, but nowhere did the Interested Party say that without permission being granted on the main application, his dairy operation would or might continue.*
- iv. *Given the copious references to animal welfare standards in the planning statement, the obvious inference is that absent the unauthorised development these standards would not be achieved. The fact remains that the unauthorised development was carried out for a reason: to enable the dairy operation to take place.’*

The application being considered now is different from the application addressed in the Judicial Review proceedings. The application challenged concerned a wider application for retrospective permission and other development. It was also made at the same time as 2 other planning applications for development at the Site. The current application concerns the provision of a new agricultural livestock building, there is only one application before the Council and there have been a number of material changes since the Judicial Review which are addressed below.

Your Officer’s assessment is as follows:

Does the applicant have a lawful ability to undertake the fall-back development?

Following the Judicial Review, the Council considered whether it would be expedient to take enforcement action against the applicants in respect of development previously considered unlawful development including some development subject to the planning decision which was quashed by the High Court. These included engineering works to create a hardstanding and concrete pad, internal works to a barn and the adaptation of an open barn to a closed barn (the Dutch Barn). With the benefit of more detailed consideration and legal advice, the Council decided that some of the development concerned amounted to permitted development and did not require planning permission. The enforcement report (a copy of which is made available to Members to consider) explains:

‘Internal works to barn:

The Council has consistently maintained that there has been no change of use at the site and that the use of the barns to accommodate a dairy herd is not a change of use. This position was supported within both legal judgements and the consideration of Ms Blackmore on the first planning application where she noted the introduction of cubicles and milking equipment is not considered to require planning permission nor is any internal works to remove internal walls, the grain dryer etc.

Mr Ward has cited the ‘400 metre rule’, referencing Part 6 of the General Permitted Development Order. As no change of use has taken place, most of the barn accommodation is not captured by this, except for the small section subject to external cladding (see below) as these works have on the face of it, enabled livestock to be accommodated. ...

S55 of the T&CP Act (2)(a) indicates that alterations / works to a building which affect only the interior do not involve development, however it further states if they are works for the alteration of a building by providing additional space in it underground then this would be development. It is not considered that development has occurred to create ‘space’ underground within the existing barns and the Enforcement Officer’s visit noted the use of a pre-existing pit area. The introduction of pipes within the existing ground area is not considered to be development in the context of S55.”

Cladding / enclosure of open barn:

These external works would be allowed via Class A (a) as they constitute works for the 'alteration of a building' that are reasonably necessary for the purposes of agriculture. However, Part A.1 (i) clarifies that such works are not permitted where the building would be used for the accommodation of livestock and within 400 metres of the curtilage of a protected building. Given the building is currently used to accommodate livestock, the works must be considered in breach and requiring planning permission. If the building were to be used for storage, then this would not be the case.

External engineering operations:

Part A (b) of Part 6 allows 'any engineering operations' which are reasonably necessary for the purposes of agriculture. There are no subsequent provisions in Part A.1 that would restrict or prevent these works, and the Council does consider them to be 'reasonably necessary for the purposes of agriculture'.

Fences / enclosures

Class A, Part 2 of the General Permitted Development Order enables the erection, construction, maintenance, improvement or alteration of a gate, fence, wall, or other means of enclosure to be permitted development subject to the conditions set out in Part A.1. The fences around the loafing area would be allowed under permitted development.

Summary

The above evaluation leads to a concluding position whereby the cladding of the building does constitute a breach of planning, but only because the building is currently being used to accommodate livestock. The engineering works are enabled through permitted development without the need for prior approval. The internal works to the building would not constitute development under S55.'

In respect of the aspects of development which were unauthorised, the Council carefully considered all material considerations and decided that it would not be expedient to take enforcement action for the reasons set out within the enforcement report.

Mr and Mrs Ward's solicitors have stated that the unlawful development was substantially completed by 16th June 2020 and would therefore obtain statutory immunity by 16th June 2024.

The view of your Officer is that the unlawful development (identified within the enforcement report) was substantially completed by 15th June 2020, as attested by the applicant on the 17th February 2021, this is confirmed by the Councils Enforcement Case.

Section 171B of the Town and Country Planning Act 1990 provided that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

Section 171B has been amended by Section 115 of the Levelling-up and Regeneration Act 2023 and the period for immunity is now 10 years. However, those changes do not apply where operations were substantially completed before the day on which section 115 came into force (Reg. 5, The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024). Section 115 came into force on 25 April 2024 (Regulation 3, The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024).

This means that the unauthorised development is now immune from enforcement.

Section 191(2) of the Town and Country Planning Act 1990 provides that for the purposes of the Act, operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the

time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

As a result, your Officer's view is that the engineering works creating a hardstanding and concrete pad, the internal works to an internal barn and the adaptation of an open barn to a closed barn (the Dutch Barn), which are used as part of the applicant's dairy business, all now constitute lawful development.

As recognised in the High Court Judgment, the use of the barns for the housing and milking of a dairy herd did not amount to a change in use (para. 5 of the Judgment).

Therefore, the Officer considers that the applicant has the lawful ability to use the existing Dutch Barn for dairy operations, together with the operational development referred to above (and use of the hardstanding in the dairy operations), now including if permission for the new agricultural building is not granted. Further, such use would not be subject to any planning conditions and there is no limit on the number of cows which can be accommodated in the Dutch Barn.

Can the applicant show that there is at least a real prospect that it will undertake the fall-back development if planning permission is refused?

Your Officer considers that the existing Dutch Barn and the Site would continue to be used for dairy operations if permission for the new building is not granted:

- i. The Site and the existing barns are currently being used for dairy operations and have been operating in this manner for a number of years.
- ii. The dairy business appears to be the predominant use of the applicant's land and its main business venture, as confirmed by the Planning Statement and in further correspondence with the applicant, received 20th September 2024.
- iii. The applicants told the Council that they will continue to operate a dairy business and to use the Dutch Barn.
- iv. A report from Landsense Professional obtained after the High Court Judgment concludes:

'With regard to the unauthorised works to the building, at that time and in those specific set of circumstances I see no reason why a reasonable person would not utilise the buildings as they were. None of these alterations would compromise the cow welfare to such a condition as to render the farm untenable and even if it was deemed untenable, the applicant had the option to rent buildings elsewhere (as he has subsequently done so) which we believe would allow the farm to continue to operate without it.'

With regard to the concreting and engineering works, we believe the works would have fallen within Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015 as amended and as such we can understand why the applicant honestly and genuinely believed that such work could be carried out under his permitted development rights.

Had the concrete loafing area not been available, we believe the unit could still operate, albeit the scale may have to be reduced to allow more space within the cubicle house as a loafing area etc.'

In Magistrates' Court proceedings pursued by Mr and Mrs Ward against the applicants for statutory nuisance, the District Judge heard evidence and said (in the context of the earlier planning application): *"I accept the evidence of Mr Seabridge that irrespective of the planning decision he would still continue to house cattle in the barns and operate as a dairy."*

The applicant has informed the Case Officer, both formally in writing and informally during in-person meetings at the Council's offices and on-site, that the intention is to continually operate as a Dairy Business and that he would continue to use the Dutch Barn as livestock accommodation.

For these reasons, your Officer considers that it is highly likely that the applicant will continue to use the existing Dutch Barn for dairy operations, together with the operational development referred to above (and use of the hardstanding in the dairy operations), if permission for the new agricultural building is not granted.

Your Officer also considers that it is very likely that the Dutch Barn will be utilised to its full capacity. This was confirmed by the applicant, in that accommodating stock within the entirety of the Dutch Barn would improve the efficiency of the enterprise and the welfare of the young stock.

If a fall-back development should be treated as a material consideration, how much weight should be afforded to the consideration?

Your Officer's assessment is that the continued use of the Dutch Barn for dairy operations is highly probable. Your Officer also considers that the application provides an opportunity to apply planning conditions which do not currently exist and to impose a condition that the Dutch Barn cannot be used for the accommodation of livestock which will move dairy operations from the Dutch Barn further away from Berry Hill and other neighbours to the new building. These are considered to be positive benefits which support the grant of permission, and which carry significant weight.

Disbenefits

It is necessary to consider the disbenefits of the application if granted against the planning implications of the existing use continuing if the application is not granted. These are addressed in the main report.

A matter raised by Mr and Mrs Ward is the potential for the dairy operations to increase as a result of the grant of permission for the new building.

The Applicant's Planning Statement states that the provision of the replacement building "*will not change livestock numbers on the unit*".

Your Officer considers that the potential increase in the scale of the operation as a result of the proposed development is limited for the reasons set out in the main report. It is considered that the negligible potential increase when considered with the relocation of activities on the Site would result in no significant harm to the amenities of Berry Hill beyond that existing already and that the benefits materially outweigh the disbenefits.

Mr and Mrs Ward have referred to the case of *R (Ashchurch Rural Parish Council) v Tewkesbury Borough Council* [2023] EWCA Civ 101. In *Frack Free Balcombe Residents Association v SoS for Levelling Up, Housing and Communities* [2023] EWHC 2548 (Admin), Lieven J said that the *Ashchurch* case "*was a somewhat odd case where the Local Planning Authority ("LPA") had granted permission for a road bridge over a railway, but with no connections to the wider road network. This was because funding existed for the bridge but at that time not for the connecting roads.*"

In *Ashchurch*, the planning committee was directed that they could not or must not take account of the harms of the proposed development that the bridge would facilitate. The local planning authority took into account the prospective benefits of the wider development as material factors but did not take into account any adverse impact that the wider development might have, to the extent that it was possible to do so.

For the avoidance of any doubt, when determining the application, Members are entitled to and should take into account the benefits and disbenefits of the proposed development.

The advice given by your Officers (as set out in the main report and this addendum), including in respect of the benefits, relates to the proposed development. The application concerns the limited development of the new building and does not refer to a wider scheme. There are no other

outstanding planning applications for the Site. No wider scheme is anticipated by the Council and any future application will be decided on its own merits and will take into account any lawful development already permitted to the extent that such matters are relevant planning considerations.

Your Officers consider that the words highlighted by Mr and Mrs Ward: “*The proposal is for the erection of an extension to the existing agricultural livestock building to be used in association with the wider agricultural enterprise*” refer to the current proposal in that it is a physical extension to existing buildings which would be used with parts of the Site for the applicant’s dairy business (albeit with the restrictions on the Dutch Barn which could be imposed). The Planning Statement in support of the application makes it clear that there will be no increase in stock numbers on the Site.

To confirm, the advice given by your Officers does take into account the disbenefits of the proposed development as set out in the main report and this addendum.

Impact on Residential Amenity and Environment Management Plan (EMP)

Policy DM01 states that development will be supported where: (a) it would not significantly harm the amenities of any neighbouring occupiers or uses; and (b) the intended occupants of the proposed development would not be harmed as a result of existing or allocated uses.

Mr and Mrs Ward made a complaint against the applicants in North and East Devon Magistrates Court under Section 82 of the Environmental Protection Act 1990 to stop alleged statutory nuisances of odour, noise, flies, fumes and ammonia emanating from the applicant’s barns. After a hearing which lasted 3 days, evidence from 5 lay witnesses and 4 experts and consideration of more than 2000 pages, District Judge Smith found that no statutory nuisance exists. A copy of the decision is made available for Members.

It is important for Members to note that the decision addressed the wider operations on the Site and not the proposed development. Also, whereas the fact that the Magistrates’ Court has found that there is no statutory nuisance in respect of the current use of the Site is relevant, a development may significantly harm the amenities of a neighbouring occupier even if it does not amount to a statutory nuisance.

Mr and Mrs Ward say that an adequate environmental management plan should be provided in order to assess the impact of the development on their residential amenity.

The Environmental Protection Team (EPT) originally said that an EMP would be appropriate to demonstrate effective ongoing management of the application Site and wider premises and operations as well as the protection of neighbouring amenity. The EPT has since stated that the previous EMP relating to a previous application is inaccurate and irrelevant. It has also acknowledged the report from Landsense Professional. In the context of the application for the new building in isolation, the EPT recommends that an EMP be submitted and used in accordance with the wider farming operation but says that whether an EMP is appropriate for the application being considered is a matter for the planning department.

The EPT has also recommended a condition about the storage of manure waste. Your Officer recommends that such a condition is imposed if permission is granted in order to help address the impact on residential amenity.

Mr and Mrs Ward make the point that the Applicants have not provided an EMP for any of the development which has been permitted or which is lawful as a result of permitted development rights or immunity from enforcement. They ask for the Council to require an EMP to manage and mitigate the effects of the farming operation on neighbouring properties.

An EMP is one way of assessing the extent of impact and how a development will minimise negative environmental impacts. It is a matter of planning judgment whether there is enough information to assess the application against Policy DM01 and the impact on residential amenity in the absence of

an EMP. Your Officer's view is that, whereas an EMP would be of assistance, there is enough information to assess the impact of the development of the new building including in circumstances where the applicant is likely to use the existing buildings including the Dutch Barn, if permission is not granted without the need for an EMP for the following reasons.

The size of the new building provides for a limit on the number of animals which can be accommodated.

The size and footprint of the Dutch Barn and the new building are known (as addressed in the main report) and an assessment can be made about the extent to which the new building could accommodate any more cattle. The proposed new building will measure approximately 32 metres in length by 13.76 (440.3m²) metres in width. The Dutch Barn measures 36 metres in length and 9.1 metres in width (327.6m²).

The technical response has been provided by a surveyor (Landsense) which is set out in detail in the main report. It notes that by the nature of dairy farming fluctuations in livestock numbers are commonplace. It refers to evidence of use and space available. It carries out a detailed analysis and concludes: "*We therefore believe, with all other things equal, the potential increase in the scale of the operation as a result of the proposed development is limited. To be clear, there is already spare capacity with the existing buildings We therefore consider the purpose of proposed development, as stated will be to make the farm more efficient as it will enable the farm to be able to utilise space differently.*" And "... we believe, rather than having an adverse effect, the proposed plans 'would significantly mitigate the impact of the farm's operation on their (the neighbours') own amenity' by relocating the calve and dry cow housing further away from the neighbouring property."

Your Officer's view is that there is sufficient evidence including the technical response from Landsense on which to conclude that the new building will result in a negligible potential increase which means that there is unlikely to be any material increase in noise, odour or flies, or any material increase in slurry. There is however a clear benefit in the Dutch Barn not being used to accommodate livestock because this will result in protection for Berry Hill and neighbouring properties.

If the Dutch Barn and the new building were utilised at the same time, then the situation may be different. However, the proposed condition would mean that Dutch barn could not be used to accommodate livestock or to store slurry. This would mean that animals would be accommodated further away from Berry Hill and neighbouring properties thereby reducing the impact of farm operations on residential amenity.

Further, a new condition would require that all manure waste resulting from the proposed development must be stored at a minimum distance of 100 metres from the boundary of any neighbouring third-party dwelling in order to protect residential amenity.

Overall, it is considered as a matter of planning judgment, that there will be no significant harm to the amenities of occupants beyond that which already exists and that the proposed development will result in less harm than that which already exists. It is also considered that there is enough information on which to carry out this assessment. For these reasons, the application is supported by Policy DM01.

However, Members may reach a different view exercising their planning judgment and may require an EMP before permission is granted.

Proposed condition 3

Mr and Mrs Ward suggest that a condition restricting the use of the Dutch Barn cannot be enforced. Your Officer respectfully disagrees with this statement for the reasons set out in the main report. A restriction on the use of a defined unit is the type of restriction which is often subject to a condition and can be monitored and enforced by the authority in the usual way.

Impact on Site of Special Scientific Interest

In the High Court decision, Mr Justice Jay noted that Natural England had consulted on the application being challenged and had advised that a detailed air modelling assessment was necessary, and that the methodology of the Air Pollution Information System required that consideration be given to the baseline in 2019 which was before the dairy farm started and when there were no cows.

The current proposal concerns a smaller development in the context that the applicants can use the Site and existing operational development lawfully and are likely to continue to do so. Natural England has confirmed that the proposed development does not trigger the IRZ thresholds and does not require the Council to consult Natural England. This means that there is no request from Natural England for a detailed air modelling system of the type requested in respect of the earlier and more extensive application considered in the Judicial Review case.

As Natural England observed, it is for the planning authority to decide whether the development is in or likely to affect an SSSI. Your Officer's assessment is set out in the main report. Assessing the impact of the proposed development, your Officer's planning judgment is that the development would not result in any significant increase in the emissions of ammonia and would not impact the relevant SSSI sites. In reaching this view your Officer has had regard to all relevant matters including the DEFRA guidance, Policy DM02, Policy ST14, the Air Quality SPD, the Natural England response, the matters raised by Mr and Mrs Ward, the report from Landsense and has given great weight to the views of Natural England and the need to protect the SSSIs. However, your Officer concludes that there is not likely to be any material increase in ammonia as a result of the proposed development because it is likely to result in a relocation of cattle rather than an increase in the number of cattle which can be accommodated.

Your Officer considers that there is sufficient information to reach this view without a further assessment. Members are entitled to disagree with this view if they are minded to do so.

Other Matters

Notes provided by Mr and Mrs Ward

Mr and Mrs Ward have provided a "file note" from Michael Bull and Associates referring to "Ammonia and EMP issues". A copy of the note has been made available to Members to consider.

The document notes that excessive exposure to ammonia can result in damage to vegetation and is of particular concern to SSSIs. It recommends that a detailed assessment of ammonia levels is carried out including an in-combination assessment. The note refers to "*Existing housing – 100 dairy cattle – 365 days use*" and "*Proposed new housing – 74 dairy cattle – 365 days use*". This is predicated on the basis that the proposed development would result in an increase of 74 cattle. It is not accepted that this is correct. Your Officer places more weight on the response from Landsense which concludes that the potential increase of cattle will be limited. This view takes into account the condition recommended which would ensure that the Dutch Barn would not be used to accommodate livestock which would mean that the use of the existing barns would be reduced.

It is not disputed that the impact of a material increase in ammonia levels is often appropriately addressed in combination with existing levels from other local sources. However, in light of your Officer's assessment, it is not considered necessary to obtain a detailed assessment of the type referred to by Bull Associates because it is not considered that there will be any material increase in ammonia levels.

The document from Bull Associates also recommends that an EMP is obtained. This is addressed above and within the main report.

The applicants can continue to operate their dairy farm lawfully at the Site without providing an EMP. It is considered that the provision of an EMP is unnecessary where the impact is limited. However, Members may disagree.

It is also said that Dr Bull's view is that the moving of dry cows and calves to the new barn will not provide mitigation to odour levels because there are no internal changes to the building and odour will flow freely to the outside and the neighbouring property. Your Officer places more weight on the evidence of the surveyor (Landsense) and in the Officer's planning judgment, the relocation of cattle further away from Berry Hill and other neighbouring properties with a condition which prevents livestock from being accommodated at the Dutch Barn will result in a positive benefit by limiting and reducing the impact on Berry Hill compared to that which currently exists and which is very likely to continue including at an increased level where the Dutch Barn is used to its full capacity (which is likely albeit with fluctuating cattle numbers).

Conclusion

Copies of the consultation responses from Mr and Mrs Ward and file note from Michael Bull and Associates have been made available to Members.

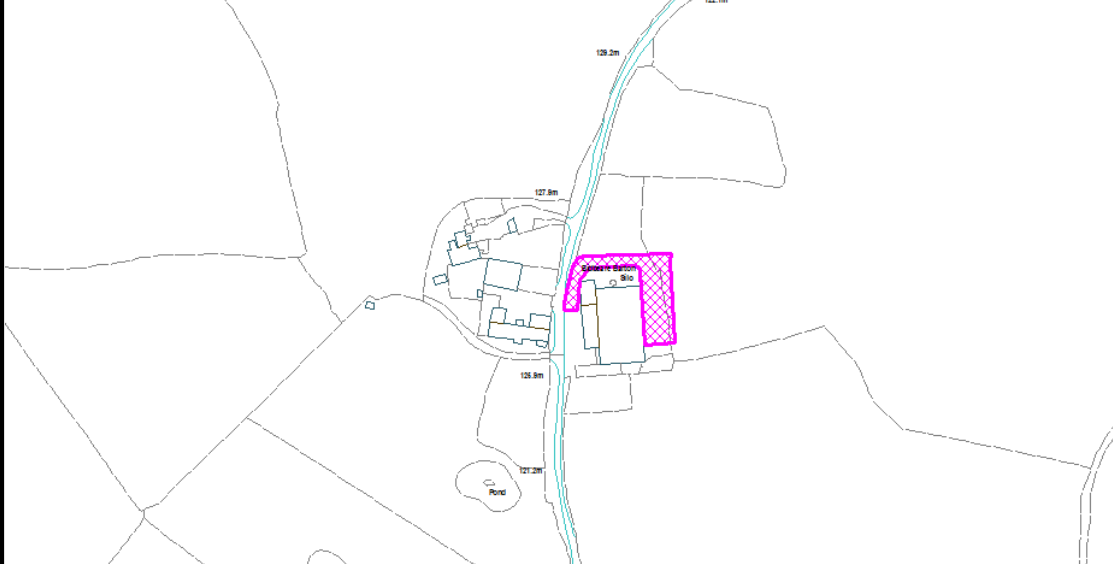
All matters raised by Mr and Mrs Ward have been considered, but none are considered to outweigh the positive benefits in support of the application.

Recommendation

The Officer recommendation is as per that set out in the attached original Committee Report dated the 25th of July 2024.

Committee Report – 25th July 2024

Application Number:	1/0277/2024/FUL
Registration date:	25 March 2024
Expiry date:	20 May 2024
Applicant:	Mr and Mrs J Seabridge
Agent:	Acorus
Case Officer:	Mr Peter Stapley
Site Address:	Buildings And Land At Grid Reference 266213 105908, Bondleigh, Devon,
Proposal:	Provision of a new agricultural livestock building
Recommendation:	Grant



Reason for referral:

The application has been requested for call-in by the Ward Member, Cllr Newton, for the following reason:

'The Constitution of Torridge District Council gives provisions whereby applications for planning permission can be determined by Plans Committee.'

Paragraph 22 d) of the Constitution states:-

"Upon the Head of Communities and Place, Chief Executive or Leader of the Council exercising a discretion to refer the matter to the Plans Committee"

Could I please request that you exercise your discretion, on this occasion to refer the matter to Plans Committee for determination.

The reason for my request is that the application site has already been the subject of a Judicial Review against Torridge District Council.

For this reason alone, I believe that the matter should be reviewed, discussed and debated in a public forum by the Plans Committee, and not determined by an officer under delegated powers.'

The Ward Member call-in was just outside of the required 28-day period. The Council's Constitution allows for planning applications to be called-in 'upon the Head of Communities and Place, Chief Executive or Leader of the Council exercising a discretion to refer the matter to the Plans Committee' (Paragraph 22(d)), and there is no specified timescale for this type of call-in. The Head of Legal & Governance requested that this discretion be exercised due to the site previously having been subject to a Judicial Review and her view that the matter should be reviewed, discussed and debated in a public forum by the Plans Committee, and not determined by an officer under delegated powers.

The Council's Chief Executive confirmed on the 10th of May 2024 that he was 'content that this application should be determined by Plans Committee in light of the reason provided.'

Relevant History:

Application No.	Description	Status	Closed
1/1439/1989	EXTENSION TO AGRICULTURAL BUILDING TO STORE HAY AND STRAW	PER	14.08.1989
1/0665/2020/FUL	Proposed fodder and multipurpose agricultural building	WDN	06.10.2020
1/1018/2020/FUL	Part retrospective application for raising of ground levels, formation of concrete yard and hardcore yard area. Installation of gas tank base, grain silo and fencing. (Amended Description)	REF	27.04.2021
1/0512/2021/FUL	Part retrospective application for raising of ground levels, formation of concrete yard	INVAL	20.09.2021

	and hardcore yard area. Installation of gas tank base, grain silo and fencing (Re- submission of 1/1018/2020/FUL)		
1/1131/2021/FUL	Part Retrospective alteration to external appearance of west elevation of barns and creation of concrete yard around agricultural buildings	WDN	06.11.2023
1/1132/2021/FUL	Provision of slurry store	WDN	06.11.2023
1/1183/2021/FUL	Extension to north and south elevations of existing livestock buildings	WDN	10.11.2022
1/1201/2021/FUL	Agricultural livestock building	WDN	10.11.2022
1/0837/2023/AGR	Erection of an agricultural building for housing of livestock	REF	15.11.2023

Site Description & Proposal

Site Description

The application site is located within the Countryside, approximately, 3.2km (as the crow flies) to the southeast of Winkleigh, the closest recognised settlement which is designated as a Local Centre in the adopted North Devon and Torridge Plan (NDTLP). In addition to this, the site falls within the designated area for the Winkleigh Neighbourhood Plan.

The site forms part of an agricultural enterprise measuring approximately 123 hectares consisting of both arable and grassland. The farm operates as a dairy, beef and arable farm, currently with a stock of approximately 290 cows, albeit only 80 are said to be present on the main farmstead.

The site does not fall within any other allocated land designation and the closest designated heritage asset is located approximately 100 metres to the west of the site, known as Bidbeare Farmhouse (Grade II). The site is located approximately 3.7 km to the northwest of Staddon Moor Site of Special Scientific Interest and 3.9 km to the southeast of Popehouse Moor Site of Special Scientific Interest.

The application site is neighboured by agricultural land to the north, east and south, with the existing farm buildings to the west. The site is accessed from the public, unclassified (Class U), highway along the western boundary of the wider site and the closest third part residential property is located approximately 50 metres from the application site.

The landscape character type for the application site is 'Upper Farmed & Wooded Valley Slopes' (3A) and Devon Character Area 32 (High Culm Ridges). The site falls within a Zone 1 Flood Risk and therefore it has a less than 1 in 1,000 annual probability of river flooding and is considered a low probability of flooding.

The existing agricultural buildings measure approximately 46 metres in length by 33 metres in width, with a maximum eaves height of 5.6 metres and a ridge height of 8 metres. The building has a floor area of approximately 1,336.8 square metres and consists of livestock accommodation; milking parlour; and agricultural feed and machinery storage.

Proposed Development

The application seeks full planning permission for the erection of an extension to the existing agricultural livestock building to be used in association with the wider agricultural enterprise. The proposed building will measure approximately 32 metres in length by 13.76 metres in width, with an

eaves height of 5.3 metres and a ridge height of 7.4 metres, from finished floor level. The proposed building will have a floor area of approximately 440 square metres.

The proposed development will be constructed from the following materials: concrete panel lower elevations to a height of 1.8 metres with profiled metal sheeting above; profiled metal sheet roof; and five bar metal gates. The North and South elevations will be partially open fronted.

Consultee representations:

Winkleigh Parish Council:

Objection: unless measures can be undertaken to mitigate smell from slurry/indoor housing. TDC should consider measures to control the subsequent use of the Dutch Barn and to limit livestock numbers so that the total number of cattle does not increase.

Devon County Council (Highways):

No representation received.

Environmental Protection Officer:

Initial Representation (Received: 09th April 2024)

The following consultation response is provided by the Environmental Protection Team in relation to the above application.

The existing agricultural building is located approximately 10 metres to the east of a third party residential property, Berry Hill Barn, where historic complaints of nuisance to this Authority have originated associated with the farming operations within the wider application site. Although there has been a change from arable farming to dairy farming in recent times, prompting the complaints of nuisance, it is acknowledged that the application site is an agricultural premises and subsequently, disturbance to nearby neighbouring dwellings may occur. It is pertinent to note that statutory nuisance has not been established both through the Authority's investigations and through a civil case.

In relation to the above application, it is noted that the proposed development applies to an extension of an existing agricultural building currently used for livestock accommodation, milking and agricultural storage. The proposed extension is intended to house livestock that currently reside in the 'Dutch Barn' section of the existing agricultural building. The Planning Statement (para 3.2) states that the number of livestock will not increase from the existing number housed however, this number does not appear to be specified and it must be assumed that numbers could potentially increase in the future. Furthermore, the Planning Statement (para 3.4) states that the 'Dutch Barn' will be used to store agricultural machinery and feed only and not be used for livestock accommodation. Having regard for the proposed use of the 'Dutch Barn' for agricultural storage only, this offers greater separation and a degree of screening between the livestock buildings and Berry Hill Farm, thereby minimising any potential disturbance, in particular noise, to the neighbouring dwelling. Although supportive of this proposal, as the 'Dutch Barn' falls outside the 'red line' area of the application site it is assumed that this could not be conditioned.

It is acknowledged that robotic milking has been or will be implemented within the existing agricultural building which does indicate a potential expansion or intensification of farming operations. Although the existing agricultural building is not the subject of this application, it is deemed appropriate to gain an understanding of operations and the ancillary use of the proposed development.

The Planning Statement (para 5.11) states that, as a result of livestock numbers not increasing, there is no requirement to provide details of slurry or manure storage provision. The Environmental Protection Team disagrees with this statement. Odour arising from slurry has been the subject of a previous nuisance complaint and a previous planning application has indicated the implementation of a slurry store and pump, resulting in noise emissions requiring mitigation to protect residential amenity. Therefore, detailed information on the storage and management of slurry and manure is considered relevant and is required in order to assess any potential amenity impact. In addition, no information has been provided on measures to control and manage flies which again, has been the

subject of previous complaints. The Environmental Protection Team requested the submission of an environmental management plan on previous planning applications to address issues such as fly control and manure waste management in line with good farming practice. Given the proximity of the neighbouring third party dwelling, the Environmental Protection Team considers the submission of an environmental management plan is appropriate to demonstrate effective ongoing management of the application site and wider premises and operations as well as the protection of neighbouring amenity.

The Environmental Protection Team will provide further comments upon receipt of the additional information mentioned above.

Second Representation (Received: 17/07/2024)

Further to the previous consultation response dated 9 April, it is noted that the applicant has submitted an Environmental Management Plan relating to a previous application. The EMP is inaccurate and irrelevant as it proposes measures that are not applicable to the application currently under consideration. For example, the Plan proposes storage of slurry in a tank which is not part of the current application or an existing installation.

Since providing the initial response on 9 April, the Environmental Protection Team acknowledges the submission of the Landsense Professional report and the findings indicating that the existing agricultural building can operate as a livestock building without additional planning permissions and subsequently, the baseline position is one of a dairy farm or operation. Whilst the Environmental Protection Team recommends an Environmental Management Plan to be applicable for the farming operations of the wider farmstead, it is acknowledged that the proposed development subject of this application, an extension to the existing agricultural building, is the focus and should be considered in isolation. Therefore, although recommended, the decision to stipulate that an Environmental Management Plan be submitted and used in accordance with the wider farming operation is one for the Planning department to determine whether appropriate for this application.

The proposed extension is to accommodate dry cow and calves only and the straw based method for manure will be utilised. Manure waste has the potential to adversely impact neighbouring amenity from the associated odour and fly nuisance associated. Subsequently, the Environmental Protection Team recommends that all manure waste resulting from the proposed development is stored a minimum distance of 100 metres from the boundary of any neighbouring third party dwelling in order to protect amenity.

Conservation Officer:

The additional bay to the building will be on the east elevation. The impact on the setting of the listed building is not altered over and above the existing situation.

There are no observations in heritage terms on the proposal.

Natural England:

Natural England has not been consulted on the above application, but concerns have been raised with us locally.

Natural England is a statutory consultee for planning applications which might affect designated nature conservation sites (Sites of Special Scientific Interest (SSSIs), Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and Ramsar sites); for development affecting significant areas of best and most versatile agricultural land; and for development requiring Environmental Impact Assessment.

The onus is upon the local planning authority to decide whether a development proposal is 'in or likely to affect a SSSI' and they make their assessment using Natural England's published set of mapped Impact Risk Zones (IRZs) for SSSI/SAC/SPA/Ramsar sites which are available for viewing on www.magic.gov.uk

As you know, the nearest protected sites to Bidbeare Barton Farm, Staddon Moor SSSI and Popehouse Moor SSSI, are approx. 4km distant, and the IRZs for these SSSIs indicate that Natural

England should be consulted on applications where livestock and poultry sheds are greater than 500m2 and slurry stores are greater than 750m2 as anything above these thresholds poses a greater risk in terms of air quality impacts.

Based on this one application, the scale of the livestock shed development (1/0277/2024/FUL) at 440m2 does not trigger the IRZ thresholds and does not require the LPA to consult Natural England.

Where the SSSI IRZs indicate a risk is unlikely, this does not mean that there are no potential impacts on biodiversity or the wider natural environment for the LPA to consider, but the IRZs help Natural England to prioritise resources on cases with the highest risk to designated sites.

This farm has a complex history with several applications that have been submitted together and then withdrawn. We would therefore recommend that consideration is given to the cumulative impacts of any future planning applications submitted in terms of air quality impacts.

South West Water:

With reference to the planning application at the above address, the applicant/agent is advised to contact South West Water if they are unable to comply with our requirements as detailed below.

Surface Water Services

The applicant should demonstrate to your LPA that its prospective surface run-off will discharge as high up the hierarchy of drainage options as is reasonably practicable (with evidence that the Run-off Destination Hierarchy has been addressed, and reasoning as to why any preferred disposal route is not reasonably practicable):

1. Water re-use (smart water butts, rainwater harvesting, grey flushing toilets)
2. Discharge into the ground (infiltration); or where not reasonably practicable,
3. Discharge to a surface waterbody; or where not reasonably practicable,
4. Discharge to a surface water sewer, highway drain, or another drainage system; or where not reasonably practicable,
5. Discharge to a combined sewer. (Subject to Sewerage Undertaker carrying out capacity evaluation)

Having reviewed the applicant's current information as to proposed surface water disposal for its development, please note that method proposed to discharge into the ground (infiltration) is acceptable and meets with the Run-off Destination Hierarchy.

Representations:

Number of neighbours consulted:	1	Number of letters of support:	5
Number of representations received:	6	Number of neutral representations:	0
Number of objection letters:	1		

The public representations received over the lifetime of the application are summarised below:

Objection Comment

- Impact on residential amenity;
 - Arising from noise generated from machinery;
 - Arising from noise generated from livestock;
 - Arising from odour from livestock accommodation;
 - Arising from fly nuisance;
- Impact on health arising from adverse living conditions;
- Lack of cooperation from the applicants;
- Inconsistencies with planning application;
- Proposed new access;
- Lack of Natural England consultation;
- Development sited on unlawful development;
- Potential increase in livestock numbers; and
- Validity of Call-in.

Supportive Comment

- Business requirement and a benefit for the business, x 4; and
- Improvement on impact to amenity.

Policy Context:

North Devon and Torridge Local Plan 2011-2031:

ST01 (Principles of Sustainable Development); ST03 (Adapting to Climate Change and Strengthening Resilience); ST04 (Improving the Quality of Development); ST07 (Spatial Development Strategy for Northern Devon's Rural Area); ST10 (Transport Strategy); ST14 (Enhancing Environmental Assets); ST15 (Conserving Heritage Assets); DM01 (Amenity Considerations); DM02 (Environmental Protection); DM04 (Design Principles); DM05 (Highways); DM07 (Historic Environment); DM08 (Biodiversity and Geodiversity); DM08A (Landscape and Seascape Character).

Winkleigh Neighbourhood Plan 2018 – 2031:

ENV1 (Natural Capital); ENV2 (The setting of new development in the Parish); ENV3 (The conservation area and traditional village core of Winkleigh); ENV4 (Appearance and style); EC2 (New economic development).

North Devon and Torridge Supplementary Planning Document(s):

Air Quality SPD

Government Guidance:

NPPF (National Planning Policy Framework); NPPG (National Planning Practice Guidance); NERC (Natural Environment & Rural Communities); WACA (Wildlife & Countryside Act 1981).

Planning Considerations

The main planning considerations in the determination of this application are:

1. Principle of Development;
2. Air Quality and Environmental Protection;
3. Design and Visual Landscape Impact;
4. Impact on Heritage Assets;
5. Impact on Amenity;
6. Access and Highways;
7. Impact on Wildlife and Ecology;
 - a. Ecological Impact;
 - b. Biodiversity Net Gain; and
8. Conclusion.

1. Principle of Development

Section 38 (6) of the Planning and Compulsory Act 2004 states that key consideration in the determination of a planning application is the development plan. Applications should be determined in accordance with the development plan unless material planning considerations indicate otherwise. For the purpose of the development plan the statutory development plan is comprised of the North Devon & Torridge Local Plan 2011-2031 (NDTLP).

In planning terms, the site is located in the countryside; therefore, Policy ST07 of the NDTLP must be applied. Policy ST07 (4) sets out that development in the countryside should be limited to that *which is enabled to meet local economic and social needs, rural building reuse and development that is necessarily restricted to a countryside location.*

Policy DM14 of the NDTLP states “to support the rural economy, new small scale economic development at Rural Settlements and in the Countryside will be supported on the following basis:

- (a) change of use or conversion of a permanent and soundly constructed building; or

- (b) sites or buildings adjoining or well related to a defined settlement or a Rural Settlement; or
- (c) the proposed employment use has a strong functional link to local agriculture, forestry or other existing rural activity;

Provided that:

- (d) there is no adverse impact on the living conditions of local residents;
- (e) the scale of employment is appropriate to the accessibility of the site and the standard of the local highway network; and
- (f) proposals respect the character and qualities of the landscape and the setting of any affected settlement or protected landscape or historic assets and their settings and include effective mitigation measures to avoid adverse effects or minimise them to acceptable levels.”

Policy EC2 of the Winkleigh Neighbourhood Plan broadly supports the development of new businesses and the expansion of existing businesses, subject to the policies of the North Devon and Torridge Local Plan and the Neighbourhood Plan.

Paragraph 88 of the NPPF states that '*planning decisions should enable:*

- (a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed, beautiful new buildings;
- (b) the development and diversification of agricultural and other land-based rural businesses.'

Paragraph 89 of the NPPF states that '*planning decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.'*

A number of public representations were received during the consultation of the application. More specifically, the application was supported by a number of representations stating that the proposed development would benefit the business operations of the agricultural enterprise.

The application submitted is for the erection of an extension to the existing agricultural livestock building and will have a footprint of approximately 440 square metres (32 metres by 13.8 metres). The building is of an appropriate scale in relation to its intended purpose and is commensurate to the operations of the wider farming enterprise.

The existing agricultural buildings measure approximately 1,336.8 square metres and consist of livestock accommodation; milking parlour; and agricultural feed and machinery storage, in association with the dairy and beef agricultural enterprise. The Dutch barn element of existing building measures approximately 37 metres in length by 9.2 metres in width and primarily consists of an agricultural storage use, albeit it is partially used for the accommodation of livestock. It was observed during the case officers site visit, that approximately 165 square metres (49%) of the building was used to house 'dry' cows and calves.

The location of the building is necessarily restricted to the agricultural enterprise in which it is related and therefore its countryside setting. On this basis, the building is deemed reasonably necessary for supporting the existing enterprise.

In light of the above, it is considered that the proposed development is considered to be justified for its countryside location and is in accordance with Policies ST07 and DM14 of the North Devon and Torridge Local Plan; Policy EC2 of the Winkleigh Neighbourhood Plan; and the National Planning Policy Framework.

2. Air Quality and Environmental Impact

Policy DM02 (2) states, amongst other aspects, that developments will be supported where it does not result in unacceptable impacts to:

- (a) *Atmospheric pollution by gas or particulates, including smells, fumes, dust, grit, smoke and soot;*
- (b) *Pollution of surface or ground water including rivers, canals, other watercourses, water bodies, wetlands, water gathering grounds including catchment area, aquifers, groundwater protection areas, harbours, estuaries or the sea;*
- (c) *Noise or vibration; and*
- (d) *Light pollution.*

Paragraph 13.11 notes that proposals should not result in the deterioration of air quality to below national standards and air quality statements will be required to be submitted with planning applications in such circumstances.

Policy ST14 of the Local Plan seeks to enhance the District's environmental assets, noting at section (b) the need to protect the hierarchy of designated site in accordance with their status. Policy DM08 (4) relates to the protection of Nationally designated sites stating "*Development proposals within or outside a Site of Special Scientific Interest or Marine Conservation Zone which would be likely to affect the designation adversely, either individually or in combination with other developments, will not be supported unless the benefits of the development at this site clearly outweigh both the adverse impacts on the site and any adverse impacts on the wider network of Sites of Special Scientific Interest and Marine Conservation Zones.*"

The Air Quality SPD was adopted by Torridge District Council on the 5th October 2020. The SPD considers the potential for new developments to affect air quality adversely, which types and scales of planning applications require an air quality impact assessment, and, if so, what an air quality impact assessment should include. Chapter 7 of the SPD states that depending on the scale and proximity to either a European Protected Site or a Site of Special Scientific Interest, a planning application may need to be accompanied by an Air Quality Impact Assessment.

Paragraph 7.4 of the Air Quality SPD, illustrates the type of development that potentially would have an adverse impact on air quality and includes:

- (a) *An agricultural building to house livestock (primarily beef and dairy cattle, pigs or poultry); and/or*
- (b) *Any new or expanded pit, tank or lagoon for storing slurry; and/or*
- (c) *Any anaerobic digester with combustion plant; and/or*
- (d) *Any anaerobic digester without combustion plant.*

The site is located approximately 3.7 km to the northwest of Staddon Moor Site of Special Scientific Interest and 3.9 km to the southeast of Popehouse Moor Site of Special Scientific Interest. The proposed development is for the erection of an agricultural livestock building measuring approximately 440 square metres. The Air Pollution thresholds for proposals in this location, as set out by DEFRA, are "*Livestock and poultry units with a floorspace > 500m², slurry lagoons and digestate stores > 750m², manure stores > 3500t.*" The proposal falls below the threshold and therefore the Local Planning Authority are not obligated to consult Natural England.

A public representation was received during the consultation of the application, in relation to the Air Pollution consideration. More specifically, concerns were raised with the lack of formal consultation with Natural England.

Nonetheless, Natural England provided a formal representation, received 08th May 2024, stating "*Natural England has not been consulted on the above application, but concerns have been raised with us locally.*"

Natural England is a statutory consultee for planning applications which might affect designated nature conservation sites (Sites of Special Scientific Interest (SSSIs), Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and Ramsar sites); for development affecting significant areas of best and most versatile agricultural land; and for development requiring Environmental Impact Assessment.

The onus is upon the local planning authority to decide whether a development proposal is 'in or likely to affect a SSSI' and they make their assessment using Natural England's published set of mapped Impact Risk Zones (IRZs) for SSSI/SAC/SPA/Ramsar sites which are available for viewing on www.magic.gov.uk

As you know, the nearest protected sites to Bidbeare Barton Farm, Staddon Moor SSSI and Popehouse Moor SSSI, are approx. 4km distant, and the IRZs for these SSSIs indicate that Natural England should be consulted on applications where livestock and poultry sheds are greater than 500m² and slurry stores are greater than 750m² as anything above these thresholds poses a greater risk in terms of air quality impacts.

Based on this one application, the scale of the livestock shed development (1/0277/2024/FUL) at 440m² does not trigger the IRZ thresholds and does not require the LPA to consult Natural England.

Where the SSSI IRZs indicate a risk is unlikely, this does not mean that there are no potential impacts on biodiversity or the wider natural environment for the LPA to consider, but the IRZs help Natural England to prioritise resources on cases with the highest risk to designated sites.

This farm has a complex history with several applications that have been submitted together and then withdrawn. We would therefore recommend that consideration is given to the cumulative impacts of any future planning applications submitted in terms of air quality impacts."

It is acknowledged that the representation refers to the planning history of the site and several applications which were withdrawn. It is evident from the Local Planning Authority's records that no planning permission has been granted on the agricultural enterprise for the erection of additional agricultural livestock buildings.

Consequently, the Case Officer has assessed the application on the current proposed development, specifically an agricultural extension which falls below the threshold (500 square metres) for further detailed assessment and has not taken into consideration any previously withdrawn application when exercising their planning judgement.

Furthermore, the Local Planning Authority has sought the advice from an independent professional consultant with regards to the slurry implications of the wider agricultural enterprise, as a result of the proposed development. The independent consultants commented "*with regard to slurry implications, the intention for the building is to enable the dry cows and calves to be housed on site in a purpose-built building. The slurry therefore is restricted largely to the milking herd in cubicles as dry cows ready for calving would not be housed in a cubicle house nor would you house a calf in a cubicle. Therefore, calving cows and calves by their nature would be housed on straw.*

There are also a number of regulations and Environment Agency requirements in relation to slurry storage, which we believe would also act as a safeguard to the Council."

Taking account of the above, the proposed development would not result in an agricultural building for livestock over 500 square metres; a new or expanded pit tank or lagoon for storing slurry; an anaerobic digester with combustion plant; or an anaerobic digester without combustion plant. Consequently, the Local Planning Authority are confident that the proposed development will not significantly increase the emissions of ammonia and would not impact the designated sites of Popehouse Moor SSSI and Staddon Moor SSSI. Nonetheless, any future application for livestock buildings would be subject to the tests of cumulative impact assessment and consultation with Natural England would be undertaken at that time. It would be unreasonable for the Local Planning Authority, to speculate on the likely impacts of any future development.

The proposed scheme is in accordance with Policies ST14(b), DM02 and DM08(4) of the North Devon and Torridge Local Plan; the Air Quality SPD; and the National Planning Policy Framework.

3. Design and Visual Landscape Impact

The Local Plan policies on design are relevant - Policy ST04 (Improving the Quality of Development) and Policy DM04 (Design Principles), which both aim to achieve high quality, inclusive and sustainable design.

Policy ST04 supports development proposal that achieve high quality inclusive and sustainable design to support the creation of successful, vibrant places. Design will be based on a clear process that analyses and responds to the characteristics of the site, its wider context and the surrounding area taking full account of the principles of design found in Policy DM04.

Policy DM04 supports developments with good design and the policy seeks to guide overall scale, density, massing, height, landscape, layout, materials, access and appearance of new developments. It seeks not just to manage land use but support the creation of successful places and respond to the challenges of climate change. The policy lists 13 design principles that proposals must meet in order to be supported by the policy.

Policy DM08A (1) states that *“development should be of an appropriate scale, mass and design that recognises and respects landscape character of both designated and undesignated landscapes and seascapes; it should avoid adverse landscape and seascape impacts and seek to enhance the landscape and seascape assets wherever possible. Development must take into account and respect the sensitivity and capacity of the landscape/seascape asset, considering cumulative impact and the objective to maintain dark skies and tranquillity in areas that are relatively undisturbed, using guidance from the Joint Landscape and Seascape Character Assessments for North Devon and Torridge.”*

The application site is not located within any special designated landscapes and falls, within Landscape Type 3A (Upper Farmed and Wooded Valley Slopes) as identified within the Joint Landscape Character Assessment for North Devon and Torridge Districts.

The landscape character types are noted as including: Strong pattern of medium-scale fields of medieval and post-medieval origin enclosed by species-rich Devon hedges with flower-rich banks; Dispersed historic villages and hamlets clustered on hilltops with farmsteads distributed throughout, linked by a network of winding rural roads and steep sunken lanes crossing watercourses over stone bridges; Strong local vernacular of whitewash and white/cream rendered cottages with painted window and door frames and slate roofs. Some buildings constructed of exposed stone with red brick detailing; and Square church towers form strong local landmark features peeping through the rolling hills, many of which are Grade II* Listed.

Policy DM14 (f) supports the expansion of small-scale rural enterprises where *“proposals respect the character and qualities of the landscape and the setting of any affected settlement or protected landscape or historic assets and their settings and include effective mitigation measures to avoid adverse effects or minimise them to acceptable levels.”*

Policy ST14 of the Local Plan seeks to enhance the District's environmental assets, noting at section (g) the need to protect and enhance the local landscape character, taking into account the key characteristics, historical dimensions of the landscape and their sensitivity to change.

Policy ENV2 of the WNP states that development proposal are expected to respect and respond to the built and landscape character of the parish. Policy ENV4 of the WNP states that *“development in the Parish should generally be simple and plain in appearance; proposals should reflect the character and context of surrounding development. Preference will be given to the use of local materials or their equivalent, where this reflects the stone, colour washed rendering, Devon thatch and slate typical in Winkleigh Parish. In principle, the use of innovative and creative design is supported in appropriate locations, where it respects the scale, mass and distinctiveness of its location and the natural and built environment.”*

The NPPF also strongly emphasises the need for well-designed places, in which Part 12 of the Framework is solely dedicated to the achieving well-design places. Paragraph 131 of the NPPF notes

'the creation of high-quality buildings and places is fundamental to what the planning and development proves should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work, and helps make development acceptable to communities.' Part 12 of the framework lists 6 key design principles that are required to be met in order to demonstrate the design is of high quality.

The proposal is for the erection of an extension to the existing agricultural livestock building to be used in association with the wider agricultural enterprise. The proposed building will measure approximately 32 metres in length by 13.76 metres in width, with an eaves height of 5.3 metres and a ridge height of 7.4 metres, from finished floor level. The proposed building will have a floor area of approximately 440 square metres.

The proposed development will be constructed from the following materials: concrete panel lower elevations to a height of 1.8 metres with profiled metal sheeting above; profiled metal sheet roof; and five bar metal gates. The North and South elevation will be partially open fronted.

Whilst sizeable in scale, the proposed scale and design of the building is considered to be characteristic of an agricultural building and would be suitable for its intended purpose. The proposed extension will be seen in the context of the existing agricultural farmstead and therefore would result in negligible harm to the wider landscape. As such the proposed development is in accordance with policies ST04, ST14, DM04, DM08A, and DM14 of the North Devon and Torridge Local Plan; Policies ENV2 and ENV4 of the Winkleigh Neighbourhood Plan; and the National Planning Policy Framework.

4. Impact on Heritage Assets

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 state that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess.

Paragraph 205 of the NPPF relates to the historic environment and notes that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). Paragraph 201 of the NPPF makes clear the local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal, including by development affecting the setting of a heritage asset.

Paragraph 206 makes clear that any harm to, or loss of, the significance of a designated heritage asset, including from impact on its setting, should require clear and convincing justification. In particular, the substantial harm to or loss of assets of the highest significance (including grade II* buildings) should be wholly exceptional.

Paragraph 208 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

Policy ST15 of the NDTLP, states that 'great weight will be given to the desirability of preserving and enhancing northern Devon's historic environment by:

- (a) Conserving the historic dimension of the landscape;*
- (b) Conserving the cultural, built, historic and archaeological features of national and local importance and their setting, including those that are not formally designated;*
- (c) Identifying and protecting locally important buildings that contribute to the area's local character and identity; and*
- (d) Increasing opportunities for access, education and appreciation of all aspects of northern Devon's historic environment, for all sections of the community.*

Policy DM07 of the NDTLP requires that all proposals affecting heritage assets should be accompanied by sufficient information, in the form of a Heritage Statement, to enable the impact of the proposal on the significance of the heritage asset and its setting to be properly assessed. The policy also outlines that proposals that conserve and positively enhance the heritage asset and their setting will be supported and where there is unavoidable harm to heritage assets and their settings, proposals will only be supported where the harm is minimised as far as possible.

The closest designated heritage asset is located approximately 100 metres to the west of the site, known as Bidbeare Farmhouse (Grade II). The Council's Conservation Officer was consulted on the proposed development and commented "*The additional bay to the building will be on the east elevation. The impact on the setting of the listed building is not altered over and above the existing situation.*"

There are no observations in heritage terms on the proposal."

Taking into account the scale and nature of the proposed development, the distance to the heritage asset, and the comments received from the Conservation Officer, the Local Planning Authority considers that there would be no harm to the setting of the designated heritage asset, known as Bidbeare Farmhouse. The proposed development is in accordance with Policies ST15 and DM07 of the NDTLP and the Section 16 [Conserving and enhancing the historic environment] of the NPPF.

5. Impact on Amenity

Policy DM01 of the NDTLP relates to amenity considerations and notes, development will be supported where:

- (a) *It would not significantly harm the amenities of any neighbouring occupiers or uses; and*
- (b) *The intended occupants of the proposed development would not be harmed as a result of the existing or allocated uses.*

Policy DM04 also aims to ensure the amenities of existing and future neighbouring occupiers are safeguarded. Policy DM14 (d) supports the expansion of rural enterprises where *there is no adverse impact on the living conditions of local residents.*

In addition to this, one of the core principles of the NPPF is to secure high-quality design and a good standard of amenity for all existing and future occupants of land and buildings. Part H1 of the National Design Guide states that '*good design promotes quality of life for the occupant and users of buildings. This includes function [...] comfort, safety, security, amenity, privacy, accessibility and adaptability.*'

The Council's Environmental Protection Team were consulted on the proposed development and commented "*Further to the previous consultation response dated 9 April, it is noted that the applicant has submitted an Environmental Management Plan relating to a previous application. The EMP is inaccurate and irrelevant as it proposes measures that are not applicable to the application currently under consideration. For example, the Plan proposes storage of slurry in a tank which is not part of the current application or an existing installation.*"

Since providing the initial response on 9 April, the Environmental Protection Team acknowledges the submission of the Landsense Professional report and the findings indicating that the existing agricultural building can operate as a livestock building without additional planning permissions and subsequently, the baseline position is one of a dairy farm or operation. Whilst the Environmental Protection Team recommends an Environmental Management Plan to be applicable for the farming operations of the wider farmstead, it is acknowledged that the proposed development subject of this application, an extension to the existing agricultural building, is the focus and should be considered in isolation. Therefore, although recommended, the decision to stipulate that an Environmental Management Plan be submitted and used in accordance with the wider farming operation is one for the Planning department to determine whether appropriate for this application.

The proposed extension is to accommodate dry cow and calves only and the straw based method for manure will be utilised. Manure waste has the potential to adversely impact neighbouring amenity from the associated odour and fly nuisance associated. Subsequently, the Environmental Protection

Team recommends that all manure waste resulting from the proposed development is stored a minimum distance of 100 metres from the boundary of any neighbouring third party dwelling in order to protect amenity.”

A public representation was received during the consultation period of the application, which raised concerns in relation to the impact on the residential amenity of neighbouring property. More specifically, concerns were raised with regard to the potential impact on amenities from noise, odour, and flies from the existing agricultural operations and from the proposed development.

Given the complex planning history of the site and agricultural practices undertaken on the site, the Local Planning Authority instructed independent professional advice from Landsense Professional. The following points of consideration were assessed as part of the independent review, and helps inform the remainder of this section:

1. An assessment of the existing scale of the enterprise and establish a baseline for the lawful scale of operations and any harm to the neighbouring property.
2. An assessment of the potential increase in the scale of operation as a result of the proposed development.
3. An assessment of the slurry implications of the new extension as the applicant is considering the straw based method, but the Council is querying what control the council would have over any increase of slurry retrospectively as the implementation of internal slurry works may fall outside the definition of development. Therefore, does slurry need to be considered as a worst-case scenario.

In response to query one, as outlined above, the independent consultant commented “*With regard to the existing scale of the enterprise, within the submissions it is noted that the provision of the replacement building will not change the livestock numbers on the unit. However, it is not made clear within the current application what the current livestock numbers are. This issue is somewhat exacerbated by conflicting evidence in previous submissions which on the one hand suggests there are 82 cows and 30 calves on site, on another 120 dairy cows, 35 heifers, a number of dry cows and a number of calves, on another c125 cows with an average of 80% in milk at any one time as an all-year round calving herd and finally in Mr Seabridges’s Statement of witness dated 12.07.23 the BCMS online and Farm Metrics Herdwatch figures.*

We accept that these submissions occurred over a period of time and by the nature of dairy farming fluctuations in livestock numbers is commonplace. As such we do not believe there is anything untoward in fluctuating figures, however for the purpose of establishing a baseline we need to arrive at a figure we can justify so for that purpose we have utilised the figures within the Witness Statement as they are stated as being the official figures from BCMS online.

We understand the cows have moved from a loose housing system, bedded on straw to a cubical based system on mattresses, and the applicants have implemented a robotic milking system. Furthermore, we understand the milking cows are housed full-time from around the beginning of October until April, dependant on weather. During the summer months the cows are let out to the fields on rotation, based on a Lely Grazeway system whereby 3 fields are utilised with 10 paddocks spread between the fields and 1 field is grazed every 10 days.

We are also told a number of cattle are housed offsite – in essence previously all youngstock from 6 – 24 months were housed offsite, with dry cows loose housed on site during the winter months then offsite from April to October, with the stock bull and any calves from 0-6 months onsite year-round. We assume that at some point replacement heifers will enter the cubicle system as preparation prior to entering the milking herd, however historically they appear to have all been housed offsite until entering the milking herd.

The offsite livestock accommodation is currently under two separate agreements, one a shed and 83 acres in Broadwoodkelly for youngstock grazing and winter housing and the second a further 176 acres with sheds less than a mile from the yard under a 5-year Farm Business Tenancy (FBT) taken out in 2023. The sheds under the FBT will allow in the future for all dry cows to be housed away from the yard until a few days before calving with calves to be housed away from weaning age (3 months).

With regard to infrastructure, we understand the applicants utilise all of the buildings at Bidbeare Barton which we understand to be:

- 9 bay livestock building measuring 41.15m x 13.72m – 564.58m²
- 9 bay livestock building measuring 41.15 x 10.67m – 439.07m²
- 5 bay Dutch barn measuring 22.86 x 8.84m – 202.08m²
- 3 bay steel framed machinery store – 13.72 x 8.23 – 112.92m²
- Dairy/tank room – 8.97m x 1.95m – 17.49m²
- Grain bin (subject to retrospective planning application)

It should be noted that there are some further discrepancies within the documents with regards to measurements. It is also unclear from any of the floorplans which areas are used for which purposes so where necessary we have had to make certain assumptions.

Based on Red Tractor housing space allowances for dairy cows in a cubicle house, we calculate that for a maximum of 81 cows, (April 2023 BCMS figures) and on an assumption they are between 600-699kg liveweight the recommended minimal cubicle dimensions would be 2.5m x 1.20m. You would therefore need 3m² per cow, plus an additional 5% more cubicles than the number of cows as recommended so 85 cow cubicles equating to 255m² for the cubicles alone.

On the assumption, the eastern 9 bay building is the cubicle housing at 41m long, this would allow for 34 cubicles in a row, leaving an allowance for a 3m scraping passage, equating to 123.45m², with 2 further back-to-back cubicle rows and a further scraping passage in between cubicles allows for 102 cubicles in that one house alone. This demonstrates that there is enough capacity and space within that one building to house the current livestock with some spare capacity.

As the floorplan suggests the cows can access the middle building internally, we have allowed for the loafing area, parlour and feed areas with the middle building plus some loose housing and/or cubicles. For clarity and as above the middle building extends to 439.07m². If we allow for the loafing area to be at least 120% of the cubicle lying area in size as recommended, the required loafing area would equate to 81 cows x 3m² x 120% = 292m². With feed area, milking parlour, loose housing etc in addition, this could feasibly be at least part housed within the 147m² of additional space (439m² – 292m² = 147m²) within the middle building with the balance housed within the further 202m² of space within the Dutch barn. It should also be noted that there is a currently un-regularised outdoor concrete loafing area to the south of the buildings which for the purposes of this exercise hasn't been taken into account. Should the external area be regularised, additional space would be created within the buildings for other uses.

Loose housing for the dry cows, based on the BCMA figures at their most recent maximum (13) and again based on Red Tractor figures would equate to 9m² per cow – (9m² x 13 cows = 117m²). With calves up to 6 months requiring at a maximum 2.4m² x 46 = 110m².

With the existing livestock buildings at Bidbeare Barton totalling c1,205m² of livestock accommodation, the existing scale of operations is deemed less than capacity."

After carrying out a review of the potential increase in the scale of operations of the agricultural enterprise as a result of the proposed development, the Professional Consultants commented "We are told the maximum milking capacity of the 2 robotic astronaut milkers is 110 cows. In January, April and July 2023 the numbers of milking cows were 77, 81 and 76 respectively, with 10, 13 and 12 dry cows for the same period respectively.

Utilising the same methodology as above and if we theoretically take 110 cows as a maximum; based on Red Tractor housing space allowances for dairy cows in a cubicle house, we calculate that for a maximum of 110 cows with a recommended 5% additional allowance, equating to 116 cow cubicles, which would equate to a space allowance of 348m² for the cubicles alone. The required loafing area would equate to c418m² on the same premise.

On site loose housing for the dry cows coming back to calve would equate to a maximum estimated 22 cows at 9m² per cow – (9m² x 22 cows = 198m²). With an estimated maximum of 63 calves up to 6 months old requiring, at an estimated maximum, 2.4m² x 63 = 151m².

The total existing utilisable space for housing, loafing, feed, parlour, cubicles, loose housing and calf housing etc is calculated at 1,205m². The total space required for housing the 110 milking cows, 22 dry cows and 63 calves pre feed space and parlour etc equates to 1,115m².

We therefore believe, with all other things equal, the potential increase in the scale of the operation as a result of the proposed development is limited. To be clear, there is already spare capacity within the existing buildings so any increase in capacity cannot be attributed to the proposed development in that case. We therefore consider the purpose of proposed development, as stated will be to make the farm more efficient as it will enable the farm to be able to utilise space differently.

By building a purpose built shed (as opposed to utilising the Dutch barn), it should enable the applicants to improve their working environment and maximise animal welfare by having their most vulnerable livestock nearby. Cows due to calf need regular monitoring and potentially assistance, with very young calves being at their most vulnerable and susceptible to illness such as scour and pneumonia. Calves can go downhill very quickly leading to losses if assistance isn't readily available. Calves housed in a purpose-built building should enable them the best possible chance of survival.

Whilst there appears to be sufficient space within the existing buildings, following one of the wettest 18 months on records, we believe the proposed building will relieve pressures on the applicants by providing designated space for each enterprise and thus allowing the Dutch barn to be repurposed for the intended storage of machinery, straw, feed etc.

In terms of the harm to the neighbouring property, we would concur with the Judges' comments in the Statutory Nuisance case, in that we believe, rather than having an adverse effect, the proposed plans 'would significantly mitigate the impact of the farm's operation on their (the neighbours') own amenity' by relocating the calve and dry cow housing further away from the neighbouring property."

The Local Planning Authority acknowledges the concerns raised by the neighbouring residents with regard to the impact on residential amenities. Nonetheless, the public representation relies heavily on the current agricultural practices and the resultant harm to residential amenity from the existing odour, flies and noise.

The existing farm buildings have no restrictive planning conditions preventing their use for agricultural livestock accommodation and the existing agricultural practices are ordinary and necessary activities for the operation of a dairy farm. Such risks to residential amenities are, to some degree, synonymous and typical to the countryside locations in which agricultural operations are strictly located. Consequently, in the assessment of harm to the amenities of the occupants of Berry Hill, the starting point is the existing scale of operations, where it has been found that the existing operations are deemed to be less than potential capacity, at a suggested stock number of 82 cows and 30 calves.

The proposal is for the erection of an extension to the existing agricultural livestock building to be used in association with the wider agricultural enterprise. The proposed building will measure approximately 32 metres in length by 13.76 metres in width, with an eaves height of 5.3 metres and a ridge height of 7.4 metres, from finished floor level. The proposed building will have a floor area of approximately 440 square metres. The applicant has accepted the restriction of the Dutch barn to the west of the site, and closest to the neighbouring property, to storage of agricultural machinery and fodder only, and not for the accommodation of livestock or slurry at any time and in perpetuity. Such a condition is acceptable under Section 72(1) of the Town and Country Planning Act 1990 given the Dutch Barn is under the control of the Applicant.

The Local Planning Authority concurs with the views of the independent consultant in that the potential increase in the scale of the operation as a result of the proposed development is limited. This negligible potential increase when weighed against the benefit of the relocation of livestock

accommodation, would result in no significant harm to the amenities of the occupants of the residential property known as, Berry Hill, beyond that already existing.

It is recognised that the Environmental Protection Officer has recommended that an Environmental Management Plan be provided. Taking into account the existing agricultural operations on the site and the anticipated operations resulting from the proposed development, it is the Local Planning Authority's opinion that the requirement for an Environmental Management Plan is onerous and would not be reasonable or necessary, in relation to the scale and nature of the proposed development and its impacts, including because, it is the Case Officers Planning Judgement that the proposed development would not result in a significant increase in stock number or any significant harm to the amenity of the neighbouring occupiers.

The Local Planning Authority is reasonably satisfied that the inclusions of the conditions restricting the Dutch barn to storage purposes only and restricting the location of all manure waste, sufficiently mitigates such amenity requirements so an Environmental Management Plan is not necessary.

Ground 3 of the Judicial Review (Case No: CO/4718/2022) relating to this site was that *'the Defendant (the Council) failed to obtain sufficient information in relation to odour impacts.'* In the Approved Judgment, Mr Justice Jay stated: *'My approach to Ground 3 is as follows. It is conceded that if Ground 1 succeeds (as it does), then so does Ground 3. But, on the alternative hypothesis that Ground 1 fails it seems to me that Ground 3 must struggle. This is because the relevant baseline is not no cows (as was the position, for example, in December 2020 when the first unsuccessful application was considered) but the Interested Party continuing their current dairy operation in the western barn. On that hypothesis, the sort of quantitative assessment which would ordinarily be required is simply not necessary – or, more precisely, the Defendant could reasonably conclude that it was not necessary. Indeed, on that hypothesis, what the Interested Party's EMP proposed, for all its failings, was better than the status quo. In my judgment, Ground 3 adds nothing to this case, and I need not consider it any further.'* Ground 1 indicated the *'Defendant unlawfully concluded that the Interested Party had a fall-back position of being able to operate the site as a dairy farm without the unauthorised development.'*

In its consideration of expediency, the Council has concluded that it would not be expedient to take action against the works that formed the application proposals considered in the Judicial Review. Given this, the baseline is as per the position set out by Landsense and it is your Officer's view that the impact arising from the proposed building (taking account of the proposed restrictions to be placed on the Dutch Barn), does not require an EMP in order to make this proposal acceptable.

Taking account all of the above, subject to the appropriate conditions, the proposed development would be in accordance with Policies DM01, DM04 and DM14 of the NDTLP and the NPPF.

6. Access and Highways

Paragraph 115 of the NPPF advises that development should only be prevented or refused on transport grounds if there would be an unacceptable impact on highways safety, or the residual cumulative impacts on the road network would be severe. In addition, Paragraph 116 notes that development should minimise the scope for conflict between pedestrians, cyclists and vehicles, respond to local character and design standards, allow for the efficient delivery of goods, and access by service and emergency vehicles.

Policy ST10 of the NDTLP, sets out the transport strategy for Northern Devon. It aims to reduce the environmental and social impact of transport by ensuring that access to new developments is safe and appropriate.

Policy DM05 of the NDTLP relates to highways and states:

- (1) All development must ensure the safe and well-designed vehicular access and egress, adequate parking and layouts which consider the needs and accessibility of all highway users including cyclists and pedestrians.*

- (2) *All development shall protect and enhance public rights of way, footways, cycleways and bridleways and facilitate improvements to existing or provide new connections to these routes where practical to do so.*

Policy DM14(e) supports the expansion of rural enterprises where *the scale of employment is appropriate to the accessibility of the site and the standard of the local highway network.*

The proposed development is for the erection of an extension to the agricultural livestock building and will utilise the existing access from the public, unclassified highway to the west of the site. Devon County Council Highways, as the Local Highways Authority, were consulted on the proposed development; however, no formal representation was received.

A public representation was received during the consultation of the application, with regards to the access and highway consideration. More specifically, concerns were raised with the proposed access and the inconsistency within the application documents. It is acknowledged that the original scheme included a new proposed access without the submission of detailed drawings. Concerns were raised with the applicant and the scheme was amended to utilise the existing access. The Local Planning Authority accepted the amendments and are satisfied the documents in this regard are consistent.

The proposal does not alter the existing provision and will not significantly increase the volume of vehicular traffic attracted to the site. There is sufficient turning provision within the wider site to the north of the proposed building.

Taking account of the above, the proposal would not result in any 'severe' highway impact and is deemed in accordance with Policy ST10, DM05 and DM14 of the North Devon and Torridge Local Plan and the National Planning Policy Framework.

7. Impact on Wildlife and Ecology

a. Ecological Impact

Local Planning Authorities have a statutory duty to ensure that the impact of development on wildlife is fully considered during the determination of a planning application under the Wildlife and Countryside Act 1981 (as amended), Natural Environment and Rural Communities Act 2006, the Conservation of Habitats and Species Regulations 2010 (Habitats Regulations 2010). This is further reinforced within NDTLP through Policies DM08 and ST14 which state that all developments must ensure that the importance of habitats and designated sites are taken into account.

The local planning authority also has a duty under Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 to have regard to biodiversity in exercising its functions. This duty includes the requirement to have regard to protected species.

Development proposals should avoid adverse impacts on existing features as a first principle and enable net gains by designing biodiversity features and enhancements and opportunities for geological conservation alongside new developments, however where adverse impacts are unavoidable they must be adequately and proportionately mitigated.

The applicant has provided a wildlife trigger list which indicated the scheme will not have an impact on any protected species. The potential for impacts to the nearest SSSIs and the position of Natural England is set out above in an earlier Section. Consequently, the Council are confident that the proposal will have no harmful impact on wildlife and ecology and the proposal fulfils the above statutory duties and the provision of Policies DM08 and ST14 of the North Devon and Torridge Local Plan and the requirements of the National Planning Policy Framework.

b. Biodiversity Net Gain

As of the 02nd April 2024, it is mandatory under the Schedule 7a of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021) that small-site developments (unless exempt) must deliver a Biodiversity Net Gain of 10%.

The application is not a major development, within the meaning of Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015) and was received by the Local Planning Authority on the 20th March 2024. Consequently, a 10% Biodiversity Net Gain is not required.

8. Conclusion

For the avoidance of doubt, your Officer can conclude that the principle of an extension to the existing agricultural building, for the accommodation of livestock and cessation of the use of part of the existing building for livestock accommodation, is acceptable in principle and in accordance with the Policies of North Devon and Torridge Local Plan and the National Planning Policy Framework, subject to conditions as set out below.

In addition to this, the proposed development is considered to result in an acceptable impact on the character and appearance of the surrounding area and landscape; would not result in a harmful impact on the amenities of the neighbouring properties, subject to the appropriate conditions; provides suitable access; and would not result in a harmful impact on protected species.

The Local Planning Authority recommends approval of the application. Regard has been given to the third-party representations received from members of the public and statutory consultees.

Human rights

Consideration has been given to the Human Rights Act 1998.

Recommendation

GRANT, subject to the following conditions:

- 1 The development to which this permission relates must be begun no later than the expiration of three years beginning with the date on which this permission is granted.

Reason: The time limit condition is imposed in order to comply with the time requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The development hereby permitted shall be carried out in accordance with the approved plans listed in the Plans Schedule.

Reason: To ensure the development is carried out in accordance with the approved plans.

- 3 Prior to the agricultural building hereby approved, being first brought into use, the use of the agricultural building labelled 'non-livestock building' on the Location and Block Plan (reference: 200_01C, received: 14/06/2024), shall cease to be used for the accommodation of livestock or the storage of slurry, at any time and in perpetuity.

Reason: In the interest of protecting the cumulative air quality impact arising from agricultural activities on the wider application site; and in the interest of improving the residential amenities of the neighbouring property, known as Berry Hill, in accordance with Policies DM01, DM02, DM04 and DM14 of the North Devon and Torridge Local Plan, the Air Quality Supplementary Planning Document; and the National Planning Policy Framework.

- 4 All manure waste resulting from the proposed development must be stored at a minimum distance of 100 metres from the boundary of any neighbouring third-party dwelling in order to protect amenity, in perpetuity.

Reason: In the interest of protecting the residential amenities of the neighbouring property, known as Berry Hill, in accordance with Policies DM01, DM02, DM04 and DM14 of the North Devon and Torridge Local Plan and the National Planning Policy Framework.

Plans Schedule

<u>Reference</u>	<u>Received</u>
200_05	20.03.2024
200_06 A	25.03.2024
200 01 C	14.06.2024

Informatives

01. The effect of Paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for development of land in England is deemed to have been granted subject to the condition (biodiversity gain condition) that development may not begin unless:
- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
 - (b) the planning authority has approved the plan.

The Planning Authority, for the purposes of determining whether to approve a Biodiversity Gain Plan, if one is required in respect of this permission would be Torridge District Council.

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply.

Based on the information available this permission is considered to be one which will not require the approval of a biodiversity gain plan before development is begun because one or more of the statutory exemptions or transitional arrangements are considered to apply.

The Permission which has been granted is for development, which is exempt from the requirements set out within Paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 [Biodiversity Net Gain] being:

- Development which is not '*major development*' (within the meaning of Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015) where:
 - (i) The application for planning permission was made before 2nd April 2024;
 - (ii) Planning permission is granted which has effect before 2nd April 2024; or
 - (iii) Planning permission is granted on an application made under section 73 of the Town and Country Planning Act 1990 where the original permission to which the section 73 permission relates was exempt by virtue of (i) or (ii).

Statement of Engagement

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF) in dealing with this application, the Council has worked with the applicant in the following and positive and proactive manner. We have made available detailed advice in the form of our statutory policies in the Development Plan, Supplementary Planning Documents, Planning Briefs and other informal written guidance, as well as offering a full pre-application advice service, in order to ensure that the applicant has been given every opportunity to submit an application which is likely to be considered favourably. In such ways the Council has demonstrated a positive and proactive manner in seeking solution to problems arising in relation to the planning application.