

## PLANNING APPLICATION REPORT – AGRICULTURAL PRIOR NOTIFICATION

**Case Officer:** Clare Stewart    **Parish:** Woodleigh    **Ward:** Loddiswell and Aveton Gifford

**Application No:** 2385/22/AGR

**Agent:**

Mrs Amanda Burden  
Luscombe Maye  
59 Fore Street  
Totnes  
TQ9 5NJ

**Applicant:**

Messrs D and J Merrin  
Hendham View Farm  
Woodleigh  
TQ7 4DP

**Site Address:** Hendham View, Lowerdale Turn To Lower Preston Cross, Woodleigh, TQ7 4DP

**Development:** Application to determine if prior approval is required for a proposed road measuring 1940m x 5m wide

**Recommendation: Prior Approval Is Required**

**Further details required:**

1. Details of alternative siting(s) of the proposed road/private way, why alternative routes were discounted and why the proposed siting is the optimum location.
2. A Landscape Appraisal of the proposed development with particular reference to the siting of part of the road/private way within the South Devon AONB, and consideration of a scheme of additional landscape planting to minimise the impact of the development on this nationally significant landscape and its setting.
3. An ecological assessment undertaken from a suitably qualified and experienced ecologist. The site lies within the sustenance zone for Greater Horseshoe bats associated with the High Marks Barn SSSI roost. This roost forms part of the South Hams SAC and as such the local authority will need to undertake a HRA screening. Given the scale of development (approx. 0.97ha), in order to undertake this screening we will need to understand the ecological value of the habitat being removed to facilitate the track and the impact this track will have on foraging and commuting Greater Horseshoe Bats.

**Key issues for consideration:**

Whether or not the proposal accords with Part 6, Class A (agricultural development on units of 5 hectares or more) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and whether or not the siting and means of construction of the private way is considered to be acceptable, or if further details are required to assess the merits of the proposal.

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**Site Description:**

Hendham View is situated in open countryside to the south west of the village of Moreleigh and north east of Woodleigh. Hendham View Farm comprises 730 acres of which 500 are owned and a further 230 acres are rented on Farm Business Tenancies and long-standing grass keep agreements. The main farmstead includes a number of large modern agricultural livestock buildings which were originally

granted planning consent in 2010. The western section of the holding lies within the South Devon AONB.

### **The Proposal:**

The application is a 28 day agricultural prior notification for formation of a private road/trackway with a total length of 1,940m across fields within the vicinity of and leading back to the main farmstead at Hendham View Farm. The trackways would measure 5m in width and be constructed from Road Planing/Rolled Stone to create a hard level surface above a Geotextile Membrane.

The proposed development is intended to help facilitate the conversion of the established beef rearing unit to a dairy enterprise. The dairy parlour will be sited at the main farmstead, with 500 dairy cows milked twice per day. The prior notification submission states the tracks are required to *“prevent the poaching of the land which not only impacts on the soil structure and the land, but also impacts on the cows feet and therefore their welfare and lifespan.”*

### **Consultations:**

No consultations required are normally required for this type of application, however the Council's Agricultural Consultant has advised that the proposed tracks appear *“reasonably necessary for the purposes of agriculture”* and also noted the following: *“Cow tracks can be grant aided through Countryside Stewardship Mid-Tier if support is gained from a Catchment Sensitive Farming Adviser. For a farmer to apply for these type of works they need to be in a medium or high priority area for water quality. I have checked Magic Maps for the farmstead and they are located within an area of medium status. Livestock and machinery hardcore tracks are an option available through Catchment Sensitive Farming, as it is known these tracks reduce soil compaction and erosion caused by livestock and machinery. The tracks also reduce channelling of surface runoff and the risk of sediment and other pollutants entering a watercourse.”*

The LPA Ecologist has also provided the following comments: *“the site lies within the sustenance zone for Greater Horseshoe bats associated with the High Marks Barn SSSI roost. This roost forms part of the South Hams SAC and as such the local authority will need to undertake a HRA screening. Given the scale of development (approx. 0.97ha), in order to undertake this screening we will need to understand the ecological value of the habitat being removed to facilitate the track and the impact this track will have on foraging and commuting Greater Horseshoe Bats. Therefore, an ecological assessment undertaken from a suitably qualified and experienced ecologist will be required for the LPA to undertake this HRA screening.”*

### **Representations:**

Whilst there is no statutory duty to advertise this type of application for public comment, a letter of objection has been received from the South Hams Society which in summary raises the following concerns:

- Proposal should require a Habitat Regulations Assessment
- Query whether the proposed tracks fall within the 1,000 sqm ground cover limit set within the GPDO
- Querying why 1,415m of track originally proposed under are no longer necessary, or why the tracks are only necessary up to 25m from a classified road but up to the point they reach unclassified roads
- Loss of habitat
- Climate emergency
- SHDC should use an Article 4 direction to restrict permitted development rights in the Greater Horseshoe Bat SAC sustenance zones.

## Relevant Planning History

- 2217/22 Application to determine if prior approval is required for a proposed new access tracks to provide direct access for the movement of livestock and machinery measuring in total 3355m x 5m width. Withdrawn.

## ANALYSIS

World Payphones Ltd related to the consideration of the duality of phone kiosks proposed under Part 16 of the GPDO. This judgment sets out the principle that to take advantage of being permitted development, the proposed development must fall entirely within the scope of the GPDO. This judgment also confirms that on an application to an authority for a determination as to whether its prior approval is required, when it is in issue, the authority is bound to consider and determine whether the development otherwise falls within the definitional scope of the particular class.

As a later judgment to both the *Keenan v Woking BC & SSCLG [2017]* and *R (oao Marshall) v East Dorset DC & Pitman [2018]* judgments, and being of a higher court than the Marshall judgment, the Inspector in this case found that the *New World Payphones Ltd* judgment takes precedence. While this judgment relates to development under Part 16 of the GPDO, he considered that the wording of its findings strongly indicate that the approach is not solely restricted to Part 16 developments. Based upon the evidence before him, he was satisfied that the findings of the *New World Payphones Ltd* judgment are equally applicable to Part 6 of the GPDO.

Furthermore, the judgement in *R (Smolas) v Herefordshire Council [2021] EWHC 1663 (Admin)* confirms that if the LPA considers that a development does not meet the criteria for Permitted Development, it is acceptable to cite this as a reason for refusing a Prior Approval. This judgement also confirmed that the LPA is able to determine whether prior approval is required and grant or refuse such approval under the same application and that a two-step process is not mandatory. As such, the case officer is will consider whether the proposed works constitute permitted development under Schedule 2, Part 6, Class A (agricultural development on units of more than 5 hectares) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

A.1 Development is not permitted by Class A if—	
(a) the development would be carried out on a separate parcel of land forming part of the unit which is less than 1 hectare in area;	No
(b) it would consist of the erection or extension of any agricultural building on an established agricultural unit (as defined in paragraph X of Part 3 of this Schedule) where development under Class Q or S of Part 3 (changes of use) of this Schedule has been carried out within a period of 10 years ending with the date on which development under Class A(a) begins;	No
(c) it would consist of, or include, the erection, extension or alteration of a dwelling;	No
(d) it would involve the provision of a building, structure or works not designed for agricultural purposes;	No
(e) the ground area which would be covered by— (i) any works or structure (other than a fence) for accommodating livestock or any plant or machinery arising from engineering operations; or (ii) any building erected or extended or altered by virtue of Class A, would exceed 1,000 square metres, calculated as described in paragraph D.1(2)(a) of this Part;	No
(f) the height of any part of any building, structure or works within 3 kilometres of the perimeter of an aerodrome would exceed 3 metres;	N/A
(g) the height of any part of any building, structure or works not within 3 kilometres of the perimeter of an aerodrome would exceed 12 metres;	N/A
(h) any part of the development would be within 25 metres of a metalled part of a trunk road or classified road;	No

(i) it would consist of, or include, the erection or construction of, or the carrying out of any works to, a building, structure or an excavation used or to be used for the accommodation of livestock or for the storage of slurry or sewage sludge where the building, structure or excavation is, or would be, within 400 metres of the curtilage of a protected building;	N/A
(j) it would involve excavations or engineering operations on or over article 2(4) land which are connected with fish farming; or	N/A
(k) any building for storing fuel for or waste from a biomass boiler or an anaerobic digestion system— (i) would be used for storing waste not produced by that boiler or system or for storing fuel not produced on land within the unit; or (ii) is or would be within 400 metres of the curtilage of a protected building.	N/A  N/A

Third party objection has been received regarding whether the proposed development exceeds the size threshold. Part 6, Class A.1(e) of the GPDO limits ground area of development for:

*“(i) any works or structure (other than a fence) for accommodating livestock or any plant or machinery arising from engineering operations; or  
(ii) any building erected or extended or altered by virtue of Class A”* to 1,000 square metres.

Whilst the GPDO does not define the meaning of “*accommodating*”, the proposed road/private way would be used by livestock to travel across the landholding and not be used as living quarters. Part 6, paragraph D.1 states that a “building” for the purposes of Class A “*does not include anything resulting from engineering operations*”. The formation of a new private way(s) are engineering operations and not therefore buildings under Part 6. As such the 1000sqm limitation does not apply to the provision of new private way(s).

As noted above the Council’s Agricultural Consultant has commended that the proposed development is “*reasonably necessary for the purposes of agriculture*”. It is considered the proposal accords with the above criteria and can be considered “*Permitted Development*”.

Part 6, Class A, A.2 (2)(i) of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended) requires the Local Planning Authority to determine whether the prior approval of the authority will be required as to the siting and means of construction of the private way.

Siting:

As noted above the western section of the land holding is located within the South Devon AONB, and part of the proposed road/trackway would fall within this nationally significant designation with the remainder in its setting. Given the significant length of road/trackway proposed and the sensitivity of the landscape in this location, it is considered further details are required with respect to siting to establish whether the proposed location is the optimum solution to minimise landscape impact and whether any mitigation measures are required.

Means of Construction of Private Way:

The submitted details are considered acceptable for an agricultural road/private way (which will be heavily used by livestock) and no further details are considered necessary in this regard.

Other Matters

Concern has been raised regarding the ecological impacts of the proposal having regard to the location within the Sustenance Zone for the Greater Horseshoe Bat SAC. Advice has been sought from the LPA Ecologist as detailed above and further details are required as part of any prior approval application to enable the LPA to undertake a HRA screening.

Other issues raised in the objection (including the climate emergency) are not matters which can be considered under this type of notification. The comment regarding the use of an Article 4 direction is noted, but the Council is required to determine the notification subject of this report on the basis that Permitted Development rights can be utilised.

Conclusion:

In this instance, the works are considered to accord with the provisions of Schedule 2, Part 6 Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). However, Officers consider insufficient information has been provided in relation to siting having regard to the location within the South Devon AONB and potential ecological impacts (which require further assessment). Prior approval is therefore required.

***This application has been considered in accordance with the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended).***

**Planning Policy**

The proposal requires an assessment as set out in the GPDO and as such, it is not necessary to consider the planning merits of the proposal.

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

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

**The above report has been checked and the plan numbers are correct in APP and the officers report. As Determining Officer I hereby clear this report and the decision can now be issued.**

**Name and signature: C.STEWART**

**Date: 04/08/2022**