

REPORT TO THE AREA PLANNING COMMITTEE

Date of Meeting	08/11/2023
Application Number	PL/2023/00303
Site Address	Moor Farm, Ashton Road, Minety, Malmesbury, Wilts, SN16 9QP
Proposal	Retention of barn for equestrian purposes
Applicant	Mr Aaron Millar
Town/Parish Council	Minety Parish Council
Division	Minety
Grid Ref	#####
Type of application	Full planning permission
Case Officer	Steve Tapscott

Reason for the application being considered by Committee

The application has been called to committee by Councillor Berry on grounds of:

- *'Scale of development.*
- *Visual impact upon the surrounding area.*
- *This was a permitted dev. sort of for an Agricultural Barn for Hay storage NOT FOR EQUESTRIAN USE. It relied on haylage from other acreage which is no longer appropriate. It is not a retention of equestrian use it was voted unanimously to be called in by Minety PC'.*

1. Purpose of Report

To consider the above application and to recommend that planning permission be GRANTED, subject to the imposition of planning conditions.

2. Report Summary

The application seeks consent for the retention of an existing rural building, which the applicant proposes to repurpose for equestrian use, in conjunction with the surrounding lawful equestrian use of the land.

The building was originally constructed unlawfully, but has since become lawful over time.

The planning issues arising for consideration are:

- Principle of development
- Impacts on the character of the locality, including the setting of designated heritage assets
- Impact on the living conditions of adjacent occupiers
- Highways

- Other matters: fire safety

3. Site Description

The application relates to an existing building located to the northeast of Minety, within the open countryside. Moor Farmhouse and Telling's Farm to the southwest and southeast respectively are grade II listed. Public Rights of Way are located to the east and west.

4. Planning History

There is a history of equestrian use at the application site, with application ref. N/04/01936/FUL being approved in 2004 for the '*construction of all-weather riding arena*'.

In 2008, consent was granted under ref. N/08/01560/COU for a '*Change of Use to Equestrian livery*', before a horse walker was approved retrospectively in 2011 under ref. N/11/01373/S73A.

The building forming the subject of this application was erected further to application ref. 17/01481/APD, which determined that the submitted proposal constituted Permitted Development and that the Council's Prior Approval was not required for the siting, design or external appearance of the building. As set out below in this report, the development was not undertaken in accordance with the approved drawings, however.

Following the refusal of a Lawful Development Certificate ref. 20/05504/CLE for '*commercial equestrian use (riding arena)*' in 2020, two subsequent applications were submitted and approved in February 2023. The first was ref. PL/2022/03080 for the '*change of use of land to equestrian, creation of 6 stables (retrospective) and use of 16 stables for competition livery*'. The approved location plan excerpt in figure 1 below shows a considerable area of land within the application red line, which it is important to note includes the building forming the subject of this current application (circled in blue).

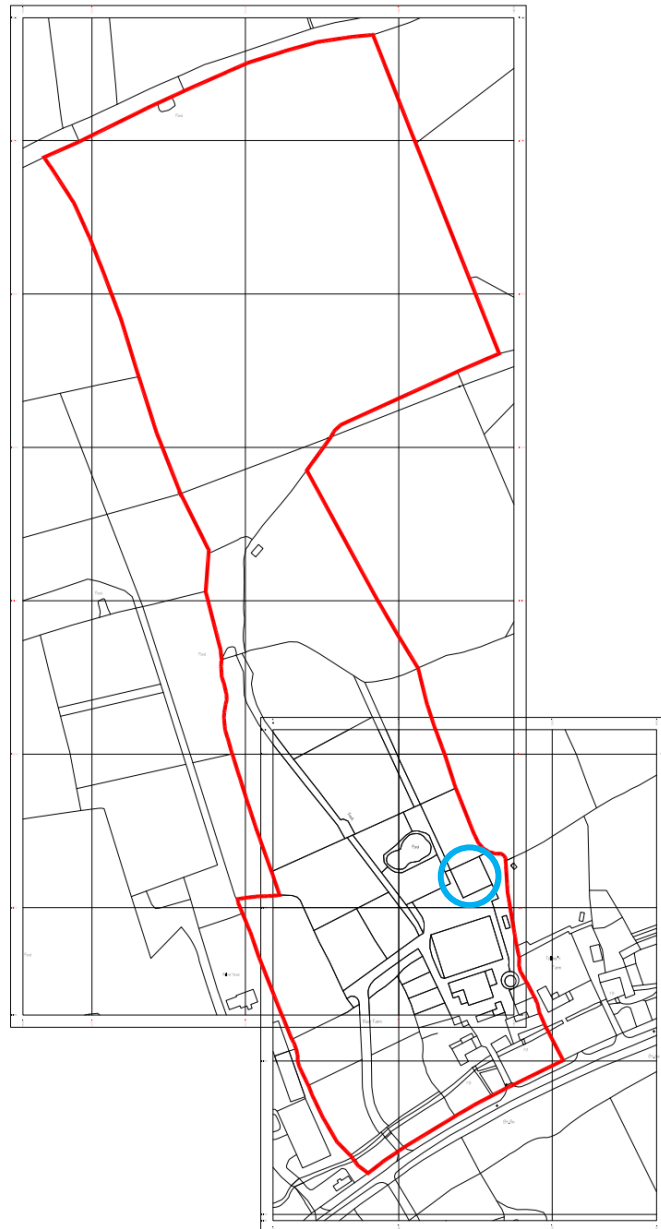


Figure 1: approved location plan excerpt. The building forming the subject of this current application is circled in blue

The second recent approval was ref. PL/2022/03081 for the *'variation of condition 4 of 04/01936/FUL - To alter condition wording to state "The all-weather riding arena hereby permitted shall be used in association with the competition livery operating from Moor Farm and at no time shall be used for the hosting of riding competitions"'*.

Lastly, the Council is currently in receipt of undetermined application ref. PL/2023/00304 for the *'laying of hardstanding track and creation of pedestrian access (retrospective)'*.

5. The Proposal

Following the recent change of use of the surrounding land and buildings to an equestrian use, this application seeks consent to retain and repurpose an existing building to use as part of the business.

The barn measures 20.6m wide x 20m deep and is 8.4m in height to the ridge and 6m to the eaves. It is enclosed along three sides and has an opening 8.8m wide along the front (south) elevation. It has a green profile sheeting finish. A photograph is provided in figure 2 below.



Figure 2: photograph of the agricultural building

The submitted covering letter states that the applicant intends to use approximately two thirds of the building for the storage of hay and straw, with the remainder providing manoeuvring space and machinery storage space. This would leave an area of circa 15m x 20.6m which would enable the total hay and straw requirement to be stored at 4 bales tall. The applicant's agent advises that although the amount of hay and straw in the building would fluctuate throughout the year, it is necessary to be able to store the maximum requirement so that it does not become damp or wet, otherwise this could result in it becoming unfit for use.

6. Planning Policy

Under the provisions of section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004, applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. At the current time, the relevant statutory development plan documents in respect of this application consist of the Wiltshire Core Strategy (WCS) (adopted January 2015); and saved policies of the North Wiltshire Local Plan (adopted 2006).

Though the development plan is considered as a whole, those parts deemed to be particularly relevant to this application are listed below:

Wiltshire Core Strategy:

- Core Policy 1: Settlement Strategy
- Core Policy 2: Delivery Strategy
- Core Policy 13: Spatial Strategy: Malmesbury Community Area
- Core Policy 48: Supporting Rural Life
- Core Policy 51: Landscape
- Core Policy 57: Ensuring High Quality Design and Place Shaping
- Core Policy 58: Ensuring the Conservation of the Historic Environment
- Core Policy 61: Transport and New Development

Saved policies of the North Wiltshire Local Plan: none.

Material considerations

National Planning Policy Framework (2023):

- Paragraphs 8, 111, 84, 85, 130, 131, 134, 185, 194, 195, 197 and 199.

Planning (Listed Buildings and Conservation Areas) Act 1990

- Paragraph 66

7. Consultations

Minety Parish Council: no record of a response on the Council's records, but the parish council's February 2023 minutes say:

'Council voted unanimously for Cllr Berry to call in. Proposed by Cllr Slucock and seconded by Cllr Pinkney.'

No reasons behind the decision are provided.

8. Publicity

Seven letters of objection received on grounds of:

- The barn was too large when built and objections would have been raised, but that was not possible because the applicant pursued a route of using Permitted Development.
- The building was *'falsely acquired'* and should be removed.
- It was never built as an agricultural barn and was not built in accordance with the 17/01481/APD submitted details. It was therefore never Permitted Development.
- Overshadowing of neighbouring property.
- Impacts on the setting of Tellings Farmhouse.
- Visibility of the structure.
- Surface water drainage, particularly given the building's siting within 20m of a watercourse to the south.
- The size of the barn is excessive for the proposed amount of haylage and other storage.
- Machinery could be stored elsewhere at the site, and there is already hay storage as part of the American barn.
- Fire risk.

Two letters of support received on grounds that:

- Storage in a barn would be visually preferable to outdoor storage *'under tarpaulins weighted down with tyres and other objects'*.
- *'Anyone suggesting that a smaller barn is required obviously has no knowledge of the care of stabled horses'*.

The agent has also provided a letter rebutting the objections, on grounds of:

- The need to keep hay and straw dry.

- Hay and straw of different varieties are required, depending on the needs of the horses.
- Higher costs associated with regularly importing hay and straw.
- Regular importation of hay and straw would cause more movements on the highway network.

9. Planning Considerations

Principle of development

The site's planning history shows that an application under the prior notification procedure ref. 17/01481/APD was approved by the Council in 2017. A building was subsequently erected; however, it is in a different position and of different dimensions and appearance from what was approved by the Council. In order to benefit from Permitted Development, any building approved by a council under the prior notification procedure has to be erected as per the approved plans. As that was not the case here, the building was thus not Permitted Development and, crucially, it is not bound by any of the requirements of the Permitted Development regulations.

The existing building thus needs to be considered as operational development that required planning permission, altogether separate from the Permitted Development regulations.

Section 171B of the Town and Country Planning Act 1990 explains that where operational development has taken place without planning permission, '*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*'. This is known as the four-year rule.

Records from the Council's enforcement file and representations submitted as part of this application are not precise as to when the building was substantially completed, but aerial photography shows the building clearly in situ in 2018, while a representation from Duckworth Planning and Design says the side walls were added in August 2019. It is therefore very likely that it was substantially completed at that time.

The case officer has discussed this case verbally with the Council's enforcement officer, who, having visited the site, concurs that the building was erected and used for agricultural purposes. Although submitted representations dispute that the building was used for agricultural purposes, the covering letter accompanying this planning application says that whilst it is now in equestrian use, the building was in fact originally used for agricultural purposes. This has involved the storage of hay, which was grown and cut onsite, rather than being imported. This constitutes an agricultural activity and there is no substantive evidence to disprove the applicant's claim that the building was initially used in that manner.

Given these factors, officers are of the opinion that the building constitutes operational development that has become lawful over the passage of time. The fact that the previous landowner decided to disregard the approved plans submitted under their prior notification application is clearly disappointing and a frustration for objectors. Nevertheless, that has no bearing on considering whether the building has become lawful over time in terms of Section 171B of the Act.

Drawing the above together, the starting point for the assessment of this application – the fallback position – is an existing, lawful rural building.

Having regard to the principle of the proposed development, the applicant wishes to repurpose the building from an agricultural to an equestrian use. It is already included in the red line of the recent approval for the equestrian use of land, and it is effectively an island in

the middle of surrounding equestrian activity. Indeed, as it washed over by the red line of the recent approval, it arguably already benefits from equestrian use by default.

There is no provision in the Core Strategy for equestrian uses, but there are numerous examples of approvals across Wiltshire (including the recent change of use application) where the Council has accepted that equestrian use is a decidedly rural form of development, and it is acceptable in principle. This also corresponds with the Council's Regulation 19 draft version of the Local Plan Review, which states at footnote 16 that:

'Rural businesses include agricultural, forestry, equestrian or other similar land-based rural enterprises'.

The Planning Practice Guidance warns councils against reaching inconsistent conclusions, otherwise they risk an award of costs at appeal. To not consider this an effective use of the building would be highly contradictory with the Council's repeatedly consistent stance. The principle of development is therefore considered acceptable.

Impacts on the character of the locality, including the setting of designated heritage assets

The proposal involves no operational development, simply the use of the building for storage associated with the surrounding lawful equestrian use. The use of the building in this manner would not materially affect local character, including the setting of designated heritage assets.

There is a condition attached to consent ref. PL/2022/03080 that requires details of any lighting on the site, which includes this barn. As the barn lies within that application red line and is already covered by the condition, it would be superfluous to repeat the condition, should planning permission be granted.

Impact on the living conditions of adjacent occupiers

Given the lawfulness of the existing structure, considerations of its impacts on outlook and overshadowing for neighbours are not relevant. The only material considerations relate to the impacts that may arise from the proposed use.

The closest wall-to-wall separation from the nearest dwelling is in the order of 90m away to the south, and the building sits around 50m from the closest garden boundary.

Given this separation distance and owing to the lawful use of the wider site that this proposal would be used in conjunction with, officers do not consider that the storage of hay and machinery would have any materially harmful impact on neighbour amenity from noise, smells or activity beyond the lawful fallback position.

Other matters: fire safety

Fire risk is an issue raised through the public consultation process. Guidance¹ published by the Royal Town Planning Institute confirms that:

'[Local Planning Authorities] have no powers or responsibilities around the fire safety of buildings or materials. However in some circumstances, LPAs may be able consult with building control and the fire service where considerations around fire safety have planning implications. This might, for example, include access for fire engines or the aesthetic implications of changing materials for example cladding'.

¹ 'Responsibility for fire safety during the development application process in England'

Planning Practice Guidance² also confirms that fire safety is only a consideration for relevant high-rise buildings.

In this case, there are no proposals to change the external materials of the building, and it is clear that there is an established access to it, in the event of a fire. There was thus no compelling reason to consult Building Control or the fire service on the application.

10. Conclusion

The building appears to have become lawful over the passage of time. Its repurposing from agricultural to equestrian storage in association with the lawful equestrian use of surrounding use is acceptable in principle. The use of the building would not give rise to any harm to the setting of designated heritage assets or neighbour amenity. The application is therefore recommended for approval.

RECOMMENDATION: that planning permission be GRANTED subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

- Location plan, block plan, elevations and floorplan ref. 2408/4.

REASON: for the avoidance of doubt and in the interests of proper planning.

INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required, it will be necessary for the applicant to obtain the landowner's consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

INFORMATIVE TO APPLICANT:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

² Fire safety and high-rise residential buildings (from 1 August 2021)