

REPORT TO THE AREA PLANNING COMMITTEE

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| Date of Meeting | 18th February 2015 |
| Application Number | 14/04529/FUL |
| Site Address | Home Farm Business Centre, Minety, Malmesbury SN16 9PL |
| Proposal | Retrospective Change of Use of the Old Workshop (Building A) as Class B1 Offices with Ancillary Reception, Demonstration/Storage & Welfare Facilities Retrospective Change of Use of Former Stables (Building B) for Class B8 Purposes; Use of Land for Vehicular Parking (Resubmission of 13/07098/FUL) |
| Applicant | Mr Peter Crocker |
| Town/Parish Council | Minety |
| Division | Minety- Cllr Berry |
| Grid Ref | 401401 190843 |
| Type of application | FULL |
| Case Officer | Lee Burman |

Reason for the application being considered by Committee

Councillor Chuck Berry called in the application for Committee determination to assess the impact on adjacent properties and to ensure a transparent process given concerns over the legality of the application.

1. Purpose of Report

To recommend that permission be GRANTED subject to conditions.

2. Report Summary

Minety Parish Council raise no objection but suggest conditions. 22 Neighbour objections submitted but this includes multiple submissions by several of the relevant neighbours, one of whom has employed planning and highways consultants and legal representatives whom have made several detailed submissions.

3. Site Description

The site is located in the open countryside to the west of the village of Minety and north east of Malmesbury. The application relates to land and two structures located within a group of former farm buildings and existing farmbuildings, with residential properties including the farmhouse associated with the farmholding located adjacent the application site. The property is known as Home Farm Business Centre from which several different businesses operate in different premises. The application site and adjacent properties are accessed from the C76/Hornbury Hill Via a long single lane access track which features passing places and which also accommodates a Bridleway. A further Bridleway is also located within part of the site. The site is surrounded by relatively level agricultural land including field boundaries with mature hedgerows and trees.

4. Planning History

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| N/00/02688/COU | Change Of Use Of Building For Mixed B1 (Business) And B8 (Storage & Distribution) Uses | Approved |
| N/01/02828/COU | Change Of Use Of Building For Mixed B1 (Business) And B8 (Storage & Distribution) Uses (resubmission of 00/2688/COU) | Refused |
| N/02/00499/COU | Conversion Of Dairy Building To B1 Use (Revised Scheme) | Approved |
| N/05/00149/FUL | Conversion of Barn to Office Accommodation | Approved |
| N/07/03181/FUL | Demolition of Single Storey Building and Erection of Single Storey Office Unit | Approved |
| N/08/00019/COU | Conversion of Outbuilding to Form Self Contained Ancillary Accommodation and Use of Two Bays in Existing Garage for Parking | Approved |
| N/13/01210/CLE | Certificate of Lawfulness Relating to Use of Old Workshop, Land & Former Stables | Refused |
| 13/07098/FUL | Retrospective Change of Use of The Old Workshop (Building A) as Class B1 Offices with Ancillary Reception, Demonstration/Storage, & Welfare facilities & (Retrospective) Change of Use of Former Stables (Building B) for Class B8 purposes. | Withdrawn |
| 13/07125/FUL | Use of 2 Barns as Covered Vehicular Parking Area & Use of Land Adjacent Former Stables (Building B) as Vehicular Parking (Retrospective) | Withdrawn |
| 14/04555/FUL | Retrospective Use of 2 Barns as Covered Parking Area (Resubmission of 13/07125/FUL) | Also reported on this Committee Agenda for determination. |

N/13/01210/CLE was the subject of the issue of a certificate of lawfulness relating to one part of the claimed established uses – that relating to the vehicular parking. This decision was the subject of a successful legal challenge in January 2014 which required that the application be re-determined. The re-determined application was refused.

5. The Proposal

The application is a retrospective application relating to the use of two buildings on site and two small areas of land adjacent to both of these buildings. The uses are as follows:-

Change Of Use Of Former Agricultural Building Known As The Old Workshop Or Building "A" as A B1 Office With Ancillary Reception, Demonstration / Storage & Welfare Facilities;

Change of Use of Former Stables known as Building "B" for B8 Storage and Distribution purposes;

Change of Use of Land for Vehicular Parking.

The application is a re-submission an earlier similar application referenced 13/07098/FUL which was withdrawn following concerns raised by neighbour objectors that the details were inadequate and the application certificates incorrectly completed.

A related retrospective application for the change of use of 2 barns to covered parking areas has been submitted and registered under reference 14/04555/FUL and is reported on this agenda for Committee determination.

6. Planning Policy

National Planning Policy Framework (NPPF) Paragraphs 14, 17, 19, 28, 32, 58, 75 & 111

Planning Practice Guidance (PPG)

Paragraph: 022 Reference ID: 14-022-20140306 Making an Application

ID: 21a Use of planning conditions

Wiltshire Core Strategy 2026 (Adopted 20/1/15) (WCS)

Core Policy 1 Settlement Strategy

Core Policy 13 Spatial Strategy for the Malmesbury Community Area

Core Policy 34 Additional Employment Land

Core Policy 48 Supporting Rural Life

Core Policy 57 Ensuring High Quality Design and Place Shaping

Core Policy 60 Sustainable Transport

Core Policy 61 Transport and Development

Core Policy 62 Development Impacts on the Transport Network

With respect to the above list two matters should be noted that this is not intended to be an exhaustive list of all relevant legislation, policies and guidance. It refers to the key policies informing the recommendation.

7. Consultations

Highways

Highways Officers raise no objection to the proposals subject to the use of conditions. Highways matters are considered in the body of the report but it should be noted that all of the applicant's and neighbours' submissions including those from the respective consultant teams regarding highways matters were considered and assessed. The Highways Officer's comments on the application(s) were reviewed in the light of additional submissions by both applicant and neighbour Transport and Planning Consultants and no objection subject to the use of conditions remained as the advice.

Legal

The Council's Legal Team were consulted on several occasions following receipt of representations from Neighbours and their consultant team. Legal issues are addressed in the body of the report but in summary Officers have advised that the application(s) can be

reported to Committee and the Council as Local Planning Authority can legally proceed to determination.

Rights of Way

Officers identified some concern regarding the width of the access road and potential conflict with bridleway users with larger goods vehicles. Officers identified that concerns could be overcome by the provision of 2 passing places adequate for a medium goods vehicle, effective management of parking at the relevant units including designated parking spaces marked to ensure no reversing into the right of way and a turning area for large vehicles; acceptable visibility splays at the exit; and prominent signage on the access route saying "Please Give Way to Bridleway Users".

In addition RoW Officers considered the submissions of Highways Consultants representing neighbours and specific suggestion that Bridleway / RoW User Groups should be consulted on the proposals. Officers considered that such consultation was not feasible and unrealistic as it would involve several such groups and would necessitate such consultation on all applications raising issues of shared use of routes. Furthermore the Council as Highways Authority has a statutory responsibility to protect the rights of the public under the Highways Act 1980 including the safety of users. Officers consider that this responsibility is implemented effectively through the RoW Team's input to the determination of planning applications.

Minety Parish Council

No objection raised but conditions regarding vehicular access are recommended, including limiting vehicles to those with 2 axles, restrict delivery vehicle movement to between the hours of 10am – 14.00pm to avoid school hours and commuting periods.

8. Publicity

The application was advertised by site notice, neighbour notification letters, Parish Council Consultation and press notice. As noted above 22 submissions have been made by neighbouring residents but this includes multiple representations by several residents. This in part reflects the fact that the application was restarted after it emerged that the incorrect Certificate had been completed and Wiltshire Council as Highways Authority and owner of the adjacent road which is partly within the red line application boundary had not been notified of the application. However one neighbour objector has appointed a team of consultants and solicitors to represent him and his partner, this team includes planning and transport consultants. The Planning and Highways consultants have made multiple submissions partly responding to multiple submissions by the applicant consultant team with a particular emphasis on Highways Matters and the submissions of the applicant's Highways consultants. Many of the submissions made are very lengthy and raise similar concerns several times and repeat other comments made in other representations or indeed cross refer to the representations of other third parties. Cross reference is made to representations on previous applications also. This position is highlighted in order to identify the difficulty in providing an effective summary of the submissions made. As such the various representations raise the following matters and include objections and general comments in relation to these issues and are summarised as follows but it should be noted that this is a summary and is not intended to be a verbatim recitation of every submission made or indeed a chronological statement:-

- Previous applications at the site have been refused but activities and development have taken place over an extended period in contravention of planning regulations. The current applications are retrospective and the existence and success of the business activities are presented as a justification for the applications. Control over development and activity at the site should be exerted to prevent further breaches.

- The location is inappropriate for the business activity taking place which should relocate to an alternative more appropriate location.
- It is considered that a retail business has been operated or will be operated from the site and this is not reflected in the proposals. Photos of signage dating to 2011 and photos of containers on site submitted as evidence of the intention in this respect.
- Permission for B1 and B8 uses could result in much large vehicles and greater traffic flows in future if the current tenants/business relocates.
- The principal access junction is becoming ever more hazardous and has inadequate visibility splays particularly in poor weather conditions and when adjacent hedges are overgrown.
- The width of the bridleway is inadequate for the type of traffic generated by the proposed B8 use. There will be conflict with Bridleway users and two objectors have identified an accident / incidents (possibly the same incident) involving a vehicle and horse/horserider.
- The bridleway is in a poor state of repair which will worsen with the type and volume of traffic resulting from the proposed use.
- The proposed “informal turning area” incorporates two bridleways (3 and 6) and access to several properties, it is inappropriate for the proposed use and will result in hazardous highways conditions.
- The proposals will result in more noise and light pollution in this rural location. The proposals will result in additional traffic movements resulting in disturbance to residential amenities.
- Concern over land values and ease of access for emergency vehicles to neighbouring properties.
- Buildings A & B have been subject to significant works of rebuilding and alteration prior to use and the submission of the current applications and without consent. Permission should be sought for these works. The use of the buildings was not commenced on the date stated in the application submissions.
- The access to the site is inadequate for the currently permitted level of B1 use and activity. Residents regularly meet a range of vehicles on the access including large lorries and must reverse back onto the main road to allow egress which is hazardous.
- The site is regularly used by large scale vehicles for delivery of goods which block the access and movement within the site for RoW users, neighbours and emergency vehicles.
- A traffic survey commissioned by a neighbour was restricted by damage to the consultants survey equipment. Photos submitted.
- Recommend the production of an independent traffic survey by the Council to test the submissions of the applicant and objectors given disputes over accuracy.

- The proposals will be harmful to the character and appearance of the locality and the residential amenities of neighbouring properties.
- Do not object to B1 use of the Old Workshop but object to linked B8 use. Consider that the proposals should be determined separately. Objections to the B8 use reflect those summarised above. Also the grant of B8 use will set a precedent for further development at the site.
- The applicant will not abide by any conditions imposed given the record of past breaches of planning regulations. There are large shipping containers already on site which have no consent, are used for storage and which are not referenced in the application submissions. Separate representations refer to the Design and Access Statement indicating that the container will be removed but object that no timeframe is given for removal.
- Given the split applications for the employment uses and the parking provision a clear calculation as to requirements is necessary and the full standards should be applied.
- Despite the provision of passing bays two large vehicles are not able to pass one another on the access road. The passing bays as constructed do not accord with and meet the requirements attached to previous grants of permission at the site as set out in related Planning Obligations, conditions and relevant submitted and approved plans. In addition the construction of the passing bays was such that they are now collapsing at the edges reducing further their usability.
- It is unsafe to use the bridleway to place rubbish and waste at the required location and on the appointed times due to the speed and volume of traffic movement on the access/bridleway and within the site.
- On site lighting to allow safe manoeuvring and access for vehicles results in harm to the character and appearance of the locality as the site is open and visible in views from the surrounding area.
- The proposed level of parking provision is inadequate for the proposed employment uses and not in accord with the Council's adopted minimum parking standards. The proposals make no provision for cycle parking and are in conflict with the Council's adopted standards and cycling strategy. The access and parking provision are inadequate for the proposed uses both in terms of existing operators at the site and possible alternative operators falling within the proposed use classes. The submission details do not adequately demonstrate how parking provision will be laid out to ensure that it is usable and that the site can accommodate the required parking spaces. The submitted details do not sufficiently demonstrate adequate space for the servicing of the site and the on-site manoeuvring of large scale vehicles.
- The application details, forms and certificates have not been correctly completed including incorrect and inaccurate submissions. Incorrect certificates have been completed as the applicant does not own all the land included in the red line application boundary. As such the correct notices have not been served on persons with an interest in the land and the applications. This is with particular reference to the access to the site and the passing bays that have been constructed. It is claimed by various parties that the passing bays are located on third party land and the fences delineating the access and the adjoining agricultural land have been relocated

onto land not within the applicant's ownership to facilitate provision of the passing bays. This is a very brief summary of the various submissions as the matter is addressed in further detail under the heading "Legal Considerations" in the body of the report.

- Wiltshire and Swindon Biological Records Centre note that there are records of Great Crested Newts nearby.

A further period of consultation was undertaken following identification of issues with the site notification and issuing of press notices. The further period of consultation expired on 5/2/15 and only 1 further representation has been received. This submission is from the legal team representing neighbouring residents and raises a number of queries as to the comments of the highways officer particularly with respect to the parking provision and layout. The same objector has submitted separate correspondence further disputing the land ownership of the applicant, asserting that the LPA cannot legally proceed to determination and stating that a Legal Challenge will be pursued if the Council as LPA does determine the applications.

9. Planning Considerations

Principle of Development

The proposals are a retrospective application for the B1 and B8 use of a small scale former agricultural building and small scale former stables located within a group of other buildings that formed part of the farmholding and which are now at least also in part consented for employment uses. The proposals also include provision for two small areas of vehicular parking. The farmholding is also part of a small grouping of other residential properties that lie adjacent to the site and are accessed via the same route from Hornbury Hill. Whilst there are no services shops or facilities in this small grouping of properties it is more than an isolated farm, it could be considered as a small hamlet.

The development is located some distance from the nearest village of Minety but is not considered to be so isolated as to be wholly unrelated to any settlement or its hinterland. In this context there are sporadic properties located between the application site and the village of Minety.

The site is the subject of previous permissions for employment uses and it is considered that these consents and the established activities on the site could be termed as farm diversification. The proposals whilst relating to a former agricultural building and former stables do relate to existing structures that are clearly a part of a complex of structures at the site. Whilst not falling with the definition of previously developed land it is considered that these rural buildings could usefully be put to an alternative use.

It is considered that the WCS Policies are broadly supportive of the proposals in principle and given the site history and circumstances there is not considered to be a direct in principle conflict with policies CP34 and in particular CP48.

The previous consents for employment uses at the site and the on-going employment activity in this location are considered to offer a valuable source of alternative rural employment opportunities for the local community in this locality and to be broadly in accord with national and local planning policy which is generally supportive of the creation and provision of such rural employment and rural diversification. This is subject to consideration of the sustainability of the proposed location in economic, environmental and transportation terms.

On balance it is considered that the application site is not so isolated from existing settlements and developments as to be wholly inappropriate in principle for further employment related development of the scale proposed. In this context Highways Officers have raised no objection on the grounds that the location is wholly unsustainable in transport terms and there are extant employment consents and permitted operational employment activities at this site which features a range of developments.

It is not considered that the application site is subject to ecological value and constraints that would restrict the development as proposed. Residential amenities are addressed under separate heading below.

On balance and in consideration of the principle of development it is considered that scope to offer further rural employment opportunities to the local community is a benefit and the location is not so wholly unsustainable as to be inappropriate and unacceptable in principle.

The comments of objectors in respect of the location of shipping containers are noted but the application does not seek consent for these proposals and this is a matter for the Council's Enforcement Team to consider should the containers remain in place and no application be forthcoming.

Objections have been raised that the consent and in particular the consent for the B8 proposal would create some form of precedent for further large scale B8 employment uses at the site, that this would generate very large scale HGV vehicular movements and this would result in significant harm in terms of residential amenity, hazardous highways conditions, conflict with rights of way users and harm the character and visual amenity of the locality.

Whilst any permissions would be a material consideration, as the historical permissions at the site are a material consideration, they do not set a precedent for large scale additional or site re-development for large scale B8 uses. Any such proposals would need to be the subject of an application which would be considered on its merits and in the context of all material considerations relevant at that time.

It is important to note in this context that the B8 use proposals relate to the change of use of small scale stables and a proposal for a new large scale B8 building would raise issues of a significantly different scale and nature. It is considered that there is a difference here between the consideration and appropriateness of a proposal for the re-use of small scale former stable buildings for a B8 use and a proposal for new build development for a large scale modern B8 warehouse or warehouses. It is not considered that consent for the proposed change of use establishes a precedent and in this context it should be noted that there is no provision for precedent in the planning system either through legislation or case law.

Similarly an objector has raised concerns as to the potential intention of the applicant to proceed with retail activity at the site. This does not form part of the proposals and such a land use has not been given consideration. It is considered inappropriate and unreasonable to determinate applications on the basis of speculation as to the future intent of an applicant and land users and as noted above applications must be determined on their own merits and the basis of the submissions made alongside other material considerations and circumstances. In this context it is also inappropriate to refuse conditional consent on the basis of concerns over the past behaviour of an applicant in relation to the implementation and application of conditions.

Objectors have also raised concerns regarding the retrospective nature of the applications. The planning system does not include any provision for refusal by a local planning authority

to register and determine such applications. Whilst the preferred and best practice approach is to seek consent prior to development the planning system does make provision for the submission and determination of retrospective applications. Objections also refer to impact on land values but this is not a material planning consideration.

The provision of the relatively small scale areas of parking proposed in relation to the two structures to provide part of the parking requirement for these structures are considered acceptable in principle.

Residential Amenities

The location and the scale of both the B8 and B1 uses of Buildings A and B are relatively limited and with respect to the B8 use in particular not directly adjacent to neighbouring residential properties. Existing structures and uses and some distance separate the B8 use from the nearest residential properties whilst the B1 use is limited in scale and as an office and showroom is considered to be broadly compatible with the nearby residential properties.

It should be noted however that there is also a reasonable degree of separation distance between building A and the nearest residential property to ensure no overlooking and loss of privacy and no over bearing impact or disturbance through the actual use of the building itself during working hours. This is considered to be the case for both the B8 and B1 uses in respect of the current operator / activity and other potential operators and activities falling within the B1 use class.

Concerns have been raised that works to the structures themselves have taken place in the past and that these are shown as established and not expressly referenced in the current application. It is not considered that the building layout and form as is shown on the proposed plans submitted with the application results in a significant loss of or harm to residential amenity for neighbouring properties.

Given that the works that have taken place were completed several years ago albeit subject to some dispute as to the exact timing they are as a matter of fact in place at present and so it is considered appropriate that the "existing" plans as submitted reflect that fact and show the buildings/structures as they are. It is considered unreasonable and indeed unfeasible to require that accurate detailed plans of how the structures used to be several years ago should be submitted. Given that the uses are considered on balance acceptable in principle and not to raise or result in significant harm to residential amenity by virtue of disturbance or overlooking from the employment activity during hours of operation it is considered and appropriate to deal with the application as submitted.

Separate consideration is given to the impact of transport movements associated with the proposed uses and their impact in terms of disturbance and overbearing impact resulting in loss of residential amenity. In this context consideration is given to both the existing operational activities/existing occupants and alternate operators with the same use classes.

As noted previously this is a rural location outside of and not directly adjacent to any defined settlement or major development. As such there is some expectation of relative peace and quiet when compared to residence within an urban area for example. However, as also noted the site is part of a former farmholding of a significant scale and operation. Such an operation could have been and indeed was subject to some expansion. Modern farmholdings are now often of a significant scale and often involve large scale buildings and activities which can generate noise and odours and other disturbance through extensive vehicular movements.

It should also be noted that there are existing employment activities permitted at the site. In this context it is considered that there could not be a reasonable expectation of no disturbance and no activity at the site from vehicular movement. Some degree of disruption would inevitably occur as a consequence of the current permitted uses and/or the established and potential agricultural use of the site. Indeed it is considered debatable if potential modern agricultural related vehicular movements would not be similar or greater in terms of disturbance and inconvenience for neighbouring residential properties.

On balance and giving consideration to the site circumstances, established permissions and potential "fall back" position of modern agricultural operations it is not considered that the proposed uses would result in such significant additional traffic movements to and from and within the site such that significant harm to neighbouring residential amenities through disturbance and inconvenience such that permission ought to be, and could defensibly be, refused on this basis. This is particularly considered to be the case in the context of the benefits to the local rural economy and rural employment opportunities that arise from the proposed development and the diversification of this farmholding.

Character and Appearance of the Locality

It is not considered that the proposed uses of the existing structures at the site or indeed the works that were previously undertaken to the structures result in any significant impact on the character and appearance of the locality such that permission ought to be and could be defensibly refused on this basis. The uses and the buildings involved are small in scale and in respect of building B are at least in part screened from the surrounding area by other structures and mature planting.

Both structures and the related parking are viewed in the context of the group of buildings at the site in views from the surrounding locality and indeed from within the site. Concern has been raised as to the visual impact of intermittent lighting at the site and that this is motion sensitive. This is not considered to be atypical and such security lighting is often a feature of many properties, employment and residential, within rural areas. Similarly many modern farmholdings and their related vehicles now include significant lighting and this is often a feature of the modern rural environment. The proposed uses and any related lighting are not considered to be significantly more visually intrusive and it is not considered that the application should or could defensibly be refused on this basis. Again it is necessary to give consideration to and balance such potential impact and harm against the benefits of development, in particular the rural employment opportunities created. The proposals are relatively small scale and the impacts on the character and visual amenity of the locality are commensurate to this, whilst the proposals would create employment and economic benefits albeit of a limited scale but which are generally supported in principle by national and local policy.

Highways – Access and Parking

As noted above there have been extensive submissions by both the applicant team and neighbours. In short the objections can be summarised as set out above and principally assert that:-

- The site access is inadequate in width to accommodate the traffic generated by the proposed development both in terms of volume and nature of vehicles and the current use of the site and adjacent land.
- This results in vehicles reversing onto Hornbury Hill creating a highways hazard and unacceptable disturbance to neighbouring residents.
- The site access has inadequate visibility splays and inadequate access width for the vehicle movements proposed both in volume and nature of vehicle and again results in the creation of a highways hazard on Hornbury Hill.

- There is no scope to address these issues through expansion of the access road or junction as the applicant doesn't own the relevant land.
- The access is a public right of way resulting in hazardous conditions and conflict with vehicles for all rights of way users.
- The passing bays that have been created under previous permissions are inadequate, not in accord with approved details, in a state of collapse and are situated on land not within the ownership of the applicant. They do not address the issues identified above re: safe access to the site and use by all rights of way users and again there is no scope to expand these passing bays as the applicant does not own the necessary land.
- The condition of the access road is poor and inadequate for the volume of traffic proposed under the development.
- Submitted traffic surveys do not accurately assess the level of traffic at the site. The uses that would be allowed should consent be granted would not be restricted to the current occupants and could therefore generate greater volumes of vehicular movements by larger scale vehicles.
- The site is an inappropriate and unsustainable location for the proposed land uses being poorly related to established settlements, services and facilities and offering limited scope for access by a range of modes of transport.
- The submitted application documentation does not adequately demonstrate that the site can accommodate the required level of parking provision (including cycle parking) and for servicing and vehicular manoeuvring within the site. Also that the proposed parking layout is inadequate and unusable in terms of vehicular manoeuvring.

Legal issues in respect of land ownership are addressed further below.

The applicant's position is effectively the opposite of that set out by objectors. It is asserted that the site access is adequate in width and condition for existing and proposed levels of traffic both in volume and nature. The passing bays as built are adequate for the required vehicle movements, existing and proposed, and use of the access by all Rights of Way users and are provided on land within the ownership of the applicant. That the proposals do not result in hazardous highways conditions and that the highways and access conditions including use of the access by local residents and RoW is not an unusual situation and feature of the environment throughout Wiltshire. That the volume of traffic movement is relatively limited and the access is sufficient to accommodate requirements without undue conflict with residents and RoW users or excessive disturbance and inconvenience out of the ordinary and expected position. That the site is adequate to accommodate the necessary vehicle movements including manoeuvring and that adequate provision is made for the requisite level of parking provision. The site has established and implemented consents for employment use and is an appropriate location for such provision but should it be considered necessary conditions restricting the form and nature of vehicular access and occupants of the application structures would be acceptable. Similarly, that the access junction can be expanded if considered necessary.

It should be noted that the Council's Highways Officers have reviewed and assessed all of the submissions made in respect of Highways matters, individually, in the context of one another, in the context of site and locality conditions and established permissions. Officers have reviewed and re-assessed their comments submitted on the applications in the context of further submission by the applicant and objector teams. Consideration has also been given to the use of conditions and the form of the applications.

In short Highways Officers raise no objection to the scheme proposals. Officers do not consider the site to be so isolated and unsustainable in transportation terms that consent

ought to be refused, in this context permitted uses and current activities alongside the scale of development proposed and current site circumstances are taken into consideration.

Similarly officers are satisfied that they have sufficient detail with respect to the application submissions in order to assess the proposals and determine that the site offers sufficient scope for provision of adequate on-site parking (this is in the context of both of the inter related applications). In this context the site circumstances as a rural location are taken into account in that the pressures on parking provision as evidenced within an urban area are of a different order than such rural locations and the fact that parking can be contained within the site.

Furthermore that the form of the applications submitted (two split applications) presents no obstacles to the consideration of the proposals and the adequacy of the parking provided for the site as a whole and in relation to the uses proposed in buildings a & b.

Similarly given the rural location officers do not consider it necessary to insist on detail as to the form and location of cycle parking provision. The site and proposals are also considered adequate and the level of detail sufficient to allow assessment in respect of on-site manoeuvring and it is not considered that the on-site conditions give rise to such hazardous conditions or restrictions on accessibility by neighbouring residents, all Rights of Way users and emergency services sufficient that objection should be raised and permission refused.

Turning to the access and passing bays and the usability and efficacy in relation to the established development at the site, previous permissions and current proposals it is important to note that Highways officers have reviewed and considered all the submissions made with specific reference to the various submissions from Highways consultants acting on behalf of the applicant and neighbour objectors.

Officers have also reviewed the application history and visited the site on several occasions. Highways Officers and the Case Officer consider the available information sufficient to be able to determine the current application proposals and do not consider it necessary to commission independent traffic surveys. It is also important to confirm that the Highways Authority has reviewed records and has found no record of any accident at the site access and junction with Hornbury Hill dating back to the year 2000. That is not to say that there have not been near misses or indeed accidents but the Council holds no records of having received any reports or being made aware of road accidents at the site. In this context it should be noted records are reliant on the system of reporting which is imperfect. As such the absence of accident records is an indicator of road conditions only.

Having undertaken the above review and considered relevant highways matters officers conclude that the application proposals can only be considered small in scale and are set within the context of implemented historic consent for B1 uses at the site and the provision of passing places on the access road broadly in accordance with the requirements of the permission granted under reference 02/0499/COU.

Officers conclude that in purely percentage terms the increase in vehicular traffic movements arising from the proposed development could be considered material but in numerical terms this additional volume of traffic is not considered to be significant or large scale in the context of the permitted use of the site. Officers also note the fallback position of agricultural and equestrian uses of buildings a & b and consider that the additional volume of traffic movements generated by the proposed uses would not be significantly greater than that generated by the fall back position.

Highways officers have concluded that no objection should be raised subject to the use of conditions which are set out at numbers 1 – 4 below.

Rights of Way Officers have similarly reviewed the application submissions, objections and visited the site. Officers similarly raise no objections subject to the use of conditions which are reflected in those proposed by Highways Officers re: signage on the access road.

As noted above various objections have been submitted in respect of the adequacy of the vehicular access and the impact of large scale vehicles servicing the site with deliveries and dispatch of goods. One objector has suggested a condition restricting hours of delivery and the scale of vehicle to access the site. An alternative condition requiring the submission and agreement of a travel plan to manage the site servicing in terms of delivery hours and type of vehicle is proposed below.

10. Legal Considerations

Extensive submissions have been made by solicitors, planning consultants and Highways Consultants representing neighbour objectors in respect of landownership matters and the completion of the correct application certificates. This includes the submission of a pre-application protocol letter indicating an intention to proceed with a legal challenge should the Council as Local Planning Authority proceed to determine the application and the related application 14/04555/FUL. In summary the neighbour objectors assert that:-

- The applicant does not own all of the land within the red line application boundary, that the passing bays as constructed are located (at least in part) on land within the ownership of third parties;
- As a consequence the certificates submitted with the application in respect of land ownership are incorrect and the relevant land owners affected by the applications have not been notified;
- That the requirements of the S106 agreement and related plans attached to permission 02/0499/COU in respect of the provision of passing bays have not been met and consequently the implemented consent is invalid.

Highways consultants acting on behalf of neighbour objectors have reviewed the historic applications at the site and related documentation and suggest that the boundaries as drawn on the application submissions are without the land owned by the applicant as identified on land registry plans, particularly in respect of the passing bays. Various objectors assert that the fences as erected either side of the access have been relocated from historic positions to be located on land not within the ownership of the applicant.

The Applicant's Planning and Highway consultants and Legal representatives have been given the opportunity to review and respond to objector submissions, particularly the legal submissions. The response is that all of the relevant land within the red line application boundary and including the passing bays is within the ownership of the applicant. Further that whilst the fences demarcating boundaries were removed to allow construction of the passing bays these were replaced in the same historic position. In addition the applicant team comment that the land registry plans are insufficiently detailed and scaled to allow an accurate assessment of the position of ownership boundaries on the ground.

In addition at the time of writing these reports the Council has been notified that the Objector's Legal Team have issued a further pre-application protocol letter to the applicant indicating an intention to issue formal legal proceedings of trespass against the applicant. The response of the applicant is awaited.

The Council's Legal Department and Enforcement Team have also reviewed the submissions and considered the representations by objectors that the Council as Local Planning Authority cannot legally proceed to determination.

The Council's Head of Legal Services has provided advice and has advised that there is no legal impediment for the committee to determine the applications. The issues raised relate to a boundary dispute between neighbours that can only be appropriately resolved in a court of competent jurisdiction and that land ownership is not a material planning consideration. As the applicant asserts that all of the relevant land within the red line boundary is within his ownership the appropriate certificates have been completed and notifications issued and therefore the application has been validly accepted. The response to the objector's solicitor on this point setting out the legal position is available should committee members require it

As noted above under the section entitled "Highways – Access and Parking" Highways and Rights of Way officers consider the current access arrangements sufficient to service the proposed development and rights of way users subject to the conditions attached below.

In effect an acceptable level of access is provided to the site for the development permitted and proposed taking into account site circumstances and material considerations such as the Right of Way for example. However the passing bays, as constructed, are located at least in part on land that is the subject of disputed ownership and threatened legal proceedings for Trespass.

We are not aware of filing or serving of Court papers at the time of writing this report. Should proceedings be issued and the argument of trespass be upheld by the Court then the passing bays, as constructed, may be lost if the relevant owner refuses to make the land available to the applicant.

The Council has no confirmed statement from the relevant landowners or their representatives at this point in time as to whether or not provision of the land by agreement would be acceptable. Similarly the Council is not the appropriate authority for determining the land ownership dispute and the determination of a planning application is not the appropriate legal vehicle for resolving a land ownership dispute. This is a civil matter that must be addressed in an appropriate court.

As it stands there is a technically acceptable solution to provide access to the site for the proposed and existing development and this is already in place subject to the conditions below. It is not possible to impose Grampian conditions requiring the provision of the passing bays prior to the commencement of development as the applications are retrospective with the development having already taken place.

It is therefore necessary to apply conditions that require the retention in perpetuity of the passing bays to support the development proposed if it is to be approved. Should a court later determine that some of the as built right of way is trespassing and the relevant land owner refuses to make the land available for provision of the passing bays and asserts their right of possession then the applicant would be in breach of condition and that would become a matter for enforcement.

11. Conclusion

The application is locally contentious and has resulted in very significant levels of detailed objection. There are clearly arguments in favour and against the proposals and the assessment of the proposed development is a balanced one.

It is considered that the proposals are broadly supported in principle in national and local planning policy and that the site is not one that is so isolated and unsustainable that it is wholly inappropriate for the land uses proposed. On balance it is considered that the re-use

of the former farm buildings for employment uses to facilitate a relatively small scale rural employment development in a location that already accommodates employment activity and uses generates sufficient benefits in terms of farm diversification and the creation of local employment opportunities as to outweigh the impacts identified.

In this context it is considered by officers that the impacts are relatively limited given the scale of the proposals and principally relate to inconvenience and disruption to local residents and all of the users of the rights of way in terms of the use of the access and movement through the site. Officers do not identify that the additional traffic resulting from the proposed development will result in a significant worsening of the current position or result in the creation of a highways hazard or harm to Highways and users of the Rights of Way such that consent ought to be refused.

In coming to this conclusion officers take note of the potential fallback position of agricultural and equestrian uses and the resultant traffic generation from such site activity and use. The scale of development is relatively limited and the impacts are commensurate with this scale of development. The benefits are similarly limited in scale but exist nonetheless.

In principle it is considered that the proposed uses are broadly in accord with national and local planning policy. In coming to this conclusion the site is not considered to be so isolated as to be wholly unsustainable such that consent ought to be refused as in conflict with planning policies on the location of employment development and the need for all development to be sustainable.

It is considered by officers that appropriate conditions can be applied to a grant of permission that are readily enforceable and which will address the identified impacts appropriately. In this context it is considered on balance that permission should be granted.

Background Documents Used in the Preparation of this Report:

Application documents
Objector submissions
Wiltshire Core Strategy
National Planning Policy Framework
Planning Practice Guidance

RECOMMENDATION

Planning permission be GRANTED subject to the following conditions:

1. Within two months of the date of the decision notice a full and detailed scheme of signage along the private road requesting motorists to give way to bridleway users shall be submitted and approved in writing by the Local Planning Authority. The approved scheme shall be constructed in accordance with the approved details, within two months of the date of approval in writing by the Local Planning Authority.

REASON: In the interests of highway safety

2. Within two months of the date of the decision notice full construction details for the widening of the vehicle access of the private road and / Hornbury Hill C76 (as outlined in PFA Technical Note para 2.12) shall be submitted and approved in writing by the Local Planning Authority. The approved scheme shall be constructed in accordance with the approved details, within two months of the date of approval in writing by the Local Planning Authority.

REASON: In the interests of highway safety

3. Within two months of the date of the decision notice full construction details of a scheme to upgrade the existing wearing course of the access road shall be submitted and approved in writing by the Local Planning Authority. The approved scheme shall be constructed in accordance with the approved details, within two months of the date of approval in writing by the Local Planning Authority.

REASON: In the interests of highway safety

4. Within two months of the date of the decision notice the parking areas shown on the approved plans (Block Plan 0823/13/06 A dated May 2014 and Existing Parking and Turning Areas, Figure 4) has been consolidated, surfaced and laid out in accordance with the approved details. This area shall be maintained and remain available for this use at all times thereafter.

REASON: To ensure that adequate provision is made for parking within the site in the interests of highway safety.

5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions / extensions / external alterations to any building forming part of the development hereby permitted and no plant or machinery shall be installed outside any such building on the site on the approved plans.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions/extensions or external alterations, or the installation of any outdoor plant/machinery.

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting or amending that Order with or without modification), the site shall be used solely for purposes within Class(es) B1 and B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended by the Town and Country Planning (Use Classes) (Amendment)(England) Order 2005 (or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification).

REASON: The proposed use is acceptable but the Local Planning Authority wish to consider any future proposal for a change of use, other than a use within the same class(es), having regard to the circumstances of the case.

7. No materials, goods, plant, machinery, equipment, finished or unfinished products/parts of any description, skips, crates, containers, waste or any other item whatsoever shall be placed, stacked, deposited or stored outside any building on the site.

REASON: In the interests of the appearance of the site and the amenities of the area.

8. The delivery and dispatch of goods to and from the site shall be limited to the hours of 08.00am and 18:00pm on Mondays to Saturdays and not on Sundays and Bank or Public Holidays.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.

9. The use hereby permitted shall only take place between the hours of 08.00am and 18:00pm on Mondays to Saturdays and not on Sundays and Bank or Public Holidays.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.

10. Within two months of the date of permission a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include proposals for managing deliveries to the site both in terms of the type of vehicles to be used which shall not exceed 18 tonnes / 2 axles; and hours and days of deliveries in accord with conditions numbered 8. The Travel plan shall also include details of implementation and monitoring and shall be implemented in accordance with these agreed details. The results of the implementation and monitoring shall be made available to the Local Planning Authority on request, together with any changes to the plan arising from those results.

REASON: In the interests of road safety and reducing vehicular traffic to the development.

11. The passing bays as shown on the approved plans and provided in situ at the date of permission shall be retained in perpetuity herein after.

REASON: In the interest of providing a safe vehicular access to the site and the safety of Rights of Way users and residential amenity.

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

0823/13/04
0823/13/05/A
0823/13/06/A
0823/13/07/A
PFA Technical Note 1 Fig 4

All dated May 2014

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

INFORMATIVES:-

WP6 ALTERATIONS TO APPROVED PLANS

1. 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.

WP13 PUBLIC SEWERS

2. The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a

public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.

WP18 PERMISSION NOT AUTHORISING WORK ON LAND OUTSIDE THE APPLICANT'S CONTROL & PARTY WALL ACT

3. 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 landowners 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.

4. The applicant is advised that the Permission granted does not relate to the Shipping Containers located on site at the time of determination and that the matter has been referred to the Council's Enforcement Team for Investigation.

