

REPORT OF THE HEAD OF PLANNING AND REGENERATION

14/00359/FULL - RETENTION OF AN AGRICULTURAL STORAGE BUILDING - LAND AT NGR 291225 112623 WITHLEIGH LANE WITHLEIGH DEVON

Description of Development:

The proposed development is for the retention of a building on agricultural land measuring approximately 9 metres x 9 metres and 5.5 metres to ridge height. Materials are green box profile cladding over low concrete block walls and a box profile cladding roof. There are two large metal doors at the eastern end of the building. The building is accessed via a narrow unmade lane and sits adjacent to another building used for hobby car repairs.

Reason for Report:

To update Planning Committee following a request for further information requested at the meeting on 21 May 2014.

RECOMMENDATION

Grant permission, subject to conditions (see report to 7 May Planning Committee for details)

Relationship to Corporate Plan:

None

Financial Implications:

Any appeal may require the appointment of planning consultants to assist in the defence of the reasons for refusal. The applicant may make an application for costs on any appeal against the Council and such costs claims are made by demonstrating that there has been unreasonable behaviour. That being the case, Members must be able to clearly justify each and every reason for refusal.

Legal Implications:

None

Risk Assessment:

If Committee decide to refuse the application for reasons that cannot be sustained at appeal there is a risk of a successful appeal costs claim against the Council for reasons of unreasonable behaviour.

Updated information

This report is to be read in conjunction with reports on this application considered by Planning Committee on 7th and 21st May 2014.

At the Planning Committee held on 21 May 2014 Members of Planning Committee requested officers to obtain additional information on two matters:

1. Clarification of the land ownership.
2. Clarification of the size and use of the holding.

Your officers carried out a Land Registry search which revealed that the applicant did not own part of the land hatched blue on the submitted site location plan. In any event, the submitted plan did not show the correct parcels of land relating to this application hatched blue. Your officers have obtained a revised site location plan showing the correct parcels of land (4.3 acres owned, 8 acres rented).

The 8 acre parcel of land adjacent to Quirkhill Farm is rented by the applicant. The land owner has supplied a letter confirming that the applicant rents the land from him on an ongoing basis with an annual review and with a 6 month notice period.

The applicant has a small flock of free range chickens and currently has 4 Dexter female cows which it is intended to put in calf. The applicant advises that there is also an intention to buy and bring on calves for selling at 14-18 months and is considering keeping pigs.

Your officers consider that this amount of land (a total of 12.3 acres owned and rented) can justify a building the size of the current building (see justification in the Implications Report to the 21 May 2014 Planning Committee). Officers do not consider that any additional information on either land ownership or use of the holding is likely to be forthcoming. The decision should therefore be made on the information currently available.

Your officers visited the site on 30 May 2014 and the building contained a number of items, including a tractor and toppler, some fencing materials, a small amount of straw/hay and various other items (see photograph attached).

Conclusion:

Your officers consider that it would be unreasonable to refuse the application for the reasons set out in the Implications Report to the 21 May 2014 Planning Committee and continue to recommend that the application be approved, subject to conditions as set out in the officer's original report.

Contact for any more information

Tina Maryan (01884) 234336

Background Papers

Planning Committee papers 7th and 21st May 2014

File Reference

14/00359/FULL

Circulation of the Report

Cllrs Richard Chesterton

Application No. 14/00359/FULL

Plans List No. 4

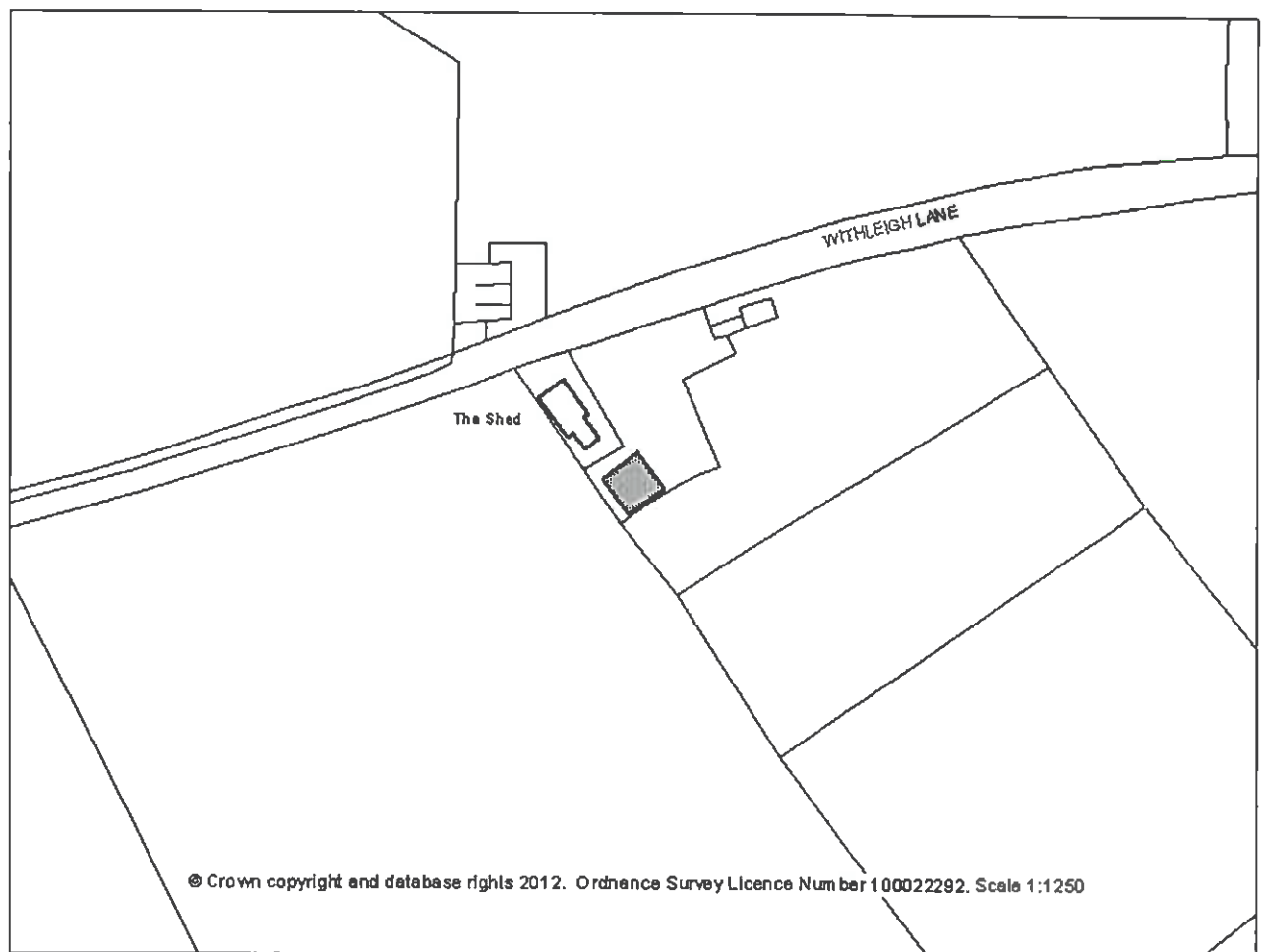
Grid Ref: 291301 : 112585

Applicant: Mr Arthurs

Location: Land at NGR 291225
112623 Withleigh
Lane Withleigh

Proposal: Retention of an
agricultural storage
building

Date Valid: 11th March 2014



Application No. 14/00359/FULL

RECOMMENDATION

Grant permission subject to conditions.

CLLR GERALD LUXTON HAS REQUESTED THAT THIS APPLICATION BE DETERMINED BY THE PLANNING COMMITTEE FOR THE FOLLOWING REASON:

To consider whether the building is designed and justified for agriculture on the holding.

PROPOSED DEVELOPMENT

The proposed development is for the retention of a building on agricultural land measuring approximately 9 metres x 9 metres and 5.5 metres to ridge height. Materials are green box profile cladding over low concrete block walls and a box profile cladding roof. There are two large metal doors at the eastern end of the building. The building is accessed via a narrow unmade lane and sits adjacent to another building used for hobby car repairs.

APPLICANT'S SUPPORTING INFORMATION

Planning, Design and Access Statement

PLANNING HISTORY

The application building was built without the benefit of planning permission and is therefore unauthorised. It is understood that the building replaced an existing building on the site which was destroyed in a storm. An enforcement notice for the building's removal was issued on 1 December 2009 and an appeal against the enforcement notice on grounds (a) and (g) was subsequently dismissed (copy appeal decision attached).

DEVELOPMENT PLAN POLICIES

Mid Devon Core Strategy (Local Plan 1)

COR18 - Countryside

Mid Devon Local Plan Part 3 (Development Management Policies)

DM2 - High quality design

DM22 - Agricultural development

CONSULTATIONS

HIGHWAY AUTHORITY - 19th March 2014 - Standing advice applies please see Devon County Council document <http://www.devon.gov.uk/highways-standingadvice.pdf>

TIVERTON TOWN COUNCIL - 8th April 2014 - Opposes this as it was previously turned down by the Planning Inspector.

REPRESENTATIONS

None

MATERIAL CONSIDERATIONS AND OBSERVATIONS

The main issues in the determination of this application are:

1. Justification for building

The appeal was made on the basis that the building was required in respect of a mixed use of the building and the surrounding land for various uses including storage of vehicles and machinery, builder's yard materials and in respect of the keeping of a pony. At the time of the appeal, the applicant owned one field adjacent to the building. Since then, he has acquired a further block of land and now has a total of 7 acres (2.8 HA) of agricultural land which he intends to run as a smallholding.

In his decision, the Inspector stated that the building was inappropriate in that it is outside and not adjacent to any village or town, has very poor vehicular access, detracts from the area's rural character and does not serve an agricultural purpose. As such the building would be contrary to policy.

Policy COR18 of the Mid Devon Core Strategy (Local Plan Part 1) permits agricultural buildings outside of defined settlements and policy DM22 of the Local Plan Part 3 (Development Management Policies) permits agricultural development where:

- a) the development is reasonably necessary to support farming activity on that farm or in the immediate agricultural community;
- b) the development is sensitively located to limit any adverse effects on the living conditions of local residents and is well-designed, respecting the character and appearance of the area;
- c) the development will not have an unacceptable adverse impact on the environment; and
- d) the development will not have an unacceptable traffic impact on the local road network.'

Your officers consider that a building the size of the appeal building could be justified to serve the expanded 7 acre holding, being relatively small in terms of modern agricultural buildings and its use for agriculture could be conditioned. There are no neighbouring residents likely to be affected by the building's use for agricultural purposes and it is not considered to have an unacceptable adverse impact on the environment or on the local road network. The issue of its design and visual impact is considered below.

2. Design and impact on the character and appearance of the countryside

The building is a standard steel framed building clad with profile sheeting over low concrete block walls. Agricultural buildings of a similar design are increasing being erected for agricultural purposes. In his decision, the appeal Inspector noted that elements of the building such as the large metal doors were not typical of agricultural buildings. However, that does not mean that it is not suitable for agricultural use. The Inspector was more concerned that the building was not erected for agricultural purposes. He commented that 'any similarity it might have to agricultural structures is not a good reason for permitting it'.

The building is visible within the landscape and is partially visible from the lane. The lane is not made up and appears to be only very lightly trafficked. The building is not highly visible from public vantage points within the landscape and where it may be visible, its overall appearance is that of an agricultural building. Its size, location and design (save perhaps for the large metal doors) is similar to other buildings approved on agricultural holdings in the District. However, in order to screen the building further within the landscape, it is recommended that a condition be imposed requiring the applicant to plant a tree screen along the south eastern side of the building to minimise the impact on the landscape, in accordance with Policies DM2 and DM22 of the Local Plan Part 3 (Development Management Policies).

Your officers consider that provided the building is controlled for agricultural use only, its retention would meet relevant planning policy and that on balance, with the additional screening would not have an unacceptable impact on the character and appearance of the area.

3. Planning gain

As mentioned above, the application is one of two applications submitted by the applicant, the other being to change the use of a small area of agricultural land to the north of the application building and adjacent to a building which has an established use for motor vehicle repairs. Part of the applicant's land is currently used to store vehicles and other materials and, although mostly screened within the landscape, the land is untidy. This use has continued for a considerable time and your enforcement officer considers the storage use is now more than likely immune from enforcement. The applicant proposes to remove the vehicles, non-agricultural machinery and materials from the land and return the land to agriculture. The vehicles and other machinery and materials would be stored in the area adjacent to the existing garage building, which would be screened by a new hedge. As a result, the two uses (agriculture and hobby vehicle repairs and storage) would be separated, and the uses could be conditioned and controlled in the future.

Your officers consider that granting the two applications, with conditions, would result in a planning gain by restricting the non-agricultural use of the land to a smaller, screened, area, and returning untidy land to agricultural use.

If the applications are refused, it is likely that the agricultural land would continue to be used for non-agricultural purposes and remain untidy. The applicant would also be able to appeal the decision in order to retain the application building for agricultural uses on the expanded holding.

CONDITIONS

1. The date of commencement of this development shall be taken as 11th March 2014, the date the application was registered by the Local Planning Authority.
2. The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule on the decision notice.
3. The building hereby permitted shall be used for agricultural purposes only on the holding to which it relates and shall not be used for any other purposes, including any non-agricultural storage or for maintenance or repairs to any non-agricultural vehicles or machinery.
4. Within 3 months of the date of this decision notice, all non-agricultural buildings, structures, vehicles, plant, machinery and materials stored on the land hatched blue on drawing number PL/S.LP./01 shall be removed permanently from that land and the land returned to agricultural use.
5. Within 9 months of the date of this decision notice, a tree screen shall be planted along the south eastern side of the building, in accordance with details that shall have been previously approved in writing by the Local Planning Authority. Following its provision, such approved tree screen shall be permanently retained and any trees or plants which die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

REASONS FOR CONDITIONS

1. In order to establish a legal commencement date for the development to enable the development to be monitored by the Local Planning Authority.
2. For the avoidance of doubt and in the interests of proper planning.
3. The building is in a location where non-agricultural uses would be inappropriate due to the poor access and unacceptable impact on the rural character of the area, in accordance with Policy COR18 of the Mid Devon Core Strategy (Local Plan Part 1).
4. To protect the character and appearance of the countryside in accordance with Policy DM2 of the Mid Devon Local Plan Part 3 (Development Management Policies).
5. To protect the rural character and appearance of the area in accordance with Policies DM2 and DM22 of the Mid Devon Local Plan Part 3 (Development Management Policies).

REASON FOR APPROVAL OF PERMISSION/GRANT OF CONSENT

The proposal is considered to be acceptable in that the building can be justified for agriculture on the holding to which it relates and is considered to be reasonably suitable for an agricultural use. Subject to conditions, the proposal is not considered to be unacceptable in terms of its effects on the character and appearance of the countryside, on the highway network or on neighbouring residents. The proposal is considered to comply with the relevant Policies: COR18 of the Mid Devon Core Strategy (Local Plan Part 1) and DM2 and DM22 of the Mid Devon Local Plan Part 3 (Development Management Policies).

AGENDA ITEM 14

**PLANNING COMMITTEE
21 May 2014**

REPORT OF THE HEAD OF PLANNING AND REGENERATION

14/00359/FULL

Land at NGR 291225 112623 Withleigh Lane, Withleigh

Description of Development:

The proposed development is for the retention of a building on agricultural land measuring approximately 9 metres x 9 metres and 5.5 metres to ridge height. Materials are green box profile cladding over low concrete block walls and a box profile cladding roof. There are two large metal doors at the eastern end of the building. The building is accessed via a narrow unmade lane and sits adjacent to another building used for hobby car repairs.

Please note: the site location plan submitted with the application showing the extent of the applicant's land holding has been corrected to exclude part of the land near Quirkhill Farm. This was an error and does not affect the size of the holding previously reported which still extends to approximately 7 acres.

REASON FOR REPORT:

To consider the reasons for refusal proposed by the Planning Committee at the meeting of 7 May 2014 in light of further advice from Officers.

RECOMMENDATION(S)

Grant permission, subject to conditions

Relationship to Corporate Plan:

None

Financial Implications:

Any appeal may require the appointment of planning consultants to assist in the defence of the reasons for refusal. The applicant may make an application for costs on any appeal against the Council and such costs claims are made by demonstrating that there has been unreasonable behaviour. That being the case, Members must be able to clearly justify each and every reason for refusal.

Legal Implications:

None.

Risk Assessment:

If Committee decide to refuse the application for reasons that cannot be sustained at appeal there is a risk of a successful appeal costs claim against the Council for reasons of unreasonable behaviour.

At the Planning Committee held on 7 May 2014 Members of Planning Committee resolved that they were minded to refuse the above application contrary to officer recommendation and requested a further report to consider -

1. The Committee's draft reasons for refusal, and
2. The implications of refusing the application

Reasons for Refusal

Set out below are the reasons for refusal which would appear on the planning decision notice.

1. Agricultural development outside of defined settlements is permitted where the development is reasonably necessary to support farming activity on that farm or in the immediate agricultural community. In the opinion of the Local Planning Authority, it has not been satisfactorily demonstrated that there is an agricultural need for a building of this size on this holding, contrary to Policy COR18 of the Mid Devon Core Strategy (Local Plan Part 1) and Policy DM22 of the Mid Devon Local Plan Part 3 (Development Management Policies).
2. The building as it has been constructed on the application site and as shown on the submitted plans is not considered to represent a design which is fit for purpose in terms of providing a building which would function as an agricultural building. The building by reason of its design is considered to be contrary to Policy COR18 of the Mid Devon Core Strategy (Local Plan Part 1) and Policy DM22 of the Mid Devon Local Plan Part 3 (Development Management Policies).

The implications of refusing the application

Reason for refusal 1

The applicant has, in total, approximately 7 acres of agricultural land on which he intends to develop a smallholding. It is understood that at the time of writing this report there were chickens and cows on the land.

There are no other agricultural buildings serving the land, save for two very small timber sheds, and it is reasonable for the applicant to require a building in which to store agricultural machinery, tools, bedding and feed. The footprint of the building is approximately 81 square metres which your officers do not consider to be large in comparison to other agricultural buildings granted on similar size holdings. Recent examples of agricultural building granted planning permission include:

- a building with a footprint of approximately 90 square metres on a holding of 10 acres,
- a building with a footprint of approximately 108 square metres on a holding of 12 acres, and

- a building with a footprint of approximately 207 square metres on a holding of 14 acres.

If the applicant were to demolish the building in accordance with the enforcement notice extant on the site, and then submit a planning application for an agricultural building to serve the holding, your officers consider that it would be unreasonable to withhold the grant of planning permission for a building of a similar footprint to the one the subject of this application.

In the previous appeal decision, The Inspector dismissed the appeal on the grounds that:

"The disputed building is outside and not adjacent to any village or town, has very poor vehicular access, detracts from the area's rural character and does not serve an agricultural purpose. The building does not meet applicable policy criteria."

The key phrase in this paragraph is that the building "*does not serve an agricultural purpose*" and it was for this reason that the Inspector found the building to be contrary to policy. At that time the building was to be used for the storage of vehicles and machinery and was not erected for an agricultural purpose. Since there has been a material change in circumstances in that additional land has been acquired and running a smallholding is intended.

If the applicant were to appeal against the refusal of this planning permission, it is likely that an Inspector would find a building of this size commensurate with the size of the holding and would grant planning permission. It may also be considered that, as the Local Planning Authority would be likely to grant planning permission for a similar sized agricultural building on this holding, an award of costs could be made in favour of the applicant due to the unreasonable behaviour of Council in not granting planning permission for the application building.

Reason for refusal 2

Members referred to the Inspector's comments in the appeal decision in relation to the building's design.

In relation to the building's design, the Inspector stated that:

"It is claimed for the appellant that the building is of a type and design commonly employed for agricultural buildings. That is only true of some of the design features - the large metal doors, for example, are not typical of agricultural buildings. In any case, the building was not erected for an agricultural purpose and any similarity it might have to agricultural structures is not a good reason for permitting it".

The Inspector did not state that the building was not suitable for use for agriculture, only that the large metal doors are not typical of agricultural buildings. His comments were directed mainly at the fact that the building was not erected for an agricultural purpose, the original application being for "a mixed use of the building and the surrounding land for various uses including storage of vehicles and machinery, builder's yard materials and in respect of the keeping of a pony".

It is not unusual for modern agricultural buildings to feature large doors to allow manoeuvring by large agricultural vehicles and machinery. If the metal doors were replaced by gates or the front left open, the building would be typical of many agricultural buildings found in the District. In any event, the building is not highly visible from public vantage points and the

parts of the building most likely to be visible are clad with box profile cladding, a standard material for agricultural buildings.

Your officers do not consider that a reason for refusal based on the building's design could be substantiated, bearing in mind its similarity to a standard agricultural building. Again, should the decision to refuse the application be appealed, the Inspector could find that the Council has been unreasonable in refusing the application on the building's design and an award of costs could be made.

Conclusion:

Your officers consider that it would be unreasonable to refuse the application for the reasons set out above and continue to recommend that the application be approved, subject to conditions as set out in the officer's original report.

Contact for any more information

Tina Maryan, Principal Planning Officer
Telephone number 01884 234336

Background Papers

Previous Planning Committee Report 7th May
2014

File Reference

14/00359/FULL

Circulation of the Report

Councillor Richard Chesterton
Members of the Planning Committee