

REPORT OF THE HEAD OF PLANNING AND REGENERATION**14/00222/FULL - Retention of an agricultural shed, Growen Lane, Cullompton**

At the Planning Committee held on 7th May 2014 Members of the Planning Committee resolved that this item be deferred for the following reasons:

- a) To allow for a waste management plan and proposed drainage plans to be provided;
- b) To further consider any history of complaints to Environmental Health relating to noise and infestation issues;
- c) To investigate the existing structures to see if they are moveable or permanent;
- d) To allow for an updated report to be prepared to include the implications of refusing the application together with possible enforcement issues to be addressed if required;
- e) An Environmental Health Officer to be present when the application is further discussed by the Committee

Description of Development:

This application seeks planning permission for the retention of an agricultural shed on land adjacent to Birchill Stud Farm, Cullompton. The site is adjacent to Growen Lane, which is a public bridleway adjoining Tiverton Road just outside of the western edge of the Cullompton settlement limit. The land is agricultural, although a piece of land directly to the north was approved for a change of use from agricultural to equestrian under 10/00069/FULL, and a timber stable block was approved on land to the south under 93/00731/FULL. This application is retrospective, and has been submitted to regularise the building following complaints made to the Local Planning Authority, and correspondence with the Local Planning Authority and Environmental Health.

The application building measures approximately 12 metres in width by 18 metres in length, and is stated to have a floor space of 204 square metres. The maximum height is 2.4 metres. The building is constructed from a timber frame with wooden cladding across the exterior, with a monopitch corrugated roof. There are wooden vents on the exterior ends, floodlighting and a container, raised on a metal frame, all of which are associated with the poultry enterprise. There are no proposed changes to the land surrounding the building, nor the concrete access onto Growen Lane.

The shed forms part of a wider agricultural unit, with 3 poultry houses and one wooden storage shed adjacent to the building. The degree of permanence of the 3 poultry houses is discussed in section (b) of this report. This site and remaining section of field to the west were granted planning permission for the retention of three poly tunnels for housing poultry (03/00801/FULL), although these are no longer found on the land. The applicant has an established business based at Weaver Mill Farm, Kentisbeare.

The shed is stated to have been on the land in excess of 3 years, and is in use for the production of eggs. This is the sole function of the business, and the shed currently houses 1200 chickens producing around 100 eggs per day. It is proposed to retain the shed for the keeping of poultry, although the proposed use has been altered to remove the cockerels that are currently being housed in the shed. The application also states that the land has been used as a chicken rearing business in excess of 10 years.

OFFICER RECOMMENDATION

Members should note that the wording of condition 3 has been revised following the submission of additional information detailed in this report.

Grant permission subject to conditions:

CONDITIONS

1. The date of commencement of this development shall be taken as the 13th February 2014 when the application was registered by the Local Planning Authority.
2. The development hereby permitted shall be carried out in accordance with the approved site location plans listed in the schedule on the decision notice.
3. Within 2 months of the grant of planning permission, the drainage/water catchment tank shown on drawing '*PL/BLOCK PLAN (COLL. TANK)/01*' shall be provided in accordance with the approved drawings and thereafter shall be managed at all times in accordance with the accompanying '*Waste management plan for shed cleaning process*' document received by the Local Planning Authority on 30th May 2014.
4. The development hereby permitted shall be carried out in accordance with the submitted Fly Control Management Plan received by the Local Planning Authority on the 24th February 2014.

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, and in accordance with the provisions of Section 51 of the Planning and Compulsory Purchase Act 2004.
2. For the avoidance of doubt and in the interests of proper planning.
3. To accord with the approved waste management plan and to ensure that risks from water contamination are minimised in accordance with Policies DM7 and DM22 of the Mid Devon Local Plan Part 3 (Development Management Policies) and the National Planning Policy Framework.
4. To manage and control flies associated with the agricultural use in the interests of protecting the living conditions of neighbouring residents in accordance with Policies DM7 and DM22 of the Mid Devon Local Plan Part 3 (Development Management Policies) and the National Planning Policy Framework.

Relationship to Corporate Plan:

None

Financial Implications:

If minded to refuse the application, members must consider that 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 the 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.

Since the previous planning committee, further consultation carried out with:

1) ***Environmental Health*** - 29th May 2014

Contaminated Land - I have no objections to this proposal

Air Quality - I have no objections to this proposal

Drainage - As per my comments under the PWS section

Noise & other nuisances - As per my comments on the 15/04/2014

Housing Standards - Not applicable

Licensing - N/A

Food Hygiene - Not applicable

Private Water Supplies - I recommend approval as long as the informal note is taken into consideration.

As long as a management plan is introduced ensuring regular emptying of the tank to ensure that no standing water is allowed to stagnate within the tank and that following any cleaning out of the chicken shed that the tank is cleaned out to prevent any possible odour nuisance then I have no objections to this proposal.

Health and Safety - Health and Safety Executive enforced activity although I have no objections

Further information requested by Committee

a) To allow for a waste management plan and proposed drainage plans to be provided;

Since the earlier deferral of this application the applicant's agent has submitted a strategy for management of waste water. Members are also advised to consider the possibility of multiple sources of surface water contamination around this site, including equestrian stables located adjacent to the main poultry site.

The agent has submitted a Block Plan setting out the proposed concrete collection tank to be installed abutting the south elevation of the building. A *Waste management plan for shed cleaning process* document has also been submitted, and states that the tank is to be constructed from concrete to measure 11.8 metres in length by 2.8 metres in width with a catchment area depth of 500mm. The end panel of the shed is to be opened for waste to be emptied into the holding tank. The document states that the waste water is removed from the site after the shed cleaning process is finished, to be disposed of by a licensed waste company.

The main clean and control procedures are stated to be necessary approximately every 70 weeks (1 year and 4 months). This is when the laying hens are removed, and the shed is cleared and washed down with disinfectant, prior to the introduction of the new flock. Laying hens are typically destroyed after 70 weeks and replaced with new layers.

The management plan includes detailed guidance for the cleaning process to be undertaken including dry and wet cleaning with disinfection to ensure a high standard of management overall. The catchment tank will have a metal mesh cover, which will be laid when not in use to ensure site safety. The measurements of the proposed tank are considered to be adequate to ensure the effective holding of waste water, during the cleaning process.

The level of information within the management plan and the proposed installation of the catchment tank are considered to be adequate in ensuring the appropriate management of the poultry shed and to prevent unnecessary contamination of surface water. It is recommended that a condition is attached to the grant of consent to ensure the timely construction of the catchment tank and ongoing management of the cleaning process.

To further consider any history of complaints to Environmental Health relating to noise and infestation issues;

The Local Planning Authority has further discussed the site with Environmental Health Officers who have provided the following records of complaints associated with the site:

- 1) 03/00144/NDODOG Dog barking at unsocial hours causing nuisance.
- 2) 03/00507/NDODOG Dogs barking throughout night at unmanned site causing nuisance. This is an ongoing issue as well as other matters.
- 3) 05/00059/PESMIC Problems with mice and rats from chicken houses. Also regular bonfires
- 4) 05/00276/POODAG Further complaint of close proximity of poultry houses causing smell nuisance
- 5) 05/00200/POODAG Concerning about smell coming from the mobile chicken houses. And also the noise coming from the barking of dogs at night.
- 6) 05/01415/NDODOG Dogs left overnight at farm barking at unsocial hours causing nuisance
- 7) 06/00049/POODAG Complaint of odour from a large dung heap at the farm

Environmental Health has received no further formal complaints since 2006 about Birchill Stud Farm, other than the objections raised by the neighbour regarding the planning application. Prior to the application being made Environmental Health received one request to sample a Private Water Supply and several telephone requests seeking advice regarding fly problems. Environmental Health has advised that these calls were only to seek advice on the possible action the Council could undertake following on from a complaint, however a complaint was never made. Members will be able to discuss this with the Environmental Health Officer who will be present at the planning committee.

b) To investigate the existing structures to see if they are moveable or permanent;

Members asked for further clarification on the possible use of, and planning status of other structures adjacent to the application building. There are 3 green-pitched roof structures that have been used as part of the poultry rearing business. The structures are timber framed and rest on a wooden base. They are finished externally with a green covered plastic coating with small wooden doors on each gable and openings for ventilation on all sides.

The units are fairly lightweight and although no steel sliders are visible at the base, the structures are considered to be capable being moved with relative ease, although each structure must be moved as a separate unit. There is no sign of the structures being anchored into the ground. Furthermore, the applicant has stated the structures have not been moved from their current position or approximately 10 years, and satellite evidence dated from 2005 would support this statement. The structures are considered to be buildings due to the significant period of time in which they have not been moved, and are therefore deemed to be permanent. It is likely that the structures are immune from enforcement action being taken in respect of their continued use for agricultural purposes.

c) To allow for an updated report to be prepared to include the implications of refusing the application together with possible enforcement issues to be addressed if required;

Member's vote to defer the decision at the 7th May Planning Committee did not determine on what grounds they might be minded to refuse the application. It is therefore presumed that members concerns relate largely to the possible environmental impact and the position of the building in close proximity to private residential properties, and the associated impact upon the amenity of neighbouring residents.

If Members are minded to refuse the application on grounds of nuisance from noise and smell by nature of close proximity to private neighbouring properties, your Officers would advise that consideration be given to the lawful use of other agricultural buildings/structures on the site.

The 3 green coloured units mentioned above, are capable of housing poultry and are situated approximately 5 metres closer to the nearest residential properties.

The Authority considers that whilst the application building is only 30 metres from a private residence, the overall impact is acceptable, subject to conditions ensuring the management of waste water and pest control. Members are also advised that the poultry rearing business is managed under Environmental Health legislation.

Environmental Health has removed its objection subject to the removal of cockerels from the shed. If members are minded to refuse the application on ground of noise impact upon the amenity of neighbouring properties, it should be considered that the shed will not be used for the keeping of cockerels which are a key source of noise. Any reasons for refusal relating to nuisance from noise and smell would not receive the support of Mid Devon's Environmental Health Department as they have not objected to the application. The Authority will not be able to defend this as a reason for refusal. Environmental Health comments are subject to conditions, which would ensure a level of control through planning and environmental health legislation.

More widely, the refusal of the application may result in an appeal against the decision of the members, who must be satisfied that they can refuse the application, contrary to officer recommendation, on reasons which can be defended.

- 1. In the opinion of the Local Planning Authority the building is in very close proximity to neighbouring residential properties un-associated with the agricultural activities on the land such that the retention of the agricultural building for the housing of chickens would be likely to cause harm to the amenity of living conditions by virtue of the production of odour and noise, contrary to policies DM7 and DM22 of Local Plan Part 3 (Development Management Policies).**

If members of the Planning Committee refuse the planning application it is recommended that further consideration is given to prospective enforcement action as detailed below:

dii) Enforcement Issues

This matter is the subject of a planning enforcement investigation ref; Enf/13/00131. In the event that members 'refuse' the planning application contrary to officer recommendation, & as a result require that enforcement action is considered the following recommendation could be appropriate.;

To delegate authority to the Legal Services Manager to take the appropriate legal action to include the service of a conditional enforcement notice or notices. Any notice to require that suitable drainage facilities are provided in accordance with the details submitted in support of planning application ref;14/0022/FULL consisting of the '*PL/BLOCK PLAN (COLL. TANK)/01*' and the accompanying '*Waste management plan for shed cleaning process*' document. In the event of a failure to comply with any enforcement notice/s there is consideration of prosecution proceedings, the issue of injunction proceedings, or direct action.

A planning enforcement notice cannot be issued to require the removal/demolition of the unauthorised building. Such a requirement would be considered as excessive & onerous. A recent Court of Appeal Decision Ahmed v. SSCLG [2014] EWCA Civ 566 requires that the Local Planning Authority (LPA) should only require, in any enforcement notice, what is considered as acceptable to rectify any harm or injury to amenity. In this case the officer recommendation is to grant conditional planning permission. That condition is therefore to be reflected in the requirements of any enforcement notice. Should the LPA require anything in excess of this the LPA could be at risk of an award of costs against it in the event of a successful enforcement notice appeal. The recommendation therefore, in this case, is for a conditional enforcement notice.

Member's reason/s for refusal would also need to be given, along with the relevant policies, to be included on any enforcement notice.

Human Rights and Equality Issues:

Any of the enforcement action taken as proposed or being considered in relation to this report could affect the land/property and the owners/occupiers rights under the provisions of Article 8 and Article 1 of the First Protocol of the Human Rights Act 1998. However the Local Planning Authority feels it is pursuing a legitimate aim in seeking compliance with the Town and Country Planning Act 1990 so as to prevent demonstrable harm in the interests of acknowledged importance and to protect the environment. In this particular case, the unauthorised operational development (agricultural building) is considered to be a breach of the Town and Country Planning Act 1990. The land owner is aware that the development is unauthorised and has been informed of that fact via his planning agent. That communication resulted in the submission of planning application ref; 14/00222/FULL. The Human Rights provisions in relation to this case are qualified rights and interference with those rights is considered to be proportionate so as to protect harm to the amenity identified, and to protect the local adopted planning policies. Your Officers also feel that negotiations and communications have been carried out in line with National Planning Policy Framework (NPPF) Paragraph 207, and Local Plan Part 3, Policy DM31- Planning Enforcement

Options for action or remedy:

The list of options available is as follows:

Members recommend formal enforcement action for the reasons set out in the report;
Serve a conditional planning enforcement notice to require that;

- 1) Ensure that the drainage facilities as identified within & submitted in support of planning application ref; 14/00222/FULL are implemented in full & in accordance with '*PL/BLOCK PLAN (COLL. TANK)/01*' and the accompanying '*Waste management plan for shed cleaning process*' document.

Period for compliance:

Six months after the Notice takes effect.

d) An Environmental Health Officer to be present when the application is further discussed by the Committee

An Environmental Health Officer will be present during the discussion of this item at the Planning Committee.

Contact for any more information

Mr Luke Smith, Planning Officer
01884234928

Background Papers

Application Files

File Reference

14/00222/FULL

Circulation of the Report

Cllr Richard Chesterton

Grid Ref: 301158 : 107743

Applicant: Mr J Hill

Location: Land and Buildings at
NGR 301158 107743
(Adj Birchill Stud
Farm) Growen Lane

Proposal: Retention of an
agricultural shed

Date Valid: 13th February 2014



Application No. 14/00222/FULL

RECOMMENDATION

Grant permission subject to conditions.

COUNCILLOR MRS NIKKI WOOLLATT HAS REQUESTED THAT THIS APPLICATION BE DETERMINED BY THE PLANNING COMMITTEE FOR THE FOLLOWING REASON:

To consider whether noise associated with the shed will have an acceptable impact upon the amenity of surrounding residential properties.

PROPOSED DEVELOPMENT

This application seeks planning permission for the retention of an agricultural shed on land adjacent to Birchill Stud Farm, Cullompton. The site is adjacent to Growen Lane which is a public bridleway adjoining Tiverton Road just outside of the western edge of the Cullompton settlement limit. The land is agricultural, although a piece of land directly to the north was approved for a change of use from agricultural to equestrian under 10/00069/FULL, and a timber stable block was approved on land to the south under 93/00731/FULL. This application is retrospective, and has been submitted to regularise the building following complaints made to the Local Planning Authority and correspondence with the Local Planning Authority and Environmental Health.

The application building measures approximately 12 metres in width by 18 metres in length, and is stated to have a floor space of 204 square metres. The maximum height is 2.4 metres. The building is constructed from a timber frame with wooden cladding across the exterior, with a monopitch corrugated roof. There are wooden vents on the exterior ends, floodlighting and a container, raised on a metal frame, all of which are associated with the poultry enterprise. There are no proposed changes to the land surrounding the building, nor the concrete access onto Growen Lane.

The shed forms part of a wider agricultural land use, and there are 3 moveable poultry houses and one wooden storage shed adjacent to the building. This site and remaining section of field to the west were granted planning permission for the retention of three poly tunnels for housing poultry (03/00801/FULL), although these are no longer found on the land. The applicant has an established business based at Weaver Mill Farm, Kentisbeare.

The shed is stated to have been on the land in excess of 3 years, and is in use for the production of eggs. This is the sole function of the business, and the shed currently houses 1200 chickens producing around 100 eggs per day. It is proposed to retain the shed for the keeping of poultry, although the proposed use has been altered to remove the cockerels that are currently being housed in the shed. The application also states that the land has been used as a chicken rearing business in excess of 10 years.

APPLICANT'S SUPPORTING INFORMATION

Planning, Design and Access Statement
Fly Control Management Plan

RELEVANT PLANNING HISTORY

93/00731/FULL - Erection of timber stables - Permitted June 1993.

95/00395/FULL - Erection of timber stables - Refused May 1995.

03/00801/FULL - Retention of use land for the siting of three poly tunnels used to house poultry - Permitted June 2003.

06/00616/FULL - Erection of 1 no. temporary dwelling - Refused May 2006.

10/00069/FULL - Change of use of land from agricultural to equestrian - Permitted March 2010.

DEVELOPMENT PLAN POLICIES

Mid Devon Core Strategy (Local Plan 1)

COR2 - Local Distinctiveness
COR18 - Countryside

Mid Devon Local Plan Part 3 (Development Management Policies)

DM2 - High quality design
DM7 - Pollution
DM22 - Agricultural development

CONSULTATIONS

HIGHWAY AUTHORITY - 20th February 2014 - Standing advice applies please see Devon County Council document <http://www.devon.gov.uk/highways-standingadvice.pdf>

(Relevant parts attached below):

Junction Visibility

The provision of adequate visibility between all highway users as a result of the development is vital for the safety of all road users.

3.4.4 Where vehicular speeds are believed to generally exceed 37mph the relevant County Council officer should be consulted.

Agricultural Vehicular Accesses

3.5.1 For agricultural accesses from adopted highway into privately owned property the arrangement must comply with drawings shown in Appendix IV.

Surface Water Drainage

3.7.1 Adequate provision should be made to ensure that surface water does not drain on to the public highway. Equally any new access should be designed to ensure that highway water does not drain on to the development site.

Rights Of Way

3.8.1 The planning application should identify if there is any effect on public rights of way. The need for stopping up or diversion orders should be identified. For further advice on the process please contact the Public Rights of Way section of Devon County Council.

3.8.2 The planning application should establish rights of access of others to highway and consider any subsequent effects. It should be noted however that in many cases private rights of access issues will be a civil matter.

Overhanging Signs, Buildings and Vegetation

3.9.1 Signs overhanging the highway must be over 2.4m above the footway level and no closer than 500mm from the carriageway edge.

3.9.2 Roots or overhanging vegetation which causes damage or obstruction to the highway can be removed by the appropriate order by the County Council. It is advised that any planting scheme, especially proposals for trees, allows sufficient clearance from the highway allowing for seasonal growth of vegetation.

3.9.3 In areas proposed for development it is strongly advised that it shall be inspected prior to any site clearance and, if any of the plants detailed in Part II of Schedule 9 of the Wildlife and Countryside Act 1981 are noted, this shall be disclosed within the application, and a method statement provided by the developer before work is commenced to ensure their eradication.

Lighting

3.10.1 Any development shall ensure that any external lighting systems do not interfere with the use of highway.

Parking

3.11.2 Parking standards should conform to the appropriate guidance given in each of the LPA's Local Plans/Local Development Frameworks.

ENVIRONMENT AGENCY - Operational development less than 1ha within flood Zone 1 - No consultation required - see surface water management good practice advice see standard comment.

CULLOMPTON TOWN COUNCIL - 18th March 2014 - Recommend approval.

ENVIRONMENTAL HEALTH - 26th February 2014

Contaminated Land - Not applicable.

Air Quality - Not applicable.

Drainage - See comments on noise.

Noise & other nuisances - Following my site visit on the 18th February 2014 my assessment is:

Whilst a waste management plan has been submitted with the application to deal with potential fly nuisance, very little has been included in relation to dealing with noise nuisance. The very nature of the rearing shed means that there are a large number of cockerels within the shed. The distance from the shed to the nearest residential property is around 30m. Taking account of the Local Plan 3 Sections DM7 & DM22, it is my opinion that the application should be refused as the shed is too close to the nearest residential property and the development is likely to have an unacceptable negative effect on the general amenity due to noise nuisance. Due to the close proximity to residential properties there is also the potential nuisance from the effects of odour and inadequate drainage.

Housing Standards - Not applicable

Licensing - Not applicable

Food Hygiene - Not applicable

Private Water Supplies - On inspecting the site, I was not able to confirm that adequate drainage has been provided. Without adequate drainage being provided there's the potential of contaminated water from the cleaning of chicken shed entering local groundwater. If the local groundwater is contaminated by chicken manure this could have an influence on a nearby private water supply.

I would recommend refusal unless the adequate provision of drainage has been fully addressed.

Health and Safety - No objections

25th March 2014

As discussed if this was a new build we would not recommend this application for approval due to the close proximity to existing residential properties and the potential risks from nuisance issues.

Environmental Health's stance with this application is that we would have concerns over the following issues:

NOISE

If cockerels are to be housed within the building then we would recommend refusing the application. If no cockerels are to be housed within this building this would remove our recommendation for refusal. If the applicant is still considering to house cockerels within the building we would expect to see a noise assessment detailing the levels of noise mitigation works to be undertaken to reduce the noise from the cockerels to an acceptable level. Without this information we would recommend refusal.

DRAINAGE

Without adequate means of drainage being in place we would look at recommending refusal of the application. Adequate means of drainage would include removing any water coming into contact with the chicken manure (primarily during wash-down) from the site to ensure that no contamination is caused to local ground water and private water supplies.

As a site we may have further issues with regards to dust, odour, pest control and fly nuisance but these can be dealt with via the applicants site management plans and EH legislation.

15th April 2014

Further to the information given my comments are:

NOISE

If cockerels are to be housed within the building with the building in its current condition, we would recommend refusing the application. However, if no cockerels are to be housed within this building this would remove our recommendation for refusal on the grounds of noise.

If the applicant is considering to house cockerels in the building at any point in the future, EH would expect to see a noise assessment detailing the levels of noise mitigation works to be undertaken to reduce the noise from the cockerels to an acceptable level and any works would have to of been completed before any cockerels can be housed within the building.

I would ask that this is detailed as a condition for the application.

I understand that the applicant is proposing to move the cockerels to a different building that is even closer to the neighbouring residential property. Although this does not form part of this application is should be noted that EH expresses a serious concern over the moving of the cockerels closer to any residential properties as this may result in an investigation and possible enforcement action being undertaken by EH under statutory nuisance legislation.

DRAINAGE

Without adequate means of drainage being in place we would look at recommending refusal of the application. Adequate means of drainage would include removing any water coming into contact with the chicken manure (primarily during wash-down) from the site to ensure that no contamination is caused to local ground water and private water supplies.

As a site we may have further issues with regards to dust, odour, pest control and fly nuisance but these can be dealt with via the applicants site management plans and EH legislation.

REPRESENTATIONS

4 letters of objection summarised as follows:

1. No indication as to what shed is to be used for.
2. Too close to residential properties.
3. Smell and health and safety.
4. Concern for the welfare of chickens.
5. There is an issue with vermin/rat infestation, dealt with by poison and dead rats being thrown into Growen Lane.
6. Disease control precautions are not being complied with and the shed has not been cleaned out properly after the breeding season ends.
7. There are other more suitable sites available.
8. The site is an eyesore.
9. The shed is not needed alongside the other chicken houses on site.
10. The use for chicken rearing seems incompatible with the equestrian use.
11. There is significant noise from cockerels, particularly in the early morning and in summer months.
12. The noise pollution means that windows cannot be opened at night; this is a problem in summer.
13. Growen Lane is in poor condition and the shed will increase the level of traffic on the lane.
14. The proposed fly monitoring and control measures will constitute a health risk due to the proximity of the shed to nearby residential properties.
15. There are no drains and foul water has no place for safe discharge; this contaminates the drinking water of the residential property nearby.

MATERIAL CONSIDERATIONS AND OBSERVATIONS

The main issues in the determination of this application are:

- 1. Use and Design**
- 2. Location and impact on residential properties**
- 3. Drainage and environmental impact**
- 4. Other Issues**

1. Use and Design

The shed is sited on agricultural land and is also outside of the Cullompton settlement limit as set out in the Mid Devon Local Plan Part 3 (Development Management Policies) Policies Map. Policy COR18 of the Mid Devon Core Strategy (Local Plan Part 1) permits agricultural and other appropriate rural uses including agricultural buildings. The legal definition of agriculture is set out in Section 336 of the Town and Country Planning Act (1990) and includes the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of the land. The shed is used for the breeding of and keeping of poultry, which falls within the agricultural definition and therefore the overall principle for an agricultural building is supported by Policy COR18.

The Local Planning Authority must take into account that there is already a permitted agricultural use of the site, and this does not restrict the type of agricultural practice within the definition as set out in Section 336 of the Town and Country Planning Act (1990). The applicant intends to use 3 green moveable structures for breeding, although this does not require planning permission (see further below). An objector has argued there are other more suitable sites available for the housing of poultry, however the Local Planning Authority must determine the application put before it. The proposal is assessed under all relevant local and national policies.

Policy DM22 of the Mid Devon Local Plan Part 3 (Development Management Policies) states that agricultural development will be permitted where it meets four tests. These are:

- 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; and
- c) The development will not have an unacceptable adverse impact on the environment.
- d) The development will not have an unacceptable traffic impact on the local road network.

In relation to point a) of the policy, two objection letters have questioned how reasonably necessary the shed is for an agricultural use, given that there are already agricultural sheds on site and part of the land has changed from an agricultural to an equestrian use (10/00069/FULL). The equestrian land is an area of approximately 1500 square metres north of the buildings, and this forms only a small part of the field which remains largely as agricultural land. The poultry site is situated in the south east corner of the agricultural field and the retention of the application shed is stated to be necessary due to wider changes to the business, with cockerels and breeding proposed to be carried out in the adjacent sheds on the site (including the moveable structures), and the application shed to be used for egg laying.

At present the 3 moveable structures are not understood to be in use, as all poultry is currently kept in the application shed. A wooden shed adjacent to the road is being used for general agricultural storage. In light of there being disused structures, the Authority has questioned the need for the retention of the application shed. The agent has highlighted that the proposed change to the business (consisting of a separation of cockerels/breeders from layers) will require the use of the other poultry units within the site and a separation between breeding and laying chickens. Furthermore the agent has emphasised that the land has been used for poultry farming for a period in excess of 10 years where other structures have been required. In light of the proposed changes to the practice, the Authority does not have evidence to dispute the agricultural need, and the proposal is therefore considered to comply with point a) of Policy DM22.

The first passage of point b) of Policy DM22 requires an agricultural proposal to be sensitively located to limit any adverse effects on local residents. This is discussed under Section 2 below. The second passage of point b) requires the proposed development to be well designed, respecting the character and appearance of the area. The building is agricultural in its appearance, built with a wooden frame with an external wooden clad and a simple corrugated roof. It is not widely visible from Growen Lane as it is screened from view by the adjacent storage shed. The building is considered to be appropriate for its intended use, with openings installed for ventilation, and an overall size that is reflective of the business. This is sufficient to comply with the second part of point b).

Policy DM2 of the Mid Devon Local Plan Part 3 (Development Management Policies) specifically refers to high quality design and sets out principles relating to the context, siting, layout, scale, massing and materials of a proposal. The design and materials are deemed to be appropriate for the agricultural use and the screening of the building is considered to reduce the overall visual impact from the lane. Objections argue that the wider site is an eyesore; however the Authority can only consider the detail relevant to this application, namely the shed. Given its screened position, it is concluded that the shed does not cause significant harm to character or visual appearance of the area and overall the shed is deemed to be sufficient to meet the tests of Policy DM2 of the Mid Devon Local Plan Part 3 (Development Management Policies) and the National Planning Policy Framework.

Part c) of Policy DM22 is discussed in Section 3 of this report.

Part d) of Policy DM22 relates to the impact of traffic from a proposal. An objection states Growen Lane is in poor condition and the shed will increase the level of traffic on the lane. The lane is narrow and rutted in places and visibility from it onto Tiverton Road does not meet with the minimum requirements for an area with a 30mph speed limit due to the presence of Trumps Barn to the west of the junction. There is no evidence to demonstrate that since the erection of the shed three years ago, vehicle movements have significantly increased, and traffic movements are not expected to be increased, given that the shed is existing and the poultry business has been operating in excess of 10 years. Devon County Highways Department has not submitted any detailed comments in relation to this application but has referred to standing advice. The provision of the shed results in low additional vehicle movements along the lane and access is not considered to be of a sufficiently poor standard in relation to the proposal to substantiate a reason for refusal. On this basis the proposal is considered to comply with part d) of Policy DM22. The National Planning Policy Framework refers to refusal of development only where residual cumulative impacts of development are severe. This does not apply in this instance.

2. Location and Impact on residential properties

The location of the shed in close proximity to residential properties has been a main point of objection to this application. Concerns relate to noise from cockerels in the shed, smell, flies, and water contamination. Water contamination is assessed under Section 3.

Under point b) in Policy DM22, a proposal must be sensitively located to limit any adverse effects on the living conditions of local residents. The Local Planning Authority recognises that the shed is situated a minimum distance of 30 metres away from two residential properties and that there are other dwellings on Tiverton Road to the south. The Authority has consulted Mid Devon District Council's Environmental Health for comments on the impact on the living conditions of residential properties.

Objectors have stated there is significant noise from cockerels, particularly in the early mornings and in summer months, when it is usual for residents to sleep with windows open. Environmental Health highlighted concerns relating to noise and drainage associated with the shed, recommending the refusal of the application on these grounds.

In light of additional letters of objection and discussions with the agent, Environmental Health advised that their recommendation of refusal on noise grounds would be removed if cockerels were to be removed from the shed. Further to this response, the agent has stated that the poultry business will be changed so that cockerels will no longer be housed in the shed, and moved to other lawful structures on the site.

The Authority has questioned how this will be feasible for the continuation of the business, as cockerels must be kept with the chickens for fertilisation on a continual basis. The agent has advised that the business will be separated into two parts, with only layers to be housed in the application shed (unfertilised egg production) and cockerels and chickens to be housed in other lawful structures. This is sufficient to remove the Environmental Health objection on noise grounds but may cause future problems with noise from other structures. Any future nuisance from noise will be subject to control under Environmental Health legislation should it constitute a statutory nuisance, and the noise from cockerels will not be associated with the application shed. The application is therefore not considered to adversely harm the living conditions of neighbouring residents through noise nuisance and a mechanism exists under other legislation to control noise elsewhere on the site. In planning terms, there is nothing to prevent cockerels from being kept elsewhere on the site.

Policy DM7 of the Mid Devon Local Plan Part 3 (Development Management Policies) is also a key policy in the determination of the application. This states that applications for development that risks negatively impacting on the quality of the environment through noise, odour, light, air, water, land and other forms of pollution must be accompanied by a pollution impact assessment and mitigation scheme where necessary.

Objectors have highlighted concerns with regard to smell and flies from the site. The agent has submitted with the application, a Management Plan for fly control in accordance with Policy DM7, setting out monitoring, management and treatment measures of control. The fly management plan sets out measures to manage manure inside the shed, and it is recommended that a condition is imposed to require compliance with the management plan.

Environmental Health has not commented on a direct relationship between odour and the shed, but raised a concern regarding odour arising from the wider agricultural practice. A planning officer site visit in February 2014 confirmed some odour from the shed, although this was only noticeable from the immediate vicinity of the structure itself. However, it is acknowledged that odour is likely to be more prominent in warmer summer months.

The Authority is mindful of the other structures on the site that are capable of housing poultry without planning consent. It is therefore considered to be most suitable to regularise the housing of poultry in the shed with a condition regarding its management, to protect the amenity and living conditions of surrounding residential properties. On balance of the issues raised and subsequent response from Environmental Health, the retention of the agricultural shed, with conditional consent is considered to be most suitable for continued use of the site in accordance with Part b) of Policy DM22 of the Mid Devon Local Plan Part 3 (Development Management Policies). Management of smell and flies is also subject to Environmental Health legislation and is guided by DEFRA code of recommendations for the welfare of livestock.

Nearby residents have highlighted a concern regarding health risk caused by the proposed fly monitoring and control measures. Measures in the Management Plan include the use of insecticides, continual monitoring, and management of manure, all of which are proposed inside the shed. This will be subject to enforcement through Environmental Health legislation.

3. Drainage and environmental impact

Objectors to the proposal have highlighted a possible impact on the living conditions of residents and the surroundings through water contamination. An objector has stated there are no drains, and foul water has no place for safe discharge, with a potential to contaminate the private drinking water supply of a residential property nearby. Environmental Health has also stated that without adequate means of drainage being in place they would consider a recommendation of refusal of the application.

The agent has subsequently outlined a proposal for the installation of a concrete water catchment tank to collect dirty water and separate from any clean water run-off. The Authority requires further information regarding the type of water catchment tank and having discussed this with Environmental Health it is considered that the requirement for a suitable drainage plan can be conditioned upon the grant of planning permission. The condition requires the applicant to submit a detailed drainage plan

to be complied with no later than 2 months of the decision notice and addresses the concerns raised.

Objectors have raised concerns regarding the management of the site and its impact on the local setting. An objector has mentioned that disease control precautions are not being complied with and the shed has not been cleaned out properly at the end of the breeding season. This is stated to have caused issues with flies and rat infestation. The Authority has consulted Environmental Health with regard to this matter who has advised that any problems across the wider site are subject to separate control through Environmental Health legislation. The wider environmental impact of the shed is considered to be low, given the screened position within an existing agricultural unit and large section of agricultural land to the west.

4. Other Issues

Consideration is given to the date of this report and likely date of determination. The shed is stated to have been on the land for a period in excess of 3 years. No formal date has been given, and therefore the Local Planning Authority cannot determine when the building shall become immune from any enforcement action. No formal enforcement action has been taken pending the outcome of this application to regularise the situation.

CONDITIONS

1. The date of commencement of this development shall be taken as the 13th February 2014 when the application was registered by the Local Planning Authority.
2. The development hereby permitted shall be carried out in accordance with the approved site location plans listed in the schedule on the decision notice.
3. Within 2 months of the grant of planning permission, a Waste Management Plan shall be submitted to and approved in writing by the Local Planning Authority. It shall set out means of waste water management and drainage to be used. The management plan must include all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works and site management procedures. The development shall be carried out in accordance with the approved Waste Management Plan at all times.
4. The development hereby permitted shall be carried out in accordance with the submitted Fly Control Management Plan received by the Local Planning Authority on the 24th February 2014.

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, and in accordance with the provisions of Section 51 of the Planning and Compulsory Purchase Act 2004.
2. For the avoidance of doubt and in the interests of proper planning.
3. To ensure that risks from water contamination are minimised, in accordance with Policies DM7 and DM22 of the Mid Devon Local Plan Part 3 (Development Management Policies) and the National Planning Policy Framework.
4. To manage and control flies associated with the agricultural use in the interests of protecting the living conditions of neighbouring residents in accordance with Policies DM7 and DM22 of the Mid Devon Local Plan Part 3 (Development Management Policies) and the National Planning Policy Framework.

REASON FOR APPROVAL OF PERMISSION/GRANT OF CONSENT

On balance, the proposed shed to be retained for the purpose of agriculture, is deemed to be reasonably necessary, and in light of changes to the use of the building and conditions being imposed, it is not considered to constitute a significant detrimental impact upon the amenity of the

occupiers of another dwelling, or the visual amenity of the surrounding countryside and adequate measures for the disposal of foul drainage can be provided.

The retention of the shed on an already established agricultural unit is deemed to be in accordance with Policies COR2 and COR18 of the Mid Devon Core Strategy (Local Plan Part 1), Policies DM2, DM7 and DM22 of the Mid Devon Local Plan Part 3 (Development Management Policies) and the National Planning Policy Framework. Approval is therefore recommended.