

Application Report

Strategic Development & Planning
Place Services
North Devon Council
Lynton House, Commercial Road,
Barnstaple, EX31 1DG



Application No:	72695	Application Expiry:	9 December 2021
Application Type:	Removal of condition	Ext Of Time Expiry:	28 April 2021
Parish/Ward:	BISHOPS NYMPTON/BISHOPS NYMPTON		
Location:	South Hayne Quarry Newton Cross Bishops Nympton South Molton Devon EX36 3QP		
Proposal:	Removal of condition 7 (occupancy restriction) attached to planning permission 54251 (outline application for erection of one manager's dwelling)		
Agent:	Mr Mike Kelly		
Applicant:	Roshni Mahajan		
Planning Case Officer:	Miss S. May		
Departure:	N		
EIA Development:	EIA Conclusion:	Development is outside the scope of the Regulations.	

Reason for Report to Committee: Originally called in by Councillor Yabsley for the following reasons:

1. A note attached by the Council to its approval of "reserved matters" application 56356 for a dwelling on the site, the construction of which has materially commenced, states: *"The condition will need to be varied to allow alternative occupancy following the cessation of the lairage"*. The present application is therefore following this advice.
2. The Committee also need to understand the differences and change in circumstances between the situation that prevailed on site at that time (2013) and the present use of the site.

The Head of Place had originally commented that he did not consider the application met the criteria for suspension of delegation commenting:

"The policy position is quite clear, there is no 'on balance' reflection required; it is a minor scheme that has drawn little consultation response and is small in scale."

I am concerned, as with many call in requests, it is based on understandable concern for the interests of the applicant but not on material planning matters. The applicant in this case is a high profile company in South Molton which has upped the ante to support it, however, I see no reason why, contrary to policy, a dwelling should be allowed on site – it would be the only manufacturing site in north Devon to have one?

With regard to point 2 from Cllr Yabsley the planning officer is more than capable in making a judgement on the past and current use of the site and I see no value in it being debated by committee”.

The Head of Place had commented that if Cllr Ley disagreed with this, the application would go to committee as the chair has the casting vote.

Councillor Ley has commented that if the Local Planning Authority are unable to find an amicable solution then it needs committee consideration.

Site Description

The site lies to the east of South Molton on the southern side of the B3227 between its junction with the North Devon Link Road. The existing access point is to the northeast of the site which comprises a former quarry set into a steep wooded hillside and has an area of approximately 0.6 hectares. To the northwest of the site are the foundations associated with the extant planning permission, whilst to the south is the commercial building (approved as storage, assembly and administration) currently associated with Aramis Rugby and to the east of the site a container storage area. Parking and turning fronts the commercial building.

Recommendation:

Refused

Legal Agreement Required:- No

Planning History

Planning	Decision	Decision Date
15030	FULL PLANNING REFUSAL	7 April 1992
Address: SOUTH HAYNE QUARRY, NEWTOWN, BISHOPS NYMPTON, , EX36 4QF		
Proposal: PROPOSED CHANGE OF USE OF DISUSED QUARRY TO FORM OPERATING CENTRE AND HAULAGE DEPOT FOR GOODS VEHICLES.		
22875	Refused	10 December 1996
Address: SOUTH HAYNE QUARRY, , BISHOPS NYMPTON, EX363QP		
Proposal: COUNTY MATTER APPLICATION IN RESPECT OF PROPOSED RESTORATION OF FORMER QUARRY TO AFTER-USE FOR FORESTRY INCLUDING IMPORTATION OF INERT FILL		

26236	FULL PLANNING REFUSAL	2 March 1999
Address: SOUTH HAYNE QUARRY, , BISHOPS NYMPTON, SOUTH MOLTON, EX364QF		
Proposal: PROPOSED CHANGE OF USE OF QUARRY TO FORM AREA FOR THE SCHOOLING OF MINIATURE PONIES AND RENOVATING SULKIES TOGETHER WITH ERECTION OF STABLES PLUS STORAGE OF TRAILER TO STORE FODDER AND STORAGE OF PERSONAL CARAVAN AND WINTER STORAGE OF MOTOR CRUISER PLUS FORMATION OF EARTH EMBANKMENT		
27224	FULL PLANNING APPROVAL	3 November 1999
Address: SOUTH HAYNE QUARRY, BISHOPS NYMPTON, SOUTH MOLTON		
Proposal: CHANGE OF USE OF QUARRY TO FORM AREA FOR RENOVATING SULKIES PLUS PARKING OF TRAILER FOR STORAGE OF FODDER AND MATERIALS FOR MAINTENANCE OF SULKIES TOGETHER WITH WINTER STORAGE OF BOAT AND ERECTION OF EARTHBANK		
33713	Approved	11 November 2002
Address: SOUTH HAYNE QUARRY BISHOPS NYMPTON SOUTH MOLTON DEVON EX36 3QW		
Proposal: ERECTION OF LIVESTOCK BUILDING FOR USE AS LIVESTOCK LAIRAGE		
54251	FULL PLANNING APPROVAL	5 October 2012
Address: SOUTH HAYNE QUARRY, NEWTOWN, BISHOPS NYMPTON, DEVON, EX36 4QF		
Proposal: OUTLINE APPLICATION FOR ERECTION OF ONE MANAGERS DWELLING		
56356	RESERVED MATTERS APPROVAL	12 November 2013
Address: SOUTH HAYNE QUARRY, , , NEWTOWN, SOUTH MOLTON, DEVON, EX36 3QP		
Proposal: RESERVED MATTERS APPLICATION FOR ERECTION OF MANAGER'S DWELLING (OUTLINE PLANNING PERMISSION 54251)		

72101	Withdrawn	14 December 2020
Address: South Hayne Quarry Newtown South Molton Devon EX36 3QP		
Proposal: Variation of condition 7 (occupancy) attached to planning permission 54251 (Outline application for erection of one managers dwelling)		
74248	Withdrawn Invalid	26 October 2021
Address: South Hayne Quarry Newtown South Molton Devon EX36 3QP		
Proposal: Removal of condition 7 (occupancy restriction) attached to planning permission 54251		

Constraints/Planning Policy

Constraint / Local Plan Policy

Advert Control Area Area of Special Advert Control
Burrington Radar Safeguard Area consultation required
for: All buildings, structures, erections & works exceeding
90 metres in height.

Class II Road

Land is potentially contaminated, site was used
for:General quarrying, Is ranked:LOW, Year:1962

Landscape Character is: 3H Secluded Valleys

Non Mains Drainage Site: 56356

Within Adopted Unesco Biosphere Transition (ST14)

Within Surface Water 1 in 100

Within Surface Water 1 in 30

Within:Culm Grasslands, SAC 10KM Buffer if agricultural
development consider need for AQIA

Within:Exmoor Heaths, SAC 10KM Buffer if agricultural
development consider need for AQIA

SSSI Impact Risk Consultation Area

Distance (Metres)

Within constraint

DM01 - Amenity Considerations
DM02 - Environmental Protection
DM04 - Design Principles
DM05 - Highways

DM06 - Parking Provision
 DM08 - Biodiversity and Geodiversity
 DM28 - Rural Worker Accommodation
 ST01 - Principles of Sustainable Development
 ST04 - Improving the Quality of Development
 ST07 - Spatial Development Strategy for Northern Devon's Rural Area
 ST10 - Transport Strategy
 ST14 - Enhancing Environmental Assets

Consultees

Name	Comment
<p>Bishops Nympton Parish Council</p> <p>Reply Received 10 September 2021</p>	<p>Bishops Nympton Parish Council consider that there is no requirement for an agricultural tie at this site or in the surrounding area.</p> <p>The site was originally a quarry and has returned to industrial use. The quarry was 'severed' from South Hayne Farm by the construction of the North Devon Link road opened in 1988. It was subsequently used for storage of livestock en-route to market or slaughter. There is no grazing potential at the site and no prospect of arable agricultural use.</p> <p>The site of the house is 'land-locked' and therefore not accessible independently of the surrounding former quarry site.</p> <p>Continuing with the agricultural tie is preventing the economic expansion of the existing business, contrary to various policies in the Torridge & North Devon Local Plan. The site is one of few industrial locations within the Parish with the potential for local residents to work without travelling much greater distances.</p>
<p>Councillor E Ley</p> <p>Reply Received 28 January 2021</p>	<p>From my understanding, the permission granted in 2013 for a dwelling on this site has already been implemented, (with building control confirmation of this).</p> <p>If this understanding is correct, then it appears the only issue outstanding, is the occupancy condition attached to the original permission, which is no longer applicable to the current business. If this is resolved at officer level, then fine, but if not it warrants Committee consideration.</p>
<p>Councillor E Ley</p> <p>Reply Received 15 February 2021</p>	<p>If you are unable to find an amicable solution, then it needs Committee consideration.</p>
<p>Designing Out Crime Officer</p> <p>Reply Received 19 November 2021</p>	<p>I have checked for crimes and incidents over the 3 years, Nov18-Oct21 and can confirm that I can find nothing linked to the above site on the police system.</p>
<p>Environmental Health Manager</p>	<p>I have reviewed this application in relation to Environmental Protection matters and comment as follows:</p>

Reply Received
19 August 2021

1 Residential Amenity Impacts

The proposal to remove occupancy restrictions raises concerns in relation to potential impacts on residential living conditions and amenity. I believe the current planning permissions relate to restricted occupancy of the dwelling related to agricultural / livestock uses of the associated site or locally employed agriculture / forestry workers. Such restricted occupancy is likely to reduce the potential for occupants to be adversely impacted by noise, odour or other emissions arising from the site as they will be aware that their occupation is linked to potentially noisy etc uses of the site. Being in local employment is also likely to result in different levels of exposure to impacts compared to some other groups. For example, retired people may be at home more during the day. Linking occupation of dwellings to use of nearby buildings or land is a common way to reduce risks associated with potential amenity impacts.

Amenity impacts might arise, for example, as a result of noisy operations taking place within or outside of the buildings or as a result of lorries or other heavy vehicles accessing and manoeuvring within the site. In addition, any permitted use during unsocial hours or operation of external plant could create significant impacts. I note the Design and Access Statement for Application 55381 (B1 & B8 use of the site) states under "Security of the Site" that "invariably this leads to a member of staff to be present on the site at odd hours during the night."

I believe removing the restrictions stipulated in Condition 7 would increase the risk that significant impacts will arise in future and circumstances amounting to statutory nuisance are also more likely to arise should commercial activities at the site generate significant noise or certain other problems. Such risks should be carefully considered and, where relevant, be mitigated prior to allowing unrestricted occupation of a dwelling in this location.

Given the above, additional information is required in order to establish whether any significant amenity impacts / statutory nuisances are likely to arise. Initially this information could be in the form of a description of the current uses of the commercial buildings along with details of any restrictions that apply in terms of future uses / hours of use, access by heavy vehicles etc. Based on this information, it should be possible to judge whether any more detailed assessment of impact risks is required such as a specialist noise impact assessment. The need for / viability of any specific mitigation measures can also be considered.

2 Land Contamination

	<p>Housing developments are recognised as having high sensitivity to the presence of any land contamination affecting the site. The occupancy restricted dwelling permissions do not appear to have addressed contamination risks associated with use of the site. Notwithstanding my comments above, should unrestricted occupancy of the dwelling be allowed, there could be an increased risk that any land contamination affecting the site becomes a human health issue. Such increased risks may arise, for example, where unrestricted occupants are more likely to use outside space for domestic gardening such as for growing vegetables. Also, use by higher risk groups such as infants may be more likely to occur.</p> <p>In circumstances where an unrestricted dwelling was proposed at a site with the historical and current uses of this site, I would expect any potentially significant contamination risks to be properly considered and would normally recommend the following condition be included on any planning permission:</p> <p>- Contaminated Land Phase 1 Condition "Prior to the commencement of any site clearance, groundworks or construction, the local planning authority shall be provided with a Phase 1 Preliminary Risk Assessment Report for potential ground contamination. The report shall be prepared by a suitably qualified competent person and be sufficient to identify any and all potential sources of ground contamination affecting any part of the development site. Thereafter, depending on the outcome of Phase 1, a proposal for any Phase 2 (intrusive) survey that may be required shall be presented to and agreed with the planning authority. Where remediation of any part of the site is found to be required, a remediation scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of any necessary quality assurance, verification and certification requirements in accordance with established best practice. The construction phase of the development shall be carried out in accordance with the agreed details and, where relevant, verification reports and completion certificates shall be submitted for the written approval of the local planning authority. Reason: To ensure that risks from land contamination to future users of the land and neighbouring land, together with those to controlled waters, property and ecological systems are identified and, where necessary, remediated in accordance with the National Planning Policy Framework."</p> <p>I recommend any decision to allow unrestricted occupation of the approved dwelling includes consideration of contaminated land related risks to human health.</p>
Environmental Health Manager	The assessment of land contamination risks is a complex specialist task. I have recommended a preliminary contamination risk assessment be undertaken based on the proposal to introduce an

<p>Reply Received 17 November 2021</p>	<p>unrestricted residential use at a site with a history of agricultural / commercial uses and various buildings / structures / disturbed ground etc. being present. I believe such an approach is in line with recognised good practice. Building control sign off on foundation work does not negate this recommendation.</p>
<p>Legal Services Reply Received 16 August 2021</p>	<p>We did discuss this previously, and I seem to recall that we concluded that we could not legally tie the land on which, under application 54251, permission has been granted for the dwelling, to the land on which the business is being carried on pursuant to the planning permission issued in April 2013.</p> <p>As I understand it, Vikas Mahajan and Roshni Mahajan are the freehold owners of the land on which the dwelling sits (or will sit when complete), whilst the freehold of the business land (DN646480) is held in the name of "SRM Infrastructure Ltd," a private limited company of which Vikas Mahajan is the director. The shareholders of a company own a company, whilst a director or directors manage a company.</p> <p>Aramis Rugby Ltd seems to be a separate company, of which Vikas Mahajan is the director.</p> <p>The proposition put forward by the agent is that the business units and the dwelling are separate in terms of title and legal entities, and this does appear correct to me.</p> <p>There is clearly a strong practical connection in relation to the titles of the land and the legal entities, but this might change significantly if either Aramis Rugby Ltd or SRM Infrastructure Ltd were taken over or dissolved, or indeed the business land was sold.</p>
<p>Planning Policy Unit Reply Received 11 August 2021</p>	<p>I understand that the previous permission for allowing a dwelling in this Countryside location was based on the fact it was to serve a lairage and therefore animal welfare. Although the previous consent would not have been considered under the adopted Local Plan (October 2018), the principles are still the same and I assume it was clearly demonstrated that there was an essential operational need for a full-time worker to be resident at or near the place of work.</p> <p>Whilst the planning permission for the dwelling was implemented, it has subsequently stalled and the initial need for a person solely or mainly employed in the former collection centre [the lairage] or solely or mainly employed in the locality in agriculture is no longer there as the site is now occupied by a company who manufacture rugby equipment. I note the current use was permitted by application 55381 (April 2013) for the demolition of existing storage building and erection of new storage, assembly and administration building (use Class B1 & B8) although the approval did not include the use of the dwelling where it has already been established that this permission has been implemented. However, the RM approval</p>

for the dwelling, dated 12-11-13 (56356) which was approved post the change of use followed outline permission (54251), made it clear that 'this grant of reserved matter permission cannot be construed as granting tacit approval for a dwelling to serve the proposed business. The applicant is strongly recommended to apply for permission to vary the occupancy condition before undertaking any work on site'. It was also made clear that 'any residential component to serve a rural business should meet the same tests of financial and functional need as an agricultural workers dwelling' (SPG on Agricultural, Forestry & Other Essential Occupational Dwellings - adopted in 2009).

My initial reaction from a policy perspective is that DM28(5) is clear in that applications for the removal of occupancy conditions or ties on dwellings for rural workers will only be permitted where there is compelling evidence to demonstrate that such a restriction is no longer justified. This is further clarified within the adopted 'Rural Workers' Dwellings SPD – adopted January 2020' at paragraph 3.42 which states 'an application that seeks the removal of an occupancy condition on a rural worker's dwelling will be expected to provide evidence which demonstrates a lack of demand for them property in the locality through a robust marketing exercise. Applicants will be expected to submit evidence of unsuccessful attempts to sell the property with the encumbrance of the occupancy restriction and prove that the marketing has been correctly targeted, financially realistic and sustained for at least 18 months. The marketing strategy, along with the price at which the dwelling will be marketed should be agreed in writing with the local planning authority prior to the commencement of the marketing exercise. For the purpose of the marketing exercise the qualification of "in the locality" will relate to the host and adjoining parishes for the first 12 months; if the property remains unsold or let during this time, the qualification area will be extended to the relevant local planning authority area for a further 6 months'.

If I understand your email correctly then no evidence has been provided in order to justify removal of the said condition although as the site is no longer used as a lairage or any other agricultural activity then such justification will be very difficult to evidence. Without that justification, the proposal is contrary to the requirements set out in Policy DM28(5) and adopted SPD.

Like you, I am struggling to understand why there is an essential operational need for a full-time worker to be resident on site for a business that manufactures sporting equipment, principally for the game of rugby?

Again, further guidance on this matter is set out at paragraph 3.7 of the SPD which states; to establish a functional need, the following requirements must be satisfied:

	<ul style="list-style-type: none"> • a genuine need to live on the site and to be available at short notice at all times rather than living in a nearby centre or village; • it is not possible for the rural enterprise to run effectively without having the worker living on site; • no one undertaking the essential functional work already lives at the rural enterprise, or insufficient provision exists if there is a functional need for more than one worker; • there is no dwelling available at the rural enterprise for occupation by the worker and there is no possibility of adapting a building at the rural enterprise; and • there is no suitable and available dwelling in a nearby village available for occupation by a worker who is required to provide the functionally essential service. <p>The functional test requires an evaluation of risk. The policy test is not about ease, convenience or personal preference; it is about whether there is an "essential need" for the worker to be resident on site for the enterprise to function properly. It is recognised that many activities can be carried out more conveniently if a worker lives on site; convenience does not however constitute an essential need and will not therefore justify a need for a new dwelling.</p> <p>From a policy perspective, I am of the opinion that due to the nature of the business activity, security and contact with overseas suppliers etc. can be easily achieved off-site in say a property in South Molton by utilising modern technology such as (CCTV/Alarms/Video Conferencing etc.) and therefore 24 hour on-site supervision is not required.</p> <p>I trust the above policy position is of assistance to you but should you wish to discuss the matter further then please do not hesitate to contact me.</p>
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Neighbours

Comments	No Objection	Object	Petition	No. Signatures
<u>1</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>

The Economic Development Team based at Brynsworth (not North Devon Foods as stated in the rep) have commented that they are not a formal consultee for the application however they wish to register their support for Aramis Rugby, in their efforts to secure the future of their successful and expanding business in North Devon.

Considerations

Proposal Description

This application seeks full planning permission for the removal of condition 7 (occupancy restriction) attached to planning permission 54251 (outline application for erection of one manager's dwelling).

Condition 7 states:

The occupation of the dwelling shall be limited to a person solely or mainly employed in the collection centre [the lairage] or solely or mainly employed in the locality in agriculture as defined in Section 336 of the Town and Country Planning Act 1990 (as amended) or in forestry, or a dependant of such a person residing with him or her, or a widow or widower of such a person.

Reason:

The submitted business appraisal and supporting information demonstrates that there is a functional need for a resident worker to be on site in the interest of animal welfare and for site security.

The application has been accompanied by a Supporting Statement which comments that *“the present redundant occupancy condition is however preventing the applicants from obtaining a realistic mortgage because no bank or building society is willing to lend against such a specifically encumbered property.... This in turn has the serious consequence of putting at risk the future viability of the business as the business is unable to realistically raise the finance it needs to expand and to implement and develop both the dwelling permission but also the further development of the approved industrial use due to the occupancy restriction”.*

It should be noted that the application form that was originally submitted with the application had certificate A completed – which is a legal declaration certifying that the applicant on the day 21 days before the application was the owner of any part of the land or building to which the application relates. One needs to refer to the original outline permission under application 54251. The red line was as follows:

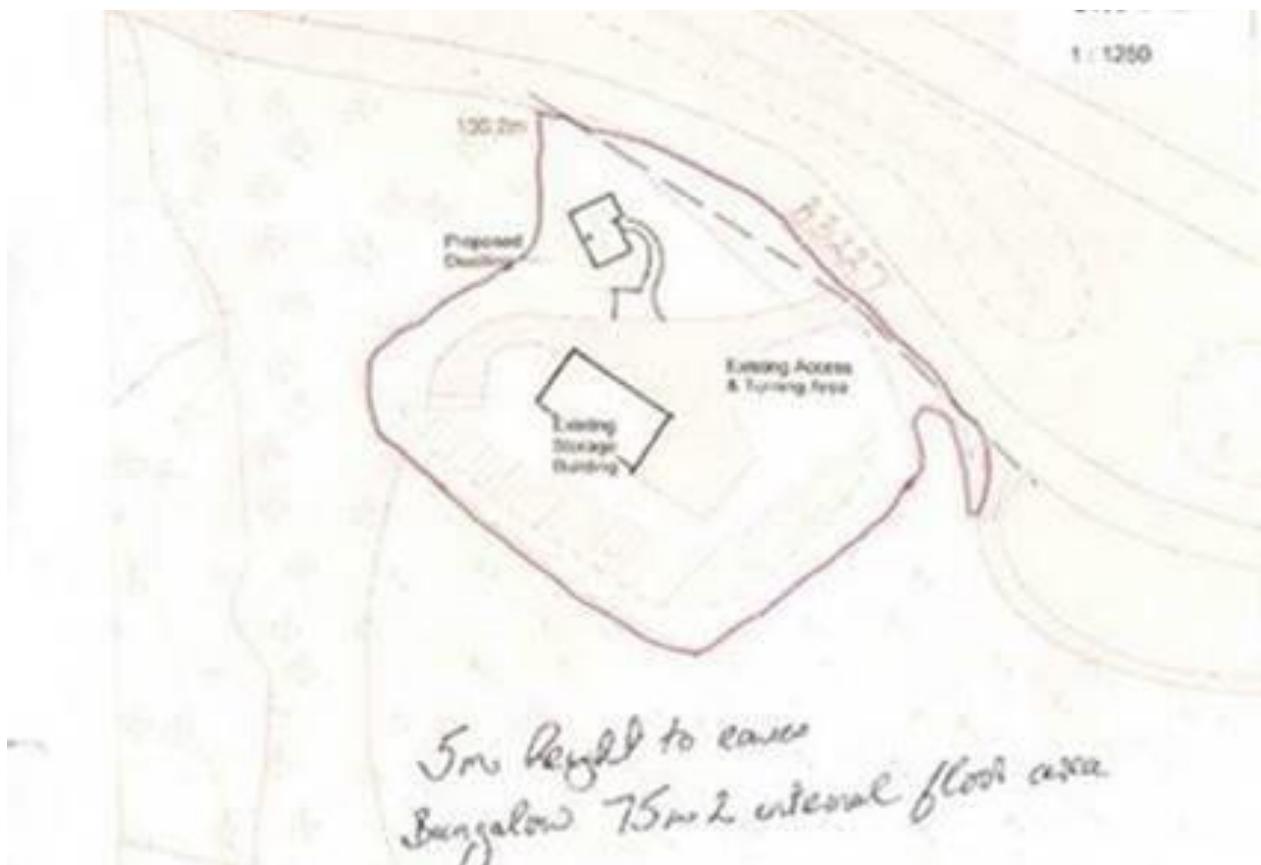


Figure 4: Original outline encapsulating whole site on outline application 54251

The agent has confirmed during the course of the application that the house, when built, could not be tied to the business as the applicant has said that Aramis Rugby rents the land from a different corporate entity which is not owned by either of the applicants.

The Local Planning Authority has carried out land registry search which confirms this to be the case.

The application was effectively invalid as Certificate B should have been signed and notice served as Roshni and Vic Mahajan as Directors of Aramis Rugby have confirmed that neither have direct ownership of the adjoining land (business land).

In light of this the agent was advised that he needed to submit certificate B.

Whilst there has been pressure from a number of councillors to bring this application to committee over recent months it should be noted that, as confirmed by the Council's Legal team that the Local Planning Authority should not entertain writing a committee report until a valid application exists.

Certificate B was not received until 14 October 2021 which is when the application was legally valid.

Planning Considerations Summary

- Principle and history relating to the site
- Character and appearance
- Highway safety
- Flood risk and drainage
- Amenity
- Ecology and biodiversity
- Other matters including representation from economic development and parish comments

Planning Considerations

In the determination of a planning application Section 38 of the Planning & Compulsory Purchase Act 2004 is relevant. It states that for the purpose of any determination to be made under the planning Acts, the determination is to be made in accordance with the development plan unless material considerations indicate otherwise. The development plan for this area includes the Devon Waste Plan and North Devon and Torridge Local Plan. The relevant Policies are detailed above.

The National Planning Policy Framework (NPPF) is a material consideration.

Principle and history relating to the site

The original outline permission 54251 (which was submitted by a different applicant) only allowed a dwelling (5 October 2012) in this countryside location on an exceptional basis that it was to serve a lairage in the interests of animal welfare. Although this consent would not have been considered under the adopted Local Plan (October 2018), the principles are still the same and at that time it was demonstrated that there was an

essential operational need for a full-time worker to be resident at or near the place of work.

In a pre-application response to Mr Mahajan in February 2013 the Local Planning Authority (LPA) commented: ***“I cannot, at this stage, advise you about whether planning permission would be forthcoming for a dwelling to service this business venture. The lairage had a functional need for residential supervision for animal welfare purposes. I would question the essential need for a sports good business to have a resident worker”***.

The current business use on site was then permitted by application 55381 (April 2013) when Mr & Mrs Mahajan submitted an application for the demolition of the existing storage building and erection of new storage, assembly and administration building (use Class B1 & B8) although the approval did not include the use of the dwelling.

The reserved matters application 56356 for the dwelling was then submitted by Mr and Mrs Mahajan, which was approved (12 November 2013) after the change of use application.

The reserved matters application made it clear stating: ***‘This grant of reserved matter permission cannot be construed as granting tacit approval for a dwelling to serve the proposed business. The applicant is strongly recommended to apply for permission to vary the occupancy condition before undertaking any work on site’***. It was also made clear that ‘any residential component to serve a rural business should meet the same tests of financial and functional need as an agricultural workers dwelling’ (SPG on Agricultural, Forestry & Other Essential Occupational Dwellings - adopted in 2009).

The application forms submitted with this application states that development started on site 01 April 2014 under the new ownership when the applicant had been warned that no further investment/work should be undertaken on this property until such time as the occupancy condition has been varied. In Enforcement case 9181 the LPA commented on 11 February 2015: ***“The Local Planning Authority accepts that there has been a material commencement on planning permission 54251/56356. The Local Planning Authority would, however, reiterate its previous advice, that no further investment/work should be undertaken on this property until such time as the occupancy condition has been varied. If the property is constructed your client would not be able to occupy it given the change of use of the quarry. The occupancy condition cannot be complied with in its current form. The Local Planning Authority cannot at this stage indicate whether the condition will be varied without sight of reasoned justification for the functional need of a dwelling to serve this business in the open countryside. If works do proceed, then the Local Planning Authority will take legal advice regarding the serving of a stop notice”***.

Whilst the LPA have acknowledged there has been a material commencement (foundations were laid) on planning permission 54251/56356 for the dwelling, no application had been forthcoming to vary the occupancy condition since the reserved matters approval in 2013. It has subsequently stalled and the initial need for a person solely or mainly employed in the former collection centre [the lairage] or solely or mainly employed in the locality in agriculture is no longer there as the site is now occupied by a

company who manufacture specialist rugby equipment with the site currently in use for light industrial and storage purposes.

This has resulted in a situation whereby the applicant has extant planning permission to erect a Managers Dwelling in respect to the lairage business which also provides for occupancy by persons solely or mainly employed in the locality in agriculture or forestry, together with the approved adjacent business use (previously approved as B1 & B8 but it is now acknowledged that B1 Business was revoked from 1 September 2020 and effectively replaced with new Use Class E(g)). However, the applicant does not have permission for a General E(g) & B8 Managers Dwelling.

The Policy Team have been consulted and have commented that from a policy perspective DM28(5) is clear in that applications for the removal of occupancy conditions or ties on dwellings for rural workers will only be permitted where there is compelling evidence to demonstrate that such a restriction is no longer justified. This is further clarified within the adopted 'Rural Workers' Dwellings SPD – adopted January 2020' at paragraph 3.42 which states 'an application that seeks the removal of an occupancy condition on a rural worker's dwelling will be expected to provide evidence which demonstrates a lack of demand for them property in the locality through a robust marketing exercise. Applicants will be expected to submit evidence of unsuccessful attempts to sell the property with the encumbrance of the occupancy restriction and prove that the marketing has been correctly targeted, financially realistic and sustained for at least 18 months. The marketing strategy, along with the price at which the dwelling will be marketed should be agreed in writing with the local planning authority prior to the commencement of the marketing exercise. For the purpose of the marketing exercise the qualification of "in the locality" will relate to the host and adjoining parishes for the first 12 months; if the property remains unsold or let during this time, the qualification area will be extended to the relevant local planning authority area for a further 6 months'.

No evidence has been provided in order to justify removal of the said condition although as the site is no longer used as a lairage or any other agricultural activity then the Policy Team have commented that such justification will be very difficult to evidence. Without that justification, the proposal is contrary to the requirements set out in Policy DM28(5) and adopted SPD.

The Policy team have commented that they are struggling to understand why there is an essential operational need for a full-time worker to be resident on site for a business that manufactures sporting equipment, principally for the game of rugby?

Again, further guidance on this matter is set out at paragraph 3.7 of the SPD which states; to establish a functional need, the following requirements must be satisfied:

- a genuine need to live on the site and to be available at short notice at all times rather than living in a nearby centre or village;
- it is not possible for the rural enterprise to run effectively without having the worker living on site;
- no one undertaking the essential functional work already lives at the rural enterprise, or insufficient provision exists if there is a functional need for more than one worker;

- there is no dwelling available at the rural enterprise for occupation by the worker and there is no possibility of adapting a building at the rural enterprise; and
- there is no suitable and available dwelling in a nearby village available for occupation by a worker who is required to provide the functionally essential service.

The functional test requires an evaluation of risk. The policy test is not about ease, convenience or personal preference; it is about whether there is an “essential need” for the worker to be resident on site for the enterprise to function properly. It is recognised that many activities can be carried out more conveniently if a worker lives on site; convenience does not however constitute an essential need and will not therefore justify a need for a new dwelling.

From a policy perspective, they are of the opinion that due to the nature of the business activity, security and contact with overseas suppliers etc. can be easily achieved off-site in say a property in South Molton by utilising modern technology (such as CCTV/Alarms/Video Conferencing etc.) and therefore 24 hour on-site supervision is not required. It should be noted that the Designing Out Crime Officer has commented that he has checked for crimes and incidents over the 3 years November 2018 – October 2021 and confirms that he can find nothing linked to the site on the police system.

Whilst the application form comments that pre-application advice has been carried out, this has **not** been with the planning unit. The application form states that economic development advice has been given. In addition, the planning statement comments that *“The application is supported by the Council’s Economic Development officers, who it was understood work closely with their planning colleagues....”*

The planning unit has contacted the Economic Development team and they have commented that they were assisting the applicant via their agent to apply for some grant funding to expand their operations on site. The issues of condition 7 came up and they provided some feedback. They have commented *“...it certainly **wouldn’t** constitute pre-planning advice in the context you would expect for this type of application”*.

It’s been consistently argued that there’s been an extant permission on this site and is the applicant’s wish to remove condition 7.

There is **no** actual dwelling on site, just foundations and the applicant wishes to complete the construction of the approved dwelling and to occupy it to facilitate the running of their successful business. The Local Planning Authority have always cautioned about constructing the rest of the house in terms of the planning uncertainty in that the transfer in ownership to the current owner is restricted to erect a managers dwelling in respect to the lairage business which also provides for occupancy by persons solely or mainly employed in the locality in agriculture or forestry.

The justification put forward on this application states that the present redundant occupancy condition is preventing the applicants from obtaining a realistic mortgage because no bank or building society is willing to lend against such a specifically encumbered property. Commenting further that this in turn has the serious consequence of putting at risk the future viability of the business as the business is unable to realistically raise the finance it needs to expand and to implement and develop both the dwelling

permission but also the further development of the approved industrial use due to the occupancy restriction.

More recently the applicant has forwarded details of a contract to supply the World Cup France 2023 which they have stated needs signing and agreeing to by 30th November 2021. They have commented that the contract would generate at least 7-10 high skill full time jobs in North Devon. The applicant has commented that if the committee does not support them they will lose the opportunity as without the removal of condition they cannot raise enough money to execute the contract.

Whilst discussions have been held whether the dwelling, when built, could be tied to the business this is not possible as the business unit and the dwelling are separate in terms of title and legal entities.

Whilst there is currently a strong practical connection in relation to the titles of the land and the legal entities, this might change significantly if either Aramis Rugby Ltd or SRM Infrastructure Ltd were taken over or dissolved, or indeed the business land was sold, over which the Local Planning Authority would have no control.



Figure 5: Shaded area – extant approval under application



Figure 6: Larger area outlined associated with the business use

Whilst the Local Planning Authority acknowledge that the application is based on concerns for the interests of the applicant (a high profile company in South Molton), it is not based on material planning matters

No compelling evidence/reasoned justification to justify the functional need for a dwelling to serve the applicant's business that manufactures sports equipment has been submitted and be resident on site in this rural location. The information currently supplied with the application fails to demonstrate an essential need for a worker to live on site and therefore there is no justification for the removing the condition, in a countryside location where the business has been in existence for a number of years. The application is therefore considered contrary to Policies ST07 and DM28 of the North Devon and Torridge Local Plan and paragraph 80 of the National Planning Policy Framework.

Character and appearance

No changes are proposed to the plans as originally approved.

Highway safety

No changes are proposed to the existing access arrangements. The removal of the occupancy condition would result in negligible increase in vehicle movements. No concerns are raised in respect of policies DM05 and DM06 of the North Devon and Torridge Local Plan.

Flood risk and drainage

The application site is situated in Flood Zone 1 and no concerns are raised in this respect. No changes are proposed to the original drainage arrangements.

Amenity

Policy DM01 of the North Devon and Torridge Local Plan requires that development should secure or maintain amenity appropriate to the locality with special regard to the likely impact on neighbours, the operation of neighbouring uses, future occupiers, visitors on the site and any local services. Furthermore Policy DM02 requires development to safeguard against hazards and pollution. Environmental Health have been consulted on the application and reviewed it in relation to Environmental Protection matters.

Residential amenity

They have commented that the proposal to remove the occupancy restriction raises concern in relation to potential impacts on residential living conditions and amenity.

The extant planning permission related to restricted occupancy of the dwelling once built to agricultural/livestock uses of the associated site or locally employed in agriculture or forestry.

Such restricted occupancy is likely to reduce the potential for occupants to be adversely impacted by noise, odour or other emissions arising from the site as they will be aware that their occupation is linked to potentially noisy etc uses of the site. Being in local employment is also likely to result in different levels of exposure to impacts compared to some other groups. For example, retired people may be at home more during the day. Linking occupation of dwellings to use of nearby buildings or land is a common way to reduce risks associated with potential amenity impacts.

Discussions have been held with the agent in respect of tying the house, once built to the business but as stated earlier this would not be feasible.

Environmental Health have commented that amenity impacts might arise, for example, as a result of noisy operations taking place within or outside of the buildings or as a result of lorries or other heavy vehicles accessing and manoeuvring within the site. In addition, any permitted use during unsocial hours or operation of external plant could create significant impacts.

It is noted that the Design and Access Statement for Application 55381 (Change of use of existing lairage business to general business (B1 & B8) including demolition of existing storage building and erection of new storage, assembly and administration building) approved 26 April 2013 states under "*Security of the Site*" that "*invariably this leads to a member of staff to be present on the site at odd hours during the night.*"

Environmental Health have commented that they consider removing the restrictions stipulated in Condition 7 would increase the risk that significant impacts will arise in future and circumstances amounting to statutory nuisance are also more likely to arise should commercial activities at the site generate significant noise or certain other problems. Such risks should be carefully considered and, where relevant, be mitigated prior to allowing unrestricted occupation of a dwelling in this location.

Environmental Health have commented that additional information is required in order to establish whether any significant amenity impacts / statutory nuisances are likely to arise. Initially this information could be in the form of a description of the current uses of the commercial buildings along with details of any restrictions that apply in terms of future uses / hours of use, access by heavy vehicles etc. Based on this information, it

should be possible to judge whether any more detailed assessment of impact risks is required such as a specialist noise impact assessment. The need for / viability of any specific mitigation measures can also be considered.

Given the above, the agent has been advised to provide this information to address the concerns but no such information has been forthcoming.

In light of the above discussion insufficient information has been submitted in order to establish whether any significant amenity impacts/statutory nuisances are likely to arise. It has therefore not been possible to consider whether any more detailed assessment of impact risks are required such as a specialist noise impact assessment or the need/viability for any specific mitigation measures. The development is therefore considered contrary to Policy DM01 of the North Devon and Torridge Local Plan.

Land contamination

Environmental Health have commented that housing developments are recognised as having high sensitivity to the presence of any land contamination affecting the site. The occupancy restricted dwelling permissions do not appear to have addressed contamination risks associated with use of the site. Notwithstanding their concerns regarding residential amenity, Environmental Health have commented that should unrestricted occupancy of the dwelling be allowed, there could be an increased risk that any land contamination affecting the site becomes a human health issue. Such increased risks may arise, for example, where unrestricted occupants are more likely to use outside space for domestic gardening such as for growing vegetables. Also, use by higher risk groups such as infants may be more likely to occur.

In circumstances where an unrestricted dwelling was proposed at a site with the historical and current uses of this site, Environmental Health have commented that they would expect any potentially significant contamination risks to be properly considered and would normally recommend a pre-commencement condition in respect of land contamination and they recommend that any decision to allow unrestricted occupation of the approved dwelling includes consideration of contaminated land related risks to human health.

The agent has commented on Environmental Health's comments stating he does not consider the land contamination would be necessary on any grant of permission as the land has not been used for any purposes other than as an agricultural lairage and that the present of high-risk ground contamination or materials must be negligible. In addition the agent comments on the foundations which have been signed-off by building control.

In response to this Environmental Health have commented: *"The assessment of land contamination risks is a complex specialist task. I have recommended a preliminary contamination risk assessment be undertaken based on the proposal to introduce an unrestricted residential use at a site with a history of agricultural / commercial uses and various buildings / structures / disturbed ground etc. being present. I believe such an approach is in line with recognised good practice. Building control sign off on foundation work does not negate this recommendation"*.

In light of this if members were minded to go against officer recommendation then they should consider the imposition of such a condition.

Ecology and biodiversity

Local Planning Authorities have a statutory duty to ensure that the impact of development on wildlife is fully considered during the determination of a planning application under the Wildlife and Countryside Act 1981 (as amended), Natural Environment and Rural Communities Act 2006, The Conservation of Habitats and Species Regulations 2017 (Habitats Regulations 2017).

In this instance the need for a wildlife report has not been triggered.

Other matters

Representation from economic development

It is noted that the Planning Statement submitted alongside the application states “*the application is supported by the Council’s Economic Development Officers, who it was understood work closely with their planning colleagues....*”

Furthermore the application form states at Question 7. Pre-application advice that advice has been sought under reference CECD-238761234, but this was **not** with the Local Planning Authority. In light of this dialogue has been held with the Economic Development Team who have commented as follows:

“I am not sure what the reference number is that Mr Kelly refers in the planning application. The input I gave was related to a narrow field (within my area of knowledge and expertise) and is seen as tracked changes on the attached document. I was assisting the applicant (Aramis Rugby) to apply for some grant funding to expand their operations on their current site. But the issue of the condition 7 came up and I provided some feedback as per the attached. I am not sure if the paragraph’s I made changes to actually ended up in the submission!

That is the only input I have had on this application and it certainly wouldn’t constitute pre-planning advice in the context you would expect for this type of application”.

Parish comments

Bishops Nympton Parish Council have commented that they consider that there is no requirement for an agricultural tie at this site or in the surrounding area. Whilst they have commented that continuing with the agricultural tie is preventing the economic expansion of the existing business their comments do not provide any compelling evidence/reasoned justification to justify removing the occupancy condition.

Conclusion

Policy seeks to direct new development to the most sustainable locations and restrict development in the countryside. The policy sets out that in the open countryside development will be strictly controlled and be limited to dwellings for rural workers to live permanently at or near their place of work.

It’s been consistently argued that there’s been an extant permission on this site and is the applicant’s wish to remove condition 7. This condition was necessary to achieve the purpose for which it was originally intended. There is currently **no** actual dwelling on site only foundations which have been in situ for a number of years.

Based on the information submitted the removal of condition 7 would result in an open market dwelling in the open countryside which would be immediately adjacent to a manufacturing business.

Whilst discussions have been held whether the dwelling, when built, could be tied to the business this is not possible as the land has been severed and is within different ownership.

Whilst the LPA acknowledge that the application is based on concerns for the interests of the applicant (a high profile company in South Molton), it is not based on material planning matters

No compelling evidence/reasoned justification to justify the removal of occupancy condition has been submitted to allow an open market dwelling for this business that has been in existence for a number of years that manufactures sports equipment. As such the proposal would be in conflict with Policies ST07 and DM28 of the North Devon and Torridge Local Plan and paragraph 80 of the National Planning Policy Framework.

In addition insufficient information has been submitted in order to establish whether any significant amenity impacts/statutory nuisances are likely to arise. It has therefore not been possible to consider whether any more detailed assessment of impact risks are required or any specific mitigation measures for future occupiers. The development is therefore considered contrary to Policy DM01 of the North Devon and Torridge Local Plan.

In light of the above discussion, refusal is recommended.

HUMAN RIGHTS ACT 1998

The provisions of the Human Rights Act and principles contained in the Convention on Human Rights have been taken into account in reaching the recommendation contained in this report. The articles/protocols identified below were considered of particular relevance:

Article 8 – Right to Respect for Private and Family Life
THE FIRST PROTOCOL – Article 1: Protection of Property

Recommendation

Refused

Legal Agreement Required:- No

Reason(s) For Refusal

1. No compelling evidence/reasoned justification to justify the removal of occupancy condition in this open countryside setting has been submitted to allow an open market dwelling for this business that has been in existence for a number of years that manufactures sports equipment. The information currently supplied with the application fails to demonstrate an essential need for a worker to live on site and therefore there is no justification for the removing the condition. The application is therefore considered contrary to Policies ST07 and DM28 of the North Devon and Torridge Local Plan and paragraph 80 of the

National Planning Policy Framework.

2. Insufficient information has been submitted in order to establish whether any significant amenity impacts/statutory nuisances are likely to arise. It has therefore not been possible to consider whether any more detailed assessment of impact risks are required such as a specialist noise impact assessment or the need/viability for any specific mitigation measures. The development is therefore considered contrary to Policies DM01 and DM02 of the North Devon and Torridge Local Plan.

Informatives

1. **Statement of Engagement**
In accordance with paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and pro-active way with the Applicant and has looked for solutions to enable the grant of planning permission. This has included exploring the potential to tie the dwelling, once built, to the business, asking for compelling evidence/reasoned justification to justify the removal of the occupancy condition. However the proposal remains contrary to the planning policies set out in the reasons for refusal and was not therefore considered to be sustainable development.

2. **INFORMATIVE NOTE: -
POLICIES AND PROPOSALS RELEVANT TO THE DECISION**

Development Plan

North Devon and Torridge Local Plan 2018: -

DM01 - Amenity Considerations

DM02 - Environmental Protection

DM04 - Design Principles

DM05 - Highways

DM06 - Parking Provision

DM08 - Biodiversity and Geodiversity

DM28 - Rural Worker Accommodation

ST01 - Principles of Sustainable Development

ST04 - Improving the Quality of Development

ST07 - Spatial Development Strategy for Northern Devon's Rural Area

ST10 - Transport Strategy

ST14 - Enhancing Environmental Assets