CASE OFFICER'S REPORT

Application Reference: PL/2023/06523
Address: Land South Of A303, Berwick Farm, Berwick St. Leonard, Wiltshire
Date site notice posted: N/A
Date of press notice: N/A

POLICIES:
The Town and Country Planning (General Permitted Development) (England) Order 2015 (As Amended), Schedule 2, Part 6, Class A (GPDO).

ISSUES:
The issues for consideration within this application are twofold: the Permitted Development Criteria and if the development would constitute permitted development; and whether the proposed siting, design and external appearance of the proposed development are acceptable or need prior approval from the Local Planning Authority.

SITE AND ITS SURROUNDINGS:
The site is situated in the countryside to the immediate south of the A303 trunk road; approximately 2.8 kilometres to the north east of the Small Village of Fonthill Bishop; and 2.5 kilometres to the north west of the Small Village of Chilmark, as defined by Wiltshire Core Strategy (WCS) policies CP1 (Settlement Strategy), CP2 (Delivery Strategy) and CP27 (Tisbury Community Area). The site forms part of a wider farm holding known as Berwick Farm which forms part of the Fonthill Farms Estate. The site is situated within the Cranborne Chase & West Wiltshire Area of Outstanding Natural Beauty (AONB). It is also within the catchment of the River Avon Special Area for Conservation (SAC); and is within the 6 kilometre buffer area for the Chilmark Bat SAC.

This site is situated adjacent to the northern boundary of an existing field. The wider field is accessed on its northern boundary via a field gate and crossing junction from the A303 Trunk Road. A further access track feeds the site from Fonthill Bishop to the south west. The land falls away from the A303 into the valley floor towards the villages of Fonthill Bishop and Chilmark. A network of public right of ways exist in the vicinity of the site including Bridleway STOC10 (approximately 360 metres to the north); Restricted Byway FBIS2 (approximately 648 metres to the south); and Bridleway CHIL9 (approximately 677 metres to the east). Mature trees/woodland define part of the wider field with the A303 and other incidental field boundaries. However, the access point and adjacent public parking area, serving users of the A303, has a fairly open boundary with the wider field within which the site sits. This site and wider field are currently in arable production.

The supporting documentation to this application confirms that the overall holding known as Fonthill Farms Estate encompasses approximately 3,400 hectares of land, consisting of 1,700 arable production and 595 hectares of grassland. It is also confirmed that the land has been farmed for in excess of 100 years.

THE PROPOSAL:
This is an application seeking to notify the Local Planning Authority about the intention to install a digestate storage lagoon on this existing agricultural field. The proposed lagoon is to measure approximately 83 x 33 metres in area (although the submitted forms confirm that the site area is 2,400 square metres) and will have capacity to store up to 10,000 cubic metres of digestate. It is confirmed that the base of the lagoon will be approximately 1-1.5 metres below existing ground levels on its northern edge (closest to the A303). Material from the excavation works will be used to create bunds around the lagoon, but as a result of the falling land levels in this part of the field, approximately 25,000 cubic metres of additional spoil will be moved from elsewhere to help create the bunds. The application form confirms that in places the height of the proposed lagoon will reach 5 metres; whilst the submitted sections show that in places the bunds will be 7 metres above existing ground levels. A 1.1 metre high stockproof post and wire fence is also to be erected around the base of the bunds. It is confirmed that the outer slopes of the bunds will be graduated and seeded with a wildflower mix. A floating cover is also to be installed, as required by law to minimise the amount of gas and product escaping into the atmosphere.

It is confirmed that access to the new lagoon will be served via the existing farm track which runs parallel to the A303 to the west of the site. This track is within the applicant's ownership and leads through farmland to the nearby village of Fonthill Bishop. It is not suggested that access to this lagoon will be served from the existing A303 access to the immediate north of the site.

It is confirmed that the farm holding is working to adopt a regenerative form of farming and is currently transitioning from a fully synthetic nutrition system to a hybrid one with an increasing use of digestate and a year on year decrease in the use of artificial fertiliser. Digestate is currently imported to the site when needed and this leads to intensive periods of vehicle movements. The applicant therefore seeks to install this storage lagoon in order to allow on-holding storage of digestate and to provide a wider application window throughout the year for the crops. This will greatly increase the flexibility and efficiency of farming operations at the holding, allowing further deployment across the business, while reducing the peak demand for haulage of the product. It is confirmed that the digestate will be derived from multiple local anaerobic digestion plants.

ASSESSMENT:
Need:
The proposed development is to be located on an existing farm holding that has been in agricultural/farming use for in excess of 100 years. The lagoon is to be used for the storage of digestate in association with this enterprise. The Council is satisfied that the new facility is to be used and is required for the purposes of agricultural.

Permitted Development Criteria:
The applicant has confirmed that the agricultural holding within which the proposed lagoon is to be located is a unit of approximately 3400 hectares in size. Therefore, the proposed development needs to be checked against the criteria of Class A of Part 6 of Schedule 2 of the GDPO, which allows works for the erection, extension or alteration of a

building; and any excavation or engineering operation, which is reasonably necessary for the purposes of agriculture within agricultural units of 5 hectares or more. This is however subject to the following criteria:

(a) the development would be carried out on a separate parcel of land forming part of the unit which is less than 1 hectare in area;

The identified site is within an overall farm holding which is over 1 hectare in size. This criterion is therefore satisfied.

(b) it would consist of the erection or extension of any agricultural building on an established agricultural unit (as defined in paragraph X of Part 3 of this Schedule) where development under Class Q or S of Part 3 (changes of use) of this Schedule has been carried out within a period of 10 years ending with the date on which development under Class A(a) begins;

No developments have been applied for under Class Q or S on this unit in the past 10 years.

(c) it would consist of, or include, the erection, extension or alteration of a dwelling;

The proposals do not involve the provision of, or works to a dwelling. This criterion is not therefore applicable.

(d) it would involve the provision of a building, structure or works not designed for agricultural purposes;

A site plan and sectional plans are provided with the application, which confirm the design of the proposed lagoon. It is considered that the design of the proposed lagoon is suitable for the purpose outlined and the size meets government restrictions for such a facility. The proposals are therefore considered to satisfy the requirements of this criterion.

(e) the ground area which would be covered by—
(i) any works or structure (other than a fence) for accommodating livestock or any plant or machinery arising from engineering operations; or
(ii) any building erected or extended or altered by virtue of Class A,
would exceed 1,000 square metres, calculated as described in paragraph D.1(2)(a) of this Part;

The submitted documentation confirms that the site area involved in the creation of this lagoon is 2,400 or 2,739 square metres which either way, far exceeds the size limitations imposed by this criterion. However, the applicant's agent has confirmed that the proposals do not involve any works or structures to accommodate livestock; or any plant or machinery arising from engineering operations; and is not a building. The agent has

therefore suggested that the size restriction outlined in this criterion is not applicable to this proposal.

However the wording of this criterion is not entirely clear. For instance it is not clear what plant or machinery would arise from engineering operations. It could also be read that 'any works' in part (i) should be applied independently of 'or structures for accommodating livestock' and therefore engineering 'works', as proposed in the excavation and regrading of this field in order to create a digestate lagoon, would constitute 'any works'.

In addition, the legal definition of an agricultural building is '*A structure designed to house farm implements, hay, grain, poultry, livestock or other agricultural products*' (www.lawinsider.com). The proposed lagoon is considered to meet this definition because although it does not have a roof, it does have walls and a base and is a structure that is designed to house agricultural products (in this case digestate). The proposals are therefore also considered to be caught by point (ii) of this criterion.

The Local Planning Authority therefore consider that the proposals are caught by this criterion and given the size of the development proposed, do not satisfy it. The Local Planning Authority therefore considers that the proposals do not constitute permitted development and instead require planning permission.

The applicant's agent has confirmed that this application is not seeking the Local Planning Authority's confirmation that the proposals are permitted development and/or that they satisfy the criteria set out in this part of the GDPO, as that is for the applicant to consider and satisfy themselves. They have confirmed that this application is merely submitted in line with the requirements of Condition 2 (i) of this Class, which requires the applicant to notify the Council of their intentions to build.

However, the Local Planning Authority considers that to provide confirmation that prior approval of the siting, appearance and design of the proposals is/is not required when it is not considered that the proposals being considered meet the relevant permitted development criteria in the first place, would be a flawed approach. It is therefore important to first undertake this assessment as part of the consideration of the prior notification application. As the proposals are not considered to satisfy all of the permitted development criteria of this Class, the prior notification application should therefore be refused.

(f) the height of any part of any building, structure or works within 3 kilometres of the perimeter of an aerodrome would exceed 3 metres;

Whilst there is an airfield in the vicinity of the site (at Stockton), this is over 3 kilometres from the site. This criterion does not therefore apply.

(g) the height of any part of any building, structure or works not within 3 kilometres of the perimeter of an aerodrome would exceed 12 metres;

The proposed works are to extend to a maximum height of 7 metres and will therefore comply with the height restriction identified in this criterion.

(h) any part of the development would be within 25 metres of a metalled part of a trunk road or classified road;

The supporting documentation confirms that the site is 25 metres to the south of the A303 trunk road. The applicant's agent has further clarified that the site is not within 25 metres of the 'metalled' part of the adjacent road. Scaling from the plans, the proposed bunding around the lagoon is shown to be exactly 25 metres away from the metalled edge of the adjacent dual carriageway, at its nearest point. This criterion is therefore satisfied.

(i) it would consist of, or include, the erection or construction of, or the carrying out of any works to, a building, structure or an excavation used or to be used for the accommodation of livestock or for the storage of slurry or sewage sludge where the building, structure or excavation is, or would be, within 400 metres of the curtilage of a protected building;

As is discussed above, the proposals are considered to constitute a building in line with the legal definition of an agricultural building; and also involves excavation works in association with a new storage lagoon for digestate, which is a form of slurry. However there are no protected buildings situated within 400 metres of the site. The proposals therefore also satisfy this criterion.

(j) it would involve excavations or engineering operations on or over article 2(4) land which are connected with fish farming; or

The proposals do not involve works connected with a fish farm and therefore this criterion does not apply.

(k) any building for storing fuel for or waste from a biomass boiler or an anaerobic digestion system—
(i) would be used for storing waste not produced by that boiler or system or for storing fuel not produced on land within the unit; or
(ii) is or would be within 400 metres of the curtilage of a protected building.

As is established above, the proposals involve the creation of an agricultural building. In addition, the supporting documentation confirms that the lagoon will be used to store digestate produced from multiple local Anaerobic Digestion Plants. It does not however clarify that these plants are all situated on land within the agricultural unit. The Local Planning Authority is not currently able to confirm therefore if the proposals satisfy this criterion.

The proposed development is not considered to comply with all of the criteria set out in Class A of Part 6 of Schedule 2 of the GPDO and *is not* therefore considered to be permitted development. The application is therefore recommended for refusal on that basis and an application for planning permission will need to be submitted in order for the proposals to be considered.

Siting & Design & External Appearance:
Whilst it is considered that the proposals do not represent permitted development under Class A of Part 6 of Schedule 2 of the GPDO, the applicant has applied to the Local Planning Authority for confirmation that prior approval is not required. It is therefore considered to be appropriate for the Council to still assess the proposed siting, design and external appearance of the proposals in line with Conditions A.2 (2) (i) of Class A, Part 6 of the GPDO.

In this instance, the site is situated in the AONB and on relatively high ground in this undulating topography. The proposed development is also of significant size and massing consisting of a development of 2,400/2739 square metres in size and extending to 7 metres in height. It therefore has potential to cause a significant impact in this sensitive landscape setting.

The submitted documentation suggests that the site is well screened in the landscape with a mature tree belt along the A303 providing complete screening to the north; and only longer distance views being afforded from the wider public right of way network to the south. In the longer distance views, the new lagoon will be softened by the grassy bunds and will in any event be seen against the backdrop of the A303 and existing landscaping on rising ground. It is also suggested that the bunds and additional landscaping could be implemented to further soften and screen the development in the landscape, although no landscape plan has been submitted with the application.

However, a site visit confirms that immediately adjacent to the existing farm access on to A303, there is a public parking layby. The boundary between this public parking area and the site consists of ad hoc small trees and a post and rail fence. The parking area otherwise benefits from wide reaching views down into the valley and the beauty of the AONB can be fully appreciated from this vantage point. As can be seen from the two Google Street View images below (and confirmed by the site visit), the parking area also has quite a public aspect over the proposed site so it is clear that from this close by public vantage point, the proposed development will be seen in profile.





It is therefore considered that the proposed siting, design and appearance of the new lagoon will be fairly prominent in the public domain and the potential implications for the character and setting of the AONB need to be carefully managed. If this proposal were considered to be permitted development, the Local Planning Authority would have confirmed that prior approval would be required so that the potential impact for the AONB and area could be properly considered. A submission of a Landscape Visual Impact Assessment and detailed landscape plan would also be appropriate.

In addition, whilst the proposals suggest that all traffic visiting the site would approach from the nearby village of Fonthill Bishop along the existing access track that runs across the agricultural holding's own land and parallel to the A303; as is identified above, another site access directly onto the A303 also exists immediately adjacent to this site. No information has been submitted with the prior notification application to confirm the likely vehicle numbers or types of vehicles that will visit the site throughout the year as a result of this proposal; and it is not clear how the use of the existing access on to the A303 will be restricted/prevented.

Furthermore, whilst it is suggested that the lagoon is to be fed from multiple local anaerobic digestion plants, no information has been submitted to confirm how many digestion plants this entails; how many different sites; where they are located; or if they are all positioned on the holding or are instead on surrounding neighbouring farms. It is also suggested that the stored digestate will be used on this whole 3,400 hectare estate, which according to the submitted site plan, also continues on the other side of the A303. It is therefore likely that the access onto the A303 will also be used to serve and service this proposed storage lagoon.

In the absence of any transport assessment or details about exactly how the operation will work, the Local Planning Authority cannot therefore be confident that the proposed siting of the new lagoon would not have significant implications for the free flow, use and users of the A303.

Overall the Local Planning Authority therefore has serious concern about the siting, design and appearance of the proposed lagoon; and were the proposals be found to be Permitted Development, the prior approval of the details would be required.

Other Matters,
Whilst not a consideration for Part 6 of the GDPO, the site is situated within the catchment of the River Avon SAC and within 6 kilometres of the Chilmark Bat SAC and has potential to have an adverse effect upon the integrity of these European sites. This means that the proposed development cannot be lawfully commenced, even if it were to be found to be permitted development, until the local planning authority, along with the appropriate nature conservation body (Natural England), has undertaken an Appropriate Assessment of the implications for the European site(s) under the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (Habitat Regulations); and can confirm that the proposals will not adversely affect the integrity of the site(s).

It is therefore considered that, should the applicant decide to pursue these proposals via the submission of a full planning application; any such application will need to be accompanied by an assessment detailing the potential impact of these proposals for these nearby sensitive ecological designations.

CONCLUSION
The proposed digestate lagoon, as described on the submitted application form; and as shown on the submitted plans received 2nd August 2023, is not considered to accord with all of the criteria of Part 6, Class A of the GDPO 2015 (as amended) and does not

therefore constitute permitted development.

It is also considered that the proposed siting, design and appearance of the proposed lagoon, as a result of its size and position, are likely to have a significant impact on the landscape character and setting of the AONB; the visual amenities of the area; and highway safety. Full details of the proposals would therefore need to be submitted for approval.

It is therefore recommended that this prior notification application should be refused; and should the applicant wish to pursue the proposed works, a full planning application would need to be submitted accordingly.

RECOMMENDATION:
Refusal:

1) The proposed development, by virtue of its proposed size, is not considered to satisfy criterion (e) of part A.1 of Class A of Part 6 of Schedule 2 of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GDPO). Insufficient information has also been submitted to confirm that the proposals satisfy criterion (k) of part A.1 of this Class of the GDPO. The proposals are not therefore considered to benefit from the provisions of this agricultural permitted development right and instead planning permission would be required accordingly.

2) The proposed development, by virtue of its siting design, size and appearance has potential to significantly impact the character, setting and visual amenities of the area, which is situated in an Area of Outstanding Natural Beauty. The proposed development also has potential to adversely affect the free flow of traffic; and the use of and users of the adjacent A303 trunk road. The siting design and appearance of the proposals therefore needs detailed approval in line with Condition A.2, criterion 2 (i) of Class A of Part 6 of Schedule 2 of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GDPO).