

EXMOOR NATIONAL PARK AUTHORITY

5 March 2013

PLANNING COMMITTEE

Report of the Head of Planning and Sustainable Development

**APPLICATION NO 6/8/12/105 – LAND AT SHEARWELL DATA SYSTEMS,
PUTHAM FARM, WHEDDON CROSS**

Purpose of Report: To inform the Committee of the latest position in relation to the Section 106 Agreement related to the Shearwell Development under Application 6/8/12/105 and to seek instructions to conclude the Agreement.

Business Plan: Maintaining our cores services – Support to Community and Business – Development Management.

Legal Implications including Human Rights Act 1998: The proposed legal agreement is an interference upon the rights of the protection of property, however it is possible for the state to interfere with such rights providing it is proportionate and in the public interest.

This is a planning decision governed by the Planning Acts. Decisions should be made in accordance with the Development Plan unless material considerations indicate otherwise. The National Planning Policy Framework is a significant material consideration in the planning analysis.

Financial Implications: Officer costs in discussing and amending the proposed legal agreement.

RECOMMENDATIONS: That the Committee:

1. CONFIRM that the Head of Terms of the Legal Agreement, as set out in the Report, meet the requirements of the Planning Committee to secure the agricultural building to an agricultural unit, and
2. DELEGATE to the Chief Executive authority to:
 - (a) conclude the agreement and
 - (b) on completion of the agreement to grant planning permission for application 6/8/12/105.

1. BACKGROUND

1.1 Application No. 6/8/12/105 proposes:

Proposed re-development of the site to replace an existing agricultural building and workshop lean-to with a purpose built B1 office, research and development and light industry workspace (2,153m² gross external area), 40kw roof mounted solar photo voltaic array, change of use and extension of existing agricultural storage building to B1 light industry (371m² gross external area), extension of car park, erection of replacement agricultural building (1,758m² gross external

area) and associated yard area, landscaping together with the provision of a new access drive (approximately 830m) from the B3224 to existing business building including crossing Public Bridleway No. WL 6/22 supplemented by an Environmental Statement received 18/05/12.

- 1.2 The application was considered by the Planning Committee at the November 2012 meeting. This followed a Committee site visit and a detailed report.
- 1.3 A key issue in the considerations was the justification for the agricultural building. In summary the rear section of the main building on the site, together with a smaller building alongside, are in agricultural use. These buildings have a ground floor space of 1,636sqm. Including the internal mezzanine in the main building the total floorspace is 1,749sqm. As part of the proposals the main agricultural building is to be demolished and a business extension put in its place and the freestanding farm building extended and converted to business space.
- 1.4 A replacement agricultural building of footprint 1,758sqm was proposed. With the proposed mezzanine the total floorspace is 1,883sqm. While officers were satisfied with all other aspects of the proposals there were concerns with regard to the size and impact of the proposed agricultural building.
- 1.5 The applicant explained that the agricultural building was a direct replacement for the existing buildings that had been permitted and were being used on the holding. It was explained that the existing and proposed building was farmed in conjunction with Lower House Farm as a single agricultural unit. There are 64 acres of land at Putham and 141 acres at Lower House together with a dwelling and other farm buildings.
- 1.6 The agent provided detailed information to justify the agricultural building. The Authority sought independent agricultural advice from Smiths Gore and this confirmed the need for the proposed agricultural barn of the size proposed on the basis of the combined holding. Smiths Gore advised that if the land at Lower House Farm was not available then the size of the building at Putham Farm need not be as large, and indicated a size of between 650-750sqm would be appropriate. The applicant's agent disputes this analysis and believes that the replacement barn could be justified in its own right on the Putham land.
- 1.7 The Committee noted that the application proposed that the area for the barn was to be excavated down, that the boundary hedge would be retained and could be allowed to continue to grow, and that ridge and eaves had been reduced from the original submission. A majority of the Committee judged that the barn was acceptable in the landscape on the basis of the farming justification on the combined holding with Lower House Farm. The Committee resolved to approve the application subject to a legal agreement that ensured that the new farm building was tied to the land at Putham and the land, buildings and dwelling at Lower House. The applicant had already confirmed that the combined land and buildings were farmed as a single unit and the legal agreement sought to ensure that this continued in the future as the justification for allowing the new barn at Putham which would not otherwise be justified on the 64 acres of land available at that holding.
- 1.8 The Committee Minute is attached which details the debate and the related resolution.

2. PLANNING AND LEGAL BACKGROUND.

- 2.1 The purpose of planning obligations (S106 Legal Agreements) is to make acceptable development that would otherwise be unacceptable in planning terms. Paragraph 203 of the National Planning Policy Framework states that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Paragraph 204 continues by stating that a planning obligation may only constitute a reason for granting planning permission for development if the obligation is:
- a) Necessary to make the development acceptable in planning terms.
 - b) Directly related to the development.
 - c) Fairly and reasonably related in scale and kind to the development
- 2.2 In addition to the NPPF policy statement, Regulation 122 of the Community Infrastructure Levy 2010 makes it unlawful for a planning obligation to be taken into account in determining a planning application if it does not meet all of the same three tests.

3. THE LEGAL AGREEMENT

- 3.1 Advisers to the applicant have made the case that they believe that the proposed obligation does not meet the tests in legislation and is not necessary. The case is made is that there is a similar floorspace of agricultural building on the site at the present time and the application seeks to simply replicate it in another part of the site. Furthermore, the Committee has come to the view that the landscape impact of the building is acceptable and therefore there is no need for an agreement in this case. They make the point that in the future if the building became redundant to agricultural use it would be removed because of the requirements of condition 12 (a condition requiring the building to be removed if redundant to agricultural purposes).
- 3.2 On the other hand, this is a substantial planning application, outside a settlement in a National Park, and therefore all elements of the application require detailed scrutiny. The applicant has set out a case that the agricultural building will serve all the land at Putham and Lower House as a single farming unit and the independent agricultural appraisal has confirmed the size of the barn is justified, but only on the basis of that combined holding. The land at Lower House has been farmed separately in the past from Putham and the land is not contiguous being across the other side of the valley. In these circumstances, there is not the typical relationship of a new building sited close to others with the farm land surrounding such that farm sub-division is less likely to result. In this case, the land at Putham could be separated from the land at Lower House, which in the view of Smiths Gore would result in a building at Putham larger than needed for that unit of land. In the view of officers, based on the information available there is a good justification for the Committee's request for a planning obligation to tie the whole farm unit together such that it meets all the required tests.
- 3.3 The applicant's advisers, while raising concerns with the need for an agreement, have nevertheless acknowledged the resolution of the Committee and have been discussing with officers how the requirement could be met through the wording of an agreement. The comments of his legal advisers are attached which outline a suggested way forward.

- 3.4 This sets out the basis for a planning obligation to meet the requirements of the Committee and meets the applicant's requirements to not adversely affect the market value of the freehold properties concerned. This will then allow finance to be raised to fund the development. The draft agreement is with the Authority's solicitors who are, without prejudice to the Committee's deliberations, working through the detailed wording and will undertake their normal scrutiny and negotiate changes as required.
- 3.5 The purpose of this report is to highlight the discussions that have been ongoing and the nature of the agreement that is presently being offered. This opportunity allows the Committee to decide whether the approach proposed in the draft agreement satisfactorily addresses the concerns of the Committee, such that officers can continue to work on the details, or whether the approach is not acceptable and the alternative would be to refuse the application.
- 3.6 The wish of the Committee was to tie the two parcels of farm land and their buildings, including the dwelling at Lower House, together. This would ensure that there was a single farm unit and sufficient land to justify the agricultural building proposed at the Putham site.
- 3.7 The applicant is offering to tie the new barn at Putham to the farm land at Putham, excluding the business land and access. The draft agreement would then link a further identified 140 acres of farm land to be farmed in association with the Putham land. This land in the agreement is identified as the land at Lower House. The agreement would allow the sale of some or all of the Lower House land providing alternative and equivalent acreage of land was secured to be farmed in conjunction with the Putham land. If, however, such equivalent farm land was not secured then the agreement would allow a reassessment of the size of the barn at Putham and its reduction in size commensurate with the remaining farm land. The applicant has indicated that the barn is a steel framed structure and it would be possible to remove sections. In this way it is explained there would either be farm land available to justify the size of the building and, if this was not to be the case, then a commensurate part of the building would be removed to relate to the size of the remaining farm holding. It is argued that this arrangement would allow the applicant to help maintain his asset base for borrowing whilst securing the requirements of the Committee.
- 3.8 Officers believe that this may be an acceptable way to enable the approved development to proceed, whilst ensuring at all times that there is sufficient land available to justify the size of the barn that would remain on the holding. This then ensures that there is not a larger building than necessary in the interests of the visual amenities of this area. It is not considered that condition 12 of the permission would cover this adequately because that requires the barn to be removed in its entirety if it were to become redundant to agricultural use whereas the agreement allows a staggered approach depending on the farm land available.
- 3.9 The approach offered by the applicant does not, however, link the new farm building at Putham with the farm buildings and dwelling at Lower House. There are a couple of issues to consider in relation to whether this is a necessary requirement of the agreement. In the past the applicant owned a stone barn converted into a house and located at the Putham hamlet. The house was subject to an agricultural tie through a legal agreement. The tie had previously been attached to another property and it was transferred over to the Putham house.

- 3.10 This house was then owned by the applicant who was also farming the adjoining land at Putham. The Putham land therefore had a dwelling associated with it in the past. An application was submitted in June 2003 (6/8/03/111) to remove the tie. While there was concerns with the application the Authority agreed to set aside the agreement and allow the house to become an open market property. A consequence of the decision was that there was not to be a dwelling associated with the Putham farm land.
- 3.11 The applicant subsequently purchased Lower House Farm and the farms were combined to form one unit, however, they have traditionally been separate units.
- 3.12 Linking the house at Lower House to the Putham land would be a comprehensive response but a decision has already been made to separate a dwelling from the Putham land. The key issue is to ensure that there is adequate farm land to justify the proposed agricultural building. The Smiths Gore report concentrates on the size of the proposed farm building and relates this to the agricultural land. Again the same can be said in relation to the linkage to the agricultural buildings at Lower House. Due to these circumstances, and having regard to the tests and advice in the NPPF and the Community Infrastructure Levy 2010, it is judged that to seek to tie the farm buildings and the house at Lower House to the Putham Farm barn is not so directly related to the development the subject of the application that it could be considered a necessary requirement in this case.

4. CONCLUSION

- 4.1 Following the Committee resolution at the November 2012 Meeting, further consideration and discussions have taken place in relation to the requirements of the legal agreement. Officers consider that the alternative approach set out by the applicant may be an acceptable way to enable the approved development to proceed while seeking to avoid overdevelopment of this countryside location and it is recommended that officers be delegated to finalise negotiations with the following heads of terms:
1. That the replacement agricultural building proposed under Application 6/8/12/105 be secured to the land at Putham;
 2. That an additional 140 acres of land be secured to be farmed in conjunction with and in proximity to the Putham land and farm building, such that it would all operate as a single farm unit; and
 3. In the event that the additional land falls below 140 acres, the Authority would re-appraise the need for the barn and any part of the barn that is in excess of that reasonably required would be removed from the land.

David Wyborn
Head of Planning Sustainable Development
21 February 2013

Background Papers: Planning application no. 68/12/105

Excerpt from the Minutes of the Exmoor National Park Authority Planning Committee meeting held on 6 November 2012

52. Application No. 6/8/12/105

Location: Putham Farm, Wheddon Cross, Minehead, Somerset

Proposal: Proposed re-development of the site to replace an existing agricultural building and workshop lean-to with a purpose built B1 office, research and development and light industry workspace (2,159m² gross external area), 40kw roof mounted solar photo voltaic array, change of use and extension of existing agricultural storage building to B1 light industry (371m² gross external area), extension of car park, erection of replacement agricultural building (1,758m² gross external area) and associated yard area, landscaping together with the provision of a new access drive (approximately 830m) from the B3224 to existing business building including crossing Public Bridleway No. WL 6/22 supplemented by an Environmental Statement received 18/05/12.

The Committee considered the report of the Head of Planning and Sustainable Development.

Public Question Time (1) Mrs Rachel Thomas (Exmoor Society); (2) Dr D Jeffray (Exmoor Society); (3) Mr David Croydon; (4) Mr George Trinkle; (5) Ms M Wilkinson; (6) Mr Richard Whittall; (7) Mr Eric Norman; (8) Mr Eric Clarbull (Cutcombe Parish Council); (9) Mr Richard Webber (Applicant)

The Committee's Consideration

This agenda item was chaired by Mr R C Edgell, Deputy Chairman of the Planning Committee, Mr R J Webber having declared a disclosable pecuniary interest and withdrawn from the meeting room.

The Head of Planning & Sustainable Development advised that technical issues relating to highways, drainage, ecology and the historic environment had been resolved to the satisfaction of the relevant statutory consultees, and it was now for Members to judge the weight to be attached to each of the relevant planning considerations including advice contained in the National Planning Policy Framework; Local Plan policies; farming justification; potential economic and employment benefits; and the compatibility of the application with National Park purposes, in particular its potential impact on the landscape. He further advised that had the application included a proposal for a smaller replacement agricultural building, Planning Officers would have recommended that it be approved. In relation to the application before the Committee, Officers considered the planning considerations to be balanced and therefore a recommendation had not been made.

During a lengthy debate, the need for Shearwell Data Ltd to be sited in proximity to the applicant's farming activities was questioned and it was suggested that the business might successfully relocate to an alternative site more suitable for a manufacturing and retail operation in terms of landscape setting, access arrangements and infrastructure. There was also concern

about the impact on highway safety of the junction of the proposed new access track with the B3224.

In relation to the farming justification for the replacement agricultural building, it was questioned whether additional agricultural building space could be achieved through the utilisation of existing structures at the applicant's holding at Lower House Farm. It was also noted that farming practices on Exmoor had developed over time and continued to evolve; and that an independent report had concluded that the applicant had demonstrated a functional requirement for the building which relied on the current farming system adopted over the combined landholdings of Putham Farm and Lower House Farm. It was therefore suggested that any grant of planning consent should be subject to the signing of a legal agreement to tie the replacement agricultural building to this combined landholding. It was noted that without such an agreement, and were the larger part of the landholding at Lower House Farm to be separated from the land at Putham Farm, the size of the proposed agricultural building could not be justified in planning terms.

Taking account of Local Plan policies on employment and economic development, it was considered that the proposals would allow expansion of an established family business, with potential to achieve increased job opportunities in the greater Exmoor area. It was also noted that the local community as represented by the Parish Council supported the application.

In relation to the impact of the proposed development on the landscape, reductions of the eaves and ridge heights of the replacement agricultural building were welcomed; however it was questioned whether the application represented the best that could be achieved in terms of mitigation of landscape impact. It was noted that the report of the Head of Conservation and Access advised that the proposed redevelopment of existing buildings would be likely to have a positive landscape impact; that the proposed car park was unlikely to have a negative visual impact; and that the replacement agricultural building and access track would be likely to result in adverse visual impacts in a number of views of the site. The report's conclusion that the overall impact of the proposed development in the wider landscape would be restricted to a limited number of viewpoints was also noted.

It was acknowledged that a development of the size and scale proposed would cause change to the character and appearance of the landscape. Having considered the application in detail, including photomontages of the proposed replacement agricultural building, the majority of Members considered that the landscape impact would not be unacceptable or of such a degree that it would violate the first purpose of the National Park to conserve and enhance the natural beauty of the area.

A motion to refuse planning consent was defeated. A motion to grant planning consent subject to the signing of a legal agreement to tie the replacement agricultural building to the applicant's wider landholding at Putham Farm and Lower House Farm was carried by a majority.

RESOLVED:

- (1) To grant planning consent subject to the signing of a S106 legal agreement to tie the replacement agricultural building to the applicant's wider landholding at Putham Farm and Lower House Farm and subject also to the conditions set out in Annex 4 of the report.
- (2) Following receipt of any additional information, to delegate amendment of the conditions set out in Annex 4 of the report to the Chief Executive.

SUMMARY OF REASONS FOR GRANTING PLANNING PERMISSION: The Local Planning Authority, having regard to all planning considerations material to the determination of this application, including particularly landscape, highway network and safety, amenities of neighbours, economic circumstances, agricultural justification, ecology, archaeology, pollution, surface water, design, materials, layout, lighting and crime issues, and all consultations and representations made in connection with the application, conclude that the proposals accord with the provisions of the Development Plan as applicable to it and there are no material planning considerations that justify its refusal.

Comments submitted by the Applicant's Advisers

Shearwell Data Limited

S106 Agreement

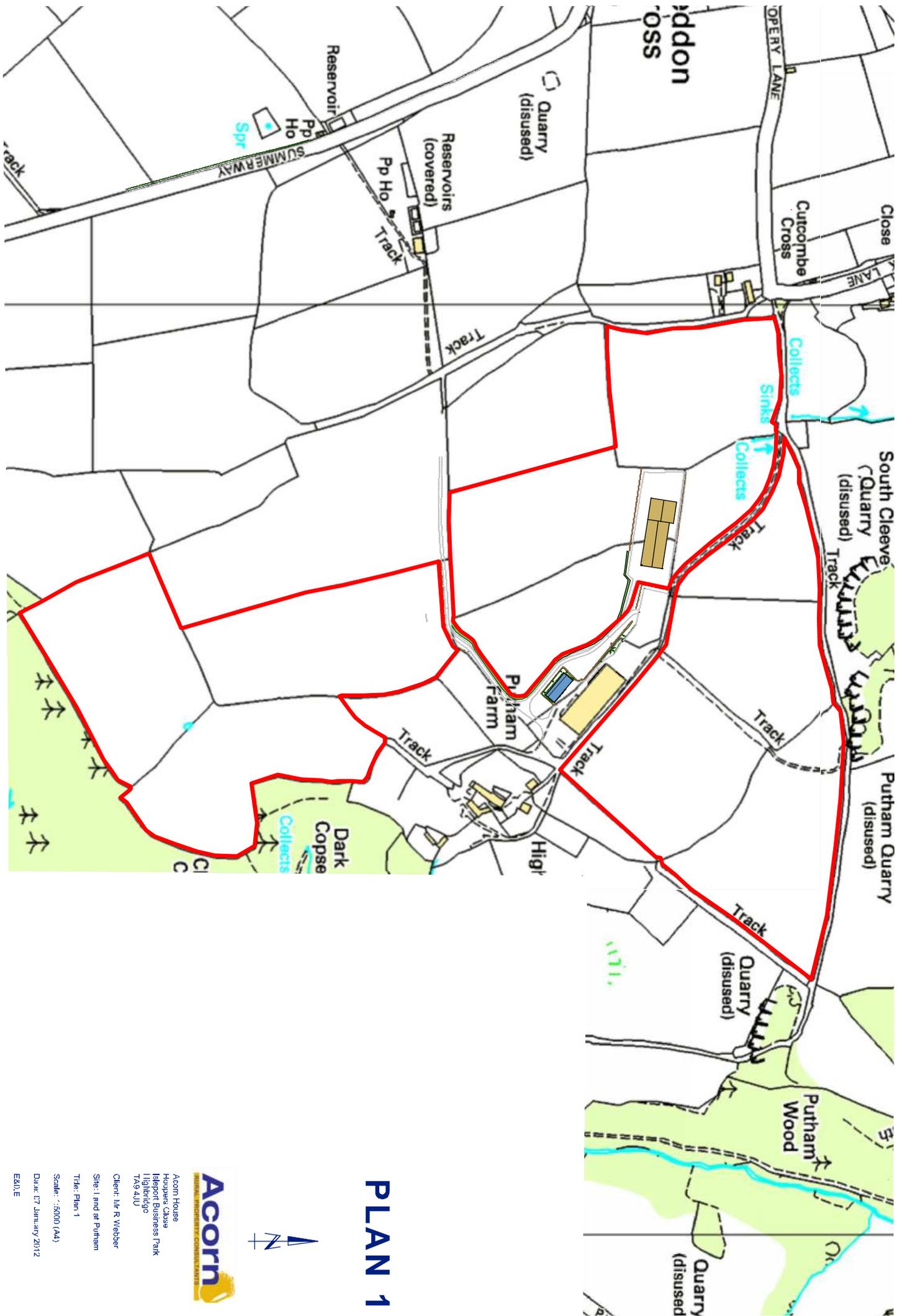
The Applicant considers that a Section 106 Agreement is not justified in planning terms in this case. The Authority's Independent Consultant has confirmed that the farming unit justifies the replacement farm building and Members' concern as to the on-going justification and the future use of the Agricultural Building is adequately safeguarded by Condition 12 which requires the removal of the Building in the event that it becomes redundant to agricultural use.

That said, the Applicant is prepared to accommodate the wishes of the Members with a fully enforceable legal mechanism for ensuring that the size of the Agricultural Building will remain justified so long as the obligations imposed do not adversely affect the market value of the freehold properties concerned. This is obviously essential, first in order to secure mortgagee's consent and second, to allow finance to be raised to fund the development.

The draft Section 106 Agreement which has been prepared meets these requirements, whilst at the same time giving the Members the assurance as to the ongoing agricultural use of the Building.

In particular, clause 4.01(i) and (ii) of the draft Agreement ensures that there would be no alienation of the Agricultural Building from Putham Farm otherwise than by way of exchange with an equivalent or greater area of land. In addition clause 4.01(iii) allows the Authority to re-appraise the issue of need in respect of the Agricultural Building in the event that the land held with Putham Farm falls below approximately 140 acres. Accordingly, the Authority will be able to take steps to ensure that the size of the Agricultural Building will remain justified in relation to the nature and scale of agricultural activities taking place at Putham, including Lower House and if appropriate require the removal on reasonable notice of all or any part of the Agricultural Building that is in excess of the area reasonably required.

12 February 2013



PLAN 1



Acorn House
 Hoopers Close
 Isleport Business Park
 Lligberido
 TAD 4JU

Client: Mr R Webber

Site: 1 and 4 Purham

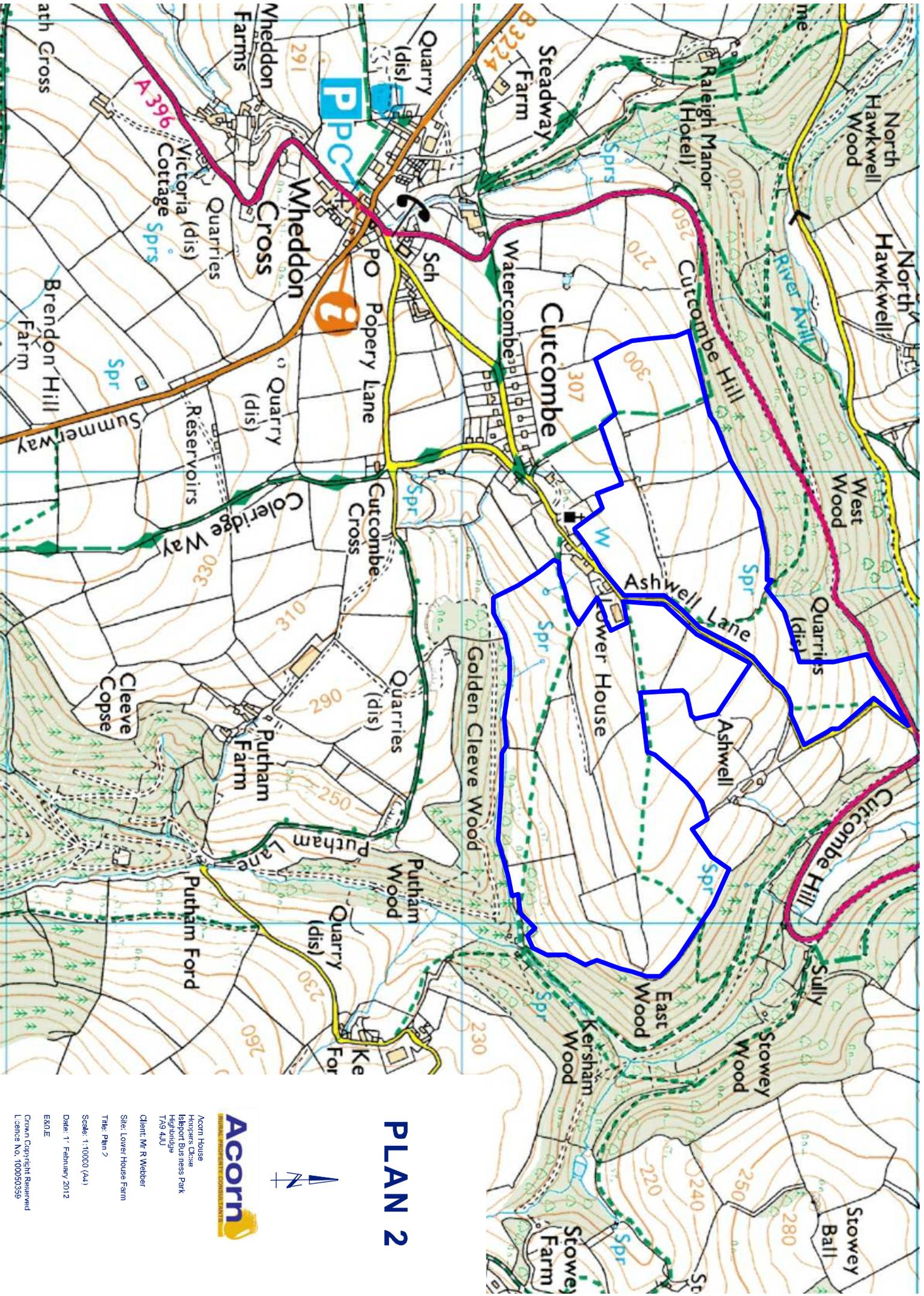
Title: Plan 1

Scale: 1:5000 (A4)

Date: 17 January 2012

E&J.E

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PLAN 2



Acorn House
 Harpers Close
 Isleport Business Park
 Highbridge
 TA9 4JU

Client: Mr. R Webber

Site: Lower House Farm

Title: Plan 2

Scale: 1:10000 (A4)

Date: 17 February 2012

E80E

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