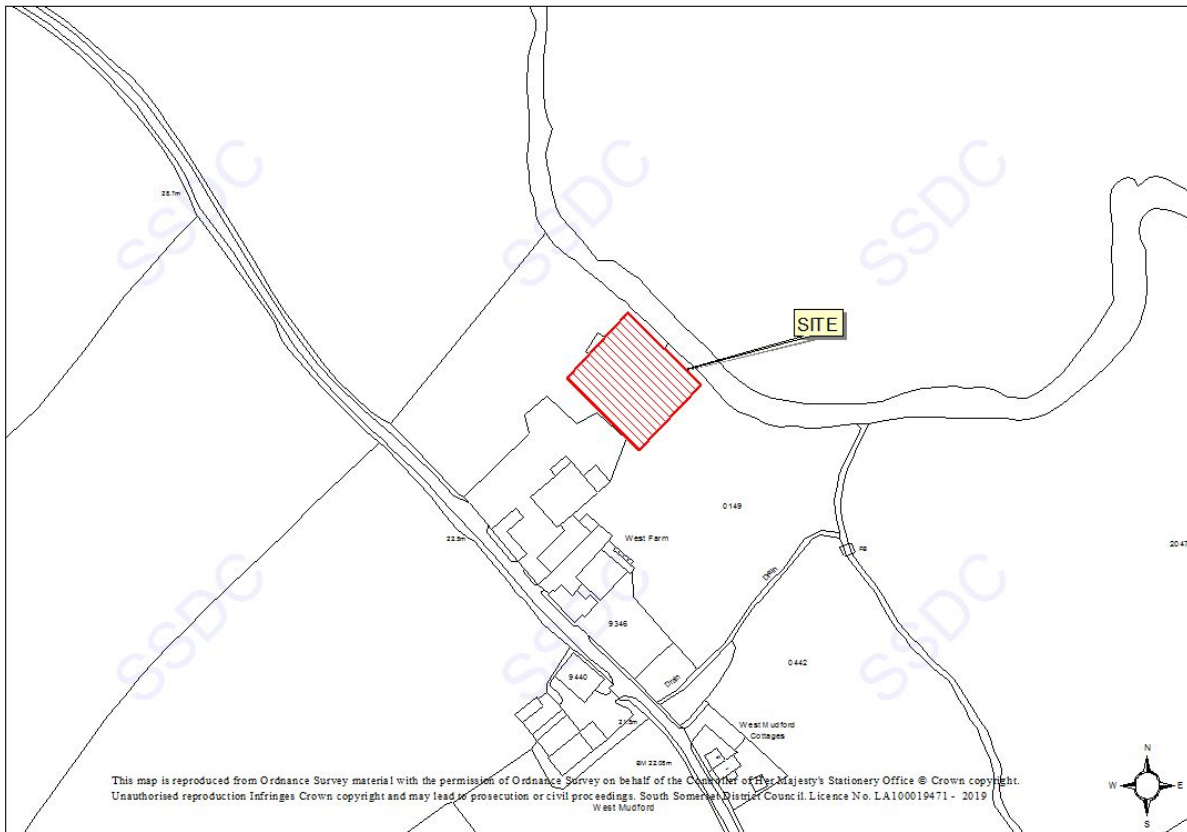
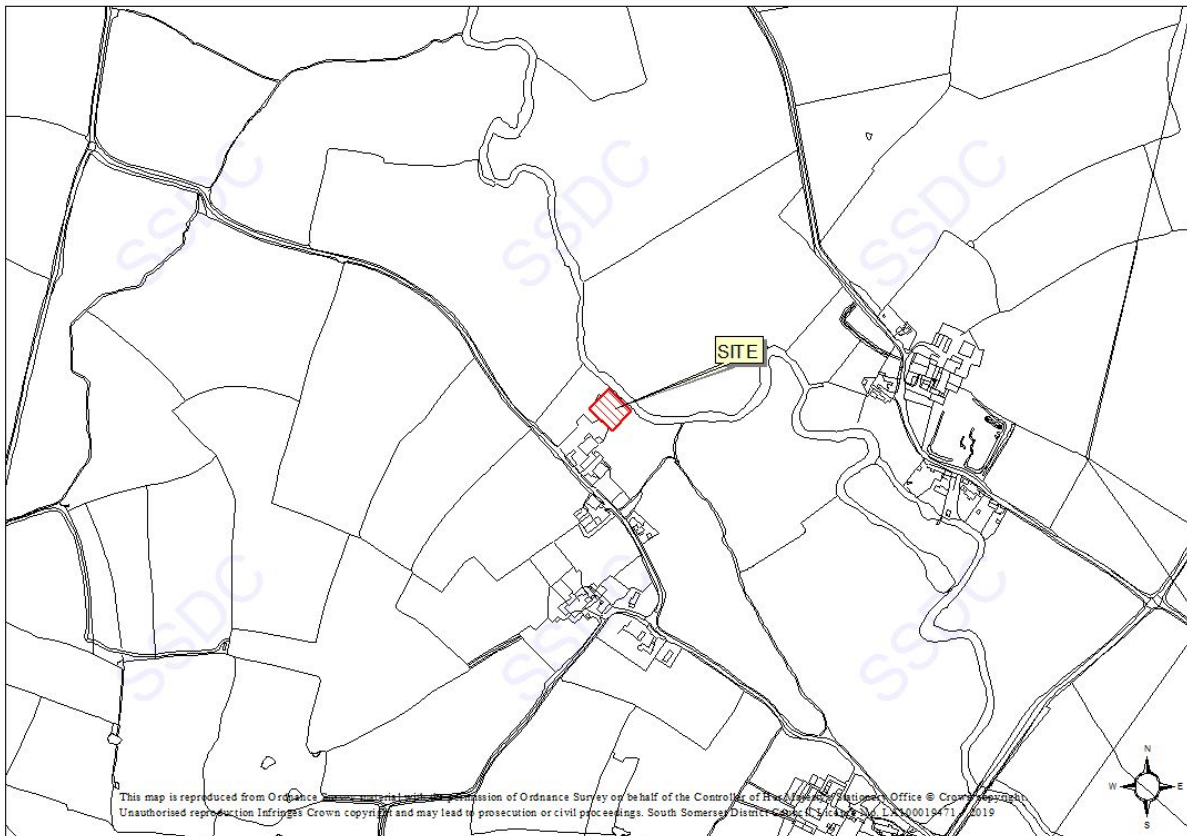


## Officer Report on Planning Application: 18/03763/COU

<b>Proposal :</b>	Extension to yard area	
<b>Site Address:</b>	Land at West Farm, West Mudford Road, Mudford	
<b>Parish:</b>	Mudford	
<b>IVELCHESTER (SSDC Member)</b>	<b>Ward</b>	Cllr A Capozzoli, Councillor Charlie Hull, Councillor Paul Rowsell
<b>Recommending Officer:</b>	<b>Case</b>	Linda Hayden Tel: 01935 462534 Email: linda.hayden@southsomerset.gov.uk
<b>Target date :</b>	17th January 2019	
<b>Applicant :</b>	Mr P Gunning	
<b>Agent: (no agent if blank)</b>	Mrs Catherine Knee, Collier Planning Unit 2, Chartfield House Castle Street Taunton TA1 4AS	
<b>Application Type :</b>	Other Change Of Use	

### SITE DESCRIPTION AND PROPOSAL





The application site relates to the yard area at West Farm, West Mudford Road. There has been no farming operation in the traditional sense on site since at least the mid-1970s. The site accommodates a red brick barn on the roadside (listed by association with the adjacent listed farmhouse) with planning permission for residential conversion with a larger steel portal framed workshop building behind sitting central to the site. The yard area is surfaced with crushed stone to the west and north where the main vehicular access is located.

The site sits on the northern periphery of West Mudford, a cluster of farmsteads, cottages and barn conversions located to the north west of Mudford. The River Yeo runs to the northeast of the site and part of the site is within Flood Zones 2 and 3. The Monarchs Way Footpath runs along West Mudford Road.

The application proposes the retention of the extension of the existing yard area (36 x 36 metres approx.).

There has been a haulage and concrete product manufacturing operating on the site which along with the yard extension was subject to an appealed enforcement notice. That appeal was dismissed and the notice upheld so the lawful use of the site reverts to a mixed contracting business as established by the issuing of a Certificate of Lawfulness in 2016 (16/05094/FUL). Due to the ongoing non-compliance with the enforcement notice, enforcement proceedings were progressed to the Magistrates Court however because of the complexities of the planning law that need to be addressed the court referred the case to the Crown Court. The first hearing in the Crown Court took place on Monday 21st October 2019 and a further hearing is due to take place on 20th December 2019. The Court has required the Council to visit the site and assess compliance with the enforcement notice.

Correspondence has been received from the solicitor acting for the applicant confirming that the unauthorised haulage business has now been relocated to Cary Fitzpaine and that the application for the concrete product manufacturing (16/05094/FUL) should be withdrawn as the applicant is no longer

operating this business.

## **HISTORY**

750856: OUTLINE-Erection of a prefabricated general purpose agricultural building: Conditionally Approved: 17/06/1975

760712: FULL-Erection of workshop: Conditionally Approved: 27/09/1976

*The file for this application is not available. It is assumed this just followed the outline consent granted the year before and was for the large building we see on site today.*

790511: OUTLINE-The erection of a storage building: Conditionally Approved: 28/06/1979

*This application sought a second building for the storage of equipment but it is observed this was never implemented.*

05/02274/COU: The change of use of barn to form 1No. dwellinghouse: Refused: 26/09/2005

05/03026/COU: The change of use of existing barn to 1No. dwellinghouse (resubmission): Conditionally Approved: 24/08/2006

*The accommodation was conditioned to be occupied by somebody associated to the business only, due to residential amenity concerns. There are no records on site to suggest this consent has ever been implemented.*

06/01324/LBC: The change of use of existing barn to 1No. dwellinghouse: Conditionally Approved: 24/08/2006

16/02329/LBC: Retrospective permission is sought for a number of alterations to the house including removal of an internal masonry wall a ground floor level, alterations to three fireplaces, removal of a ceiling and introduction of a rooflight: Withdrawn: 15/07/2016

16/03580/COL: Certificate of Lawfulness application for the existing use of land and buildings for general industrial use of workshop and vehicle haulage contractors use of yard area: Permitted: 21/10/2016

16/03738/FUL: Retention of enlarged site for use as vehicle haulage contractor's yard and retention of use of workshop for manufacture of concrete products and ancillary office space: Application Refused: 18/10/2016.

*Enforcement Notice served - Appeal dismissed; enforcement notice compliance period now in force.*

16/05094/FUL: Retention of use of workshop for manufacture of concrete products and ancillary office space and outdoor storage of aggregates: Application withdrawn 18/11/2019.

17/01460/LBC: Various internal and external alterations to include the insertion of roof light (Part Implemented): Application permitted with conditions 09/06/2017

17/02626/LBC: Conversion of former agricultural barn to dwelling house and changes to access: Approved 12/12/2017.

17/02625/FUL - Conversion of former agricultural barn to dwelling house, elevational changes to workshop premises and changes to access. Approved 12/12/2017.

18/01767/COL - Application for a Lawful Development Certificate for the existing use - Parking on land and servicing within a building of two HGV lorries operating in general haulage, alongside uses specified

in planning application 16/03580/COL dated 21 October 2016. Application refused 17/9/2018, subsequent appeal dismissed.

## **POLICY**

Section 38(6) of the Planning and Compulsory Purchase Act (2004), and Paragraphs 2, 11 and 12 of the NPPF indicate it is a matter of law that applications are determined in accordance with the development plan unless material considerations indicate otherwise.

On 5th March 2015 South Somerset District Council, as Local Planning Authority, adopted its Local Plan to cover the period 2006 to 2028.

On this basis the following policies are considered relevant:-

### South Somerset Local Plan (2006-2028):

SD1 - Sustainable Development  
SS1 - Settlement Hierarchy  
SS2 - Development in Rural Settlements  
EP4 - Expansion of Existing Businesses in the Countryside  
EQ2 - Design & General Development  
EQ7 - Pollution Control  
TA5 - Transport Impact of New Development

### National Guidance - National Planning Policy Framework:

2. Achieving sustainable development  
4. Decision-making  
6. Building a strong, competitive economy  
8. Promoting healthy and safe communities  
9. Promoting sustainable transport  
12. Achieving well-designed places  
14. Meeting the challenge of climate change, flooding and coastal change

### National Guidance - Planning Practice Guidance

- Design
- Enforcement and post-permission matters
- Flood risk and coastal change
- Healthy and Safe Communities

## **CONSULTATIONS**

### Mudford Parish Council (27/1/2019):

Last night Mudford Parish Council considered the planning application ref. West Farm Mudford 18/03763/COU.

There was a good turnout of Councillors and Parishioners with much disappointment voiced during the open session.

The Council's views remain the same, in so much as this is an unlawful extension currently under enforcement action and a planning decision should not be made until the court case is concluded. The Parish Council unanimously disapproves of the extension to the site and remains trusting in the law and planning process to recognise this unlawful act.

The Parish Council also noted further anomalies in the planning application, Item 11- Assessment of flood risk. If the extension is to be used for storage without any explanation of what is to be stored, it follows that in an area at risk of flooding, displacement of water by storage containers would further increase the flood risk elsewhere. Nearby properties are already at increased risk due to the damage to the banks of the River Yeo by the applicants business. Particular worries around contamination to the river by trade waste, namely concrete remain unanswered.

Also on Item 11 to note that the question 'How will surface water be disposed of?' does not appear to have been answered.

As a general comment, this would appear to be a wholly unsuitable location for a business of this nature.

Please also note the attached photograph taken of the site recently showing the beginning of what is believed to be an unlawful pipe installation.

The Parish Council would also request that this application should be put before Area East Committee for their consideration.'

Highway Authority (Somerset County Council):  
Standing Advice is applicable in this instance.

SSDC Highway Consultant:

Initial comments (16/1/2019):

*'I have commented previously on the approach road to this site especially for HGV's. It would be useful if the reasoning behind the application is made apparent, specifically whether or not it would lead to the generation of additional vehicle movements to and from the site.'*

23/1/2019: Upon receipt of agent's comments that the extended yard would be only used in connection with the lawful use at the site:

*'I am mindful of the previous planning history on this site and the potential generation of additional traffic on the approach road to the site from the village, particularly by large vehicles and HGVs. I note the comments of the agent but if the existing parking and turning area within the site is sufficient to accommodate all vehicles (I am not aware that vehicles park on the highway), it is difficult to understand why an additional hardstanding area is required for this purpose. In addition, if the extended yard is required to allow for a larger storage area that would suggest more items need to be stored on-site which in turn would need to be transported to and from the site; hence additional traffic movements to and from the site.'*

Environment Agency:

Advise that they have no objection to the proposed development subject to a number of informatives relating to pollution and land levels.

In terms of flood risk they commented:

*'The applicant has demonstrated that the majority of the site now lies within Flood Zone 1 (Low Risk), using the Environment Agency's latest flood modelling data from the new Yeo & Cam detailed model. The flood depths on the lowest part of the site are not considered to be sufficient to impact the less vulnerable use proposed under this application.'*

### Environmental Protection:

No comments.

### South West Heritage Trust:

'As far as we are aware there are limited or no archaeological implications to this proposal and we therefore have no objections on archaeological grounds.'

## **REPRESENTATIONS**

The application was publicised by way of a site notice and letters sent to over 80 properties.

14 letters of objection were received making the following comments (summarised):

- Application is a cynical attempt to avoid compliance with the ongoing enforcement action. The Council should pursue compliance with the enforcement notice.
- The yard has already been extended without planning permission.
- The current level of vehicle usage exceeds the historic levels. The business is operating illegally.
- There is no justifiable requirement for the yard.
- Concerned about pollution of water source.
- Vehicles are causing danger to walkers, horse riders and cyclists.

## **CONSIDERATIONS**

### Principle of Development

This application has been submitted on the basis that the existing yard area is used for the parking of vehicles in connection with the existing lawful uses which are set out in the Lawful Development Certificate (LDC) ref: 16/03580/COL, dated 21 October 2016. This established the existing lawful use of the yard for a mixed contracting business and uses ancillary to that said contracting business.

The First Schedule of the LDC 16/03580/COL includes a specific reference to the established use of the existing yard comprising "the outside storage and operation of one heavy goods vehicle, one articulated lorry plus trailer and other smaller vehicles ancillary to" and "the outside storage of drainage materials ancillary to" a mixed contracting business. The planning application proposes to extend the yard into adjoining land to the north east of the land that is the subject of LDC 16/03580/COL.

The applicant's agent advises that *'The extended yard area will simply provide a larger storage, parking and turning area for the vehicles associated with the existing uses at the site and therefore there will be no change to the existing vehicle movements.'*

Given that it has been established that a small mixed contracting business can operate from the site then the proposal can be considered against Policy EP4 'Expansion of Existing Businesses in the Countryside, which states:

- The business has been operating successfully for a minimum of 3 years, and is a viable business;
- It is demonstrated that the proposal is needed in this location;
- The proposal is of a scale appropriate in this location and appropriate to the existing development;
- Existing buildings are reused where possible;
- Firstly, use is made of land within the curtilage of the development where possible, and outside of the curtilage only where it is demonstrated that additional land is essential to the needs of

the business;

- There is no adverse impact on the countryside with regard to scale, character and appearance of new buildings and/or changes of use of land;
- There is no adverse impact upon designations for wildlife and conservation reasons, at either local, national or international level; and
- The proposed development ensures that the expected nature and volume of traffic generated by the development would not have a detrimental impact on the character or amenity of the area and would not compromise the safety and/or function of the road network in terms of both volume and type of traffic generated.

In this case:

- The business has been established through a lawful development certificate and the site visit indicated the additional yard area was needed to allow storage further from the road in order to improve security.
- The scale of the proposal is not significant in terms of the site as a whole and is directly adjacent to the existing yard and workshop building.
- With regard to the potential landscape impact this was considered by the Inspector when considering the appeal against the enforcement notice (APP/R3325/C/16/3164480) :

'...while this has extended the visual profile of the site's development, that is not obvious in views from West Mudford Road, and there are no other public viewpoints from which the extended yard is visible. I note that the Council's Landscape Architect considered that adequate mitigation of the landscape impact could be achieved through supplementation of the existing hedgerow to the east of the yard, riverside plantings to the north, and the creation of a new boundary native-species hedgerow to the west, running between the river and the road. A grant of planning permission could be made subject to a condition requiring the implementation, and future upkeep, of such landscaping work.'

A comprehensive landscaping condition can be imposed to seek the mitigation and enhancement of the landscape as described by the inspector

- There are no ecological designations at the site.
- With regard to traffic generation, the yard is to be used in connection with the existing lawful use and as such there will be no significant additional traffic associated with the development. Counsel's opinion has been sought on the ability to impose a condition to ensure that the use of the yard is restricted to the lawful use and it has been confirmed that a condition can be imposed to ensure that the use is limited to that outlined in the Certificate of Lawfulness. As such, if approved the yard could only be used in association with the existing lawful use of the site and as such there would be no significant increase in vehicular movements at the site.

In the circumstances, it is considered that the proposal complies with Policy EP4 and therefore the principle of the development can be supported.

#### Residential Amenity

With the advice from Counsel that a condition can be imposed to restrict the use of the extended yard area to the lawful activities at the site it is not considered that the application could reasonably be refused on the grounds of impact upon residential amenity as there should be no significant change from the existing lawful use. It is fully appreciated that the unauthorised haulage use that was operating from the site was causing significant concerns to local residents and this has led to the ongoing enforcement action and court proceedings. It has now been confirmed that the unauthorised use has been relocated to a site in Cary Fitzpaine and this has meant a reduction in HGV movements at the site.

Therefore, with the proposed condition to restrict the use of the yard, it is considered that the proposal complies with Policy EQ2 of the South Somerset Local Plan 2006-2028.

### Highway Safety

The use of the site as an unauthorised haulage yard clearly resulted in an unacceptable increase in vehicle movements within the vicinity. The comments of the Highways Consultant are noted but the proposal, if appropriately conditioned, will be restricted to the existing lawful activities at the site and, as such, there would be no significant increase in traffic movements as a result of the proposal. In the circumstances, it is considered that it would be difficult to substantiate a reason for refusal on the grounds of highway safety.

Therefore, with the advice of Counsel regarding a restrictive condition, it is considered that the proposal accords with Policy TA6 of the South Somerset Local Plan 2006-2028.

### Flooding and pollution

The application has been assessed by the Environment Agency who have advised that they have no objection to the grant of permission in this case but have recommended informatives in relation to pollution and land levels. As such, it is not considered that the proposal could be refused on the grounds of flooding or pollution.

### CONCLUSION

The proposal has been very carefully considered and Counsel's opinion was sought on the issues surrounding the proposal. Counsel's advice is that a condition can be imposed that would mitigate any highways harm. Given that there is no landscape objection and no demonstrable harm to residential amenity it is not considered that there are reasonable planning grounds to refuse this application. The application is therefore recommended for approval subject to a number of conditions to include restriction on the use of the yard and the requirement for planting.

### **RECOMMENDATION**

#### **Grant planning permission for the following reason:**

01. The development has a limited landscape impact and appropriate conditions can be imposed to control the use of the yard and the associated vehicle movements. The proposal therefore complies with Policies EP4, EQ2, EQ7 and TA5 of the South Somerset Local Plan 2006-2028.

#### **SUBJECT TO THE FOLLOWING:**

01. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To accord with the provisions of section 91(1) of the Town and Country Planning Act 1990.

02. The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan (1:12500) received 22/11/2018.

Reason: For the avoidance of doubt and in the interests of proper planning.

03. The yard area hereby approved shall only be used in connection with the lawful use of the yard as defined within the Certificate of Lawful Use dated 21/10/2016, planning ref 16/03580/COL.



Reason: To ensure an appropriate level of activity at the site to respect the rural surroundings and highways in accordance with policies EQ2 and TA6 of the South Somerset Local Plan 2006-2028.

04. Within 3 months of the date of this permission a hard and soft landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. All planting, seeding, turfing or earth moulding comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the date of the permission; and any trees or plants which within a period of ten years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of visual amenity, in accordance with policy EQ2 of the South Somerset Local Plan 2006.

05. No means of external illumination shall be installed on any part of the subject land without the prior written consent of the Local Planning Authority. Any details that may be agreed shall not be subsequently altered unless the Local Planning Authority gives its written consent to any variation.

Reason: In the interests of residential and visual amenity and to comply with policy EQ2 of the South Somerset Local Plan (2006-2028).

06. No system of public address, loudspeaker, amplifier or other audio equipment shall be operated on any part of the subject land.

Reason: In the interests of residential amenity in accordance with Policy EQ2 of the South Somerset Local Plan 2006-2028.

07. Any materials stored on the subject land shall not exceed 3 metres in height and there shall be no form of racking system installed without the prior grant of planning permission.

Reason: In the interests of visual amenity in accordance with Policy EQ2 of the South Somerset Local Plan 2006-2028.

#### **Informatives:**

01. The Environment Agency advise:
- i) The applicant must ensure that there is no increase in ground levels within the flood zones.
  - ii) There must be no vehicles re-fuelled on site, as this would need to be carried out in a designated area positively drained via an interceptor, of suitable standard, to foul sewer, and subject to the consent of the sewerage undertaker.
  - iii) There must be no washing of vehicles on this site as vehicle wash facilities must be connected to the foul sewer, with the necessary approval from the relevant sewerage undertaker.
  - iv) The applicant should ensure that no pollution occurs from the surface water drainage from the site. All possible steps regarding the operations on site and storage of vehicles should be taken to ensure that this does not result in the pollution of the receiving watercourse. Such a pollution may result in form action from the Environment Agency.
  - v) Safeguards should be implemented during the construction phase to minimise the risks of pollution from the development. Such safeguards should cover:
    - the use of plant and machinery
    - wheel washing and vehicle wash-down
    - oils/chemicals and materials
    - the use and routing of heavy plant and vehicles

- the location and form of work and storage areas and compounds
- the control and removal of spoil and wastes.

02. The Certificate of Lawfulness 16/03580/COL as referred to in Condition 03 is attached to this decision in the interests of clarity.