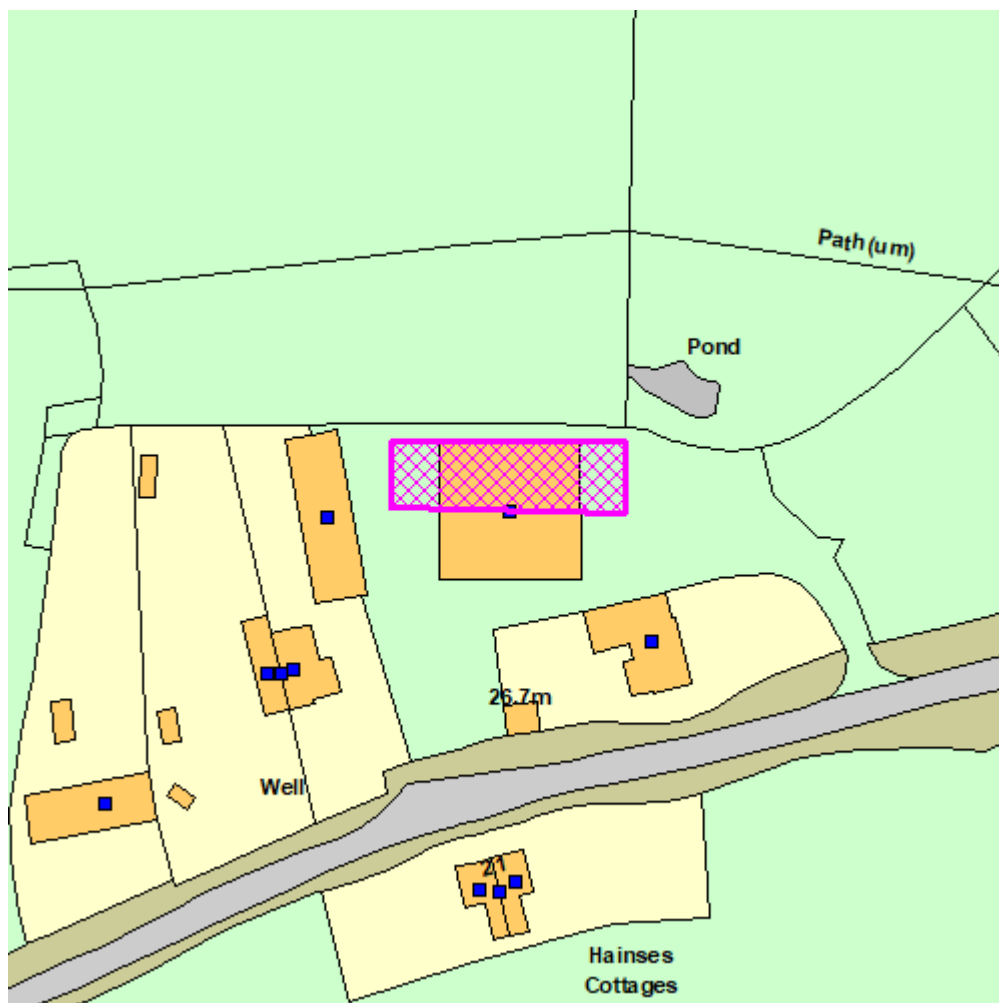




## Development Control Committee Schedule 12/10/2021

<b>Item No:</b>	2
<b>Application No.</b>	S.21/1713/FUL
<b>Site Address</b>	The Old Granary, Halmore Lane, Wanswell, Berkeley
<b>Town/Parish</b>	Hamfallow Parish Council
<b>Grid Reference</b>	369005,201686
<b>Application Type</b>	Full Planning Application
<b>Proposal</b>	External alterations to residential dwelling approved under prior approval S19/1198/P3Q
<b>Recommendation</b>	Refusal
<b>Call in Request</b>	Cllr Gordon Craig





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<b>Applicant's Details</b>	Mrs & Mr Warren Barn At Hainses, Halmore Lane, Wanswell, Berkeley, Gloucestershire
<b>Agent's Details</b>	Mr John Rooney Kestrel Court Stokes Morgan Planning Ltd, 1 Harbour Road, Portishead, BS20 7AN,
<b>Case Officer</b>	Laurence Corbett
<b>Application Validated</b>	09.07.2021
	<b>CONSULTEES</b>
<b>Comments Received</b>	Hamfallow Parish Council Biodiversity Officer
<b>Constraints</b>	Berkeley Safeguard Area Hamfallow Parish Council SAC SPA 7700m buffer
	<b>OFFICER'S REPORT</b>

### MAIN ISSUES

- Background
- Principle of development
- Design
- Residential amenity
- Personal circumstances
- Other planning consideration
- Summary and planning balance

### DESCRIPTION OF SITE

The site consists of a plot sited to the north of the public highway and is set behind residential property Butlers Orchard, located between the settlements of Wanswell and Halmore.

The site was formerly a collection of agricultural barns. Under applications S.19/1198/P3Q and S.19/1207/P3Q two barns were allowed to be converted into dwellings, a two storey and single storey property respectively. This involved relevant demolition to remove one barn that was located immediately to the rear of Butlers Orchard and to reduce the barn width of the subject to this application. The barn under consideration was converted into a two storey dwelling with fenestration to all elevations, and a drive to the public highway to the south. There is a garden, mostly to the front of the property and off street parking. The applicants have also erected a boundary wall to the front to separate the site from Butlers Orchard. To the east and north is open countryside (the land to the north is identified as a key wildlife site - Wanswell hay meadows) and to the west of the site is the other barn currently being converted to a dwelling with other residential properties further to the west.

The application site is outside any defined settlement limit being located over 2km to the north of the settlement boundary for Berkeley and approximately 1.8km to the east of Sharpness. There is a Public Right of Way close to the rear of the property identified as Hamfallow footpath 19.



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### **MATERIALS**

Walls: Brick to base with vertical cedar boarding above.  
Roof: Zinc roof.  
Windows: Grey anthracite powder-coated aluminium.  
Doors: Glass, Timber.

### **REPRESENTATIONS**

#### **Statutory Consultees:**

Hamfallow Parish Council:

Hamfallow Parish Council have no objections to this planning application.

SDC Biodiversity:

Acceptable subject to the following condition:

\* Within 3 months of any approval for this scheme, a specification (including methodology and programme of implementation) for the enhancement of biodiversity through the provision of bird boxes, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved specification and programme of implementation and be retained thereafter.

**REASON:** To protect and enhance the site for biodiversity in accordance with paragraph 174(d) of the National Planning Policy Framework, Policy ES6 of the Stroud District Local Plan 2015 and in order for the Council to comply with Section 40 of the Natural Environment and Rural Communities Act 2006.

**Comments:**

I am pleased to see the applicant is trying to connect the development to the wider ecological network however, the current location of the bird box is unlikely to attract nesting birds due to its current location and if birds do attempt to nest within the box, it is highly likely it will be subjected to predation due to limited height. Ideally bird boxes should be installed 4m above the ground, either mounted on a tree or a wall. The bird box should be installed in shade and should be north or east facing with a clear flight path in order to encourage birds to use the nesting box. Any further advice should be sought from a suitably qualified and experienced ecologist.

#### **Public:**

Five letters of support. Points raised were –

Good design. Good barn conversion. Better than original proposal.

Two letters of objection. Issues include -

Proposal affecting privacy of neighbouring property. Does not connect into mains sewerage. Outside development area. Would send wrong message can build larger than Class Q application. Might be acceptable if height was reduced to the original.



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### **PLANNING CONSIDERATIONS - NATIONAL AND LOCAL PLANNING POLICIES**

#### National Planning Policy Framework

The Town and Country Planning (General Permitted Development) Order 2015 (as amended).

Stroud District Local Plan.

CP1 - Presumption in favour of sustainable development.

CP2 - Strategic growth and development locations

CP3 - Settlement Hierarchy.

CP14 - High Quality Sustainable Development

CP15 - A quality living and working countryside.

ES3 - Maintaining quality of life within our environmental limits.

ES12 - Better design of places.

### **BACKGROUND**

Prior approval was granted on 10 September 2019 following notification of a change of use under Schedule 2 Part 3 Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO"). Application S.19/1198/P3Q proposed the change the use of The Old Granary Barn 2 from agricultural to one residential dwelling. The council's enforcement team were notified that the development had not been carried out in accordance with the plans submitted as part of the prior approval.

Upon a site visit undertaken by the enforcement team it was noted that the proposal was not built in line with the details submitted in the prior approval, as required by paragraph W.(12) of the GPDO. The breaches that have occurred are:

**Fenestrations** – The number and placement of the fenestrations agreed under the prior approval were at odds with those on the building when enforcement visited.

**Size/dimensions** – The barn that has been built is larger than that considered under the prior approval conversion. On the plans submitted for S.19/1198/P3Q the width and depth of the barn was measured at 7.6m and 18.5m respectively with an eaves and ridge height of 4.0m and 5.3m (west elevation). The built out structure measures, on plans submitted with this application (S.21/1713/FUL), a width and depth 8.7m and 20.2m respectively and an eaves and ridge of 4.6m and 6.3m (west elevation).

**Boundary wall/curtilage** – The area of garden allowed on barn conversions is restricted. This area was detailed and agreed upon on the plans submitted for the barn conversion in 2019 and was found acceptable. Upon a visit by the enforcement team it was noted that a boundary wall had been erected between the application site and Butlers Orchard and so increasing the garden land allowed under the prior approval.



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In response to the issues raised the applicants have sort to regularise the breaches to the property and submitted a planning application to regularise the external alterations to the property. Justification has also been submitted to justify why the breaches have occurred and why the proposal should be supported.

### Fenestration

The Regulations makes it clear that the development must be carried out in accordance with the details approved; this is a statutory requirement. For the development to be carried out lawfully, the proposal must be carried out in accordance with the prior approval, including the fenestration.

The design and appearance of the barn conversion is a matter of prior approval. As a result, the siting of windows and doors are part of the details approved and are required to be complied with by virtue of paragraph W.(12).

Given the effect of paragraph W.(12), prior approval decisions are not required to impose a plans compliance condition . The Inspector Training Manual issued by the Planning Inspectorate (correct as at 20 January 2021) sets out some useful information on this. Whilst the Inspector Training Manual does not constitute Government policy or guidance, it is a good source of information on how Inspectors should look to determine appeals. In the General Permitted Development Order & Prior Approval Appeals chapter, paragraph 242 finds that conditions already imposed under the GPDO "should not be set out in the formal decision on a prior approval appeal, because the decision is not to grant planning permission but prior approval only".

It is clear, therefore, that approval was given under application S.19/1198/P3Q on the basis that it would be carried out in accordance with the drawings submitted and, as a matter of law, the development must only be carried out in accordance with the details approved by the local planning authority.

There have been numerous changes to the fenestrations detailed from the plans submitted for the prior approval. As such the development undertaken has been done so without the appropriate statutory approval in place.

### Size/dimensions

Class Q of Part 3 of the Second Schedule to the GPDO sets out that development would not be permitted by Class Q if "the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point". This restriction means therefore it must not go beyond the existing footprint of the barn nor raise the roof - any insulation works, for example, would need to be done internally.

A report submitted by the applicant agrees that the proposal, as built out, is larger than the plans submitted for consideration.

Also on an officers visit it was evident that the building had a flue and satellite dish on the roof. This would also be contrary to the criteria set out within Class Q as there are no permitted development rights to install these features.



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### Boundary wall/curtilage

Class Q permits the "change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3" alongside building operations which are reasonably necessary to convert the building. So far as the domestic curtilage is concerned, the rules are very restrictive.

Paragraph X of Schedule 2 Part 3 sets out that, for the purposes of Class Q, curtilage is defined as the lesser of:

- (a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building; or
- (b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building.

The curtilage is therefore an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building. Any additional parking space, car port or garage, etc. would have to be the subject of a separate planning application, as would the change of use of any additional agricultural land that is to be used to form an enlarged domestic garden (for example, if the land is regularly mown and laid to lawn or used as an outdoor seating and play area).

A gate, fence, wall or other means of enclosure can be erected as permitted development under Part 2 (Class A) of the Second Schedule to the GPDO. This right has not been excluded by virtue of the dwelling being created under Class Q and this permitted development right is not confined to the domestic curtilage of a dwelling. The owners do therefore have the right to erect the wall.

However, the fact that the land has been annexed by the erection of a wall is evidence that it now forms part of the residential garden/amenity, even if the land remains in the same physical condition as before (which it does not) even though the wall has been erected using permitted development rights.

### Summary of works undertaken

It is the view of officers that the development is not a conversion, but rather tantamount to the erection of a new dwelling in the open countryside. Therefore, as the proposal has already been built there would be no fall-back provision to consider with regards to Class Q as there is now no barn to convert. Officers therefore conclude that the proposal should be considered as the erection of a new dwelling within the open countryside and determined against the relevant policies contained within the Stroud Local Plan 2015. This will be considered below.



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### **PRINCIPLE OF DEVELOPMENT**

The discussion above has set out that the unauthorised development undertaken is tantamount to the erection of a new dwelling in the countryside. Residential development is managed by policies contained within the Local Plan on where development is best located.

The Local Plan has been adopted and full weight should be given to its contents, in accordance with paragraphs 11 and 12 of the NPPF.

Policy CP1 of the Local Plan reiterates the NPPF presumption in favour of sustainable development. There is a presumption in favour of sustainable development as applied locally through the policies contained within the Local Plan. Consequently, decision makers should approve proposals that accord with the Local Plan without delay, but should refuse proposed development that conflicts with the Local Plan, unless material considerations indicate otherwise. The Stroud District Local Plan (the "Local Plan") seeks to do that throughout its policies, but the key strategy of the Local Plan to deliver sustainable development in the local context is to focus development in the most sustainable locations in the district i.e. at designated employment or retail areas, at strategic allocations near the largest settlements and within the settlement development limits of other settlements identified in the settlement hierarchy. Those constitute the 'designated areas' described in policy CP2 of the Local Plan.

The site is situated within the open countryside outside of any settlement boundary which is identified within the adopted Local Plan Policy CP3 as an unclassified Fifth tier settlement. Fifth tier settlements have a lack of basic facilities to meet day to day requirements. However, there could be scope for very limited development, should this be required to meet a specific need identified by these communities in any Neighbourhood Plans. There is no neighbourhood plan that covers Hamfallow.

The site is within the Berkeley Cluster in the 'Making Places' section of the Local Plan, the fourth point of the guiding principles of the Berkeley Cluster states that: '...lower-tier defined settlements will see minimal levels of development except where it addresses needs identified by communities through their Neighbourhood Plans.' The development site falls within a lower tier settlement (open countryside) and does not address any identified 'need', further to this, no information has been submitted to indicate that the applicant has sought the views of the local community and there is no mention of how the proposed housing would meet the needs of the community it is intended to serve. Therefore, residential development in this location is not considered acceptable in principle.

The proposal can be considered with regards to delivery policy CP15 as this addresses all development outside settlement development limits.

Policy CP15 of the Local Plan is a restrictive policy and seeks to protect the separate identity of settlements and the quality of the countryside. It does allow development in the open countryside subject to it complying with at least one of six principles. Upon satisfying these, the development must then satisfy six criteria. Whilst the explanatory text to the policy refers to certain types of development, the policy is applicable to all types of development.



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The six principles are –

1. It is essential to the maintenance or enhancement of a sustainable farming or forestry enterprise within the District; and/or
2. It is essential to be located there in order to promote public enjoyment of the countryside and support the rural economy through employment, sport, leisure and tourism; and/or
3. It is a 'rural exception site', where development is appropriate, sustainable, affordable and meets an identified local need; and/or
4. It is demonstrated that the proposal is enabling development, required in order to maintain a heritage asset of acknowledged importance; and/or
5. It is a replacement dwelling; and/or
6. It will involve essential community facilities.

In this instance, the proposal is considered a new dwelling within the open countryside. There is no essential need established to allow development in this rural location and the proposal would not fall within any of the exceptions set out in Policy CP15.

NPPF Paragraph 80 states that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as where the development would re-use redundant or under used buildings that would result in an enhancement of its immediate surroundings, or in addition to the criteria in CP15, the design is of *exceptional* quality. In this instance, the proposal is considered a new dwelling within the open countryside and the design is not exceptional.

Development beyond settlement development limits does not satisfy any of the criteria outlined in CP15 and therefore the principle of development for a residential dwelling on this site is not established and the proposal is contrary to the outlined Local Plan policies.

The site is located outside settlement limits and therefore development of this land is contrary to policies CP2 and CP3 of the Local Plan.

The proposal would in principle be in conflict to the policies contained within the Local Plan as this would be an unsustainable form of development in the open countryside. Given the above, the proposal would be harmful to the policies contained within the Local Plan and is contrary to policies CP1, CP2, CP3 and CP15 of the adopted Stroud District Local Plan.





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### **DESIGN**

CP14 considers, in part, high quality development that conserves and enhances the built environment.

The property is set well away from the public highway to the south. There are no footpaths along this highway but there is a Public Right of Way to the rear on agricultural land. Due to the location of the property it is considered the increase in built form from that detailed in the prior approval would not significantly harm the street scene or wider setting.

The numerous windows to the rear are not considered appropriate for a barn conversion or for a new dwelling due to the sporadic placements leading to a confused design element to this elevation that can clearly be viewed from a public right of way to the north. The chimney and satellite dish are also overtly domestic paraphernalia for a barn conversion or new dwelling in the character of a barn conversion. Due to the confusing design and overly domestic elements on the property it is considered the proposal does not reach an acceptable standard of design and appearance. It is neither a successful barn conversion, where the character of the agricultural building is retained, or a new building of exceptional design quality. As such with the design elements detailed it is considered this is harmful to the property and contrary to policy CP14 criterion 5 of the Stroud Local Plan 2015.

### **RESIDENTIAL AMENITY**

The proposal has a first floor window that looks towards a barn conversion to the west. This is detailed to be to a bedroom similar to that detailed in the prior notification application that was found acceptable, which had a much larger first floor and ground floor windows/openings. A new large window with a Juliette balcony is now in to the east elevation as well as a larger opening at ground floor and numerous windows have been included to the rear, these look out over open countryside as well as further changes to the fenestration at the front. Due to the size, location and scale of the development it is considered that the proposal would not have an overbearing effect upon the neighbouring properties private amenity areas when considering the development with regards to the prior approval

### **PERSONAL CIRCUMSTANCES**

#### Sustainable development

The applicants have argued that to alter the structure to that permitted by prior approval would not constitute sustainable development given the amount of demolition this would require and have pointed to an appeal and application decision relating to development in Bristol City Council in relation to a dormer added to a dwelling. It that appeal (which was dismissed) the Inspector stated that the possibility of future enforcement requiring the removal of the dormer might be seen as unsustainable development, that if avoided might be in the public benefit, but that was not a matter for him to assess in the appeal. Bristol City Council subsequently granted permission for an amended scheme in relation to the dormer.

No policy context (with regards to the Stroud District Local Plan 2015) is offered for this argument and the appeal decision and report submitted as evidence is the opinion of one Inspector/council on a specific matter and is therefore given very limited weight.



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### Human Rights

The applicants have highlighted the issue of human rights and rights of the child with regards to this application and the possibility of them losing the property. The barn conversion is now occupied by two adults and their four children.

Article 8 of the Human Rights Act states that everyone has a right to respect for private and family life, their home and correspondence. Article 3(1) of the UN Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. It sets out that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

This is reflected in the Planning Policy Guidance 028 which states:

"local authorities need to consider whether children's best interests are relevant to any planning issue under consideration. In doing so, they will want to ensure their approach is proportionate. They need to consider the case before them, and need to be mindful that the best interests of a particular child will not always outweigh other considerations including those that impact negatively on the environment or the wider community. This will include considering the scope to mitigate any potential harm through non-planning measures, for example through intervention or extra support for the family through social, health and education services".

Therefore, Article 8 rights and the rights of the child are a primary consideration in the determination of this application. The rights of the children must be considered, but are not determinative in themselves. This must be balanced against the aims and policies of the Local Plan most notably CP1, CP2, CP3 and CP15.

It is in the best interests of a child to have a stable home. Refusing the application would cause great disruption to the applicants and their family which in time would affect their rights under the ECHR in so far as everyone has a right to respect for their home and private life. However, these are qualified rights, whereby interference may be in the public interest/legitimate aims of planning policy.

There is no lack of open market housing available for them to choose within a relatively close distance to Hamfallow/ Berkeley and the children have no requirement to be in this specific location. There is no essential need for the family to live in this location over and above anywhere else within the district.

All these points have been considered, but it is not considered that they outweigh determining the application in accordance with the development plan policies in this case.

### Costs

The applicants have highlighted the costs involved in regularising the site are prohibitive and that, as a result, they could potentially become homeless. The issue of private finances is not a material planning consideration and does not carry any weight in the determination of this application.



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### **OTHER PLANNING CONSIDERATIONS**

The impacts of the original proposal upon highway safety was found acceptable. The changes to the built of development would not lead to any increase in trip generation from the site as such the highway safety concerns remain acceptable.

Stroud District Council's Biodiversity team have recommended conditions to any approval that would enhance the site in terms of bird boxes. These are considered reasonable if the application were to be permitted.

### **SUMMARY & PLANNING BALANCE**

As the proposal has not been built to the details submitted with the prior approval the proposal has to be considered as a new dwelling within the open countryside. As there is no longer a barn to convert, any fall-back position argued by the applicants is lost. This development is considered contrary, in principle, to policies contained within the Local Plan that directs all development within the district in a sustainable way and only allows specific development in the open countryside which this proposal does not satisfy. The design has elements that are overtly domestic in appearance and does not represent a successful barn conversion. These issues are harmful to the policies contained within the Stroud Local Plan and are considered to carry significant weight. These issues must be balanced with the possible loss of a dwelling that is home to four children, with the best interests of the children being a primary consideration. It is considered that the harm this proposal raises outweighs the benefits and this has not tipped the planning balance to allow this development. As such the proposal is considered contrary to the policies contained within the local plan and the proposal should be refused.

### **RECOMMENDATION**

In light of the above, it is considered that the proposal does NOT comply with the policies outlined and is therefore recommended for refusal.



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### For the following reasons:

1. The proposal has been built contrary to plans considered and previously approved. Given the extent of development and deviation from the details previously approved, the proposal is tantamount to a new dwelling in the open countryside. The application site is located outside any defined settlement development limits. It does not form part of a strategic allocation nor does it meet the exception principles that support development outside settlement limits. As such the proposal is not a sustainable form of development and is contrary to policies CP1, CP2, CP3 and CP15 of the adopted Stroud District Local Plan (November 2015).
2. The number and sporadic placement of windows to the rear results in a confusing design element that is at odds with the host dwelling. The addition of a flue and satellite dish would be overtly domestic paraphernalia that is not in keeping with the appearance of the host property. Due to the confusing design and overly domestic elements on the property it is considered the proposal does not reach an acceptable standard of design and appearance. It is neither a successful barn conversion, where the character of the agricultural building is retained, or a new building of exceptional design quality. As such with the design elements detailed it is considered this is harmful to the property and contrary to policy CP14 criterion 5 of the Stroud Local Plan 2015.

### Informatives:

1. ARTICLE 35 (2) STATEMENT - Unfortunately this application was submitted without any meaningful pre-application discussions. For the reasons given above the application is recommended for refusal. The applicant/agent has been contacted and the issues explained. Furthermore, the case officer has suggested that the application be withdrawn so that the project can be fully discussed.
2. Original plans of barn for conversion: Ref - 002A submitted 09.07.2021  
Plans approved for conversion: Ref - 001A submitted 09.07.2021  
Location plans: Ref - 021-120-085A submitted 09.07.2021  
As built block plan: Ref - 021-120-088 A submitted 09.07.2021  
As built floor plan: 021-120-01 B- submitted 09.07.2021  
As built elevation plan with biodiversity enhancements: Ref - 021-120-089 A submitted 09.07.2021