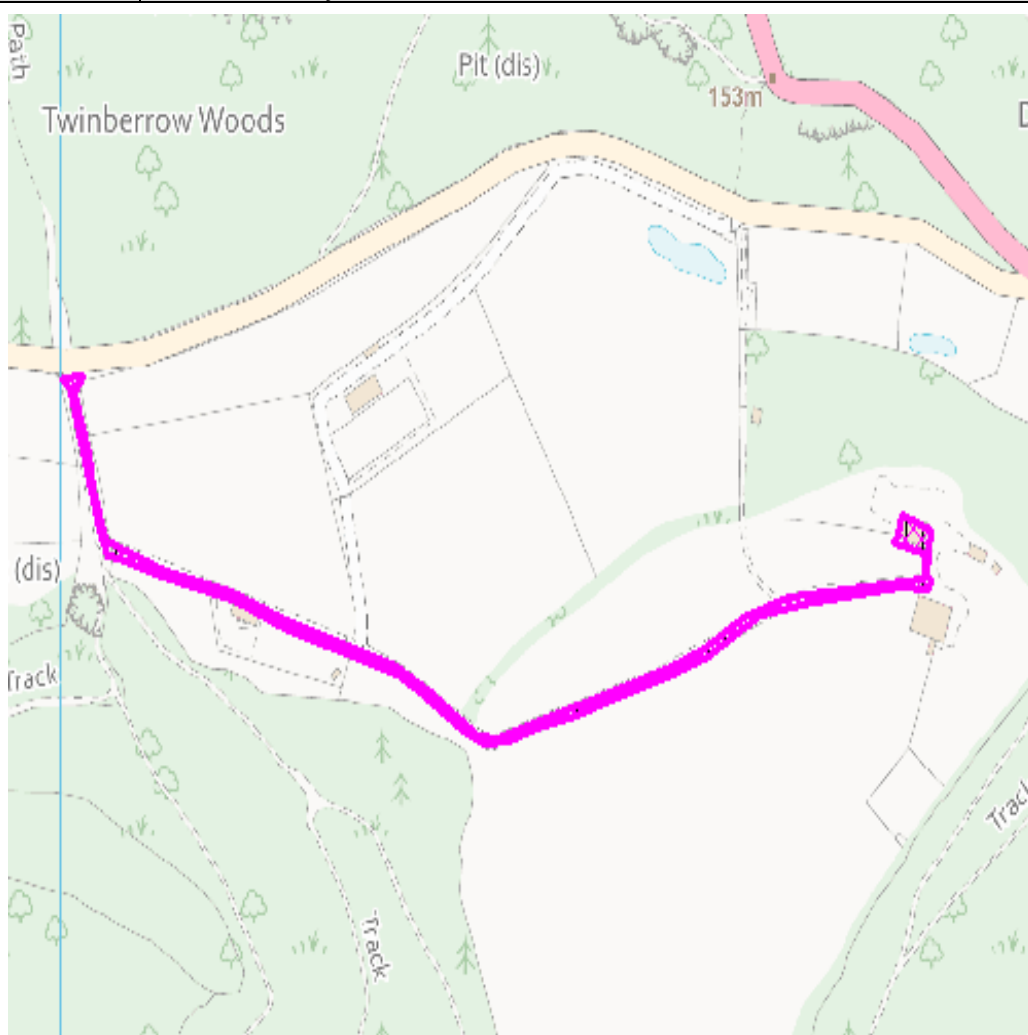




## Development Control Committee Schedule 02/09/2021

<b>Item No:</b>	<b>01</b>
<b>Application No.</b>	S.19/2712/FUL
<b>Site Address</b>	Agricultural Building, Ashen Plains, Waterley Bottom, North Nibley
<b>Town/Parish</b>	North Nibley Parish Council
<b>Grid Reference</b>	376559,196595
<b>Application Type</b>	Full Planning Application
<b>Proposal</b>	Erection of open fronted agricultural building (retrospective) (376559, 196595)
<b>Recommendation</b>	Permission
<b>Call in Request</b>	North Nibley Parish Council





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<b>Applicant's Details</b>	Mr & Mrs D Orchard C/o MSP Town Planning & Architecture, The Pike House, Kingshill Road, Dursley, GL11 4BJ
<b>Agent's Details</b>	MSP Town Planning & Architecture The Pike House, Kingshill Road, Dursley, GL11 4BJ,
<b>Case Officer</b>	Laurence Corbett
<b>Application Validated</b>	13.01.2020
	<b>CONSULTEES</b>
<b>Comments Received</b>	Biodiversity Officer North Nibley Parish Council Natural England (E) South West Area Officer (Forestry Commission) Mr M Taylor - South Cotswold Group Public Rights Of Way Officer
<b>Constraints</b>	Ancient Woodland Area of Outstanding Natural Beauty Glos Centre Env Records - Species Key Wildlife Sites - Polygons Nymphsfield Airfield Zone North Nibley Parish Council Affecting a Public Right of Way
	<b>OFFICER'S REPORT</b>

### MAIN ISSUES

- Principle of development
- Design and appearance
- Residential amenity
- Highways
- Ecology

### DESCRIPTION OF SITE

The application site is a collection of fields located off the lane at Ashen Plains within the parish of North Nibley. The ground slopes downhill from south east to north west. The site is located outside of any settlement development limit although Dursley is located to the north with North Nibley to the west and Wotton-under-Edge to the south. The site is therefore in the open countryside.

The site is within the Cotswolds Area of Outstanding Natural Beauty (AONB) and is surrounded by an identified key wildlife site 'Gravelpits Wood'. There is a Public Right of Way (North Nibley Footpath 12) that partly goes through the applicant's land; this is adjacent to the highway access to the site and does not cross the fields relevant to this application. The site does not have any further planning constraints.



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### PROPOSAL

Planning permission is retrospectively sought for the erection of an open fronted agricultural building. This structure has a footprint of 18.5m by 12.5m with an eaves and ridge height of 4.5m and 6m respectively.

### REVISED DETAILS

Site plan and elevation: Ref - 006/C submitted 13/01/2020.

Agricultural appendix 1 submitted 07/02/2020 - for appraisal dated 19.12/2019  
Agricultural appendix 2 submitted 07/02/2020 - for appraisal dated 19.12/2019  
Agricultural appendix 3 submitted 07/02/2020 - for appraisal dated 19.12/2019  
Agricultural appendix 4 submitted 07/02/2020 - for appraisal dated 19.12/2019  
Agricultural appendix 5 submitted 07/02/2020 - for appraisal dated 19.12/2019  
Agricultural appendix 6 submitted 07/02/2020 - for appraisal dated 19.12/2019  
Agricultural appendix 7 submitted 07/02/2020 - for appraisal dated 19.12/2019  
Agricultural appendix 8 submitted 07/02/2020 - for appraisal dated 19.12/2019

Appraisal Report 10/09/2020 in response to Robert Fox Rural report of 26.02.2020.

### MATERIALS

Walls: Blockwork and Yorkshire boarding.

Roof: Profile metal sheeting.

### REPRESENTATIONS

North Nibley Parish Council: The most recent comments submitted by the Parish Council are dated (03/12/2020) -

The Parish Council wishes to submit the following additional representations on the above application:

1. On 29th January your Council's Biodiversity team required an Ecological Assessment to be undertaken and submitted by the applicants and if not submitted recommended refusal based on Local Plan Policy ES6. The Parish Council understands this assessment has not been submitted and the application is therefore in contravention of this requirement. As the land is situated within an area of high landscape value within the Cotswolds AONB and adjacent to a Key Wildlife Site it is considered essential that a proper assessment is made in order to protect and enhance the special characteristics of the area including its important Ecological habitat. In the absence of such assessment the application should be refused.
2. As previously stated there are a number of other unauthorised structures on site including barns, glamping pods and residential caravan. In the Parish Council's view, the current application should not be considered in isolation but as part of a comprehensive review of all structures and uses on the holding. The 'playing down' of the clear change over recent years to a mixed use of the holding involving non-agricultural uses raises strong doubts over the sustainability of the agricultural business going forward. In this event the building could well be considered redundant for agricultural purposes and a change of use sought which has already occurred in relation to Barn 1. In this regard paragraph 5.44 of Local Plan Policy EI5 is relevant which states that a change of use of an existing agricultural



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building to a non-agricultural use—in this case barn 1 for Event Use—which subsequently gives rise to the need for a new building such as Barn 2 to meet the original use will not be supported.

3. The cumulative impact of the various structures and uses on this site, including the barn the subject of this application and associated infrastructure including roads and parking areas, into a previous and otherwise peaceful location detracts from the character and appearance of the protected Cotswolds AONB landscape and the natural environment of the Ashen Plains Woods Key Wildlife Site. The proposal is therefore contrary to Local Plan policies ES7 and EI5 criterion 2 and para 172 of the NPPF.

The Parish Council requests that these comments are fully taken into account and the local planning authority confirms its original decision to refuse planning permission.

### Forestry Commission:

On this occasion due to the scale of the proposed development and/or the distance from the ancient woodland we have no comments to make.

### SDC Biodiversity Officer: 25/03/2020 -

Acceptable subject to the following condition:

Within 3 months of commencement, a specification (including methodology and programme of implementation) for the enhancement of biodiversity through the provision of bird and bat boxes, and re-plating with an appropriate seed mix 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 175 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.

**COMMENT:** Please see the revised comments from the Biodiversity Team. After discussions with the agent and the applicant's ecologist it is understood that the access track is not part of the application and it would be difficult for the ecologist to assess the grassland surrounding the agricultural barn due to extensive degradation. Therefore, in this instance it has been decided that an extended phase one preliminary assessment will not be required. However, the planning system should aim to deliver overall net gains for biodiversity where possible as laid out in the National Planning Policy Framework and other planning policy documents. Therefore, it has been agreed that a suitable and appropriate enhancement report will be submitted to the LPA that will mitigate the proposal and ecologically enhance the site which will aim to connect the site to the wider ecological network therefore, the above condition is recommended.



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### Natural England:

Natural England has no comments to make on this application.

### CPRE:

CPRE ask Stroud District Council to refuse this application. However, should it be allowed, it must have some form of agricultural restriction on it so it cannot be adapted for alternative uses.

### Public Right of Way (PROW):

This development does not appear to affect any public right of way, however if there is any suggestion that it will, whether through a need for a temporary closure or permanent diversion then contact should be made with the PROW team at the earliest opportunity.

### Robert Fox Rural planning consultant:

Planning appraisals dated 26.02.2020 and 06.11.2020.

### **Public:**

8 letters of objection:

- Conserve AONB
- Barn not essential
- Area not large enough for this many barns. Only required due to other barn being used as an events centre.
- Application should be considered with regards to site as a whole, not in isolation.
- Lack of information and transparency in the application.

1 letter of support:

- Benefit to farming and local employment/economy.

1 letter passing comment:

- Proposal should be considered with regards to the impacts the proposal will bring to the site and wider area.

### **LEGISLATION**

Town and Country Planning Act 1990

Planning (Listed Buildings and Conservation Areas) Act 1990

Wildlife and Countryside Act 1981

Countryside and Rights of Way Act 2000



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### **NATIONAL AND LOCAL PLANNING POLICIES**

National Planning Policy Framework  
Planning Practice Guidance

*Stroud District Local Plan (Adopted) November 2015*

- CP1 Presumption in favour of sustainable development
- CP14 High quality sustainable development
- CP15 A quality living and working countryside
- EI5 Farm enterprises and diversification
- ES3 Maintaining quality of life within our environmental limits
- ES6 Providing for biodiversity and geodiversity
- ES7 Landscape character
- ES12 Better design of places

### **PROCEDURAL MATTERS**

A decision was issued on this application, without appropriate consent to do so. Following a decision by the High Court on 3 July 2021, that decision was quashed and the application was rightfully returned to the Local Planning Authority for determination, allowing the application to be correctly referred to the Development Control Committee.

This application should be determined *de novo*. This report contains the officer recommendation to committee. The previous decision notice has no status and the committee should determine this application on the merits of the case.

### **BACKGROUND**

A number of planning applications have been submitted for this site and these relate to different buildings. The following discussion sets out the relevant planning history.

The land holding for the whole of the site measures approximately 20 hectares, this includes the Ashen Plains campsite (as approved under planning application S.14/0414/FUL), and adjoining mixed equestrian/ agricultural site, with an equestrian exercise area (approved under planning application S.14/0412/FUL).

The barn subject of this application - shown as Barn 2 on the block plan submitted 19 December 2019 - is located away from these elements and set within an adjacent field to the east which measures approximately 7.6 hectares. The barn is set next to a larger barn, which is identified as Barn 1 on the same plan.

#### **Barn 1:**

The Local Planning Authority hold no record of any prior notification/ prior approval or planning permission for this building. From aerial photographs it can be seen that the structure has been substantially complete since at least 2012. As the building has been in situ for over 4 years without any enforcement action being taken, the building is immune from any enforcement action. This building is not subject to this application, nor is any planning approval required for this building as it has become lawful through the passage of time. Similarly, the track is purportedly lawful and beyond the scope of planning enforcement.



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A previous application (S.19/0477/COU) was submitted on 20 March 2019 for the change use of this building from the storage of machinery and equipment for managing the land to a mixed agricultural/ event space unit. That application was refused. While that application was refused, it does not relate to the building being considered now.

Officers are aware that Barn 1 was been used for non-agricultural purposes prior to the pandemic. As the application referred to above was refused, such uses do not have an appropriate planning permission. Should Barn 1 be used for non-agricultural purposes in the future, the Local Planning Authority has powers to investigate and, where appropriate, take action. However, Barn 1 does not form part of the current application and it is not within the scope of the current application to apply any forms of control to Barn 1; the current application must be considered on its own merit.

### **Barn 2:**

This building was also erected without any planning approval. On aerial photographs the barn first appears on records dating 2018. A retrospective application (S.19/0576/FUL) was submitted on the 20 March 2019 for the 'erection of open fronted agricultural building'. On section 5 of the accompanying application form it was stated that works were completed for this structure by 01 January 2018.

The application was refused as there was insufficient information submitted to justify the essential need for an additional barn on the land, contrary to policy CP15 and policy EI5 of the SDLP 2015. The change of use of an agricultural building to non-agricultural use, which subsequently gives rise to demand for a new building, will not be supported.

Barn 2 is the building subject to this application. As the building has been substantially complete for less than 4 years it is an unauthorised development. It is not immune from enforcement action and has not become lawful through the passage of time.

### **Surrounding land:**

While there is permission for the surrounding land to be used as a camp site, officers are aware of reports of ancillary works associated with the campsite. This has previously been investigated and at the time no breach of planning control was identified. The pandemic has impacted on many businesses, particularly hospitality, leisure and tourism. An investigation represents a snapshot in time. As with the use of Barn 1, if in the future unauthorised development occurs, the Local Planning Authority has powers to investigate and where appropriate take action. The use of the land and any ancillary structures or works upon it are not within the scope of the current application and should be treated as a separate matter.

### **PRINCIPLE OF DEVELOPMENT**

Policy CP15 is a restrictive policy that seeks to control development outside settlement development limits in order to protect the separate identity of settlements and the quality of the countryside (including its built and natural heritage). Development proposals therefore need to meet the principles for exceptional development within the countryside and further satisfy the detailed criteria for acceptable development to ensure it is essential to the maintenance or enhancement of a sustainable farming enterprise and that there is no excessive encroachment or expansion of development away from the original buildings.



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Policy E15 allows farming enterprises and diversification as long as the proposal can demonstrate the viability of farming through helping to support, rather than replace or prejudice, farming activities on the rest of the farm as long as it adheres to the criteria contained within the policy. The subtext of this policy highlights that -

*5.44 The change of use of an existing agricultural building to a non-agricultural use, which subsequently gives rise to demand for a new building to meet the original use, will not be supported, unless there is clear evidence of changing farming practices that can justify further expansion or change.*

As previously stated, an earlier application to regularise the development was refused. For this application to be successful and planning permission to be granted, the applicant must demonstrate that the reasons for refusal have been addressed and the proposal complies with the local plan.

### **Agricultural Appraisal**

In this revised application an agricultural appraisal, dated 19 December 2019, was submitted to address the refusal reasons for the previous application (S.19/0576/FUL). Due to the specialised information contained within this report an independent specialist agricultural consultant was appointed by the local planning authority to review its contents. The details of the review are available to view on the website in a report from Fox Rural Planning and Land Management, dated 26/02/2020. The appointed consultants concluded that the report submitted by the applicants lacked any assessment of livestock space requirement, hay production and storage requirements, or any assessment of machinery storage. These details would be required to justify the need for an additional agricultural building on the relatively modest plot of agricultural land where there are other buildings which may be able to address this need.

The applicant submitted an additional report on the 10 September 2020. Fox Rural Planning and Land Management responded to this with a detailed report on the 17 November 2020. Sufficient evidence had been provided to demonstrate that the site should be considered an agricultural unit. It was concluded that as Barn 1 is used as an enclosed machinery and equipment store for the farming business, Barn 2 is totally suited for livestock and the storage of hay and straw and is reasonably necessary to support a sustainable small-scale livestock business.

While planning permission was previously resisted as the applicant had not demonstrated the need for the building, evidence submitted with the current application has overcome this issue. The applicant's evidence has been robustly reviewed by an independent consultant and therefore can be given significant weight in determining this application.

Given the above, the principle of development for an agricultural storage building in this instance has been established, subject to all other material considerations as discussed below.





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### **DESIGN/APPEARANCE/IMPACT ON THE AREA**

Both barns are located within a protected landscape, the Cotswolds AONB. The agricultural unit is, however, relatively secluded and positioned well away from the public highway.

Policy ES7 and NPPF paragraph 176 prioritises the conservation and enhancement of the natural and scenic beauty of the landscape. This requires the decision taker to attach *great weight* to landscape issues. As set out above, it is established that Barn 2 is reasonably necessary to support the agricultural use of the site in addition to Barn 1. Agricultural buildings can reasonably be expected in rural areas. It should also be noted that national permitted development rights for agricultural development make no distinction between development in or out of a protected landscape. Agricultural buildings for an agricultural use on agricultural land should be permitted provided development does not harm the landscape or appear as an isolated structure in the open countryside.

The barn under consideration is located adjacent to a larger barn and would be read in conjunction with the existing built form. The buildings sit well within the landscape and would not appear as an isolated structure in the open countryside. The scale, design, and use of materials are appropriate for its agricultural use and would be compatible with the wider landscape setting. The development would not have a major impact on the character or appearance of the landscape setting or wider AONB.

### **RESIDENTIAL AMENITY**

Due to the location of the proposal in relation to the neighbouring properties it is concluded that the development would not result any significant overbearing, overshadowing, or privacy issues. The structures are sufficiently distanced from any residential property not to cause harm in terms of noise and odours from the agricultural activities.

### **HIGHWAY SAFETY**

There is an existing vehicular access onto the agricultural land. The proposal does not require any works to highway. The development will not lead to any significant increase in traffic movements and will not be detrimental to highway safety. The proposal is therefore acceptable in this regard.

### **ECOLOGY**

Policy ES6 is a policy that protects biodiversity and geodiversity. Key wildlife sites will be safeguarded from development unless the benefits of the development outweighs any harm to the nature conservation or scientific interest of the site. Where development is considered necessary, adequate mitigation measures will be required with the aim of providing an overall improvement in local biodiversity and/or geodiversity.

While initially, concerns were raised, the biodiversity officer's latest consultation response confirms no objection for the proposal subject to biodiversity enhancement conditions being attached to any approval.



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Concerns were raised with regards to a track that goes through the field towards the barn. A request for an extended phase one preliminary assessment was originally requested for this track. This was not considered necessary and was not required by the biodiversity team as the track that accesses the barns is an established track that has been in use for approximately 10 years and is not part of this application. The track has been shown on the plans to identify the access arrangements for the barn to the public highway. This is a pragmatic approach considering the lawfulness of other structures, the contents of the application, and means to improve any degradation of the land.

The imposition of a condition to secure biodiversity improvements is a benefit that would be secured as a result of the development and this should be attributed some weight.

### **OTHER ISSUES**

Consultation responses have requested conditions to restrict any change of use of the site from agricultural. Any use of the site that is not agricultural or allowed under permitted development rights would require planning permission in its own right. As such a condition restricting the use would not pass the tests of a planning condition and therefore is not recommended.

### **HUMAN RIGHTS**

In compiling the recommendation below, officers have given full consideration to all aspects of the Human Rights Act 1998 in relation to the applicant and/or the occupiers of any neighbouring or affected properties. In particular regard has been had to Article 8 of the ECHR (Right to Respect for private and family life) and the requirement to ensure that any interference with the right in this Article is both permissible and proportionate. On analysing the issues raised by the application no particular matters, other than those referred to in this report, warranted any different action to that recommended.

Furthermore, the development would have a neutral impact on equalities.

### **PLANNING BALANCE**

National guidance on retrospective planning applications is clear: any such application should be considered as if the development was yet to occur. The decision taker should not apply any weight to the fact that the application is made retrospectively.

The evidence supplied by the applicant, which was independently verified, has established that there is a justifiable agricultural need for the building. The principle for the development is therefore established.

Analysis of the proposal has not identified any harm resulting from design and appearance, amenity, or highways. Great weight must be given to protecting the landscape and the assessment concludes that there would be no harm to the Cotswolds AONB.



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There would be a minor benefit as a result of a planning permission from biodiversity improvements.

The planning balance therefore fall to granting planning permission as the development has been found to comply with the provisions of the development plan and there is no resulting harm.

### RECOMMENDATION

It is recommended that planning permission is GRANTED subject to the conditions listed below.

<b>Subject to the following conditions:</b>	<ol style="list-style-type: none"><li data-bbox="448 768 1533 1086">1. The development hereby permitted shall be carried out in all respects in strict accordance with the approved plans listed below:  Site plan and elevations: Ref – 006/C submitted 13/01/2020  Reason: To ensure that the development is carried out in accordance with the approved plans and in the interests of good planning.</li><li data-bbox="448 1086 1533 1668">2. Within 3 months of this permission, a specification (including methodology and programme of implementation) for the enhancement of biodiversity through the provision of bird and bat boxes, and re-planting grassland with an appropriate seed mix 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 175 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.</li></ol> <p data-bbox="448 1668 1533 1736">Informatives:</p> <ol style="list-style-type: none"><li data-bbox="448 1736 1533 1897">1. ARTICLE 35 (2) STATEMENT - Whilst there was little, if any, pre-application discussion on this project it was found to be acceptable and required no further dialogue with the applicant.</li></ol>
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