

OFFICER'S REPORT

Case Officer:	Charlotte Howrihane		
Parish:	Chivelstone	Ward:	Stokenham
Application No:	0191/25/CLE		
Applicant:	Mr & Mrs Herniman c/o Agent	Agent:	Ms Anna M Martin Annie Martin Architect Little Thorne Cheriton Bishop Exeter EX6 6HN
Site Address:	Land at SX 773 357, East Prawle		
Development:	Certificate of lawfulness for existing lean-to structure as an extension to the existing agricultural barn		

Recommendation: Certificate granted

Key issues for consideration:

Whether, on the balance of probabilities, the applicant's claim that the lean-to has been constructed more than four years ago and has been used for agricultural purposes, is sufficiently evidenced and the development is therefore immune from enforcement action.

Site Description:

The site is a agricultural barn, known as Shell Barn, located on the road from East Prawle to Prawle Point. The building is a 19th century stone barn, with a slate roof which has been repaired in recent years. A modern, lean-to addition was added to the east elevation in the late 20th century. The lean-to accesses the stone barn via a door. The barn is a tall structure, with a footprint of 63sqm over three floors.

The site is within the open countryside, and the Undeveloped Coast and Heritage Coast policy area. It is also within the South Devon National Landscape.

The Proposal:

The application seeks the grant of a lawful development certificate which confirms that the lean-to addition to the barn is lawful and has been used continuously for agricultural purposes for a period of more than four years.

Consultations:

- Chivelstone Parish Clerk: no comments received
- DCC Highways: no highways implications

Representations:

Nine letters of objection have been received, which can be summarised as follows:

Name	Comment
K.Hill	Lean to is not on aerial photos from March 2020 so could not have been in place for more than four years
South Hams Society	Insufficient evidence to prove that the lean-to has been in agricultural use; inaccuracies in application; no farming operations on the site
J.Bower	Not seen any evidence of agricultural use since it was constructed
L.Healey	Lived by the site for 16 years and never seen regular agricultural activity
M.Stone	Regular visitor, never seen regular agricultural activity
Michael	Can see the barn from property and never seen agricultural activities
Webb	Never witnessed agricultural activities
N.Brown	Previous objections to development on site still remain
W.Potts	Never seen agricultural activity, lean-to added to increase saleability

Relevant Planning History

Application Number: 3673/24/NAU

Proposal: Application to determine if prior approval is required for a proposed change of use under Class R of agricultural buildings to a flexible commercial use for Class E (Commercial, Business or Service)

Decision: Withdrawn

Decision Date: 03/01/2025

Application Number: 1543/24/FUL

Proposal: Conversion of barn to dwelling

Decision: Withdrawn

Decision Date: 06/11/2024

ANALYSIS

The usual material planning considerations relating to matters such as Development Plan Policy and other Guidance, the principle of development/ sustainability, design /landscape, neighbour amenity and highways/ access issues do not fall to be considered under an application for a Certificate of Lawfulness of existing use or development.

The decision is based upon 'the balance of probabilities' and rests on the evidence submitted, the facts of the case and any relevant planning law and takes into account the facts presented and any contrary evidence if available.

Section 191 of the Town & Country Planning Act 1990 (as amended) [hereafter referred to as The 1990 Act] allows for any person who wishes to ascertain whether any existing use of buildings or other land is lawful; any operations which have been carried out in, on, over or under land are lawful; or any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, to make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

It is noted that s55(2)(e) of The 1990 Act sets out that “the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used” “shall not be taken for the purposes of this Act to involve development of the land.”

In this instance, it is noted that the applicant is seeking specific confirmation that '*the lean-to extension has been used for continuous agricultural use (either for hay storage or cattle) since April 2020.*'

In support of their claim in this regard, the applicant has submitted the following information:

- A statement outlining the history of the building
- Aerial photos from March and May 2020
- A statement from the former owner of the site detailing when the lean-to was constructed
- Undated photos of the building
- Email from the applicant detailing use of the lean-to

Assessment:

When assessing an application for a Certificate, the onus is on the applicant to supply supporting documentary evidence. The legal test of evidence is 'on the balance of probabilities' that the use is lawful and not the criminal burden of proof, 'beyond reasonable doubt'.

The applicant has specifically sought the grant of a certificate for the lean-to extension for agricultural use. Aerial images show that the lean-to has been in place for more than four years, with the structure evident on images from May 2020, the certificate application also seeks consideration of whether the structure has been used for continuous agricultural use since its construction.

A number of representations have been received from people who either visit the area regularly, or live nearby, who claim that the lean-to has not been used for agricultural purposes. Officers are also mindful of information submitted as part of a planning application last year, by the same applicant (application 1543/24/FUL) which stated that '*the stone barn has no obvious use*', along with several photos of the building being empty, with no apparent agricultural use being undertaken. Although these photos are not dated, the statement is dated March 2024.

The Ecology Report submitted with that application also states that the site was visited on 15th March 2024, with internal photos of the lean-to showing no agricultural activity, with only ladders being stored in the structure.

The applicant has provided some photos of the building in use to demonstrate that it has been used for agricultural purposes, including hay bales being stored, as well as agricultural equipment, such as water troughs. Whilst this evidence is limited, there is no evidence from the applicant or in representations that the lean-to has been used for purposes/uses other than agriculture. Whilst Officers do not consider that the applicant has demonstrated 'continuous' agricultural use of the lean-to, the lean-to has been built on agricultural land, and so the land use is already agricultural, with no evidence that any change of use of land has occurred.

Officers are also conscious that agricultural use is not development, as defined by the Town & Country Planning Act (ref. s55(2)(e)) "(2)The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land— (e)the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;"

Conclusion:

The photographic evidence indicates that the structure has been in place for more than four years with the structure evident on images from May 2020.

With regard to the use of the lean-to, the applicant has submitted limited information regarding any active agricultural use and various representations assert that the barn/lean-to have not been used

at all. None of the representations indicate that the barn/lean-to has been used for other purposes either.

Overall, officers are mindful that the barn is an agricultural building built on agricultural land. The lean-to was thus built on agricultural land. Agricultural use does not constitute development. Whilst there is limited evidence of any active use of the lean-to itself, there is no suggestion that any change of use from agriculture has occurred, and there is insufficient evidence to consider that this use has been abandoned, or that the building now has a nil use. The only conclusion that can be reached, therefore, is that the lawful use of the building is agriculture and that its use for agriculture is and would be lawful.

For the above reasons, a certificate is therefore granted.

This application has been considered in accordance with Section 38 of the Planning & Compulsory Purchase Act 2004

Considerations under Human Rights Act 1998 and Equalities Act 2010

The provisions of the Human Rights Act 1998 and Equalities Act 2010 have been taken into account in reaching the recommendation contained in this report.

The above report has been checked and the plan numbers are correctly recorded within the computer system. As Determining Officer I hereby clear this report and the decision can now be issued.
Name and signature: <i>Charlotte Howrihane</i>
Date: 9 th April 2025