



# Botus Fleming Parish Council

## PA22/10400 HATT BARNES

This planning application follows on from PA22/01708, which was for change of use of agricultural land/yard to B8 in part retrospective on land at Site 1 and the applicant(s) were Mr G Deacon and Kivells Ltd.

That application was discussed at Botus Fleming Parish Council's (BFPC) public meeting on Wednesday 28<sup>th</sup> September 2022. As a result the landowner/applicant withdrew the planning application, gave the occupant Mr Tomkin from Keltec Car Recovery notice to quit, and he then apologised for any anxiety caused to any residents.

BFPC were aware that immediately after Keltec Car Recovery vacated the site, extensive works on the site commenced. There has been large-scale clearance by diggers and the laying of hardcore on site. In addition there has been the siting of portakabin offices and erection of new business signs. All this has happened even though the owner has breached his permissions and flagrantly ignored Cornwall Council Enforcement and Planners.

BFPC were then obviously not surprised when this new planning application was submitted.

This application (PA22/10400) is for change of use (retrospective) of Agricultural Land/Yard to Use Class B8.

The application states that *"the property having been used for various purposes falling within Use Class B8 for a number of years"* and assumes that it should now be consequently granted.

The landowner decided to change the use of the property completely unilaterally and after failing to comply with the granted permissions then allowed the site to be utilised by a drainage specialist company and their vehicles and also those of DMY Ltd by for the storage of large amounts of building supplies and associated vehicles.

The applicant has allowed the latest two new businesses to trade from his site knowing full well that he has no planning permission. This latest application has been made because Planning Enforcement had reached Stage 6 of enforcement and this is simply a ploy to delay Enforcement by applying for retrospective planning permission.

The planning application via Kivells Ltd like the original one for Keltek Motors was provides no justification for this change of use.

They have further tried to frustrate the planning process by removing the statutory Planning notice attached to the gate of his premises. The Planning Officer in charge is fully aware of this and had to make a special journey to replace it.

Unfortunately as with the previous application, the latest incarnation of this application and the supporting documents are littered with mistakes, flawed information, partisan comments and inconsistencies.

This application (PA22/10400) asks, “*Has the work or change of use already started?*” The reply is “yes”. It then asks, “*Please state the date when the work or change of use started*”. On the previous application the date given was 1<sup>st</sup> January 2019, which meant that they were applying for retrospective permission after over 3 and half years.

This latest application now utilises a different date, that of 26<sup>th</sup> March 2009. Incredulously this means that the change of use that retrospective permission is being asked for took place almost 13 years ago.

The introduction section of the Planning, Design and Access Statement states that “*The property formerly comprising an agricultural field upon which planning permission has been obtained for the construction of agricultural buildings. Part of the field remains in agricultural use, with the buildings/yard housing machinery. The field, however, is too small for any agricultural enterprise to be carried out, particularly considering the location of the Applicant’s main holding some distance away*”.

BFPC believes that the size of the field is completely immaterial the size of the field should not be a factor in determining its suitability for agricultural use. Many small to medium sized agricultural businesses would be able to make good use of the field. The site could be utilised to grow fruit trees/bushes on allotments for residents and/or to use as a market garden space.

The distance from the owner’s major holding should also not be a consideration. Other farms in the Landulph area use land on the western side of the A388, even further away from Hatt Barns.

## PLANNING POLICY

The applicant conveniently omits to include the following from the above quote from the CLP: “*Planning applications that accord with the policies in this Local Plan and supporting Development Plan (including, where relevant, with policies in Neighbourhood Plans) will be regarded as sustainable development and be approved, **unless material considerations indicate otherwise.***”

Botus Fleming Parish Council believes, and will demonstrate, that there are indeed material conditions that indicate that this application should not be considered sustainable or appropriate for this location.

With regard to the economic development of the county, there would likely be some income generated from the site.

However, BFPC maintains that this kind of enterprise is best sited well away from residential or rural areas. There are numerous industrial and commercial estates in the Cornwall Gateway area that would better accommodate the proposed business and are well-served by the A388 or A38.

BFPC maintains that the proposed development would have a serious impact on the social development of the area. As has already been shown, there is a private dwelling less than 25 metres from the site. The noise, dust, light pollution and traffic hazard caused by the use of the site has already had a significant impact on the quality of life of the resident, making a relaxed afternoon in the garden an impossibility now.

Should this situation continue there are good grounds for fearing the impact on the resident’s physical and mental well-being.

It will also very likely affect the value of the resident’s property and the likelihood of actually selling the property in the future.

The National Planning Policy Framework (NPPF) states that to achieve its social objective, plans should foster *“well designed, beautiful and safe places... that support communities’ health social and cultural well-being.”* (Section 2 Para 8).

This application would make a mockery of such aspirations. The NPPF environmental objective sets out *“to protect and enhance our natural, built and historic environment... improving biodiversity.”* (Section 2 Para 8). Should it be approved, this application would result in the desecration of the natural environment there, seriously detracting from the beauty of the rural setting and doing nothing to improve biodiversity.

An important part of Policy 2 emphasises the need for *“respecting and enhancing quality of place”*. The location of the site is at the start of one of the principal roads that leads into the Tamar Valley Area of Outstanding Natural Beauty (TVAONB).

Should this application be approved, the first thing the unsuspecting visitor in search of natural beauty would behold, would be a site full of building supplies and associated transport. In short, an environmental and aesthetic eyesore.

Much of Cornwall’s prosperity depends on the tourism brought down here because of the county’s beauty. This development would detract from, rather than enhance Cornwall’s tourist potential.

This site is most certainly not “well-integrated” with the village of Botus Fleming. The haphazard jumble of building supplies, associated transport and drainage vehicles, are totally at odds with the sleepy, rural character of the village. The settlement is characterised by narrow, sunken lanes lined by Cornish hedges, green fields and woodland. As pointed out above, there are even better transport links that could be accessed from sites in Saltash and Carkeel. Sited there, the business would not be at all out of keeping with the surroundings.

The report quotes *“Policy 5 also refers to ‘demonstrating an overriding locational and business need such as farm diversification’. Notwithstanding the fact that this site is in a rural yet highly accessible location, the proposed use will help underpin the principal farming business providing valuable income, particularly in light of the reform of the Common Agricultural Policy and reduction in subsidy support received by the farming community”*.

As with several of the comments made, this section is very misleading and a step too far. Farm diversification is when a farm branches out from traditional farming by adding new moneymaking activities. This can be an expansion of agricultural activities into new innovations, or moving into non-agricultural business types. Agricultural diversification is a complex situation to assess with different effects regionally and globally. However, turning an agricultural site into a site for drainage vehicles and the transportation and storage of building supplies is not something that policy 5 would agree with or envisage as a success.

BFPC confirms that the site has indeed been used for a number of years as Class B8, but without the appropriate planning permission. This section seems to celebrate the unilateral decision to have breached the permissions and to have attempted to turn a minus into a plus.

## **ACCESS**

The access to this site has altered exponentially from the original use that permissions were granted. The access gate is just a few metres from a *“blind”* corner. Delivery vehicles wanting to access will often be parked outside that gate awaiting access. This means that vehicles rounding the corner from Botus Fleming suddenly find themselves having to break heavily or overtake long vehicles in an effort to avoid a collision.

In 2017 an application for the construction of an agricultural storage building was granted. On Friday 26th January 2018 when commenting on the planning application (PA17/11798) Botus Fleming Parish Council said "At its public meeting on 24th January 2018, Botus Fleming Parish Council resolved to support this planning application. Councillors understood the need for this new agricultural building and its siting would be incorporated within the existing farm space using existing facilities. However, councillors expressed concerns about the impact that this might have on traffic movements in the immediate area as vehicles enter and leave property, causing soiling on the road and unsafe passage for pedestrians. The proposal is located within 1km of the boundary of the TVAONB, listed on the portal as an Application Constraint: Councillors ask that you consider the potential for impact on the natural environment when making your decision".

BFPC's concerns have unfortunately been realised and believe that the granting of this application would further aggravate the problems.



The application states that the site does NOT have any existing vehicle parking spaces. Please see the photo above.

Moving onto page 6. The applicant agrees that there are trees or hedges on the proposed development site.

However, when asked "*are there any trees or hedges on land adjacent to the proposed development site that could influence the development or might be important as part of the local landscape character?*" the answer was again "*no*". Attached to this document is an aerial photograph (which predates the site as it is now) of the applicant's site. It clearly demonstrates that the application is again wrong.

Still on page 6 the applications moves onto "*Biodiversity and Geological Conservation*". The questions "*is there a reasonable likelihood of the following being affected adversely or conserved and enhanced within the application site, or on land adjacent to or near the application site?*"



- ☐ Protected and priority species - **NO**
- ☐ Designated sites, important habitats or other biodiversity features - **NO**
- ☐ Features of geological conservation importance - **NO**

BFPC notes that no further information has been made with this application. The original and authorised use for this land was agricultural use/yard.

The landowner decided to change the use unilaterally and to allow the site to be utilised by a drainage specialist company and their vehicles and also those of DMY Ltd a builders supplies company.

This development will seriously affect our biodiversity and contribute to the village's carbon footprint through additional motor vehicles and non-sustainable or renewable energy.

The very real possibility of oil, diesel, petrol and other noxious liquids leaking onto agricultural land has been completely and conveniently ignored. This is another example of not accurately answering questions and being very lackadaisical with such important issues.

Page 7 then discusses "*Foul Sewage*" and the question "*please state how foul sewage is to be disposed of*" is answered with "*unknown*". The question "are you proposing to connect to the existing drainage system?" is also answered with "*unknown*". As the landowner and or his agent have a responsibility for their land, how can it be conceivable that they answer the questions as being "unknown"?

A number of employees would be on site at any one time. Indeed this latest application claims that there would be 6 employees on the site. We feel that there must be some system in place for toilet facilities and also for the drainage of liquid waste produced during the normal course of business.

The next part of the application asks in connection with Waste Storage and Collection "*do the plans incorporate areas to store and aid the collection of waste?*" And "*have arrangements been made for the separate storage and collection of recyclable waste?*" Both questions are answered with "*no*".

The final part of this aspect of the application deals with *Trade Effluent* and asks, "*does the proposal involve the need to dispose of trade effluents or trade waste?*" answered by "*no*" although the drainage vehicles would contain liquid. BFPC believe that the answers to these aspects are simply not good enough and in 2022 are completely unacceptable.

Contaminated land arose as a result of historic industrial activities and waste disposal practices. In the past, legal controls and standards within industry were not as high as they are today. This has resulted in polluted ground.

There are some pollutants that are naturally occurring. These are also considered under legislation.

Contaminating substances include organic compounds, such as oils, petrol, and diesel.

The landowner is responsible for determining whether land is suitable for a particular development or can be made so by remedial action.

In particular, the owner is responsible for:

- Determining whether the land in question is already affected by contamination;
- Whether the development proposed will increase the potential for contamination on that site

or elsewhere; and

- Satisfying the Local Planning Authority that any contamination can be successfully remediated with the minimum adverse environmental effect to ensure the safe development and secure occupancy of any site.

Moving onto page 8 the question posed on the application in connection with residential units was “*does your proposal include the gain, loss or change of use of residential units?*” and the answer was “*no*”.

On examination of the site plan, BFPC noted that the residence known as Hazelmere, Botus Fleming, PL12 6NH, conveniently does not appear on any of the applicants’ documentation.

BFPC has attached a location plan (below) that demonstrates how close the premises are to the applicant’s site. The occupants have already suffered from the stress and noise caused by the site and it has all but destroyed their quality of life.



**VIEW FROM HAZELMERE, BOTUS FLEMING & OF WITHIN THE TAMAR VALLEY AREA OF OUTSTANDING NATIONAL BEAUTY**



BFPC does not wish to repeat itself, but believe that the responses are unacceptable.

In our opinion the planning application is poorly completed and peppered with serious inaccuracies throughout. BFPC believes that it demonstrates a degree of disdain for our residents, the Parish Council and Cornwall Council.

It should always be borne in mind that any person who makes a false or misleading statement in connection with a planning application, knowing that it was or might be untrue or misleading, with the intent to make a gain for himself could incur serious penalties.

## DMY LIMITED



BFPC's position is that this was and continues to be a deliberate and flagrant abuse of planning regulations.

The Supporting Information a Management Plan from Kivells Ltd states that "*DMY Limited comprises a local established building supply business (see [www.dmylimited.co.uk](http://www.dmylimited.co.uk)) trading for in excess of 30 years, supplying a wide range of building materials shown in full on the website*".

DMY Limited is **not** local, but is registered in Plymouth.

DMY Limited has **not** operated for 30 years. The company was incorporated on 29<sup>th</sup> March 2022.

DMY Limited (Company No. 14009578) was incorporated on 29<sup>th</sup> March 2022.

The registered address for the company is 33 Kings Road, Higher St. Budeaux, Plymouth, PL5 2PE.

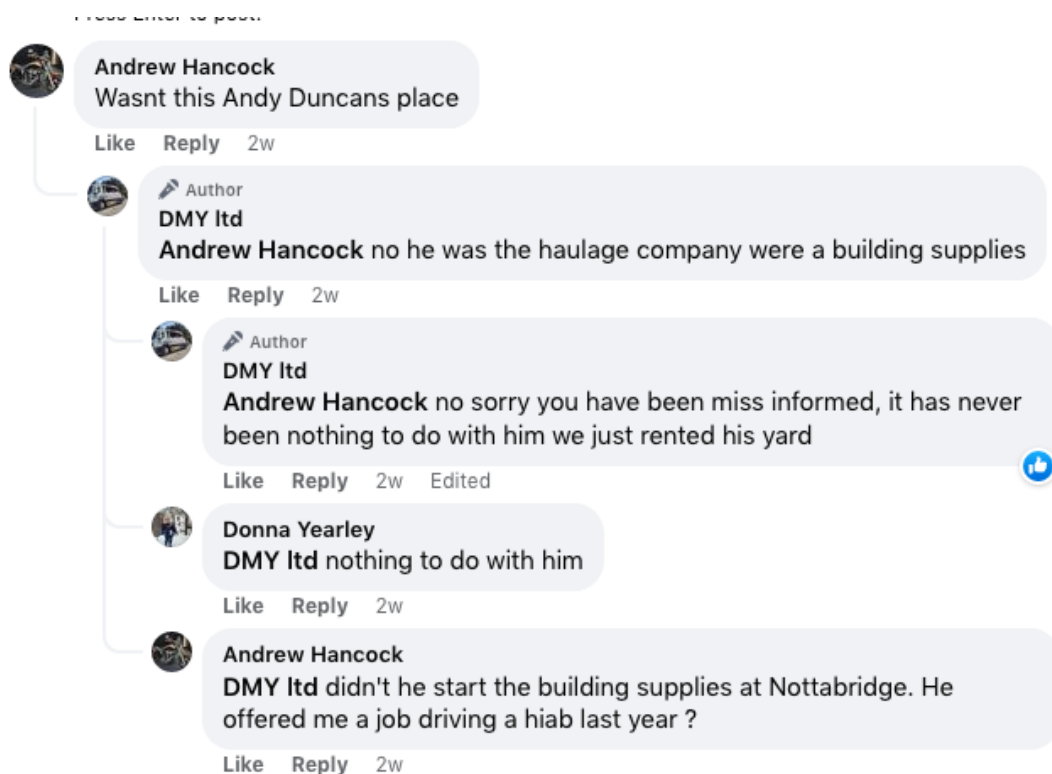
DMY Ltd had 2 directors when it was incorporated; Mrs Donna Michelle YEARLY and Mr Mark Adrian YEARLY. On 8<sup>th</sup> November 2022 it was confirmed that Mr Mark YEARLY had resigned as a director of DMY Ltd.

Mr YEARLY is also a director of DUNCHAUL BUILDING SUPPLIES LIMITED (DBS LTD) – Company No. 12795010 and was appointed on 5<sup>th</sup> August 2020.

Another director of DBS Ltd was Mr Andrew Ian DUNCAN.

Mr DUNCAN resigned from DBS Ltd on the same day as Mr YEARLY was appointed (5<sup>th</sup> August 2020).

Below is an excerpt from a conversation on 24<sup>th</sup> October 2022 from DMY Ltd's Facebook page concerning Mr DUNCAN's connections with DMY Ltd.



There is no trace at Companies House of DMY Building Supplies.

It could be that the denials of a connection (see above) with Mr DUNCAN and DUNCHAUL BUILDING SUPPLIES LIMITED (DBS LTD) are because of the following:

### ***Hefty Fines for Illegal Dumping of 66,000 tonnes of Waste in Cornwall – 20<sup>th</sup> November 2015***

*An investigation by the Environment Agency that uncovered the illegal dumping of some 60,000 tonnes of waste in Cornwall has led to heavy fines for three of the men involved.*

*The agency explained that farmers David Stroud and Darren Pearce and waste haulier, **Andrew Duncan**, who runs haulage company Dunchaul Limited, were caught following a detailed investigation by the Environment Agency that revealed how they had deposited tonnes of demolition and construction waste in the Cornish countryside.*



Truro Crown Court heard that as an experienced haulier, **Duncan** would have been well aware that anyone depositing waste on land needs to do so with the permission of the Environment Agency and comply with the conditions of an authorisation.

Further, the agency noted that when waste is transferred, there is a legal requirement that it is accompanied by Waste Transfer Notes and that these are correctly completed, distributed and retained by all the parties involved.

The court was told that between June 2010 and September 2012, Stroud and Pearce were involved in the tipping of construction, demolition waste and soil at two different farms near Callington in Cornwall, operated by the two men. They are said to have been known locally as “Dunchaul’s tips”.

A total of nearly 66,000 tonnes of waste was deposited between the two farms, while each was only eligible for 1000 tonnes of sub-soil and 5000 tonnes of concrete, rubble and bricks.

The waste deposited by Dunchaul Ltd was sub-soil from development sites; therefore the 1000 tonne limit applies.

At Axford Farm, one of the fields was said to have had poor drainage and Stroud wanted to raise the level of the field to improve it. The building of a new Tesco store nearby produced a large quantity of excavation spoil and this was used for the project from June 2010.

However, the court heard there was no construction project, as a land-raising activity is not classified as ‘construction’ and the tonnage deposited was way in excess of the prescribed limit of 1000 tonnes. Some of the waste tipped on the raised field slipped into a nearby stream.

Dunchaul tipped at Axford farm for a year and when that had finished made arrangements with Pearce and started tipping on his Lower Trebrow farm to help with building farm tracks to connect one part of his farm with another across a deep and wooded valley.

However, the Environment Agency said that no planning permission was applied for in respect of this work.

Between July 2011 and September 2012, the agency said that 37,219 tonnes of waste were deposited. But according to Waste Transfer Notes supplied by Dunchaul, only 20,565 tonnes were delivered.

The discrepancy between Dunchaul’s records and those of the other parties were said to be clear evidence of a breach of the duty to accurately complete, provide and retain waste transfer notes.

Judge Carr said legislation was there to ensure waste was deposited in proper landfill sites but this case was “a long term avoidance of rules and regulations”.

The court found that substantial amounts of waste went to two farms, which were paid to receive the waste. This was said to have obviously done to increase the profitability of the company over a significant period of time and was well organised.

Darren Pearce was earlier fined £7500, and ordered to pay £7500 costs for operating a regulated facility without a permit. He was also ordered to make a Proceeds of Crime payment of £59,500.

Stroud was fined £5000 for also operating a facility without a permit, with £5000 costs and a £30,000 payment under Proceeds of Crime legislation.

*Dunchaul Limited and **Andrew Duncan** were fined £30,000, with costs of £20,000 for failing to comply with a duty of care in respect of waste transfer notes, depositing waste without a permit and permitting the depositing of controlled waste without a permit. Under Proceeds of Crime, **Duncan** and his company were ordered to pay £100,000.*

*Judge Carr added that the only purpose for **Duncan** was for financial gain through winning contracts by undercutting legitimate hauliers. He wanted the fines to reflect there is no profitability in illegal activity.*

*Sophie Unsworth for the Environment Agency said: “Waste crime can cause serious pollution to the environment, put communities at risk and undermines legitimate business and the investment and economic growth that goes with it.*

*“We take tough action against poor performing companies and those who commit waste crime.”*

The Supporting Information a Management Plan from Kivells Ltd states then continues “*for the avoidance of doubt, there are no operations conducted on the site during the working day, which would generate noise, therefore there is no requirement for a management plan to mitigate against any noise issues*”. This is completely untrue and doesn’t make sense. This does not qualify as an “avoidance of doubt” or an attempt to dismiss out of hand, the requirement for a genuine management plan to mitigate any noise issues.

The noise levels for our residents are very apparent. The noise and disturbance resulting in the current use falls outside of the original planning and is a significant and negative effect on this once quiet rural village.

*A resident close to the site has stated, “I strongly object to this application. I feel this site is totally unsuitable for this sort of use. At present the business causes noise when lorries are unloading building materials from early in the morning till late in the day. Other vehicles and machinery on site are going to generate noise when loading materials. In dry weather it is likely to cause serious problems with dust being blown down into my property as has happened previously. I feel traffic in and out of the entrance is a hazard, with it being close to a very sharp blind bend. The site is an absolute eyesore, and is not in keeping with our lovely rural environment. The site is totally detrimental to natural habitation and wild life. I believe this sort of business should be situated on an industrial estate away from any residential homes”.*

The principles and ethics of ignoring planning controls are also an important part of this application. The landowner decided to change the use unilaterally and to allow the site to be utilised in contravention of the regulations. This we believe demonstrates contempt for the rules and also shows that the future uses for this site could prove to be even more of a nuisance for our residents.

The parish of Botus Fleming is defined by its rural location, by the 2 distinctive villages of Botus Fleming and Hatt and the east west division by the A388. Botus Fleming will be defined by its quiet, rural nature by protecting the distinct character of both our villages by maintaining our rustic boundary, by preserving our countryside, and protecting our fauna and flora for recreation and community wellbeing. It obtains its character from its agricultural setting, its abundance of trees and Cornish hedges, and its sense of isolation from other settlements.

Very little of the 360-degree skyline shows any sign of development, adding to the sense of remoteness. The landscape also reveals the history of the parish with its ancient buildings and structures, its fields, and narrow lanes connecting it to the quay at Moditonham.

This poorly compiled application does nothing to instil any confidence in the planning system for our residents or the Parish Council. As previously highlighted, it is peppered with serious inaccuracies throughout.



**POLICY 2 – “RESPECTING & ENHANCING QUALITY OF PLACE”**

**VIEW FROM ROAD INTO BOTUS FLEMING & TAMAR VALLEY AREA OF  
OUTSTANDING NATIONAL BEAUTY & DMY LTD AND BUILDING  
SUPPLIES YARD**



**POLICY 2 – “RESPECTING & ENHANCING QUALITY OF PLACE”**

**VIEW FROM A388 HATT ROUNDABOUT & ENTRANCE TO BOTUS FLEMING &  
TAMAR VALLEY AREA OF OUTSTANDING NATIONAL BEAUTY**

**CONCLUSION**



In summary, this application does not reflect the stated wishes of the local population or those that represent them. It is our contention that this is merely a deliberate and flagrant abuse of planning regulations and makes a mockery of Cornwall Council's Enforcement Policy. The application purports that there is a history of business operating from the site but this is simply not true. The applicant has decided to utilise the land in any way that fits purely for a financial gain. We believe that if the landowner lived in the parish we would have hoped that their understanding of the love its residents have for the character of their village would have prevented them even considering such a change of use so totally at odds with the character of the village.

**The site is unsuitable for the following reasons -**

1. It adjacent to the Tamar Valley Area of outstanding Natural Beauty.
2. It is a blot on the entrance to our village and is totally inappropriate.
3. The entrance is in close proximity to a blind bend and is very dangerous and is likely to result in an accident. HGVs come and go on a frequent basis. The site is on the route that very young children are expected to walk to and return from Landulph School.
4. DMY Ltd is utilising the site for storage and retail, which requires further permission.
5. DMY Ltd has erected an advertising hoarding without authority facing the Hatt roundabout and signage on the entrance gates. This is also dangerous to motorists who try to read it.
6. The site is fitted with floodlights and CCTV, which is wholly inappropriate for our village.
7. There is a risk of environmental pollution from chemicals seeping into the ground and water table.
8. There are far more suitable sites on industrial sites locally than placing these in a rural village.

The entire parish either lies within the TVAONB or forms it's setting. The TVAONB designation provides a high level of protection to our precious natural environment.

BFPC believes that the ramifications of permitting this application are far reaching. The location of the site is at the start of one of the principal roads that leads into the Tamar Valley Area of Outstanding Natural Beauty (TVAONB). Not tackling these breaches will cause an unacceptable impact on the area.

There are numerous opportunities for utilising industrial sites at both Saltash and Carkeel rather than at the approach to the TVANOB. Should this application be approved, the first thing the unsuspecting visitor in search of natural beauty would be a yard full of building supplies and associated vehicles.

**6.6. Botus Fleming Parish 2030 - Vision statement**

The Parish of Botus Fleming will be defined by its quiet, rural nature by protecting the distinct character of both our villages by maintaining our rustic boundary, by preserving our countryside, and protecting our fauna and flora for recreation and community wellbeing.

### 7.2.2. Policy LS1: Landscape Character Policy wording

Where development is proposed that will detract from, or have an adverse impact on, important characteristics identified in the Botus Fleming Landscape Character Assessment (BFLCA), and appropriate landscaping fails to provide appropriate mitigation, such development shall be refused.

The revised [National Planning Policy Framework](#) (NPPF) sets out the government's planning policies for England and how these are to be applied. The revised NPPF through paragraph 176 reaffirms that “***Great weight should be given to conserving and enhancing landscape and scenic beauty***” in AONBs and that designation has “**the highest status of protection in relation to these issues**”.

It is important to remember that the non-designated landscape that surrounds the AONB can still be vitally important and contribute to the quality and perception of the designated landscape (<https://www.tamarvalley.org.uk/care/planning/>)

On Tuesday 10<sup>th</sup> January 2023 at an Extraordinary Public Meeting it was unanimously voted that Botus Fleming Parish Council did not support this application.

BFPC believes that the application should be refused and Cornwall Council Enforcement should force a cessation of the current site activities immediately.

Botus Fleming Parish Council

Wednesday 11<sup>th</sup> January 2023