

44/14/0010

MRS J COATE

**CHANGE OF USE OF LAND AND ERECTION OF DOG BREEDING KENNELS AT BEACON LANE FARM, VOXMOOR, WELLINGTON (RETENTION OF WORKS ALREADY UNDERTAKEN)**

Location: BEACON LANE FARM, FOXMOOR ROAD, WELLINGTON, TA21  
9NX

Grid Reference: 314070.11764

Retention of Building/Works etc.

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**RECOMMENDATION AND REASON(S)**

Recommended Decision: Temporary Approval

**RECOMMENDED CONDITION(S) (if applicable)**

1. The use of land and buildings hereby permitted shall be discontinued and the land restored to its former condition on or before 31 January 2017 in accordance with a scheme of work that shall be submitted to and approved by the Local Planning Authority prior to those approved works being carried out.

Reason: To allow the Local Planning Authority to reassess the impact of the use and development upon the Blackdown Hills AONB and local residential amenity within an appropriate time frame.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

(A4) Location Plan  
(A4) DrNo EC Elevations  
(A4) DrNo EB1 Elevations  
(A4) DrNo EA1 Elevations  
(A4) DrNo 201/B1 Site Plan

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

3.
  - (i) Within 1 month of the date of the Decision Notice, a landscaping scheme, which shall include details of the species, siting and numbers to be planted, shall be submitted to and approved in writing by the Local Planning Authority.
  - (ii) The scheme shall be completely carried out within the first available planting season from the date of the landscaping scheme being approved, or as otherwise extended with the agreement in writing of the Local Planning Authority.
  - (iii) For a period of five years after the completion of each landscaping scheme, the trees and shrubs shall be protected and maintained in a healthy weed free condition and any trees or shrubs that cease to grow

shall be replaced by trees or shrubs of similar size and species, or the appropriate trees or shrubs as may be approved in writing by the Local Planning Authority.

Reason: To ensure that the proposed development does not harm the character and appearance of the Blackdown Hills AONB in accordance with Policies DM1 and CP8 of the Taunton Deane Core Strategy.

4. Unless within 1 month of the date of this decision schemes for:
- The new boundary fencing to be erected between Range C of the adjoining live-work unit and the east elevations of Unit Type C.
  - Means of enclosing window and door openings to runs of Unit Types A and B

are submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 1 month of the local planning authority's approval, the use of the site shall cease until such time as a scheme is approved and implemented.

Reason: To ensure that the proposed development is fully enclosed in order to prevent potential sources of nuisance and disturbance to dogs within the site, to the benefit of the Blackdown Hills AONB and local residents.

5. If no scheme in accordance with condition 4 above is approved within 3 months of the date of this decision, the use of the site shall cease until such time as a scheme approved by the local planning authority is implemented.

Reason: To ensure that the proposed development is fully enclosed in order to prevent potential sources of nuisance and disturbance to dogs within the site, to the benefit of the Blackdown Hills AONB and local residents.

6. There shall be no external access to the training areas for dogs housed within Kennel Type C between 20:00 hours and 07:00 hours the following day.

Reason: To reduce any potential noise and disturbance within the area, to the benefit of the Blackdown Hills AONB and residential amenity within the area.

7. No more than 30 breeding bitches shall be kept on the site at any given time.

Reason: The current size of the business has been shown not to have an adverse impact upon the amenity of the area and it is necessary to prevent its increase.

Notes to Applicant

## **PROPOSAL**

The application seeks planning permission for the erection of 7 timber kennel structures and associated training/yard areas and boundary fencing in order to house approximately 50 dogs. Unit C will be altered, increasing the degree of timber

cladding and fully enclosing openings. The smaller six units will be aligned so that openings face West onto the larger building and enclosed training area. The kennel units are generally of timber boarding with a combination of perspex and metal wire to window and door openings. Dogs are trained, or allowed free time within the specified areas for 3 hours per day, split evenly into one morning and one afternoon session.

The kennel buildings were located to this site on 28 March 2014 following enforcement action at an alternative location. The unauthorised development, subject to this application, is subject to an enforcement notice, to which an appeal is currently ongoing, although a postponement has been agreed in order for this application to be determined by the Council.

## **SITE DESCRIPTION AND HISTORY**

Beacon Lane Farm is in an isolated site approximately 2 miles from the centre of Wellington. The site is set within a remote rural area within the Blackdown Hills Area of Outstanding Natural Beauty (AONB) and approximately 525 metres Northeast of Wellington Monument, a Scheduled Ancient Monument.

The site is accessed from junction from an unclassified road by way of a single track access way approximately 560 metres in length. The track has recently been upgraded with stone scalping's. This access track also forms a Public Right of Way (WG13/23), which follows the line of the track from the highway through a small wooded area to the complex of barns. These are in an elevated position within the local landscape. The site is surrounded by a collection of mature trees and native species hedgerows to the north and west.

Planning permission was granted in January 2012 for the change of use of land and conversion of redundant agricultural buildings to form a dog breeding enterprise with ancillary residential space. Work on converting the barn to residential accommodation has been completed but the outbuildings planned to be used in connection with the dog breeding business has yet to be commenced.

A previous site to the South has been used for housing dogs. The use had no planning permission and therefore Members authorised the serving of an Enforcement Notice to cease the use of land for the stationing of timber structures to house dogs. A planning appeal was dismissed and the notice was not complied with within the time so Prosecution action was taken against the owner of the land. Subsequently the structures were relocated on a small area of land to the north of the converted barn but outside of the area originally granted Planning permission for the Live/work proposal.

In terms of planning history, the following applications relate to the site:

- 44/88/0017 - Conversion of agricultural barns to dwelling - refused 01/1989
- 44/09/0014 - Demolition of barns and provision of new agricultural building - permitted 12/2009
- 44/11/0011 - Conversion of barns to live /work unit - refused 09/11
- 44/11/0020 - Conversion of barns to form a dog breeding enterprise and formation of residential space - permitted 01/12

44/14/0001 - Change of use of land and siting of dog kennels to the South of Beacon Lane Farm - Refused and appeal dismissed.

## **CONSULTATION AND REPRESENTATION RESPONSES**

### **Consultees**

*WELLINGTON WITHOUT PARISH COUNCIL* - From the beginning of this case the Council have been opposed to the development and the ever increasing noise nuisance and encroachment outside the development area and the erection of Wooden structures to house dogs. The case through all its phases has been closely monitored by the Council and has appeared on the Formal Minutes of their monthly meetings.

In conclusion the unauthorised development have been a blight on the surrounding areas and has caused distress to near neighbours and been the constant source of much correspondence from the many walkers and ramblers who use this vital footpath which leads to a National Monument.

Therefore the Council most **STRONGLY OBJECTS** to this development and wish its removal as soon as legally possible.

*LANDSCAPE* - Subject to landscaping details the proposals are acceptable.

*ENVIRONMENTAL PROTECTION CONTAMINATED LAND* - Thank you for consulting on the above application. Some information regarding noise has been submitted with the application "Environment Noise Assessment, 30<sup>th</sup> July 2014, Acoustic Associates South West Ltd". Noise is also mentioned in the Design and Access Statement, June 2014, which was provided with the application.

The Noise Assessment includes details of a site visit by the consultant and also noise modelling to predict levels of noise at nearby premises. When the consultant visited the site it was noted that the dogs did bark when fed in the morning and when visitors arrive on site but that it was not prolonged. Noise monitoring was carried out outside the nearest residential properties (Gidlands Cottage and Dowland's Farm). At the time of the visit the consultant could not hear the dogs barking at these properties (the kennels were telephoned to check that the dogs were barking). Noise measurements were taken but these did not measure any noise levels from the dog barking.

Noise modelling was carried out to estimate the level of noise from the dog barking at nearby premises. The modelling estimated that the maximum noise levels (L<sub>Amax</sub>) would be 30dB or below and the L<sub>Aeq</sub> would be 8dB lower. The predicted levels were compared to noise criteria, although the report does acknowledge that there are no specific criteria for noise from dog barking. The predicted noise levels were estimated to be below the criteria that were used (comparing noise levels to background levels, and comparing to guidance from the World Health Organisation).

The Assessment concludes that the kennels in their current location do not present

any significant noise impact.

The Design and Access Statement includes a section on noise. This states that the noise can be controlled by fully enclosing the main kennel building where exercise will be taken twice a day (for 1.5 hours in the morning and 1.5 hours in the evening). The whelping (type A) kennels face the fence of the main kennel to act as a noise barrier, and the training area is enclosed by a 2m high cedar fence to act as a sound barrier

### Comment

On 21<sup>st</sup> August I visited Beacon Lane kennels with a Planning Officer. There was no noise audible on approaching the property, when we walked into the courtyard some of the dogs in the old farm buildings did bark. We met Mrs Coate and then walked to the whelping kennels and the dogs in there did bark when we were by the kennels. We then went into the gate to the main kennel area and the dogs ran out into the training area and barked loudly; when we left the kennel area the barking eased off. I went down the hill to the lane by Dowland's Farm. Mrs Coates and my colleague stayed at the kennels and went into the kennel areas again to get the dogs to bark. While I was stood by Dowlands the main noise was from the motorway. There was a slight breeze which did cause some noise from the nearby trees. I did hear some dog barking for about 30 seconds, however, it was not loud and I did not try to measure the level as it was close to background levels (and noise from the trees would interfere with any measurements). I walked east along the lane to the houses in Voxmoor. During this time I heard one more, brief bit of noise that could have been dog barking.

The Environment Noise Assessment is an attempt to try and objectively measure and assess the noise from the kennels. As the kennels are already in place it should be possible to measure the noise, and also to give a subjective assessment rather than rely on predictions. However, at the time of the visit the noise was not audible (or measureable) at the nearest properties. As the level of noise from the kennels could vary, as will the background noise levels it is likely that there will be times when the noise from the dog barking will not be audible. When I visited the site (see below) the noise was audible but not very loud. The noise modelling was another way to try and objectively assess the noise. The modelling is acceptable; however, as the report confirms, there are no suitable criteria for assessing noise from dog barking.

The Design and Access Statement does say that the main kennel is enclosed and training area is fenced to provide a sound barrier. When I visited I could see that the main kennel was enclosed, although as it is a wooden structure with windows it will not be particularly soundproof. The fence may provide some screening but noise will get round/over a barrier. The whelping kennels have an enclosed indoor area but are mainly open, I did note that they were adjacent to the footpath that runs east from the main track, although I was told that this path was rarely used and it would be possible to extend the fencing along this boundary.

I note that the previous application for kennels in a field to the south of the farm buildings also had a Design and Access Statement that mentioned noise. Regarding the location of the kennels it says that if the kennelling and training areas were to be near the curtilage of the residential element

- “inevitable and constant disturbance by day to day activities, deliveries, post, customer arrivals/collections would cause an almost constant noise issue for neighbouring residents”
- “the footpath would be very much closer causing increased reaction disturbance”.
- “it will have a severe and detrimental impact on the selling environment to prospective new puppy owners due to the disturbance resulting in over bearing noise level”

It gives this as a reason to locate the kennels in the field to the south rather than by the old farm buildings.

A noise study was also provided with the application in 2011 for the kennels to be sited inside the old farm buildings (rather than in outdoor kennels). This stated that the proposed kennels will be inside, discharging any possibility of distraction barking and that any barking will be largely protected by the envelope of the building. It concludes that for the infrequent walker along the footpath it would be

- “impossible for them to cause disturbance to the dogs housed within the converted barns in a controlled environment” and that
- “any infrequent barking noise will be largely protected within the envelope”.

The problem with assessing noise from dog barking is that it is not consistent in either noise level, time of day, the length of time of frequency that it occurs. The noise is more likely to be audible at nearby premises when the background noise level drops, for example, when the motorway noise decreases at night. However, it is not clear how often or for how long any barking happens at these times. This is shown by the fact that the noise consultant did not hear the noise; I heard some barking that was not very loud and nearby resident have said they are disturbed by noise at different times of day

From a purely acoustic point of view it would make sense to have the kennels and runs constructed as well as possible to contain any noise. This is likely to be more achievable in the old farm buildings than wooden structures on. Whether or not this would lead to the dogs generating more noise due to being disturbed is not something I could comment on, as it's not an acoustic issue. The conflicting statements in the 2011 Noise Study and the 2013 Design and Access Statement and current information do not help to clarify the situation.

I am aware that there have been dog kennels on the site for a couple of years. In July 2012 Taunton Deane Council's Environmental Health section received complaints about noise from dog barking at the kennels. These are being investigated however, there has not been enough evidence to show that the noise is severe or persistent enough to serve a noise abatement notice. If complaints continue to be received they will be investigated further.

SCC - TRANSPORT DEVELOPMENT GROUP - Refer to standing advice.

- Standard visibility splays required;
- On site parking and turning clear of highway.

BLACKDOWN HILLS AONB SERVICE - As you know, the primary purpose of the

AONB designation is to conserve and enhance natural beauty, and national planning guidance advises that great weight should be given to conserving their landscape and scenic beauty. The AONB Partnership supports its local planning authorities in the application of their development management policy framework in this regard. You will also be aware from previous representations that the AONB Partnership believes that any development proposal in an isolated and remote location requires very careful consideration as to necessity and potential impact on the character of the setting, in order to conserve and enhance the natural beauty of the area.

From the outset we were of the view that this is fundamentally an inappropriate location for residential or business development. A situation has been allowed to develop that should never have been accepted in the first place. Nevertheless the barn conversion was permitted on the basis of accommodating a specified, viable dog breeding enterprise within the buildings. This application gives no indication of whether the original permission has been, or will be, implemented. A key factor was that disturbance to dogs would be minimised and noise from barking, etc. controlled by the dogs being inside the converted barn buildings. The application provides no indication as to how many of the 50 breeding dogs that 'have to be catered for' and their puppies will be accommodated in the outdoor sheds.

There is therefore real concern that the sight and sound of this kennel complex is not compatible with quiet enjoyment of the AONB, particularly those visiting Wellington Monument, the nearby Somerset Wildlife Trust reserve, and using the nearby public rights of way. The AONB management plan encourages quiet enjoyment of the AONB, and supports the restriction of developments and activities that detract from the tranquillity of the Blackdown Hills – one of the AONB's special qualities. The kennels, fencing and training area are to the detriment of the barns (supposedly an important heritage asset) and the rural surroundings, altering the character of the area and introducing an intensive commercial activity into a remote rural location.

## **Representations**

6 letters of OBJECTION to original submission raising the following planning related comments:

- The proposals are now closer to local properties; further from any sound barrier which may have helped attenuate some of the noise in the past;
- The kennels are erected closer to public footpaths; walkers day and night will disturb the dogs increasing frequency of noise outbursts;
- There will be a general deterioration in the present unacceptable situation;
- Experience sleep disturbance caused by noise from the kennels and dogs at night; the proposals will make matters worse;
- Barking at night requires us to keep windows closed when would prefer them to be open;
- Applicant has not complied with previous permission;
- Attempting to operate the business in the external area will cause dog noise pollution to a sensitive area;
- Are the dogs secure? Dogs have been seen in our garden;

1 letter received following re-consultation in receipt of Noise Survey, raising the following comments:

- Assessment commissioned by site owners - can it be seen to be independent?
- Can noise levels measured on a single day, given the enormous variation in conditions that effect the site, be of significant value?
- Would the involvement of the applicant making the dogs bark and being involved with assessment be reasonably accepted?
- Were the number of dogs counted on the day and if so by whom?
- Unscientific statement of small dogs having small bark. Who defines small dog? Does small bark mean quiet bark relative to a large dogs barks? The barking is collective; how many dogs barked at one?
- Dog barking appears to be greater at night or early hours of the morning, presumerably because ambient noise levels are much lower. Therefore noise to neighbours is perceived to be greater at night. Was this covered by the assessment?
- Would a neighbour suffering stress and ill health due to the impact have recourse under Section 3 (1) of the Health and Safety at Work Act 1974?

## **PLANNING POLICIES**

EN21 - TDBCLP - Nationally Important Arc Remains (HISTORIC),  
EN10 - TDBCLP - Areas of Outstanding Natural Beauty,  
ROW - Rights of Way,  
EN22 - TDBCLP Dev Affecting Sites of County Archaeological Importce,  
EN12 - TDBCLP - Landscape Character Areas,

## **DETERMINING ISSUES AND CONSIDERATIONS**

Permission was originally granted for a dog breeding enterprise within converted buildings at Beacon Lane Farm as part of a permission for a live-work unit. The original conversion works for the business element have still not taken place, but since moving the dogs to the site, the number of dogs has increased. The occupiers of the site have stated that due to an increase in the number of breeding bitches being kept at the business premises it has become necessary to find additional accommodation to house the dogs until the dog breeding element is fully functional.

The main issues to consider are the effect of the proposed development on the character and appearance of the area, given the sites location in the Blackdown Hills Area of Outstanding Natural Beauty (AONB) and the perceived impact upon nearby residential amenity, having specific regard to potential noise and disturbance.

### Impact upon Blackdown Hills AONB

Para 115 of the national Planning Policy Framework (NPPF) states that "great weight should be given to conserving landscape and scenic beauty...Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to



landscape and scenic beauty." Such an approach is also taken within Core Strategy Policies DM1, DM2 and CP8 which aim to protect the appearance and character of landscapes from harmful development and to protect, conserve or enhance the interests of landscape character and natural assets.

The previous enforcement notice, which related to the erection of these structures and breeding of dogs on land to the South has now been complied with. However, in complying with the Enforcement Notice and in order to avoid impending prosecution, the structures and dogs were relocated to the North of buildings at Beacon Lane Farm, again without first seeking planning permission. The Blackdown Hills AONB Service have again objected to the development virtue of its adverse impact upon the peace and tranquillity currently enjoyed within the area.

The structures are now located within close proximity to one another and are largely enclosed by timber fencing. In this location the buildings are no less visible within the wider landscape, however at present they can be more readily seen from the public footpath to the West, as boundary walls to the live-work unit have yet to be constructed. Visually however, the structures and fencing relate better to the existing buildings at Beacon Lane Farm, and they no longer form a stand alone development within the Blackdown Hills AONB. The Council's Landscape Officer has not objected to the proposals and is satisfied that additional landscaping can and should be secured by condition. Whilst the building will be visible from the public footpath, it is obscured by hedgerow and tree planting to the North and by stone walls and timber gates to the West. The relationship with existing buildings is appropriate and as a consequence of these matters the proposals will not adversely impact upon the scenic beauty of the AONB.

Notwithstanding the visual impact of the proposed development, concerns have previously led to the refusal of planning permission virtue of noise and disturbance from the use of the buildings for kennelling and the impact of this noise upon the peace and tranquillity enjoyed within the AONB. At the previous site, the Planning Inspector found the open nature of the kennelling and the potential for disturbance and noise within the AONB to be detrimental to the setting, peace and tranquillity of the AONB. Such would adversely affect the enjoyment of the area by the public.

A noise assessment and report has been compiled on behalf of the applicant, however this is most useful for informing the impact of the use upon residential amenity. The impact of noise and barking upon the peace and tranquillity of the AONB is a more subjective one. The buildings have been relocated to be sited immediately north of the principle farm buildings and residential accommodation that forms the original live-work unit, restricted to be used as a dog breeding premises.

The kennels are now generally well enclosed by 2.0m timber board fencing to the North and stone walling and access gates to the West. The boundary treatments, together with the orientation of the dog kennels in relation to publicly accessible land, will reduce the likelihood of the dogs being disturbed and thus the occurrence of barking. The site has been visited more than six times since the receipt of this application; on these visits the site has been accessed on foot along the length of Beacon Lane from the public highway and direct access into the site by motor vehicle. The footpaths that runs over land to the North and West have also been walked on numerous occasions. The primary aim of varying movement was to assess whether human activity within close proximity of the kennel buildings can be

detected by the dogs within their enclosures, and if so, whether detection results in significant level of barking from the dogs as a pack.

The results of the above assessment have indicated that only a small number of dogs bark upon entering the site in a motor vehicle; driving up to the site and parking outside did not result in barking nor did walking of the footpaths or entering the site on foot. Very little barking was experienced; the breeding bitches within the smaller 6 kennels did not bark upon approach, presumably as they were either in gestation or with pup. There is no doubt that accessing the larger kennel building and training area does result in barking and this was experienced first hand when the site was visited with the Environmental Health Officer to assess the noise issue in person.

There is no doubt that the level of barking in the new location is significantly lower in level than that experienced when the kennels and dogs were kept in the open on the land to the South of the farm. It is considered that the kennelling is more manageable in this location and its level of enclosure and layout provides significantly less potential for dog barking to be triggered in a pack like behaviour. Additional fencing will be required to the East in order to prevent access from the adjoining field by animals and the public who may wander off the public footpath, however such can be secured by condition. On the basis of on-site observations, the proposed development is no longer considered to result in an unacceptable impact upon the peace, tranquillity and general enjoyment of the Blackdown Hills AONB.

#### Impact upon amenity of local residents

It is well documented within previous planning application and enforcement reports for this site that local residents object to the breeding of dogs and their kennelling due to the level of noise produced and the subsequent impact of the noise upon local amenity. As with previous submissions, the representations received make it clear that the barking of dogs can be heard at nearby residential properties. Having been to site on a number of occasions and at varying times of the day, noise has been observed in the area from nearby properties. During the day it is clear that the degree of background noise from the nearby motorway and in general from the movement of air and fauna within the area which itself generates noise, the occasional barking of dogs from the site is barely detectable from nearby properties in the area. This conclusion was also reached when the site was visited with the Environmental Health Officer; at that time the Officer observed noise from the highway and Downlands Farm to the North; the dogs were triggered to bark deliberately by the applicant and Case Officer. The Environmental Health Officer has confirmed that the barking could be heard for 30 seconds but was not loud and that otherwise only one bark was heard.

My concern previously was that dogs will be disturbed day and night by human and wildlife interaction and that this would potentially result in an unacceptable level of noise and nuisance to residents within the area. The applicant has commissioned a Noise Assessment and report upon request of the Council. Physical monitoring of noise was undertaken for a limited time on one day. Whilst this is a very narrow window of assessment across the year, the findings were consistent with my general day time experience on the site and its surroundings being that the disturbance from any barking at a distance that local properties are found is low and certainly not loud during the day time.

From discussions with Environmental health it is my understanding that complaints over the dog barking have ceased and no report has been received by the Council since the kennels and compounds were moved to their new position. It has to be accepted that dogs will bark, possibly at night, at that the level of noise produced will be louder at nearby residences than the 30dB level that registered when the acoustic survey of the area was undertaken.

In light of the Noise Assessment and its findings, which generally support the Officer findings from visits to the site and area, it can be concluded the new location, siting and means of enclosure have led to an improvement in the noise produced from the keeping of dogs at the level that is now ongoing. The impact upon neighbours would be further reduced by properly enclosing the yard area to the East with additional fencing and this can be secured by a condition. Whilst there may be dog barking on occasions at night it is unlikely to be at a level or frequency that was likely to occur at the previously unattended and unenclosed site that could be more readily disturbed by passers by and wild fauna. In addition to this, it would be reasonable to require the sections of Unit type A enclosed by wire mesh to be fully enclosed at night to provide further noise buffering; the enclosures could be opened during the day in order to allow ventilation. In addition ensuring that all dogs are locked away internally within the units at night will provide further assurances against dogs barking within the more open aspects of the compound training areas. These matters can be secured by condition.

### Conclusions

It is considered that the new location, means of enclosure and layout/orientation of the units is suitable and provides better shelter for the dogs thereby minimising any potential sources of disturbance that might trigger them to bark as a pack. Such will significantly reduce the adverse impact of the use upon the Blackdown Hills AONB, its scenic beauty, peace and tranquillity. These matters are also considered to have reduced the noise impact of the proposals upon local residential properties and their occupants to an acceptable degree. At its current intensity, the impact of the business is considered to be acceptable and a condition is recommended to prevent an increase in the number of dogs kept at the site.

Given that the business in this location is still in its infancy and that further mitigation works are required that seek to further mitigate any impacts, it is considered that permission should only be granted for a temporary period in the first instance. Such would allow the Local Planning Authority to continue to monitor the situation and ensure that the proposed mitigation measures are adequate. Also, when the buildings have been fully converted and are capable of use by the dogs, there should be a need for fewer external, free standing structures.

Other than the temporary time limit, it is recommended that conditions be attached to the approval requiring further landscape planting; additional fencing; the enclosure of Unit type A to cover the metal mesh and to retain all dogs within buildings at times of darkness. With these conditions in mind it is recommended that temporary planning permission be granted.

**In preparing this report the Planning Officer has considered fully the implications and requirements of the Human Rights Act 1998.**

**CONTACT OFFICER: Mr R Williams Tel: 01823 356469**