



Appeal Decision

Site visit made on 3 June 2025

by **J Hills MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 June 2025

Appeal Ref: APP/X1165/W/25/3359506

Land at SX904562, Bascombe Road, Churston Ferrers TQ5 0HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr John Haines against Torbay Council.
 - The application Ref is P/2024/0403.
 - The development proposed is change of use from agricultural to a secure dog walking and exercise field, together with new entrance, parking area and shelter.
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. The appeal relates to a failure to determine the application within the prescribed period and where the Council did not validate it. In that context, there was a previous application at the appeal site for what is said to have been a similar proposal. This was withdrawn. Subsequently, a further application that is the subject of this appeal was submitted to the Council.
3. The Council wrote to the appellant on the 21st of June 2024 advising that further information would be required to validate the application, including but not limited to a site location plan, elevations, a wildlife checklist, tree survey, flood risk assessment, and a statement of historic significance. The requested information was provided by the appellant on the 10th of July 2024. Further biodiversity net gain details were requested by the Council in emails dated the 7th and 13th of November and the appellant provided a response with the requested information on the 20th of November 2024.
4. Based on this evidence, there is little to show that the appellant has not provided sufficient information to make the appeal valid. Additionally, the Council has notified those interested parties from the previous withdrawn application and others who should have been, as part of this appeal. For these reasons, I am satisfied that the appeal is valid.
5. The Council has not provided any putative reasons for refusal and has instead relied upon its assertion that the appeal is not valid. However, it has included a number of policies and suggested conditions. Additionally, interested parties have raised concerns relating to the character and appearance of the Churston Conservation Area, the suitability of the location with regard to highway safety, and biodiversity. The appellant has responded to interested party comments and would therefore not be prejudiced by these forming the basis for the main issues.

Main Issues

6. The main issues are:

- whether the proposed development would preserve or enhance the character or appearance of the Churston Conservation Area (CA);
- whether the proposed development would provide a safe and suitable access for all users; and
- the effect of the development on biodiversity with regard to protected species.

Reasons

Character and appearance

7. The appeal site is located within the CA where there is a statutory duty to pay special regard to the desirability of preserving or enhancing the character or appearance of the conservation area; and where great weight should be given to the asset's conservation. The CA's significance derives from its historic settlement origins and manorial influence that has led to the development of groups of cottages, farms, and larger properties, surrounded by characterful fields. The appeal site includes hedgerows and field boundaries that provide a strong visual break between village, church, and nearby Court Farm. These boundary features are recognised in the Council's Character Appraisal as providing a strong sense of enclosure.
8. It is said that the appeal site lies adjacent to a National Landscape (NL), and I find no reason to disagree. The National Planning Policy Framework (the Framework) attaches great weight to conserving and enhancing landscape beauty in the NLs, noting that development in their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designation.
9. The appellant says that the proposed internal perimeter fencing and gazebo, positioned next to the old railway line, would not be seen except by those within the field. Be that as it may, a lack of public visibility is not determinative when considering proposals within conservation areas and it is always necessary to consider the intrinsic qualities which define the character of the area. A gazebo would be a rather unusual element that would appear out of place. As such, it would present as an inherently harmful building in the midst of an otherwise undisturbed and beautifully preserved field landscape. Moreover, even if some fencing could be erected without the needed for permission, it would create an extensive hard landscaped arrangement. It has been applied for as a necessity for the proposed scheme. Consequently, it is unlikely such boundary treatment would be installed in the absence of such an application.
10. It is claimed that the proposed access would be reflective of any other agricultural access. However, the new opening would result in a 15-foot field gate with additional posts and walling either side of it. This would be untypically wide and eminently noticeable at the midpoint in the hedgerow, particularly given current undisturbed levels of field enclosure. In that context, the evidence points to an approved hedgerow removal notice closer to the junction at the old railway line. There is however little to show any such permission remains extant.

11. Additionally, the required cut back for visibility and a relatively large area assigned to the rolled stone parking would result in notable manufactured incursions into the field. Even if all proposed elements of the development could be easily removed, the eye would nevertheless be drawn to these permanently permitted jarring features. The reasons for blocking up the existing gated access on the appeal site corner are understood, though this would consume the rather characterful rounded stone pillared gateway.
12. No additional lighting would be introduced to a business that could conceivably be conditioned to be open only during daylight hours. This would provide some moderate degree of mitigation. Moreover, there is little evidence to demonstrate that the noise from barking dogs would cause unacceptable disturbances. Nevertheless, the comings and goings associated with a year-round open-space facility, gazebo and a formalised parking area would fundamentally alter and disrupt the character, tranquillity, and visual appearance of an otherwise peaceful NL setting.
13. Drawing these matters together, the development would cause less than substantial harm to the significance of the designated heritage asset. Paragraph 215 of the Framework explains that in such circumstances it is necessary to balance the harm against the public benefits of the proposed development.
14. The development would provide a secure space for dogs to exercise healthily off the lead away from farm animals, which would align, in part, with paragraph 98 of the Framework's support for social and recreational facilities. Bookings could be managed and available for a range of users. It would also represent a form of farm diversification for the appellant who continues to trade in beef. Moreover, hedge planting and conservation grassland would deliver wildlife gains and some carbon capture. These can all be considered public benefits.
15. Against the benefits I must weigh the harm to the heritage asset. The Framework states that great weight should be given to the assets' conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to significance. Any harm to the significance of a designated heritage asset should require clear and convincing justification, as set out in paragraph 213 of the Framework.
16. In the heritage balance, I have given moderate weight to the social, environmental, and economic benefits. However, the adverse impact on the CA is a matter of considerable importance and weight. Overall, I consider that the harm to the heritage asset outweighs the benefits.
17. I therefore conclude on this main issue that the proposed development would neither conserve nor enhance the character or appearance of the CA. As such, there would be conflict with Policy SS8 of the Torbay Local Plan (LP) and Policy E7 of the Brixham Peninsula Neighbourhood Plan which, together in this respect, seek to ensure development proposals conserve or enhance the distinctive landscape character, wherever possible, retaining or enhancing features such as devon banks, dry stone walls and gateposts. There would also be conflict with paragraph 88 of the Framework which requires rural business to respect the character of the countryside.

Access

18. The appellant says that the appeal site is within easy reach of a large population. While it may well be close to Churston Ferrers and a nearby large settlement, the basic premise of the proposal is that it would be primarily accessed by those with private vehicles. Indeed, an interested party has made the point that it would be useful to them to have a facility about 25 mins away from their home.
19. Even if a safe vehicular access could be secured using an appropriately worded condition, alternative means of access to the site would be somewhat limited. The surrounding lanes are without pavements. At the time of my visit, I took the opportunity to walk around the connected area. During this time, I experienced a particularly high level of vehicular passing traffic, often travelling at uncomfortably high speeds. At one point, I was forced to jump onto the grass verge to avoid a car. Accordingly, while my observations only represent a snapshot in time, walking would not be an inviting option for pedestrians choosing to arrive at the appeal site, particularly during inclement weather conditions. Therefore, even if future users may be able to catch a bus nearby, priority would not be first given to pedestrians. The nature of the intended use means that cyclists would be unlikely to attempt to arrive with their dogs using this mode of transport.
20. It is acknowledged that opportunities to maximise sustainable transport solutions will vary in rural areas, as set out in paragraph 110 of the Framework. Even so, while there is a tennis court facility nearby, the proposal would nevertheless not be in a location accessible by a range and choice of transport, as required by LP Policy SC2. I therefore conclude on this main issue that the proposal would not provide a safe and suitable access for all users. As such, there would be conflict with LP Policy SC2.

Biodiversity

21. It is submitted that the proposal would achieve more than a 10% net gain in biodiversity enhancements by measures including modified grassland and additional hedgerow planting. In the absence of any compelling evidence to the contrary, I find no reason to disagree.
22. The South Hams Special Area of Conservation (SAC) has been designated, in part to ensure the favourable conservation status of this population of greater horseshoe bats. SACs, sometimes referred to as European Sites, form part of a network of designated sites across Europe. They are designated under the EU Habitats Directive and UK Habitats Regulations.
23. This legislation requires me as the competent authority, to assess plans or projects which may have a likely significant effect on a European Site, alone or in combination with other plans or projects. Such plans or projects can only proceed if the competent authority is convinced they will not have an adverse effect on the integrity of a European Site, other than in exceptional circumstances. These requirements are known as Habitats Regulations Assessment requirements.
24. The appeal is accompanied by an Ecological Impact Assessment (EIA) that includes surveys undertaken around the appeal site field boundaries. This is said to be in accordance with the Council's SAC guidelines. The results show that there is some greater horseshoe bat activity and that hedgerow maintenance, and a lighting strategy would avoid the requirement for any further mitigation. Even so, interested parties have provided evidence that the appeal site has been used for cattle grazing and that associated dung beetles are an important food source for

greater horseshoe bats. The EIA makes no reference to the possible importance the majority of the appeal site's grassland plays in sustaining a favourable status for these bats. In fact, no transect surveys were considered necessary due to the relatively small area.

25. Even with the 4000sqm of excluded grassland that would be managed for bat conservation and the siting of bat boxes in trees, I cannot be certain that there would be no likely significant effects on greater horseshoe bats. I have already concluded above that there would be no overriding public benefits to the proposal, which would be required to comply with LP Policy NC1. Furthermore, the Council has included a list of possible conditions, one of which is described as SAC contribution. The use of a planning condition to secure money would not meet the tests of reasonableness set out in paragraph 57 of the Framework. Therefore, if other mitigation were to be required, this may need to be secured by other means such as a planning obligation.
26. In the absence of any compelling evidence to the contrary, I cannot rule out significant harm to biodiversity with regard to protected species. As such, there would be conflict with LP policies NC1 and SS8 which, collectively in this respect, and amongst other things, seek to protect wildlife habitats.

Other Matter

27. The appellant refers to a poor service and lengthy delays that have led to the appeal. In that context, they ask whether I might consider an award of costs, though no formal application has been made. Having paid regard to the evidence in this regard, I fully understand the appellant's frustrations. It is clear that the process could have progressed more smoothly and in a timelier manner. However, this matter is not relevant to the planning merits of the appeal.

Conclusion

28. For the reasons above, and taking into account all other matters raised, I conclude that the proposal would fail to accord with the development plan as a whole and there are no considerations individually or cumulatively that outweigh this. Therefore, the appeal is dismissed, and planning permission is refused.

J Hills

INSPECTOR