



Appeal Decision

Hearing held on 5 June 2025

Site visit made on 5 June 2025

by E Catcheside BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2025

Appeal Ref: APP/A1530/W/25/3359611

Land north of Shatters Road, Shatters Road, Layer Breton CO2 0PY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Miss Sara Carew against the decision of Colchester City Council.
 - The application reference is 241366.
 - The development proposed is described as: "Erection of 6 standard size close observation stables and two foaling boxes, a surfaced turnout pen, hard standing turn out area and a 40m x 30m assessment and rehabilitation Menage, use of land for grazing horses and the siting of a mobile rural workers dwelling".
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Decision

1. The appeal is allowed and planning permission is granted for erection of 6 standard size close observation stables and two foaling boxes, a surfaced turnout pen, hard standing turn out area and a 40m x 30m assessment and rehabilitation Menage, use of land for grazing horses, an equine health and rehabilitation centre, and the siting of a mobile rural worker's dwelling at Land north of Shatters Road, Shatters Road, Layer Breton CO2 0PY in accordance with the terms of the application, reference 241366, subject to the conditions in the attached schedule.

Preliminary Matters

2. At the hearing, the appellant confirmed her agreement to the description of the development used on the decision notice, which is reflected in the banner heading albeit with a typographical correction to the spelling of 'grazing'. However, my formal decision also refers to the use of the land for an equine health and rehabilitation centre as this use has been described extensively in the written and verbal evidence.
3. It is common ground that prior approval applications have previously been granted for two barns and a track on the site. However, it is the Council's position that the existing barn and track shown on the submitted site plan, and the second barn which had not been erected at the time of my site visit, do not benefit from permitted development rights. It is also the Council's case that the existing track and areas of hardstanding extend beyond the prior approval scheme considered for the track. It is not for me, as part of this Section 78 appeal, to determine the lawfulness or otherwise of this existing development. Nonetheless, I have had regard to the uncertainty as to their permanence insofar as it is relevant to the main issues in this appeal.

4. Not all of the existing structures are shown on the submitted plans, and this has been a source of concern to some third parties. The Council stated at the hearing that the submitted plans are sufficient to provide certainty over the development that is proposed, and I have no reason to take a different view. For the avoidance of doubt, the appellant has confirmed that planning permission is not sought for the structures identified on the submitted plans as 'existing' and I have determined the appeal on this basis.
5. The appellant submitted a biodiversity metric and accompanying explanatory document as part of the appeal. These documents were not before the Council when it determined the application. The Council was provided with an opportunity to comment on the documents in advance of the hearing, and they were discussed at the public event. Consequently, I am satisfied there is no procedural unfairness in me taking them into account.
6. As part of the appeal process, two signed and dated Unilateral Undertakings (UU) were submitted, each of which provides for a financial contribution to mitigate any adverse effects on the integrity of the Essex Coast Habitats Sites. The first signed UU, dated 7 June 2025, contains some discrepancies and therefore I have not had regard to it in my decision. For the avoidance of doubt, the UU to which I have had regard in this decision is dated 12 June 2025. Following the receipt of the UU, the Council has confirmed that it is not seeking to defend the second reason for refusal on the decision notice and, therefore, the effect of the proposal on the Essex Coasts Habitats Sites does not form a main issue in my decision.
7. Nonetheless, the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) require that, before deciding to give permission for a plan or project which is likely to have a significant effect on a European site, the competent authority must make an appropriate assessment of the implications of the plan or project on its conservation objectives. I have had regard to this duty and will return to this matter later in my decision.
8. The decision notice refers to Policy DM7 of the Colchester Borough Local Plan 2017-2033 Section 2 (Adopted July 2022) (LP2). However, at the hearing, the Council conceded that the proposal is not for agricultural diversification and, therefore, it is common ground between the parties that Policy DM7 is not a relevant policy. I see no reason to form a different conclusion on this matter and I have proceeded to consider the appeal accordingly.

Main Issues

9. The main issues are:
 - whether the site is a suitable location for the proposed development, having regard to (a) relevant development plan policies for the countryside, and (b) its effect on the character and appearance of the landscape and area; and
 - whether the statutory biodiversity gain condition (BGC) would be capable of being successfully discharged.

Reasons

Whether a suitable location

(a) Relevant development plan policies for the countryside

10. The appeal site lies outside of Layer Breton, in the open countryside. Therefore, it does not fall within an existing or new settlement where most development is generally directed through Policies SP3 of the North Essex Authorities' Shared Strategic Section 1 Plan (Adopted February 2021) (LP1) and SG1 of the LP2. However, these policies do not preclude proposals outside of settlement boundaries that would diversify the rural economy whilst also safeguarding the natural environment, landscape and local character.
11. Policy OV2 of the LP2, which is cross-referenced in Policy SG1, further states that proposals for development essential to the effective operation of an equestrian use may require a countryside location. It is common ground that the principle of an equestrian use at the appeal site would accord with these development plan policies, subject to its effect on the character and appearance of the landscape and area. I concur with this view.
12. Policy DM14 of the LP2 sets out the circumstances in which a temporary rural worker's dwelling may exceptionally be supported in the countryside. Amongst other things, these circumstances include where there would be an essential functional need to support a new activity, and where there is evidence of a sound financial basis for the proposed enterprise. The appeal documents set out the reasons why there would be a requirement for a 24-hour on-site presence to monitor and attend to the health needs of rehabilitating horses; and financial projections have been provided. This evidence has been accepted by the Council as providing justification for a temporary rural worker's dwelling so as to accord with Policy DM14 of the LP2. I have no reason to find differently in this regard.
13. I have been directed to Policy DM6 of the LP2, which relates to economic development in rural areas and the countryside. It is not disputed that the proposal would provide some modest economic benefits. However, the general thrust of Policy DM6 is to safeguard allocated employment sites and other rural locations that provide an economic function. Whilst the site currently provides for jobs associated with the existing agricultural use, the evidence indicates the enterprise generates only a small income for the appellant and her family and has limited wider economic benefits. Consequently, the site does not have the character of an existing employment site that would be worthy of protection under Policy DM6 of the LP2. For this reason, and whilst I do not identify conflict with Policy DM6, I also do not find it to be determinative to the outcome of the appeal.

(b) Character and appearance

14. The area around the appeal site is characteristic of the Layer Breton Farmland Plateau Landscape Character Area, due to its gently rolling arable landscape, comprising a mix of field sizes interspersed with woodlands, commons, and dispersed rural settlements. It has a notably rural quality that should be valued for its intrinsic character and beauty.
15. However, the appeal site has a markedly different appearance to the surrounding landscape due to the nature of the existing agricultural practices undertaken within it. Indeed, whilst there is a degree of uncertainty as to whether the existing barn and track will endure in the longer term, I observed fencing, chicken pens, and small outbuildings which, alongside the presence of animals and the associated comings and goings to the premises, have led to a fundamental change to the site's character. Given that there is limited evidence to indicate that the site is likely

to revert to a solely arable field in the foreseeable future, the appeal scheme must necessarily be considered with regard to this context.

16. The proposed development would be visible from the surrounding road and footpath networks due to the undulating land profile and hedgerow gaps, which could be increased in size during the winter months when there is typically less tree foliage. These views could, to some extent, be mitigated through enhanced landscaping. However, additional planting would not always be effective, and I observed that it would be particularly challenging to fully screen the development from the elevated views from Winters Road and footpaths 104_5 and 104_7.
17. The Colchester Landscape Character Assessment (November 2024) identifies the increase in equine-related land uses around settlement areas to be an issue or change of note. However, equestrian developments are commonly found in the countryside, and I observed many stable buildings and paddocks near to the appeal site, some of which are prominent in long and elevated public views including from footpath 104_5. This leads me to conclude that horse-related developments comprise an integral part of the identity that is unique to this edge of Layer Breton; and the addition of further equestrian buildings and equipment, including the menage, would not be incongruent to the character of the local area.
18. The proposed cluster of buildings would be modest in scale and height, and the timber-clad exterior of most structures would be appropriate in this rural context, thus reducing the likelihood of harmful visual effects. Moreover, the buildings and parking area would be located near to the northern hedged boundary, where opportunities to screen views from the north through additional planting could be maximised. There would be limited opportunities to view the menage, other than from higher ground, due to its low profile and the well-established trees and hedgerows along the Shatters Road boundary. Consequently, even if the existing barn and track were to be retained, and a further agricultural barn were to be erected, the proposal would not lead to unacceptable visual impacts from the surrounding landscape.
19. The introduction of a residential use and associated paraphernalia would inevitably have a domesticating effect on the site's character. However, the mobile home would be a small-scale structure that would be partially screened by other buildings on the site. Moreover, the change to the site's character arising from the mobile home would be for a temporary period, which could be secured through a condition. Furthermore, the countryside is not devoid of homes, and nearby residential properties within the village are prominent in views from the appeal site as well as from local roads and footpaths. Consequently, the domestic use of the site would not have a harmful, urbanising effect on this part of the local landscape.
20. Given the nature of the proposed use, it is likely that horses would occasionally require care during hours of darkness. I heard that this would be the exception rather than the norm and that it would generally be carried out within a building and by torchlight. Lighting emitted from the temporary dwelling would, in all reasonable likelihood, be similar to the light emissions from other homes in the area and could be effectively obscured by window coverings. On this basis, and because external lighting could be controlled through condition, I am satisfied that there would be no deleterious effects due to light pollution.

21. The proposed development would necessitate comings and goings for domestic and equine purposes. However, there is already a degree of activity associated with the existing agricultural land use, and I have not seen or heard any substantive evidence to suggest there would be a significant intensification of movements to, from, and around the site associated with the development. Rather, I heard that visitors to the facility would be limited to those necessary to care for rehabilitating horses and would not be significant in number so as to cause harm to the wider locality.
22. Overall, whilst the proposed development would inevitably trigger a change to the character and appearance of the site, it would be small-scale and appropriately designed to reflect the rural area. Moreover, the proposed buildings and structures would be typical of other equestrian developments that are commonly observed in the countryside including near to the appeal site. Consequently, the proposal would not harmfully detract from the character of the surrounding landscape.
23. Overall, I conclude that the site is a suitable location for the proposed development, having particular regard to the relevant development plan policies for the countryside and the effect of the proposal on the character and appearance of the landscape and local area. The proposal would be in accordance with Policies SP3 and SP7 of the LP1, and Policies SG1, OV2, ENV1, DM14, and DM15 of the LP2 which, taken together, support the diversification of the rural economy whilst expecting proposals to respond positively to local character and the surrounding countryside.

Statutory BGC

24. Article 7 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 sets out the minimum information requirements that should accompany planning applications that are subject to the BGC. This includes a completed metric calculation tool showing the calculations of the pre-development biodiversity value of the onsite habitat. Establishing the pre-development biodiversity value of a site is a critical step in establishing whether the biodiversity gain objective would be met.
25. The Planning Practice Guidance (PPG) explains that there are special provisions for establishing the pre-development biodiversity value of onsite habitat when loss or impact to habitats (or 'degradation') has occurred prior to the submission of a Biodiversity Gain Plan (BGP). This is in order to discourage the deliberate degradation of existing onsite habitats to reduce the pre-development biodiversity value¹.
26. The submitted metric has taken a precautionary approach to an area of grassland that has been disturbed by temporary buildings, traffic, and poultry enclosures. As such, that area has been evaluated as if it were undisturbed modified grassland commensurate with that present throughout the rest of the site. However, it is the Council's contention that unauthorised, albeit unintentional, degradation has occurred because the existing barn, track, and hardstanding areas may not benefit from permitted development rights and have not been granted planning permission. If this were to be the case, Paragraph 6 of Schedule 7A of the Town and Country Planning Act 1990 (TCPA) requires the pre-development value of the

¹ PPG Paragraph: 036 Reference ID: 74-036-20240214

onsite habitat to be calculated from the date immediately before the carrying out of the unauthorised degradation works.

27. As I have set out above, the determination as to whether or not the existing development is lawful falls beyond the scope of this appeal. At the time of the hearing, the Council had not actively commenced an enforcement investigation, nor had it taken any formal enforcement action in respect of the barn, track, or hardstanding. Consequently, and particularly given the extensive permitted development rights for agriculture, there is no substantive evidence before me which leads me to conclude that unauthorised degradation has occurred. On this basis, I find that Paragraph 6 of Schedule 7A of the TCPA does not apply to the appeal.
28. It has also been put to me that Paragraph 6A of Schedule 7A of the TCPA would apply in the event that Paragraph 6 does not. Paragraph 6A requires that the pre-development biodiversity value of the onsite habitat accounts for degradation that has occurred through activities carried out on or after 25 August 2023 in accordance with a planning permission.
29. At the hearing I was told that some development, for which the appellant relies on permission granted through the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), has been undertaken since 25 August 2023. However, Paragraph 6A(b) of Schedule 7A refers only to development which either (i) has not been begun, or (ii) has been begun but has not been completed on the relevant date. There is no substantive evidence before me to indicate that any development that has been begun has not been completed.
30. Whether or not there are other developments that are permitted but that have not been begun is a matter of contention between the parties. However, on the basis of the information before me, I am satisfied that the pre-development biodiversity value of the onsite habitat that has been submitted reflects the biodiversity value prior to any such development being carried out. Consequently, there is no conflict with the provisions of Paragraph 6A of Schedule 7A of the TCPA.
31. Given these conclusions, I am satisfied that the submitted metric provides a robust assessment of the pre-development biodiversity value of the onsite habitat insofar as it is required at the planning application stage. No information has been provided with the appeal to indicate the post-development biodiversity value. However, this is not a mandatory validation requirement and would necessarily be provided through the information submitted pursuant to the BGC. Taking all of the above into account, I have no reason to conclude that the BGC would not be capable of being successfully discharged.

Appropriate Assessment

32. The site lies within the zone of influence of the Colne Estuary Special Protection Area (SPA) and Ramsar Site, the Blackwater Estuary SPA and Ramsar Site, the Abberton Reservoir Estuary SPA and Ramsar Site, the Dengie SPA and Ramsar Site, the Stour and Orwell Estuaries SPA and Ramsar Site, and the Essex Estuaries Special Area of Conservation. Collectively, these sites form part of the Essex Coast Habitats Sites, and they are designated because they support a range of internationally important breeding and non-breeding birds.

33. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document May 2020 (RAMS) describes that the conservation objective of these sites is to maintain and restore the habitats, which are impacted by visitor pressure associated with residential developments.
34. The proposal would provide a new home for a rural worker, and it is likely that its occupants would visit the Essex Coast Habitats Sites. Consequently, particularly when combined with other local developments, the proposal would have a likely significant effect on the integrity of these European sites due to increased disturbance through recreational activity.
35. The RAMS sets out a strategic approach to mitigate adverse impacts on these habitats sites, including through education, communication, and habitat-based measures. The measures are to be funded through financial contributions, based on a specified tariff per dwelling. Natural England has been consulted as part of this appeal, and it has stated that it has no objection to the proposal subject to a financial contribution being secured in accordance with the RAMS.
36. The submitted UU provides for a financial contribution in accordance with the RAMS, and the Council accepts that this would effectively mitigate the adverse impacts on the European sites. I am satisfied that the financial sum would enable the delivery of mitigation sufficient to address the harm likely to be caused by the proposal. Therefore, the proposal would not result in an adverse effect on the integrity of the Essex Coast Habitats sites.

Other Matters

37. I note the comments made by third parties that there is a lack of demand for the proposed development. However, I have not been directed to any development plan policy that sets out a requirement for a need for the equestrian development to be demonstrated. The appellant has supplied sufficient information to justify the need for a temporary rural worker's dwelling in accordance with Policy DM14 of the LP2, and its occupation by a rural worker could be secured through condition. However, the identity of the occupant(s) of the dwelling falls outside the scope of this appeal. Therefore, it is not necessary for me to consider its suitability to accommodate a particular family.
38. There is no substantive evidence before me to indicate there is a shortage of local specialists to support the development. Moreover, given the size of the site and the nature of the surroundings I have no reason to conclude it would not provide sufficient and appropriate space for rehabilitating horses to graze and recover, even if some of the land could continue to be used for agriculture. Whether or not the development is likely to be viable for the foreseeable future could be a matter for consideration should a proposal for a permanent dwelling on the site come forward. However, the details of the financial arrangements between the business and its prospective customers is not pertinent to the outcome of this appeal.
39. Third parties have raised concerns about the colour of the existing barn. However, whilst a condition could control the external appearance of the proposed structures, the existing barn does not form part of the proposal before me and its appearance falls beyond the scope of this appeal.
40. There are references in some third-party comments regarding a farm shop. There is limited evidence before me to indicate that a farm shop forms an established

part of the existing enterprise, and it does not form part of the proposal before me. Therefore, it is not a matter which has been determinative to my decision.

41. It is likely that most visiting specialists would travel to the site by private vehicle. However, the number of visitors would not be significant. The road network near to the site already provides for agricultural vehicles moving around the area, and there is sufficient capacity to cater for the small number of additional vehicle movements that could be generated. Additionally, there would be space within the site for large vehicles to turn so as to exit the site in forward gear. The Council has not raised any concerns in respect of highway safety or congestion and, based on the evidence and my own observations, I have no reason to take a different view.
42. I have had regard to concerns raised about waste disposal, details of which could be secured through a condition. This would enable the Council the opportunity to ensure that the waste management proposals would not cause harm to the area.

Conditions

43. The Statement of Common Ground included a list of suggested conditions, which I have considered against the tests set out in the National Planning Policy Framework. Where appropriate, I have adjusted the wording of the conditions to improve precision and enforceability.
44. In addition to the standard time limit condition (1), I have attached a condition to define the approved drawings (2) to provide certainty.
45. Conditions are included to control the occupancy of the rural worker's dwelling and to limit its use to a temporary period (3 and 4). These conditions are required to ensure the proposal accords with Policy DM14 of the LP2.
46. I have imposed conditions requiring details of hard and soft landscaping (5), details of the menage (8), external and roofing materials (9), and external lighting (10) in the interests of protecting the character and appearance of the landscape and local area.
47. It is necessary to secure details of the habitat management and monitoring to ensure that the on-site delivery of biodiversity net gain is delivered and maintained (6).
48. I have included conditions requiring details of waste management (7) and foul water drainage (11) in order to protect the living conditions of nearby occupiers and the environment from adverse odour, flooding, and visual effects.
49. The effect of paragraph 13 of Schedule 7A of the TCPA is that planning permission granted for development of land in England is deemed to have been granted subject to the BGC, which states that development may not begin unless:
 - (a) a biodiversity gain plan (BGP) has been submitted to the planning authority, and
 - (b) the planning authority has approved the plan.

The planning authority, for the purposes of determining whether to approve a BGP if one is required in respect of this permission would be Colchester City Council.

There are statutory exemptions and transitional arrangements which mean that the BGC does not always apply. These are listed in paragraph 17 of Schedule 7A of the TCPA and the Biodiversity Gain Requirements (Exemptions) Regulations 2024.

Based on the information available, this permission is considered to be one which will require the approval of a BGP before development is begun because none of the statutory exemptions or transitional arrangements are considered to apply. Because the BGC has a separate statutory basis as a planning condition, it is not necessary for me to include it within the schedule of conditions on this decision.

Conclusion

50. The proposal accords with the development plan when read as a whole. Therefore, for the reasons given above the appeal should be allowed.

E Catchside

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following drawings: Unnumbered location plan, Site Plan TQRQM24183130204976, Stable Block (A) Floor Plan and Elevations, Treatment Shelter (B) Floor Plan and Side Elevations, Treatment Shelter (C) Floor Plan and Side Elevations, Equipment Shelter (D) Floor Plan and Side Elevations, and Foaling and Isolation Barn (E) Floor Plan and Side Elevations.
- 3) The rural worker's dwelling, identified as a 'staff dwelling' on the approved site plan, shall comprise only of a structure that meets the definition of a caravan, as defined at Section 29(1) of the Caravan Sites and Control of Development Act 1960.

The use of the site for the siting of the rural worker's dwelling shall be for a limited period of three years from the date of this decision. The use shall be discontinued, and the land shall be restored to its former condition, on or before the expiration of three years from the date of this decision.

- 4) The occupation of the rural worker's dwelling referred to in condition 3 shall be limited to a person solely or mainly working in connection with the provision of an equine health and rehabilitation activity at the site, and their spouse, partner, or resident dependants.
- 5) No development shall commence until a scheme of hard and soft landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include the details of:

- any changes in ground levels;
- the positions, spread, and species of all existing and proposed trees, shrubs, and hedgerows;
- hard surface finishes and external works;
- the timing of the implementation of the hard and soft landscaping scheme.

The approved hard and soft landscaping scheme shall thereafter be carried out in accordance with the approved details. Any trees, shrubs, or hedgerows which, within a period of five years of being planted, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

- 6) No development shall commence until a Habitat Management and Monitoring Plan (the HMMP) has been submitted to and approved in writing by the local planning authority. The HMMP shall be prepared in accordance with the Biodiversity Gain Plan (BGP) and shall include:
- (a) A non-technical summary;
 - (b) The roles and responsibilities of the people or organisation(s) delivering the HMMP;
 - (c) The planned habitat creation and enhancement works to achieve biodiversity net gain in accordance with the approved BGP, to include details of the timing of the implementation of the works;
 - (d) The management measures to be undertaken to maintain habitat in accordance with the approved BGP for a period of 30 years from the date of the completion of development; and
 - (e) Details of the methodology and frequency by which the habitat creation and enhancement works will be monitored and reported to the local planning authority.

Notice in writing shall be given to the Council when (i) the HMMP has been implemented, and (ii) the habitat creation and enhancement works set out in the HMMP have been completed.

The approved HMMP, including the management, monitoring, and reporting measures, shall be carried out in complete accordance with the approved details.

- 7) The use of the site hereby permitted shall not be commenced until a scheme for the storage and disposal of waste, including manure and medical waste, has been submitted to and approved in writing by the local planning authority. The storage and disposal of waste shall thereafter be carried out in complete accordance with the approved details.
- 8) The construction of the menage shall not be commenced until full details of its surfacing materials and forms of enclosure have been submitted to and approved in writing by the local planning authority. The menage shall be constructed in complete accordance with the approved details and retained as such thereafter.

- 9) The external facing and roofing materials to be used in the development hereby permitted shall accord completely with details that have first been submitted to and approved in writing by the local planning authority. The details to be submitted and approved shall include the manufacturer, type, and colour of the materials to be used.
- 10) No external lighting shall be constructed, installed, or illuminated at the site at any time other than in complete accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 11) The rural worker's dwelling referred to in condition 3 shall not be occupied unless and until a scheme for the drainage and treatment of foul water, including details of connection points, discharge rates, and treatment methods, has been submitted to and approved in writing by the local planning authority. The foul water drainage and treatment scheme shall thereafter be implemented in complete accordance with the approved details and retained for the duration in which the rural worker's dwelling is sited at the site.

END OF SCHEDULE

APPEARANCES

FOR THE APPELLANT:

Sam Eachus BSc (Hons) MRICS, MBIAC	Plainview Planning Ltd
Sara Carew	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

James Ryan BSc MSc MRTPI	Planning Manager, South
John Miles MPlan	Principal Planning Officer

DOCUMENTS SUBMITTED AT THE HEARING

Email from Hushwing Ltd to Sam Eachus regarding biodiversity net gain.

DOCUMENTS SUBMITTED AFTER THE HEARING

Signed and dated UU, dated 7 June 2025

Signed and dated UU, dated 12 June 2025