



Appeal Decision

Site visit made on 2 October 2025

by Mr D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2025

Appeal Ref: APP/Z1510/W/25/3361772

Land to the West of Foxborough, A1124, Sible Hedingham, Essex CO9 3AN

- 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 Mr Kevin Mortier of Mortier & Sons Ltd against the decision of Braintree District Council.
 - The application Ref is 24/01895/FUL.
 - The development proposed is Formation of vehicular access to the highway, creation of a trackway, erection of fencing, tree and hedge planting, and blocking up of existing vehicular access.
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Decision

1. The appeal is allowed, and planning permission is granted for Formation of vehicular access to the highway, creation of a trackway, erection of fencing, tree and hedge planting, and blocking up of existing vehicular access at Land to the West of Foxborough, A1124, Sible Hedingham, Essex CO9 3AN, in accordance with the terms of the planning application Ref. 24/01895/FUL, dated 2 September 2024, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The evidence indicates the development commenced on 1 April 2023 and I saw an access and track that appeared to be laid out in general accordance with the submitted plans. Therefore, the application is retrospective, however, as its retrospective nature is not an act of development, I have omitted this from the description in the banner heading and decision paragraph above.
3. The appellant has submitted amended plans with the appeal scheme omitting field gates inside the access. The Procedural Guide¹ states the appeal process should not be used to evolve a scheme, and it is important that what is considered by an Inspector is essentially the same scheme considered by the LPA and by interested parties at the application stage. It is not clear that those who were contacted about the application, made representation to it and in receipt of the appeal notification, are aware of the changes. Therefore, I have determined appeal based on the scheme determined by the Council and which I can be assured that interested parties are fully aware of and have had the opportunity to comment.

Main Issues

4. The main issues are:
 - the effect of the development upon the character and appearance of the area;

¹ Paragraph 16.1 of the Procedural Guide: Planning appeals – England (2025).

- the effect of the development upon archaeological remains as non-designated heritage assets (NDHAs); and,
- if there are any policy conflicts or harm in respect of the above matters, whether or not there are other considerations that may be sufficient to outweigh the adverse effects.

Reasons

Character and appearance

5. The character and appearance of the area is one including sporadic residential and agricultural development either side of the A1124 which vary in position and proximity to the highway. It is set within the primarily arable and pastoral Colne Valley landscape (LCA A4) that includes varying sized land parcels typically lined and divided by trees and hedgerows. Varying range views are possible of the valley landscape within which the appeal site and surrounds are located. The area therefore seems typical of the Colne Valley LCA A4 characterisation.
6. Before the development commenced, the appeal site field appears to have been a typical and largely undeveloped pastoral field in the landscape part bound and surrounded by hedgerows and trees. It would therefore have seemed reflective of the positive attributes of the wider landscape and made a positive contribution to the character and appearance of the area. This would have been appreciable from a moderate section of the A1124 and certain vantage points in the wider landscape in various directions.
7. The pre-existing track comprising various materials and compacted soil, is around part of the perimeter of an adjacent field. Surrounding wider vegetation and its proximity to the perimeter, means outside the field it has a rather limited wider visibility. In consequence it can be regarded as a largely neutral contributor to the character and appearance of the area.
8. The appeal development has created a hard surfaced new access on a main route between settlements where there previously wasn't one, a new curved sweeping track through what appears to have been otherwise largely undeveloped grazing land. Additional fencing is also proposed around the site and track, together with the blocking up of the access, adding further elements of development into the scenic landscape.
9. The track has been constructed in crushed stone which is not an untypical material in this setting and will weather and may be part-colonised by vegetation. It is cut into the ground and the valley slope, which is to some degree effective in limiting its visibility from the A1124, although it is still partly visible, particularly around the site access. The post and rail fencing would not appear out of context. The interaction and combination the engineered hard surfaced access, track and fencing, does have some urbanising effect, and the development does alter the character and appearance of the field.
10. While accesses and agricultural tracks are not untypical of the wider surrounds, the development is and would be harmful to the character and appearance of the area. The appellant's landscaping scheme indicates planting a length of new hedgerow with a variety of species which would part mitigate the appeal scheme. The hedgerow and individual trees at the frontage are of differing species, and

trees planted at differing gaps so would not appear uniform, and I am satisfied the hedgerow would grow to become typically dense and competitive.

11. Hedging is shown to stop just rear of the highway, although to provide sufficient mitigation hedging would need to run further rear to at least the gates. The appellant does not necessarily propose to retain the indicated standard trees within the field as they may impede its use in the future. However, it would appear any such planting, would in any event, be better placed at the internal field boundary along the fencing to soften its appearance.
12. Subject to some further additional planting into the site and its long-term retention, the landscaping could provide significant mitigation and limit the harm from the appeal scheme, secured by suitably worded planning conditions. I saw some Cypress hedge plants around part of the perimeter. Although express planning permission is not required to plant them, if deemed necessary, it is possible their removal could be secured under any subsequent approved landscaping scheme.
13. In the medium-term planting would create a positive landscape feature that would screen a significant proportion of the track and reduce the prominence of the access from what it currently is. Taking the effect of the scheme as a whole into account, the development would have a limited adverse effect upon the character and appearance of the area in the medium term.
14. For the reasons set out above, the development would be harmful to the character and appearance of the area. This would conflict with Policy SP7 of the Braintree District Local Plan – Section 1 (2021) (the S1LP) and Policies LPP1, LPP52 and LPP67 of the Section 2 Local Plan (2022) (the S2LP). Amongst other things these seek a high standard of layout and design, development responds positively to its character and context, protects and enhances valued landscapes, and the intrinsic character and beauty of the countryside.

Archaeological remains

15. In fields to the northeast and southwest evidence of Roman and Medieval settlement activity was revealed at approximately 0.6m to 1.0m in depth, and there is moderate potential for archaeological remains associated with this activity to have extended into the area where the track has been constructed. Therefore, there is concern it may have been disturbed or destroyed by the works.
16. The Council's adviser concluded the nature and scale of the development, means there is a low likelihood for it to have impacted on significant archaeological remains, and there would be no further requirement for investigation as the works have been completed. However, that any further development in this area should be assessed for the impact on archaeological deposits before it is carried out.
17. The substantive evidence before me is that track construction has taken place significantly above the level that remains of significance have previously been recorded. The track required excavation of around 200mm, which is around the level as activities for previous arable cultivation. This suggests if at some point there were any remains at the depth required for the track, they are highly likely to have been damaged or lost through a number of years of arable cultivation. However, this is now unable to be established and as expected by Policy LLP59 of the S2LP further investigation and recording may have been necessary.

18. The Written Ministerial Statement of 2015² provides that intentional unauthorised development is a material consideration. In this case it is not clear that the appellant intentionally sought to circumvent planning controls, and I note they have sought to regularise the development and included a significant body of overall evidence and schemes in support of their application. The substantive submissions are indicative that the development is highly likely to have had a low potential to have had effects upon archaeological remains of significance.
19. Nevertheless, were it not to have taken place before the application, even if there might have been no case for preserving them in-situ, it may have required a programme of archaeological recording, reporting and archiving. Taking into consideration that it is not possible now to ascertain the effects of the development upon archaeological remains due to the retrospective nature of the development, this should elevate it, to attract moderate weight against the appeal scheme.
20. For the reasons set out above the development may have had an adverse effect upon archaeological remains as NDHAs. This conflicts with Policy LLP59 of the S2LP, which requires that development which would destroy or disturb potential remains will be permitted, subject to conditions ensuring an appropriate programme of archaeological investigation, recording, reporting and archiving, prior to development commencing.

Other considerations

21. Policy LPP1 of the S2LP requires development is confined to uses appropriate to the countryside and the Council finds the proposal in conflict with this requirement because they do not consider the development 'reasonably necessary'. Although I am not totally convinced these amount to the same thing, where a development has adverse effects, there is a need to have regard to its justification and merits.
22. In principle an agricultural development in the countryside would seem an appropriate use. Notwithstanding the approved dwelling³, that the access did not prevent the agricultural use of the fields, and the absence of accident records, these are not categoric that the existing access can be regarded as safe and convenient. The appellant does not own that pre-existing access and part of the track, which is accessed via the A1124 over a layby. A high bank restricts the right-hand visibility splay to around 17.5m, on a well trafficked high-speed highway, so is considerably below the desirable safe splay and sight stopping distance. The left-hand splay is around 115m visibility, but visibility and manoeuvring can be impeded by parked vehicles and those leaving the layby, over which the appellant has no control.
23. Though noting its previously deemed suitability for residential access, agricultural vehicles are typically much larger, slower moving and take significantly longer to ingress and egress, which increases the potential risks associated with vehicles leaving a significantly below specification access. The owner requires the gate is locked, and the distance of its set back is such, that when larger agricultural vehicles leave the highway, they cannot clear it, and parked vehicles can exacerbate this, with the potential for agricultural vehicles obstructing the highway.

² Written statement - HLWS404, made on 17 December 2015.

³ Ref. 22/02518/FUL.

24. Various photographs from the appellant show vehicles using the layby and obstructing or blocking the access entirely. While only brief snapshots in time I was able to pass and visit the pre-existing access on a couple of occasions at my visit. At one point it was quiet, but at another it was busy. I could see that vehicles parked adjacent or close to the gate made turning left more difficult and there is the potential for conflicts with vehicles entering and leaving the highway.
25. Though movements from the pre-existing access by the appellant might be quite limited, what I saw and the substantive evidence before me, indicates the current access arrangements have significant potential for vehicular conflicts and is prejudicial to highway safety. Overall, the pre-existing access cannot be defined as meeting the aims of Policy LLP52 of the S2LP insofar as it seeks to avoid detrimental impacts upon highway safety. National Planning Policy Framework (2024) (the Framework) paragraphs 131 and 139 seek well-designed places, and I see no reason this does not include their functionality and safety. Overall, it would seem to me the appeal proposal can be regarded as 'reasonably necessary'.
26. The situation also raises concerns about emergency vehicle access, and gate users such as new residents, having to leave their vehicles to lock and unlock the gate in a secluded location. It is unclear that much of the track could not be re-surfaced or that the owner would prevent their part being regraded. However, the curve, gradient, surfacing and need to un-lock and re-lock the gate adds to issues of inconvenience, in conflict with the aims of Policy LLP48 of the S2LP insofar as it seeks that development is safe and convenient for all users.
27. The new access provides approximately 110m visibility to the left and 182m to the right, which based upon speed surveys meets the required safety standards. The Highway Authority (HA) raises no objection to it subject to planning conditions. There is a public benefit in terms of highway safety to providing a much safer access over the existing one, and the benefit, is not purely of private convenience. In weighing the benefits of the appeal access over the pre-existing one, these attract significant weight in favour of the appeal development.
28. From what is before me, the access requires express planning permission, and the track prior notification under the GPDO⁴, which the Council states it would have refused. Therefore, there does not appear to be a fall-back position, which is a neutral matter. The comparatively minor loss of some grazing land, and its subdivision, would not prevent its on-going viable use for agriculture. The limited loss of agricultural land attracts minor weight against the appeal scheme.
29. The main parties disagree as to whether the provisions in respect of mandatory Biodiversity Net Gain (BNG) apply to the appeal scheme. It would seem that, due to the application being retrospective its making and determination would implicitly be under section 73A of the TCPA⁵ which specifically makes provision for such applications. However, the appellant proposes a considerable BNG of 280%, through their landscaping scheme and accompanying metric calculations.
30. There is some disagreement as to whether the hedgerow achieves the net gain quoted, because, although planting may be thicker, the distance on the plans is less than set out in the appellant's calculations. However, to mitigate the effects of the appeal scheme greater planting is necessary as set out earlier and could be

⁴ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

⁵ The Town and Country Planning Act 1990 (as amended).

achieved by a suitably worded planning condition. I am satisfied the new habitats and the long-term management can be secured by suitably worded conditions, and the appeal scheme would be compliant with the aims of Framework paragraphs 187 and 193 insofar as they seek the minimising of impacts on, and providing measurable net gains, for biodiversity. The benefits proposed and that could be secured are of a magnitude that attracts moderate weight in favour of the scheme.

31. I am also informed it is recognised there are other potential positive effects for biodiversity and drainage from new farm tracks, as they reduce soil compaction and erosion caused by livestock and machinery, and channel run-off including sediment and pollutants.
32. Reference is made to a covenant to ensure the permitted dwelling could use the new access were it to be sold off separately in the future, which I am informed is common place in such circumstances and does not need to be the subject of a planning condition. A neighbouring interested party refers to the pre-existing track having caused disturbance and stress to horses in the fields and adjacent arena, resulting in safety concerns when being worked, so the appeal scheme would be a benefit. However, there is no further substantiating evidence in this regard, so I treat this as a neutral matter.

Other Matters

33. Any planning permission is restricted to that sought in the application. It would not include a change of use of the field to residential garden land, which would require an express future application that would need to be considered on its own merits. I am referred to alleged unauthorised development such as bridge and caravan style structures. While noted on my visit and I have had regard to them, their status is unclear, and they are not development for which permission is sought in or approved by this appeal scheme.

Conditions

34. As the development has already commenced a commencement condition is not necessary. For the avoidance of doubt and in the interests of the character and appearance of the area, a plans condition is necessary. In the interests of the character and appearance of the area and securing a biodiversity net gain and its on-going management, conditions are necessary to require the submission and approval of a Biodiversity Gain Plan and a Habitat Management & Monitoring Plan.
35. The condition requires that in the event its provisions are not complied with, the land must be restored in accordance with a previously approved site restoration scheme. It is not necessary for the condition to list individual restoration requirements and would be at the Council's discretion as to whether or not the level of detail is sufficient to be approved and to take enforcement action if it is not met. The onus would be upon the appellant to make a sufficiently detailed submission to in time to ensure compliance with the overall restoration deadline, allowing for the suspension in the event of an appeal or legal challenge, and subsequent resumption of the timescale. I have removed a tailpiece from the condition because it would not meet the tests of being precise and enforceable.
36. In the interests of highway safety conditions are necessary to provide and retain visibility splays free of obstruction, prevent the use of unbound materials within 6m of the highway boundary and ensure that any access gates are inward opening

only and set back set back a sufficient distance. I have included a version of the plan that clarifies the access measurements as sought by the HA. I have noted the Council's Biodiversity adviser's HA's suggested informatives. However, these should not be used in place of planning conditions. Given that much of the development has taken place, there are unlikely to be any risks to biodiversity, and the appellant is fully aware of the HA's requirements, so it is not necessary to impose the informatives as conditions. The appellant will be able to access the consultation responses and be aware of the advice for any remaining works.

Planning Balance

37. The development would result in harm to the character and appearance of the area, which subject to the imposition of suitably worded planning conditions could be mitigated in the medium term. Based upon the harm I have found, this attracts limited weight overall, against the scheme. The conflict with policies for the assessment and investigation of NDHAs, attracts moderate weight against the scheme. There would be a small loss of agricultural land which attracts minor weight against the appeal scheme. Overall, the policy conflicts and harm from the development attracts moderate weight against the scheme.
38. However, the existing access is significantly substandard and results in conditions that are prejudicial to highway safety. The benefits to highway safety of the new access attract significant positive weight in this regard. Subject to the imposition of suitably worded conditions the appeal scheme would secure a sizeable BNG, which is of the order that attracts moderate weight in favour of the appeal scheme. Overall, the benefits of the appeal scheme are such that they outweigh the harm from it. Therefore, the appeal should be allowed.

Conclusion

39. The development conflicts with the development plan taken as a whole. However, the benefits of the development outweigh the harm, and are such that the material considerations indicate the development should be determined other than in accordance with the development plan. Therefore, for the reasons given, the appeal is allowed.

Mr D Szymanski

INSPECTOR

----- Schedule of Conditions -----

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 22020-LP – Location Plan; Existing Access Blocking Up Plan; LSDP 2103.01 Rev A – Landscape Proposal; 22020 -08 – Site Extract and Street Scene along Halstead Road; Access Junction Plan Version 2.
- 2) Notwithstanding the approved plans, within 6 months of the date of this decision, a detailed Site Development Scheme shall have been submitted to and approved in writing by the Local Planning Authority. The Site Development Scheme shall include the following:
 - a) a scheme for the provision of soft landscaping works, including a detailed planting schedule to include the size, species and density of planting and seeding, a timetable for implementation, replacement planting, and a maintenance schedule;
 - b) a scheme for the blocking up of the existing access to the appellant's land;
 - c) a Biodiversity Gain Plan reflecting the submitted soft landscaping works plan and to achieve net gains of not less than the habitat and hedgerow gains set out Statutory Net Gain Biodiversity Metric – Calculation Tool submitted with the application;
 - d) a Habitat Management and Monitoring Plan (HM&MP) for biodiversity net gain including 30 year objectives, management responsibilities, maintenance schedules and a methodology to ensure the submission of monitoring reports in years 1, 3, 5, 10, 15, 20, 25 and 30 from the date of the Biodiversity Gain Plan, demonstrating how the biodiversity net gain is progressing towards achieving its objectives, evidence of arrangements and any rectifying measures needed.

The Site Development Scheme shall be implemented and the site maintained thereafter in accordance with the approved details. Monitoring reports shall be submitted in years 1, 3, 5, 10, 15, 20, 25, and 30 to the Local Planning Authority, in accordance with the methodology specified in the approved HM&MP. The Local Planning Authority shall only issue approval of the habitat creation and enhancement works once the habitat creation and enhancement works set out in the approved HM&MP have been completed, and a completion report, evidencing the completed habitat enhancements, has been submitted to, and approved in writing by the Local Planning Authority.

Within 3 months of the date of a failure to meet the requirements of this condition set out above, the access, track and fencing hereby permitted shall have been removed, and the land restored to a condition in accordance with a site restoration scheme that has been previously submitted to and approved in writing by the Local Planning Authority.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, or an appeal has been made to and accepted as validly made by the Secretary of State against the Local Planning Authority refusing to approve the scheme or failing to give a decision within the prescribed period, the operation of the time limits specified in this condition will be suspended until that legal challenge or appeal has been finally determined. In the event the appeal is dismissed and/or a legal challenge fails, the time limit shall

subsequently resume in accordance with the condition, unless expressly modified by the decision upon that legal challenge or appeal.

- 3) The access at its centre line shall be provided with a clear to ground visibility splay with dimensions as shown on Drawing no. 3822.SK01 Rev P2, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of any obstruction at all times.
- 4) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.
- 5) Any gates provided at the vehicular access shall be inward opening only and shall be set back a minimum of 6 metres from the back edge of the carriageway.

End of Schedule.