



Appeal Decision

Site visit made on 3 February 2026

by **T Gethin BA (Hons), MSc, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 February 2026

Appeal Ref: APP/U1105/C/25/3361196

Land adjoining Pencroft, Wilmington, Honiton EX14 9JW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Miss Kyrelle Burton against an enforcement notice issued by East Devon District Council.
- The notice was issued on 23 January 2025.
- The breach of planning control as alleged in the notice is Without planning permission and within the last 4 years, unauthorised Operational Development under Section 171B(1) of the Act consisting of the removal of a Devon Bank to create a vehicular entrance/exit onto and off the A35 (Honiton to Axminster Road) together with a hardstanding area and the erection of a fence in excess of 2 metres in height facing on to the highway in the approximate position shown edged blue on the enclosed Location Plan.
- The requirements of the notice are to:
 - I. Permanently cease the use of the vehicular entrance/exit onto and off the A35 (Honiton to Axminster Road).
 - II. Permanently close the vehicular entrance/exit onto and off the A35 (Honiton to Axminster Road) by reinstating the Devon Bank that has been removed so that it is equal in height, width, and depth to the remaining Devon bank on either side of the part of the bank that has been removed from the Land.
 - III. Permanently remove all hardcore and/or hard surfacing materials from the Land and reinstate the Land as grassland.
 - IV. Permanently reduce the fence to 2 metres in height from the original ground level.
 - V. Permanently remove all materials and debris associated with compliance of steps I to IV above from the Land.
- The period for compliance with the requirements is: 1 (one) month.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Main Issue

1. The main issue is the effect of the development on highway safety.

Reasons

2. The removed section of bank is intended to provide vehicular access between the appeal site and the A35 trunk road. Although the speed limit is 40mph, the highway is relatively busy and the limited visibility available from the new opening means that approaching vehicles are not visible until very close by. The new access is also not particularly visible for passing vehicles.
3. Driving out of the site via the new opening would therefore carry a significant risk of collision. Whilst the limited size of the hardstanding area means that surface water runoff onto the A35 is unlikely to be a significant issue, its unbound nature means that there is also a risk of debris entering the highway. The need to access the registered smallholding to attend and care for the animals and maintain the

land does not outweigh the need to ensure the safe operation of the highway. Whilst the appellant indicates they could move the remaining bank, I also have insufficient evidence to be sure that such works would provide sufficient visibility.

4. At the lower end of the site, the original field access has similarly limited visibility of the A35. However, whilst that access is rather narrow, concealed and situated on a bend in the road, the new opening, although wider, is not an obviously much safer option with significantly better visibility for vehicles exiting the site. Nor is the new access much more visible to passing vehicles. The new access does not therefore significantly reduce the risk of collision between vehicles compared to the original access. Furthermore, with planning permission having previously been granted for a new access, it seems to me that providing safe vehicular access with sufficient visibility is possible and the available evidence does not indicate otherwise.
5. Pedestrians using the original access to get to/from the site from the business park for example would have to negotiate a longer stretch of A35 (with a narrowing verge) compared to the new access. However, the available evidence indicates that the main need for site access is for vehicles rather than pedestrians; and neither access provides a safe option for pedestrians (of any age).
6. For the above reasons, I conclude that the development harms highway safety, contrary to Policy TC7 of the East Devon Local Plan 2013 to 2031 which sets out that permission will not be granted if the proposed access would be detrimental to the safe operation of the highway network. Whilst commendable, the appellant's commitments to conserving and rehabilitating the area, including their tree planting and rewilding of the site, protecting wildlife, and supporting the local community (through growing vegetables and flowers and teaching sustainable living) do not change this.

Other matters

7. It has been put to me that trees on the bank beside the A35 fell, pulled the bank down and obstructed the highway; that there are several areas of Ash dieback along the bank; that removing affected trees opened up the new access; and that resurfacing the original access would increase flooding and debris runoff. Be that as it may, this does not make the new opening acceptable from a highway safety perspective.
8. I recognise that the fence around the hardstanding area secures the site, keeping animals, children and others safe, and reduces the chances of fly tipping. However, the reinstatement of the bank would provide a similar function, whilst the enforcement notice does not require the fence to be removed in any event.

Conclusion

9. I find that the proposal conflicts with the development plan as a whole and there are no material considerations which carry sufficient weight to warrant a decision otherwise than in accordance with it. I therefore conclude, for the reasons above, that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

10. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

T Gethin

INSPECTOR