



Appeal Decision

Site visit made on 6 January 2026

by **B Plenty BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 February 2026

Appeal Ref: APP/U1105/W/25/3369195

Land East Side of Oak Hill, East Budleigh EX9 7BL

- 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 Clinton Devon Estates against the decision of East Devon District Council.
 - The application Ref is 24/2091/FUL.
 - The development proposed is the change of use of land for the siting of three holiday cabins and conversion of existing forestry building to provide for holiday use, creation of parking area, bat building, bin storage and landscaping.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by the appellant. This matter is the subject of a separate decision.

Preliminary Matters

3. The appellant has submitted amended plans. These seek to remove glazing from the gable end of the proposed cabins and alter cladding to a 'Juniper Green' colour. These details are shown on amended plans "Devon Cabin 01 & 03" and "Devon Cabin Design 02 & 04" and reduce the overall coverage of glazing in the gable end, omitting the apex glass. The proposed changes would not result in a proposal that is substantially different to the original proposal. Furthermore, the amended version would not cause prejudice to any party by its consideration as part of this appeal. Consequently, I have accepted these amended details.
4. The appellant has suggested that the Council's Decision Notice is not considered robust as it fails to refer to all plans and documents that were submitted in support of the scheme. However, article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 sets out the information a local planning authority must provide on their decision notices. This requires the decision maker to state clearly and precisely the full reasons for refusal, specifying all policies that are relevant to the decision. As such, it is not a requirement for the Notice to include a list of supporting material.
5. The Council's first reason for refusal refers to Strategy 26 of the East Devon Local Plan [2016] (LP). This appears to be focussed on the Plan's approach to development within the town of Sidmouth, which is around 5 miles from the site. This policy therefore weighs neither for nor against the proposal.

Main Issues

6. The main issues are:

- The effect of the proposal on protected species, and
- The effect of the proposed development on the character and appearance of the area, with particular regard to the National Landscape.

Reasons

Protected species

7. Regulation 9(3) of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitat Regulations) requires a competent authority to have regard to the requirements of the associated Directive so far as it may be affected by the exercise of its functions. This includes any proposal that might lead to the deterioration or destruction of the breeding sites and resting places of European Protected Species (EPS) under Article 12(1)¹. This includes bats and the places that they roost, irrespective of whether or not they are present at the time the development is carried out.
8. The appellant's Ecological Impact Assessment identifies that the forestry building provides a bat roost for the common pipistrelle and grey long-eared bats (which are very rare) and is a night roost for greater and lesser horseshoe bats.
9. The Courts² have established that planning permission should ordinarily be granted save only in cases where a proposed development would either be likely to offend Article 12(1) of the Regulations or unlikely to be licensed pursuant to the derogation powers. The duty to have regard to the requirements of the Directive, as set out in Regulation 9(1), remains but the judgement establishes that there is no need to carry out a detailed assessment as to whether there would be a breach of Article 12(1) or whether derogation from that article would be permitted and a licence granted.
10. Nevertheless, I am still required to ensure that any potential harm to an EPS would be adequately mitigated and whether or not the proposed development is unlikely to be licensed. The proposal seeks to convert the forestry building to residential use and relocate the bat roost to a purpose-built timber bat roost. A Natural England Mitigation Licence is required to relocate the bats. Natural England can only issue a licence if the development is necessary for preserving public health or public safety or other imperative reasons of overriding public interest, there is no satisfactory alternative; and the action will not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range. The National Planning Policy Framework establishes a mitigation hierarchy requiring development to avoid, adequately mitigate or, as a last resort, compensate for such harm through development.
11. The Council identifies that the bat mitigation, whilst supported in principle, would not accurately mimic the conditions present within the existing building, referencing a different summer temperature and the longevity of the timber structure. Instead, the Council notes that a concrete block structure clad in timber would be likely to

¹ Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora (the Directive)

² Supreme court ruling in *R (Morge) v Hampshire CC* [2011] Env. L.R. 19

provide a suitable alternative form of accommodation. Consequently, whilst the suggested mitigation measures may be sound in principle, I do not have sufficient detail to be convinced that this would fully address the adverse impact of the development. As such, I cannot be satisfied that the mitigation hierarchy has been followed or that there would be no significant harm to the long-term conservation status of the bat species that are present.

12. The appellant has stated a willingness to construct this building as sought by the Council. However, a concrete structure is not currently proposed and amended plans have not been provided to show its form or scale. Accordingly, I am unconvinced that a condition would provide sufficient certainty that suitable and adequate mitigation would be provided to prevent an adverse effect on the local bat population. As a result, I cannot be certain that the proposed development would not have a significantly harmful effect on the long-term conservation status of the bat population through impacts to breeding sites or resting places, or that this would be suitably mitigated.
13. Accordingly, the proposal would result in harm to protected species, in conflict with LP policy EN5. This identifies that sites that support important wildlife habitats will be protected from development which would result in the loss or damage to their nature conservation value.

Character and appearance

14. The site is to the east of East Budleigh. It includes a field with some wooded areas and a disused forestry building but is largely open. The field slopes downhill from the highway to Frogmore Road, with the B3178 following the top of a ridgeline. The site sits within the open countryside and views from the field take in the Otter Valley to the east, which has a wide and flat base. From several viewpoints, within the valley, the site can be seen to contribute to the verdant and open character of the valley's sloping side, conveying a high landscape value. Nonetheless, the site's immediate area cannot be characterised as undeveloped as the cabins would be between the forestry building and buildings along Frogmore Road.
15. In terms of design, the proposed cabins include glazing areas that would largely overlook the valley. Nonetheless, the extent of glazing originally proposed would have emphasised the domestic nature of the buildings and, as such, the revised drawings would have a more sensitive visual effect from views of the site, creating a preferred and less visually intrusive design.

Visual Effects

16. The appellant's Landscape and Visual Impact Assessment [June 2025] (LVIA) has been submitted in support of the proposal. Views of the site can be obtained from the East Budleigh footpath 15 (VP02) to the side of the site, and from Otterton footpath 1 (VP03a) within the valley. However, the visual effect of the proposal on these views would be 'moderately' adverse and 'minor' adverse respectively, at year one. Views of the site from Frogmore Road, demonstrated by VP01, would only be glimpsed occasionally, resulting in a 'negligible' change to such views.
17. More significant views of the site, and the proposed cabins, would be obtained from the valley floor. Views of the site at VP03b, 03c and 03d, along Otterton footpath 1, are obtained from alongside the River Otter. Most prominent views of the site are from around VP03c where the field of the appeal site is relatively

exposed within a wider tapestry of fields on the valley slope, interspersed by wooded areas, hedging and sporadic farm and residential buildings. Nonetheless, the proposed development would not be isolated due to surrounding built form. As a result, the visual impact of the proposal would range from 'medium-small' to 'minor' adverse, at year one.

18. The proposed development would include the addition of trees and shrubs to the north side of the cabins and the infilling of hedgerow gaps to the site's eastern and southern boundaries. The full details of such planting could be secured by the imposition of a suitably worded condition. This planting would, as it matures, provide both a backdrop to the cabins and enhance boundary landscaping, providing mitigatory screening for the proposal, reducing the residual visual effects to 'minor' adverse only.
19. The appellant's Lighting Impact Assessment [July 2025] notes that the site, being with a National Landscape, has a natural surrounding with an intrinsically dark lighting environment. The scheme proposes the use of bollard lighting, with other external lighting activated with passive infrared motion detection. The Assessment finds, that the proposal would have a negligible effect on ecological receptors and the intrinsically dark landscape character of the site. Despite largely accepting these findings, I also find that the amended plans with reduced glazing, would be necessary to further reduce the extent of light spill. As such, the overall effect on the dark skies would be minimal, with lighting details secured by condition.

Landscape issues

20. The site is within the East Devon National Landscape (EDNL) and within Landscape Character Type (LCT) 5D – Estate Woodland Farmland, consisting of predominantly pastoral farmland. The characteristics of this area consist of rolling hills and ridges, that create an undulating topography, containing historic parkland, estates and manors. The site complies with these characteristics and therefore makes a positive contribution to the area's landscape character. The site is also within 200m of LCT 3C – Sparsely settled farmland, following the Otter Valley floor, which consists of open flat valley floors which often act as floodplains.
21. The proposed cabins would be sited close to the existing building. This would result in a 'moderate' adverse degree of change to the site's landscape character tempered by the clustering the cabins close to the existing building and the retention of the general form and characteristics of the site.
22. With regards to the appeal site's location in the EDNL, I have given great weight to the duty imposed by Section 85 of the Countryside and Rights of Way Act 2000 (CRoW ACT) to seek to further the purpose of conserving and enhancing the natural beauty of National Landscapes. Guidance³ requires a decision maker to demonstrate with proportionate, reasoned, and documented evidence the measures to which consideration has been given when seeking to further the statutory purposes of Protected Landscapes.
23. The EDNL management plan describes the area's predominantly pastoral landscape as, being diverse and rich in wildlife, which is interspersed with copses and wooded goyles. Its steep sided hedge-banks border fields and narrow country

³ Guidance for relevant authorities on seeking to further the purposes of Protected Landscapes, DEFRA, 2024

lanes, contrast with the broad flat floodplains of the Axe and Otter which cut into the area, served by tributaries from the surrounding valleys. Accordingly, the appeal site is within a settled landscape of well treed farmland, that includes clusters of farm and residential buildings.

24. The proposed development is in a gap between the houses of Frogmore Road and the existing nursery building. New development within the site would be, in part, in character with the developed nature of adjacent plots. Furthermore, the proposed cabins would be sensitively integrated into the landform, with small footprints and a low-key domestic scale.
25. Consequently, the proposal would cause only 'moderate' adverse harm to the area's landscape character. This harm would be further mitigated through the addition of new planting to the boundaries of the site resulting in a 'minor' adverse effect on the area's landscape character and its scenic beauty. Also, the proposal would deliver new landscaping that would improve the biodiversity of the site to the benefit of local wildlife. Therefore, in applying great weight to the conservation and enhancement of the National Landscape, I find that the proposal would conserve the EDNL and further its conservation purposes.

Summary of Landscape and visual effects

26. Accordingly, the effect of the proposal on the area's landscape character and its visual effects would only be 'minor' adverse, which is not regarded as significant. Consequently, the proposal would complement the character and appearance of the site and area. As a result, the proposal would comply with LP policies D1 and E19 and Strategies 7 and 46. These seek, among other matters, for development to not adversely affect the distinctive landscape, amenity and environmental qualities of an area, be sensitive in scale and siting and help conserve and enhance the quality and local distinctiveness of the National Landscape.

Other Matters

27. The appellant asserts that the proposal is supported by several policies not mentioned by the Council. These include LP policies E4, E5 and E16 which support rural diversification, small-scale economic development and overnight accommodation in the countryside respectively, and Strategy 33 which promotes high quality year-round tourism.
28. However, the scheme is not clearly presented as one which could be considered as rural diversification of a traditional agricultural related economic activity and therefore garners only moderate support from LP policy E4. Furthermore, the proposal would not be within the Built-Up Area Boundaries of a town or village and would not only relate to the conversion of an existing building and as such would not be supported by LP policy E16.
29. Nonetheless, the proposal would be supported by Strategy 33, which seeks to promote tourism in East Devon. Also, it would be supported by LP policy E5 as it would include the conversion of an existing building and the cabins would relate well in scale and form, and in sustainability terms to the surrounding area.
30. Benefits of the proposal include the retention and conversion of the building in a sensitive manner and the removal of Himalayan balsam and Japanese Knotweed.

The scheme would also make a modest contribution to the local economy through tourists making use of local services.

31. Furthermore, Clinton Estates has been involved in a number of local environmental enhancement projects, including the 'Lower Otter Restoration Project', the 'Heaths to Sea Landscape Recovery Project'. The appellant explains that the proposal would support sustainable rural tourism and is intrinsically linked to the Estates wider improvement projects. However, whilst welcoming these wider works, these appear to have already taken place and are not contingent upon the proposal being delivered. Consequently, there would only be an indirect link between the proposal and these projects, in providing tourists with access to enhanced areas of the local countryside.
32. In supporting the proposal East Budleigh Parish Council asserts that the cabins would be modest and would not have a material effect on the views from the River Otter footpath. However, this support only weighs in favour of the scheme to a modest extent.
33. An appeal decision, for tourist accommodation in a National Landscape, has been submitted by the appellant. The scheme was allowed as it was found that the significant tourism and economic benefits outweighed the limited conflict found with the development plan. However, I understand that the context of that proposal was markedly different to the scheme the subject of this appeal in terms of its proximity to other buildings and degree of intervisibility. Furthermore, even whilst each case must be considered on its own merits, in comparison to the allowed scheme I have found greater conflict with the development and only modest weight has been afforded to its benefits.

Planning balance and conclusion

34. Despite finding that the proposal would complement the character and appearance of the area, the proposal would result in harm to protected species, to which I ascribe significant weight, and which raises conflict with the development plan.
35. The proposal would provide tourist accommodation on a site close to East Budleigh, providing good access to the village which provides a range of goods and onward bus services to nearby towns, via Footpath 15. The scheme would also deliver economic and tourism benefits to the wider area. It would also include the reuse of a vacant building and the removal of invasive plant species.
36. Whilst some policies of the LP, including Strategy 33 and LP policy E5, the East Devon Tourist Strategy [2022] and the East Devon Partnership Plan 2019-2024 may provide general support for the proposal, such support does not outweigh the conflict found with the development plan. Furthermore, the identified benefits are only of moderate to limited weight in favour of the proposal. As such, material considerations do not outweigh the conflict found with LP Policy EN5 and the Framework. As such the proposal would fail to accord with the development plan as a whole.
37. For the above reasons, the appeal is dismissed.

B Plenty

INSPECTOR