Planning Inspectorate

Appeal Decision

Site visit made on 13 October 2026

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 November 2026

Appeal Ref: APP/K1128/W/25/3366229
Kennels Meadow, Land adjacent to Cottlass Lane, Modbury, Devon PL21 0TF

- 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 Jodie Hawkins against the decision of South Hams District Council.
- The application Ref is 1587/24/FUL.
- The development proposed is described as "hardcore track for agricultural access, levelled area for poultry farming use & small hardcore areas for animal feeders & drinkers"

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The land has already been remodelled creating a flat area in the middle of the site, the route of the access track, several steep embankments and land levelling elsewhere. It seems that the proposed hardcore areas had not yet been installed or the access track's hardcore material. As such, my on-site observations have been made with the above in mind but based on the submitted plans.

3. The site is subject to a recently made Tree Preservation Order (TPO). This relates to both trees of group value and individual trees and are largely positioned along the southern boundary of the site.

4. The appeal site is within the South Devon National Landscape (NL). Section 85 of the Countryside and Rights of Way Act 2000 (as amended)(the CRoW Act) required decision makers to have regard to the purpose of conserving and enhancing the natural beauty of the area. Since 2023, Section 245 of the Levelling-Up and Regeneration Act (LURA) amended the duty on relevant authorities in respect of their interactions with statutory purposes of Areas of Outstanding Natural Beauty (AONBs – now NLs), as set out in The CRoW Act. In so far as it relates to this appeal, the amendment now requires relevant authorities "in exercising or performing any functions in relation to, or so as to affect land in an, AONB…must seek to further the purpose of conserving and enhancing the natural beauty of the AONB".

5. The appellant states that a detailed business plan, marketing strategy and financial projections are available to the Planning Inspectorate on request but cannot be publicly disclosed due to confidentiality. However, Planning Inspectorate procedural guidance requires all evidence to be shared publicly in the interest of fairness. It allows sensitive financial information to be submitted where essential, provided any redactions are supported by clear evidence of commercial harm. As

these documents have not been made available to the Council or interested parties, they do not form part of the appeal evidence and are afforded no weight.

Main Issues

6. The main issues are:

- The effect of the proposed development on the character and appearance of the area and on trees, being within the South Devon NL, and
- Whether the proposed access track and levelled area would meet an identified agricultural need.

Reasons

Character and appearance

7. The appeal site consists of three parcels of agricultural land in a loose linear group that follows a valley floor and rising edge. It is bound by Cottlass Lane and Aylestone Brook. Cottlass Lane is a bridleway that follows the site along its southern boundary, it is adjacent to, and higher than, the site providing many views out across most of the site and its surrounding valley.

Landscape and visual effects

8. The site is within the South Hams Landscape Character Type 3G: 'River valley slopes and combes'. This is characterised as a valued semi-natural habitat, including rivers, wet grassland and broadleaved woodland which may be ancient in origin. The site sits within a highly rural landscape with the surrounding valley forming part of a gently rolling landform of low hills, with a distinguishable floodplain, creating a flat valley floor of meadows with pastoral fields rising on both sides. The site therefore accords with the landscape character area (LCA).

9. The special qualities of the NL are defined by the South Devon AONB Management Plan [2019]. These include its wild and rugged coastline, its deeply rolling patchwork of agricultural landscape and its unspoilt and expansive panoramic views. Other qualities include its intricate network of winding lanes, paths and recreational routes and its areas of high tranquillity and distinctive natural landscapes.

10. The valley the site is within is found by the Council to be highly scenic, to which I agree, with the bridleway providing many pleasant views out over the valley. The routes of Runaway Land and Cottlass Lane follow the valley on its sloping sides, and a further footpath follows the floodplain meadows on the northern side of the brook. Prior to development taking place on the site, the site would have included sloping land that contributed to the defining characteristics of the LCA. As such, the site makes a strong and positive contribution to the landscape character of the area in a highly visible location.

11. The proposal, including the formation of a flat section of land with steep sided embankments, is a feature uncommon in the area and erodes the gently sloping sides of the valley with works that appear out of character with the gently undulating form of local land. Although the appellant refers to nearby steep earth banks, such features have not been clearly identified and were not evident during my visit. Consequently, the proposed works, both undertaken and yet to occur,

would materially erode the positive contribution the site, in its original form, made to the surrounding area's landscape character resulting in long term adverse effects.

12. In visual terms, there are examples of sporadic housing and commercial uses along Church Lane, with Modbury Joinery being close to the end of Cottlass Lane. There are also numerous tracks through the local area, although the nearest route, the bridleway, consists of compacted dirt and creates a strong rural feel. Furthermore, the nearby structures are mostly not evident from views within the site or clearly prominent along the bridleway. There is a derelict barn close to the access of the site on Cottlass Lane and water treatment works to the north of the site which is well screened. These are visible from the bridleway in some views but are subdued features. Accordingly, the site largely presents itself as rural in character with limited man-made interventions apparent.

13. The works undertaken have removed the gradually sloping land and created terraces for both the access track and the paddock area. The introduction of a flat area of land and a steep embankment is out of character with the surrounding undulating landform that would not integrate seamlessly with their surroundings. Furthermore, the access track is a highly engineered feature that, with the application of final surfacing, would appear out of place in this rural setting.

14. The bridleway is substantially different in form and character, following the undulation of the land and having a more natural finish. Although small scale agricultural activity may require alterations to the landscape, these should be modest and in character with the surrounding area. Consequently, the visual effect of the field levelling and access track, as seen from various viewpoints would be to create moderate adverse visual harm, that mitigating screening would only address to a limited extent.

Effect on protected trees

15. The site is subject to a number of trees protected by TPO. During construction of the access track and land remodelling some works took place close to these trees, which I understand from the appellant were not protected at the time.

16. Guidance with respect to Tree works on development sites are provided by BS5837:2012 'Trees in Relation to Design, Demolition and Construction'. This explains that a tree's Root Protection Area (RPA) should be kept free from construction damage, compaction and digging. It also explains that the RPA should be modified to account for a slope and reconfigure the shape to an elongated ellipse, and asymmetric polygon or sector to account for soil morphology, moisture gradient and stability needs.

17. The appellant explains that tree roots would follow the existing hedge line limiting damage to the trees. The advice provided by the appellant identifies that tree roots have been severed although few significant roots seemed to have been severed. It suggests that most tree roots would be retained within the hedge bank and any damage would be less severe than might otherwise have been the case which would be unlikely to have shortened the life expectancy of the trees. Nonetheless, the tree survey identifies that tree (T5) has been eroded with many severed fine feeder roots but then concludes this tree should be able to tolerate the damage.

18. The appellant's evidence, at section 5(e), provides an assessment of an oak tree 18 months after the works were undertaken, presumably referring to tree (T5). This explains that the tree shows no signs of stress, such as crown dieback, poor leaf quality or reduced growth and supports the conclusion that the tree has not suffered lasting negative effects.

19. However, the appellant acknowledges that the excavation work unknowingly caused root disturbance but suggests that the offered mitigation would reduce ongoing risk and protect the tree's future health. Mitigation consists of the addition of hardcore of the track to help distribute mechanical loads, restoration of parts of the levelled area with additional soil to recover exposed roots and in providing ongoing monitoring. Nonetheless, the addition of hardcore, which may well distribute the load, may also compact the remaining root system causing further damage to the trees.

20. I understand that the works undertaken included the removal of extensive areas of topsoil close to the trees which appears to have removed roots and finer rooting mass, beyond those on a linear path. I am also cognisant that the Council's tree officer identifies that works undertaken have resulted in harm to the root system of protected trees, including the severing of structural roots. Furthermore, further damage would be likely to occur in the creation of the permeable track surface and the level platform, due to the further proposed lowering of soil levels on the slope.

21. As such, it has not been adequately demonstrated that existing works have not damaged the longevity of the protected trees or that the further work would not result in trees being further harmed through invasive nearby works. Based on the evidence before me, it has not been clearly demonstrated that some trees would not fail. The loss of trees in this area would result in a further adverse visual effect and a harmful effect on the area's landscape character. Replacement tree planting already undertaken by the appellant, may not fully or adequately off set the harm identified to the protected trees.

Summary of character and appearance effects

22. Mitigation in the form of tree planting has been undertaken in pockets throughout the appeal site. These appear in clusters alongside the brook and in a large area within the first field. These would enable parts of the access track to be partially screened from users of the bridleway. Nonetheless, this would only screen a small part of the track as most of the track runs alongside the bridleway. Further landscape screening could be secured by condition, but this would not materially screen the majority of the works and in any event would not reduce the harm found to landscape character. As a result, due to the identified harms the proposed development would not further the purpose of conserving and enhancing the natural beauty of the NL.

23. Accordingly, the proposed development would result in landscape and visual harm to the character and appearance of the area, cause harm to protected trees and would not further the purpose of the CRoW Act. As such, the scheme would conflict with policies SPT1, SPT12, DEV23, DEV25 and DEV 28 of the Plymouth and South West Devon Joint Local Plan [2019] (LP) and policies MNP13 and MNP14 the Modbury Neighbourhood Plan (NP). The requirements of these policies include for development to protect the distinctive characteristics, special

qualities and important features of the natural landscape, to conserve and enhance landscape character and to avoid loss or deterioration of trees.

Agricultural need

24. Policy DEV15 of the LP, supports proposals that creates employment in rural areas and would assist in the diversification of the rural economy. This seeks to support the expansion of small business in rural areas providing it would result in no adverse impact on the environment. It also seeks to support development that would meet the essential needs of agriculture.

25. Due to its sloping nature, narrow width and non-linear boundary caused by the brook, the site is constrained in several ways that would limit its scope to be used well for agricultural purposes. The appellant's planning statement explains that the site is currently planted with fruit trees, which will be farmed, and is also used to graze horses. The submitted business plan explains that the intension is to add herb growth, lavender production, woodland development, orchard cultivation, poultry egg farming and sheep and goat breeding. The works undertaken are described as activity in support of a start-up agricultural use which is recognised and perhaps explains the modest level of activity currently taking place on site.

26. The track would benefit the proposed activity on site in aiding the movement of livestock, delivering animal feed, agricultural machinery and for land maintenance. It is also understood that the route of the new track replaced a former track, although this has been erased by the works undertaken. The new track and regraded land are suggested by the appellant to help prevent soil compaction and erosion and reduce scope for pollutants from entering the watercourse. The levelled area creates a flat site where poultry farming could take place preventing animal waste from entering the brook, due to the previously sloping field, causing contamination.

27. However, whilst these benefits to the farmer and agricultural activity are noted it is not clear why such extensive engineering works would be necessary to achieve the required outcomes. It seems that access to the furthest field, from the access from Cottlass Lane, could be readily achieved by livestock and agricultural machinery through the previously sloping land and it has not been demonstrated why this could not have happened without the works. The slope shown on the submitted cross sections does not appear to be of such severity that access over the original topography would have been prohibited. Consequently, the scale and type of material proposed for the access track would be disproportionate for its intended use, based on the scale of the fields it would serve.

28. Also, it not clearly demonstrated within the evidence how the previous slope of the middle field was of such a gradient that animal waste pollutants would enter the watercourse. Moreover, if this was at risk of occurring, it is not demonstrated why other less invasive methods of prevention, such as a catchment system and bund at the lowest point of the slope, would not address this issue with a lessened visual effect. It is also noted that the majority of the development area is not liable to flooding being within flood zone 1. Further, It has not been demonstrated that an imminent agricultural operation is due to commence that would require the scale of works undertaken.

29. Accordingly, whilst the agricultural need for some improvement to the land may have been necessary, the extent of works undertaken and proposed have not

been adequately justified to form a compelling reason to weigh in favour of the proposal.

30. Consequently, as the proposal would result in harm to the local environment, and has failed to demonstrate an agricultural need, it would conflict with LP policies TTV26 and DEV15 and NP policy MNP1. These seek, among other matters, for development to respond to proven agricultural need that requires a countryside location and for proposals beyond the settlement boundary to be demonstrably essential.

Other Matters

31. Whilst it is advanced that the works undertaken would improve soil and water management, reduce soil erosion and provide better managed surface water runoff these assertions appear speculative and are not demonstrated in the evidence. There is no indication that the site was previously subject to soil erosion or poor surface water runoff requiring the substantial earthworks undertaken. Also, it is suggested that the proposal would improve animal welfare, but again this assertion is not demonstrated in the evidence before me. The site is shown to largely be within flood zone 1, it seems likely that the works undertaken have retained land levels to a similar or improved level. It is therefore unclear how the proposal would mitigate flood risk as a benefit that could weigh in favour of the scheme.

32. The appellant suggests that the need to reverse the works, if required, would cause adverse environmental effects, including increased traffic importing new soil, harm to trees and a cost to the appellant. However, the extent of any corrective mitigation is not currently proposed or understood and is a separate matter for the appellant and Council to pursue collectively. Accordingly, the adverse effects of undertaking any corrective works, to works undertaken without the benefit of planning permission, is a neutral matter in the planning balance.

33. The appellant suggests policy TTV26 supports sustainable communities as the applicant's proposal might meet this goal through local food production and eco-friendly practices. It is also asserted that LP policies DVE23 and DEV25 supports development in the rural economy and sustainable development in the countryside. However, such support is contingent on such development not causing an adverse effect on the NL and furthering its key purposes.

34. The appellant has provided a list of 'related applications' at part 07d but has not clearly indicated the relevance of these decisions to the proposal. Also, the appellant refers separately to the location of existing tracks within the area at appendix A. It is not unusual to see such tracks in a countryside setting, but the presence of existing tracks has no material bearing on the environmental effects of the proposed track and extent of works undertaken and proposed to form it. It is noted that the 'blue' track was approved by the Council, but its context is not disclosed, attracting limited weight as a precedent for the proposal.

35. The appellant suggests that the track and levelled area improve safety for workers submitting a short health and safety report. However, this provides limited detail to demonstrate that the gradual slope of the unaltered land was inherently dangerous, necessitating the addition of substantial safety features.

36. The appellant explains that the site is within an area designated for woodland development, where additional wooded areas would be supported. It is also asserted that new trees reduce flooding elsewhere, providing an environmental benefit. Nonetheless, there is no objection to the planting of new trees which does not seem to be contingent upon the proposed scheme. It is also identified that the tree and hedge planting would provide some ecological benefits in providing new habitat opportunities, whilst this is of merit it only attracts limited weight in favour of the proposal.

37. The absence of an objection from Natural England is considered as a positive factor that weighs in favour of the scheme by the appellant. However, this consultation response clearly states that the proposal should be assessed at a local level and is outside the scope of Natural England's assessment, this therefore is a neutral consideration only.

38. The appellant asserts that the access track would be permitted development by virtue of Schedule 2, part 6, Class E of the Town and Country Planning (General Permitted Development) Order 2015. However, this provision cannot be applied when dealing with works already undertaken as Part 6, condition E.2(a) of the order requires the developer to seek prior approval before the beginning of development.

39. The appellant raises issues with respect to how the application was dealt with by the Council and alleges bias. However, accusations of bias should be taken up with the Council directly and weigh neither for nor against the merits of the case.

40. The proposal has gained various letters of objection and support from interested persons. The support identifies that the appellant has improved the appearance of the land in making productive use of it, in promoting responsible land management and environmental protection, providing new tree and hedge planting with various benefits including in providing improvements to drainage and air quality. These matters provide limited to minimal weight in favour of the proposal.

Planning balance and Conclusion

41. I have concluded that the proposal would result in adverse effects in terms of harm to the landscape character and visual appearance of the area, harm to the National Landscape and fails to demonstrate a clear agricultural need for the works. These matters have raised conflict with a range of development plan policies. This includes finding conflict with LP policies SPT1, SPT12, TTV26, DEV15, DEV23, DEV25 and DEV 28 and NP policies MNP1, MNP13 and MNP14. As such, the proposal would conflict with the development plan when taken as a whole. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.

42. Policy S03 of the National Planning Policy Framework (the Framework) applies a presumption in favour of sustainable development. Policy S05, for development outside settlements relates to a list acceptable development including development for agriculture. This states that such development should be approved unless the benefits of doing so would be substantially outweighed by any adverse effects, when assessed against the national decision-making policies of the Framework. The proposal is reported to deliver economic benefits on the basis that it would support a rural business, supported by policies E2 and E4 of the

Framework. Furthermore, the scheme proposes new hedgerow and tree planting as environmental improvements as supported by policy N3.

43. Whereas, the proposal would harm the character and appearance of the area, the National Landscape and fails to be justified as required works to support an agricultural enterprise. This therefore fails to address the requirements of policy DP3 in failing to respond well to its context and would not integrate well with its surroundings. It would also fail to enhance tree cover in conflict with policy DP3(2)(c). Furthermore, the proposal would fail to comply with policy N2(1)(b) and (d) in failing to take account of the quality of agricultural land and in failing to conserve or enhance natural features. Also, the proposal would fail to comply with policy N4(1) where development within a protected landscape should be designed to avoid harm to the statutory purposes and its special qualities, causing conflict with the Framework as a whole.

44. In this instance, the limited benefits of the proposed development would be substantially outweighed by the identified adverse effects of the proposal, when assessed against the national decision-making policies of the Framework as a whole. Accordingly, the identified conflict with the development plan would not be outweighed by the material considerations.

45. For the reasons given above the appeal is, therefore, dismissed.

B Plenty

INSPECTOR