

Committee Report – 16.01.2025

Application Number: 1/0976/2024/FUL

Registration date: 25 November 2024

Expiry date: 20 January 2025

Applicant: Mr Ashley Clements

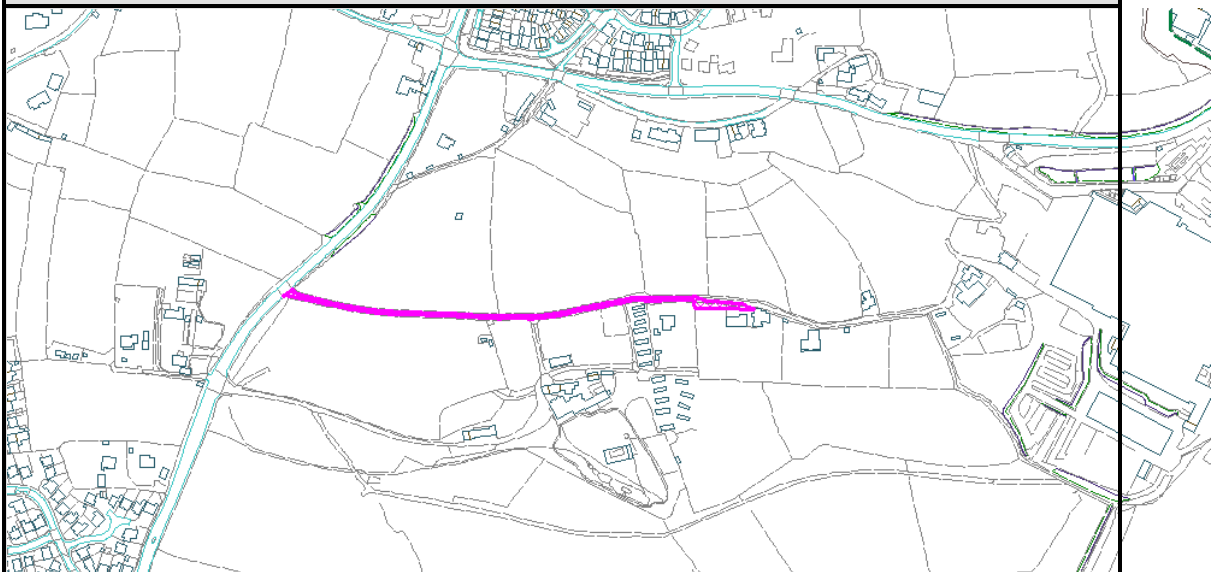
Agent: NPAS Devon Limited

Case Officer: Mr Peter Stapley

Site Address: River View,
Bidna Lane,
Northam,
Bideford,
Devon,
EX39 1NU

Proposal: Retrospective creation of vehicular access, including installation of gates, wall, fence, and hedgebank; the partial removal of the unauthorised boundary wall and fencing; closing of the existing vehicular access; and associated works, including landscaping (Affecting a public right of way)

Recommendation: Grant



Reason for referral:

The application was called-in by Councillor Hames, if minded to approve, for the following reason:

- 'To enable members of the Plans Committee to consider planning issues relating to the application.'

Relevant History:

Application No.	Description	Status	Closed
1/1249/1988	CONVERSION OF BARN TO ONE DWELLINGHOUSE	PER	22.09.1988
1/1333/1993	RENEWAL OF CONSENT FOR CONVERSION OF BARN TO DWELLING	PER	07.01.1994
1/1836/1998	CONVERSION OF BARN TO DWELLING (MODIFIED SCHEME)	PER	04.02.1999
1/1331/2003/FUL	Porch	PER	03.09.2003
1/1729/2003/FUL	Conservatory	PER	24.10.2003
1/0363/2012/FUL	Proposed extensions and alterations to provide additional living accommodation, bedrooms and study	PER	17.07.2012
1/0860/2022/OUT	Outline application for demolition of existing outbuilding and erection of 1 no. live work dwelling with all matters reserved	REF	01.11.2022
1/0940/2023/FUL	Retrospective application for widening of driveway access, removal of hedge scrub to replace with a garden wall and creation of passing area.	REF	07.06.2024

Site Description & Proposal

Site Description

The application site is located in the countryside, approximately 210 metres to the south of the development boundary of Northam (including Appledore and Westward Ho!), which is designated as a Main centre in the adopted North Devon and Torridge Local Plan (NDTLP). The wider site measures 0.49 hectares and comprises of a residential dwelling, known as River View; an agricultural building; an area of hardstanding; and a small parcel of greenfield land, which would appear to be used as residential amenity space.

The site falls within the designated Coast and Estuary Zone, however there are no designated heritage assets within close proximity. The Landscape Character Type for the application site is 5B (Coastal Undulating Farmland) and falls within a Zone 1 Flood Risk and therefore it has less than 1 in 1,000 annual probability of river flooding and is consider a low probability of flooding.

The site is neighboured by residential properties to the east and west; the private access lane to the north; with agricultural fields to the south. The site is accessed via a private lane from the public highway located approximately 365 metres to the west of the site.

Relevant Planning History

Planning Permission (1/0940/2023/FUL) was recently refused at Plan Committee, decision issued 07th June 2024, which sought *'Retrospective application for widening of driveway access, removal of hedge scrub to replace with a garden wall and creation of passing area.'*

The proposed development of the previous application consisted of a vehicle access measuring approximately 8 metres in length, with a further 12 metres of low boundary wall and fencing. The access gates and garden wall were to be set back from the private lane by approximately 2 metres. The proposed fencing measured approximately 1.8 metres in height and were to be constructed with dark grey render and natural timber boarding. The proposed gate consisted of solid grey cladding to a maximum height of 1.6 metres.

The proposal also included the provision of a replacement hedgebank to the north of the proposed boundary wall, with a hedgebank to a height of 0.6 metres with planting to a height of 1.9 metres. The existing northern vehicular access to the east of the proposed access is to be blocked with a further 7 metres of boundary hedge and the closing of the access to the southwest of the site, with an additional 10 metres of hedgebank. The proposal included a scattering of new native trees along the west and southern boundary of the site.

The application was refused for the following reason:

'In the opinion of the Local Planning Authority, the proposal would cause unjustified harm to the character and appearance of Bidna Lane and the wider area, including the sensitive and tranquil landscape setting in which the site is situated and the Undeveloped Coast (based upon the associated landscape character types). The proposed mitigation is insufficient in reducing the harm to the character of the area and the proposal is therefore contrary to Policies ST04 (Improving the Quality of Development), ST09 (Coast and Estuary Strategy); ST14 (Enhancing Environmental Assets); DM04 (Design Principles) and DM08A (Landscape and Seascape Character) of the North Devon and Torridge Local Plan and Paragraph 135 (b), (c) and 180 (a)-(c) of the National Planning Policy Framework.'

Proposed Development

The application seeks retrospective planning permission for the removal of approximately 45 metres of boundary hedge; the creation of a vehicle access with a garden wall; the partial demolition of the unauthorised boundary wall; a replacement hedge boundary; the closing of the existing vehicular access and associated works, including landscaping.

The proposed vehicle access will measure approximately 8 metres in length, with a further 12 metres of low boundary walling, including one panel of timber fencing. The access gates and garden wall are set back from the private lane by approximately 2 metres.

The proposed low boundary wall will measure approximately 0.6 metres in height; the two boundary pillars will measure approximately 1.68 metres in height; the three boundary pillars will measure approximately 2.08 metres in height; the proposed fencing panel will measure approximately 1.65 metres in height; and the proposed gate will measure approximately 1.5 metres in height.

The low boundary wall and pillars will be constructed with dark grey render and the fencing panel and gate will consist of natural timber boarding.

The proposal includes the provision of a replacement hedgebank to the north of the proposed boundary wall, with a hedgebank to a height of 1.2 metres, with planting above. The existing northern vehicular access to the east of the proposed access is to be blocked with a further 7 metres of boundary hedge and the closing of the access to the southwest of the site, with an additional 10 metres of hedgebank. The proposal includes a scattering of new native trees along the west and southern boundary of the site.

The application form confirms that works were completed on the 01st March 2023.

Consultee representations:

Northam Town Council:

It was resolved to recommend the proposal be refused permission on the grounds that it was contrary to Local Plan policies ST04, DM04, ST09 and DM08A, and NPPF paragraphs 135(b)&(c) and 180 (a) to (c). The proposed mitigation is not sufficient to offset the detrimental visual and environmental impacts on Bidna Lane, a country lane. The Council considers that the wall should be removed and replaced by a traditional Devon Hedgebank, and the gate replaced with a more sympathetically-designed one in wood, such as a traditional field gate.

Devon County Council (Highways):

Standing advice.

South West Water:

Thank you for this consultation. As this application concerns revisions to an access only and does not impact on our infrastructure, SWW have no observations.

Representations:

Number of neighbours consulted:	15	Number of letters of support:	0
Number of representations received:	2	Number of neutral representations:	0
Number of objection letters:	2		

The public representations received are summarised below:

Objection Comment

- Accuracy of hedgebank details – width
- Retention of large section of wall
- Lack of removal to enable hedgebank
- Design and impact on character and appearance

Policy Context:

North Devon and Torridge Local Plan 2011-2031:

ST01 (Principles of Sustainable Development); ST03 (Adapting to Climate Change and Strengthening Resilience); ST04 (Improving the Quality of Development); ST07 (Spatial Development Strategy for Northern Devon's Rural Area); ST09 (Coast and Estuary Strategy); ST10 (Transport Strategy); ST14 (Enhancing Environmental Assets); DM01 (Amenity Considerations); DM02 (Environmental Protection); DM04 (Design Principles); DM05 (Highways); DM06 (Parking Provision); DM08A (Landscape and Seascape Character); DM08 (Biodiversity and Geodiversity); DM25 (Residential Extensions and Ancillary Development).

Government Guidance:

NPPF (National Planning Policy Framework); NPPG (National Planning Practice Guidance); NERC (Natural Environment & Rural Communities); WACA (Wildlife & Countryside Act 1981).

Planning Considerations

The material planning consideration, which are relevant, in the determination of this planning application are:

1. Principle of Development;
2. Impact on Character and Appearance;
3. Impact on Amenity;
4. Access, Parking and Highways;

5. Impact on Wildlife and Ecology;
 - a. Ecological Impact;
 - b. Biodiversity Net Gain; and
6. Planning Balance and Conclusion.

1. Principle of Development

Section 38 (6) of the Planning and Compulsory Act 2004 states that key consideration in the determination of a planning application is the development plan. Applications should be determined in accordance with the development plan unless material planning considerations indicate otherwise. For the purpose of the development plan the statutory development plan is comprised of the North Devon & Torridge Local Plan 2011-2031 (NDTLP).

The NPPF sets out national policy in relation to ‘Sustainable Development’ and notes, at paragraph 12, that *“the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.”*

Policy ST01 of the North Devon and Torridge Local Plan (NDTLP) emphasises that development proposals will be considered with a presumption in favour of sustainable development, as contained in the NPPF.

In accordance with the definition provided in the Glossary to the NDTLP, the site subject to the application is considered to hold a Countryside location, with Part (4) of Policy ST07: Spatial Development Strategy for Northern Devon’s Rural Area providing the starting point for considering development proposals in such locations.

Policy ST07(4) sets out that in the Countryside, beyond Local Centres, Villages and Rural Settlements, development will be limited to that which is enabled to meet local economic and social needs, rural building reuse and development which is necessarily restricted to a Countryside location. In doing so, the NDTLP seeks to control dispersed development in the Countryside, guarding against development in unsustainable locations and requiring the character of the countryside to be conserved and enhanced. In this instance, the relevant consideration is whether the development is enabled to meet local economic and social needs. In doing so, the application of Policy ST07(4) requires consideration of what is enabled by the wider policies of the NDTLP which are applicable to the development proposal in question.

In addition to being located within the countryside, the application site falls within the Coastal Estuarine Zone; Policy ST09: Coast and Estuary Strategy of the NDTLP is therefore relevant. Policy ST09 seeks to guide development towards appropriate locations within the coast and estuary areas of northern Devon whilst at the same time ensuring their positive characteristics and features are suitably protected.

Policy ST09 (7) of the NDTLP states that 'Development within the Undeveloped Coast and estuary will be supported where it does not detract from the unspoilt character, appearance and tranquillity of the area, nor the undeveloped character of the Heritage Coast, and it is required, because it cannot be reasonably be located outside the Undeveloped Coast and estuary.

Policy DM25 offers broad planning policy support for ancillary residential developments, beyond which are enabled through permitted development, as long as it meets three tests:

- (a) *The form, scale, setting and design of the proposal respects the existing development, its context, setting and surroundings;*
- (b) *Adequate residential amenity space and parking provision being maintained; and*
- (c) *There being no significant adverse impact on the amenity of the occupants of neighbouring properties.*

The proposed development includes the removal of the existing boundary hedge and the relocation of the existing access, consisting of the provision of a vehicular access and garden wall. The proposed access is located to approximately 21 metres to the west of the existing access, which had previously served the residential use of the site and the existing agricultural building.

Northam Town Council were consulted on the proposed development and recommended the application be refused permission on the grounds that it was contrary to Local Plan policies ST04, DM04, ST09 and DM08A, and NPPF (2023) paragraphs 135(b)&(c) and 180 (a) to (c) (paragraph 187 (a) and (c) 2024 NPPF) and the proposed mitigation is not sufficient to offset the detrimental visual and environmental impacts on Bidna Lane, a country lane. The Town Council considers that the wall should be removed and replaced by a traditional Devon Hedgebank, and the gate replaced with a more sympathetically-designed one in wood, such as a traditional field gate.

It is noted that the proposed access is located outside of the residential curtilage of the dwellinghouse, known as River View. Additionally, the existing agricultural building is currently used for the storage of a Rigid Inflatable Boat (RIB), trailer, 4 x 4 truck all used in association with the business operated by the applicant. The area of hardstanding to the south of the proposed access has been created for the customer parking in relation to the previously mentioned business use of the site.

For the avoidance of doubt, the site does not benefit from planning permission for either the use of the whole site as residential curtilage or the use of the agricultural building and hardstanding for business purposes. Furthermore, a Certificate of Lawfulness has not been granted on the site to regularise such use.

The site has previously been served by an access from the north and the southwest of the site, via Knapp House. The access to the southwest is now no longer viable for the applicant and the existing access which serves the residential use of the site measures approximately 8 metres in width and has no visibility splay to the east. Whilst, the existing northern access may be appropriate for the volume of traffic relating to the residential property, the applicant states it is not appropriate for the business use, which requires the transportation of the RIB to the nearby slipway at Appledore.

Notwithstanding the above, the existing residential access is to be closed with the proposed access providing vehicular access to the residential property and the business use of the site. It is acknowledged that there currently is no lawful use of the site as business storage, it would therefore be reasonable to expect that should the original use (agricultural) of the building be reinstated, it would require a suitable vehicular access beyond that already existing.

Taking account the above, the proposed vehicular access is necessarily restricted to its countryside location, given its relation to the existing uses of the site. Consequently, the principle of an access is acceptable in accordance with Policies ST01, ST07 and ST09 of the North Devon and Torridge Local Plan and the National Planning Policies Framework, subject to the remaining planning considerations.

2. Impact on Character and Appearance

The Local Plan policies on design are relevant - Policy ST04 (Improving the Quality of Development) and Policy DM04 (Design Principles), which both aim to achieve high quality, inclusive and sustainable design.

Policy ST04 supports development proposals that achieve high quality inclusive and sustainable design to support the creation of successful, vibrant places. Design will be based on a clear process that analyses and responds to the characteristics of the site, its wider context and the surrounding area taking full account of the principles of design found in Policy DM04.

Policy DM04 supports developments with good design and the policy seeks to guide overall scale, density, massing, height, landscape, layout, materials, access and appearance of new developments. It seeks not just to manage land use but support the creation of successful places and respond to the challenges of climate change. The policy lists 13 design principles that proposals must meet in order to be supported by the policy.

Policy DM08A seeks to protect the landscape and seascape character stating 'developments should be of an appropriate scale, mass and design that recognises and respects landscape character of both designated and undesignated landscapes and seascapes; it should avoid adverse landscape and seascape impacts and seek to enhance the landscape and seascape assets wherever possible. Development must take into account and respect the sensitivity and capacity of the landscape/seascape asset, considering the cumulative impact and the objective to maintain dark skies and tranquillity in areas that are relatively undisturbed.'

The Landscape Character Type for this area, as defined in the 2011 Joint Landscape Character Assessment for North Devon and Torridge, is 'Farmed Lowland Moorland & Culm Grassland' (5B) and Devon Character Area, 'Bideford Bay Coast' (3). The summary of special qualities includes:

- Strongly rolling landscape with prominent ridges and hilltops, influenced by the close proximity of the sea.
- Pervading maritime influence with long coastal views, including to development at coastal settlements and to the north-west peninsula of the North Devon coastline
- Nature conservation interest provided by the area's network of woodlands and hedges, with isolated sites of Culm grassland, unimproved species-rich grassland and scrub interspersed within the farmland. Coastal locations include patches of maritime grassland, wet flushes and bracken scrub.
- Settlement and farms linked by a network of rural roads enclosed by high hedgebanks. The main A39 cuts through the area.
- Away from settlements, high levels of tranquillity are experienced with dark night skies.
- Traditional built vernacular of whitewashed and cream cob/render cottages, with some buildings of exposed local stone with red brick detailing. Recently built housing, including cream/white bungalows, is a feature of some villages
- Special Area of Conservation extend into the coastal landscape. A number of County Wildlife Sites also highlight important areas of nature conservation interest.

Policy ST09 (7) states that development within the Undeveloped Coast and Estuary will be supported where it does not detract from the unspoilt character, appearance and tranquillity of the area, nor the Undeveloped character of the Heritage Coast, **and** it is required because it cannot reasonably be located outside the Undeveloped Coast and Estuary.

Policy ST14 of the Local Plan seeks to enhance the District's environmental assets, noting within section (g), the need to protect and enhance the local landscape character, taking into account the key characteristics, historical dimensions of the landscape and their sensitivity to change.

The National Planning Policy Framework (NPPF), and in particular Part 12: Achieving well-designed places, attaches great importance to the design of the built environment. Paragraph 135 of the NPPF states that development should in terms of design:

- (a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- (b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- (c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
- (d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- (e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
- (f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder,

and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Paragraph 139 of the NPPF states that permission should be refused for the development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

Paragraph 187 of the NPPF states that Planning policies and decisions should contribute to and enhance the natural and local environment by:

- (a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);
- (b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;
- (c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;
- (d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
- (e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and
- (f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

Northam Town Council were consulted on the proposed development and recommended the proposal be refused permission on the grounds that it was contrary to Local Plan policies ST04, DM04, ST09 and DM08A, and NPPF paragraphs 135(b)&(c) and 180 (a) to (c) and that the proposed mitigation is not sufficient to offset the detrimental visual and environmental impacts on Bidna Lane, a country lane. The Town Council considers that the wall should be removed and replaced by a traditional Devon Hedgebank, and the gate replaced with a more sympathetically-designed one in wood, such as a traditional field gate. It is noted that the NPPF was updated on the 13th December and Paragraph 180 as set out in the Town Councils representation, now forms Paragraph 187 of the NPPF.

A number of objections were received during the public consultation which raised concern on the design of the gate and wall; and its impact on the character and appearance of the area.

The application seeks retrospective planning permission for the removal of approximately 45 metres of boundary hedge; the creation of a vehicle access with a garden wall; the partial demolition of the unauthorised boundary wall; a replacement hedge boundary; the closing of the existing vehicular access and associated works, including landscaping.

The proposed vehicle access will measure approximately 8 metres in length, with a further 12 metres of low boundary walling, including one panel of timber fencing. The access gates and garden wall are set back from the private lane by approximately 2 metres.

The proposed low boundary wall will measure approximately 0.6 metres in height; the two boundary pillars will measure approximately 1.68 metres in height; the three boundary pillars will measure approximately 2.08 metres in height; the proposed fencing panel will measure approximately 1.65 metres in height; and the proposed gate will measure approximately 1.5 metres in height.

The low boundary wall and pillars will be constructed with dark grey render and the fencing panel and gate will consist of natural timber boarding.

The proposal includes the provision of a replacement hedgebank to the north of the proposed boundary wall, with a hedgebank to a height of 1.2 metres, with planting above. The existing northern vehicular access to the east of the proposed access is to be blocked with a further 7 metres of boundary hedge and the closing of the access to the southwest of the site, with an additional 10 metres of hedgebank. The proposal includes a scattering of new native trees along the west and southern boundary of the site.

It is acknowledged that a similar application was refused by Plans Committee, decided on 07th June 2024, for the following reason:

'In the opinion of the Local Planning Authority, the proposal would cause unjustified harm to the character and appearance of Bidna Lane and the wider area, including the sensitive and tranquil landscape setting in which the site is situated and the Undeveloped Coast (based upon the associated landscape character types). The proposed mitigation is insufficient in reducing the harm to the character of the area and the proposal is therefore contrary to Policies ST04 (Improving the Quality of Development), ST09 (Coast and Estuary Strategy); ST14 (Enhancing Environmental Assets); DM04 (Design Principles) and DM08A (Landscape and Seascape Character) of the North Devon and Torridge Local Plan and Paragraph 135 (b), (c) and 180 (a)-(c) of the National Planning Policy Framework.'

The differences between the previously refused application and the proposed development, which is the subject of this application are as follows:

1. Removal of two (2) pillars on the boundary wall.
2. Removal of four (4) timber panel sections.
3. Alterations to the proposed gate material from grey composite cladding to natural timber cladding.
4. Provision of a BT10 Devon Hedgebank, measuring 1.85 metres in width by 1.2 metres in height, rather than the previously proposed 'Small Hedgebank', measuring 0.8 in width by 0.6 metres in height.

Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015, as amended (hereafter referred to as the GPDO) allows for *the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure*. However, development is not permitted by Class A if:

- (a) *The height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed—*
 - (i) *For a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;*
 - (ii) *In any other case, 1 metre above ground level;*
- (b) *The height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;*
- (c) *The height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater; or*
- (d) *It would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.*

The fence and wall, which is above 1 metre in height, is set behind the proposed Devon Hedgebank which directly adjoins the public highway, being a defined route over which the public can pass. When considering the possibility of a fall-back position, the question, revolves around whether or not the wall and fence is considered to be 'adjacent', or not, to the highway. The word 'adjacent' is not defined in the Planning Act and it has been held that legislators were not likely to have intended 'a one size fits all approach'. The common dictionary definition of 'adjacent' is 'lying near' or 'contiguous', although Case Law shows that 'adjacency' does not equate to 'contiguous' or 'abutting'.

Thus, the position established by the courts is that the word 'adjacent' does not necessarily mean that the fence has to be abutting or touching the highway. A wall or fence can be set back from a highway, but still be 'adjacent' to it, as a matter of fact and degree, provided that the enclosure is clearly to define the boundary of the property concerned from the highway and is perceived to do so.

In this case, the low boundary wall measures 0.6 metres and therefore is considered to fall under permitted development. The two pillars which measure approximately 1.68 metres in height and the timber panel which measures approximately 1.65 metres in height, are located approximately 2.3 metres from the public, highway, and are behind the proposed hedgebank. The hedgebank is considered to define the boundary of the property and therefore the two pillars could be considered to fall under permitted development.

The three pillars which measure approximately 2.08 metres in height, located approximately 2.3 metres from the public, highway; however, they exceed the 2 metres threshold in any case and therefore would not fall under permitted development. Nonetheless, the fall-back position could be considered should the pillars be reduced by 0.08 metres, and therefore the level of harm from the additional height is considered minor.

The proposed gate which measures approximately 1.5 metres in height, would form the defined boundary of the site and therefore is considered to be adjacent to the highway despite it being located approximately 2.4 metres from the highway. Consequently, the gate exceeds that allowed under Part 2, Class A of the GPDO by 0.5 metres. The resulting harm arising from the additional 0.5 metres is considered to be minor.

The proposed hedgebank which measures approximately 1.2 metres in height, would form the defined boundary of the site and therefore is considered to be adjacent to the highway. Consequently, the hedgebank exceeds that allowed under Part 2, Class A of the GPDO by 0.2 metres. The planting within the hedgebank is not considered to be development and therefore is not included in the assessment.

The application is retrospective and therefore a true sense of character is difficult to assess given the works have already been carried out. Photo 6 of the submitted ecology report is the only surviving evidence of the former boundary hedge and clearly demonstrates that the hedge was well-established and would've contributed significantly to the immediate context and character of being a quiet country lane, typical of country lanes within the *Farmed Lowland Moorland & Culm Grassland* landscape character.

Overall, whilst there are existing residential dwellings in the immediate area, including the host dwelling, the sense of place and character is described as being particularly spacious, tranquil and peaceful.

Turning to the scale and design of the proposed access. The proposal includes the blocking of the existing access, which measures 7 metres in width and consists of a five-bar agricultural gate. The proposed development consists of solid timber clad gate and would therefore be of a more domestic appearance. The proposal also includes the provision of a low garden wall measuring 12 metres in length, with one timber fencing panel, set behind the boundary Devon Hedgebank to a height of 1.2 metres with vegetation above.

It is noted that the rural lane to the east of the proposed access does consist of a solid timber fence measuring approximately 12 metres in width, with a further domestic access measuring 10 metres in width which consists of rendered pillars to a height of approximately 2 metres, black metal barred gate and a solid timber fence. Given the context of the domestic entrances and features within the immediate vicinity and the level of development which could be achieved under permitted development, it is the opinion of your Officer that the proposed development incorporating the Boundary Devon Hedge providing sufficient screening would not significantly impact the overall character of this private access lane.

Taking account of the above, the proposed development, subject to appropriate conditions, is considered to be in accordance with Policies ST04, ST09, ST14, DM04 and DM08A of the North Devon and Torridge Local Plan and the National Planning Policies Framework.

3. Impact on Amenity

Policy DM01 of the NDTLP relates to amenity considerations and notes, development will be supported where:

- (a) *It would not significantly harm the amenities of any neighbouring occupiers or uses; and*
- (b) *The intended occupants of the proposed development would not be harmed as a result of existing or allocated uses.*

Policy DM02 of the NDTLP, states that development will only be supported where it does not result in unacceptable impacts to:

- (a) Atmospheric pollution by gas or particulates, including smell, fumes, dust, grit, smoke and soot;
- (b) Pollution of surface or ground water including rivers, canals, other watercourses, water bodies, wetlands, water gathering grounds including catchment areas, aquifers, groundwater protection areas, harbours, estuaries or the sea;
- (c) Noise or vibration; and
- (d) Light pollution where light overflows on to areas not intended to be lit.

Policy DM04 also aims to ensure the amenities of existing and future neighbouring occupiers are safeguarded.

In addition to this, one of the core principles of the NPPF is to secure high-quality design and a good standard of amenity for all existing and future occupants of land and buildings. Part H1 of the National Design Guide states that *'good design promotes quality of life for the occupant and users of buildings. This includes function [...] comfort, safety, security, amenity, privacy, accessibility and adaptability.'*

The application site is neighboured by residential dwellings to the west, with the host dwelling located immediately to the east and a further neighbouring residential dwelling to the east of the wider site.

The proposed access is to serve the existing uses of the site, in which there is no evidence of any harm arising to the amenities of the neighbouring dwellings. The proposed development would not significantly increase the scale of operations or alter the nature of existing business use.

Taking account of the above, given the scale and nature of the existing operations of the site and the proposed development, the proposed development is considered to not result in any significant harm to the environment in terms of air quality nor in terms of harm to neighbouring dwellings amenity.

Taking account of the above, it is considered that the proposal is in accordance with Policies DM01, DM02, and DM04 of the NDTLP

4. Access, Parking and Highways

Paragraph 116 of the NPPF advises that development should only be prevented or refused on transport grounds if there would be an unacceptable impact on highways safety, or the residual cumulative impacts on the road network would be severe. In addition, Paragraph 117 notes that development should minimise the scope for conflict between pedestrians, cyclists and vehicles, respond to local character and design standards, allow for the efficient delivery of goods, and access by service and emergency vehicles.

Policy ST10 of the NDTLP, sets out the transport strategy for Northern Devon. It aims to reduce the environmental and social impact of transport by ensuring that access to new developments is safe and appropriate.

Policy DM05 of the NDTLP relates to highways and states:

- (1) All development must ensure the safe and well-designed vehicular access and egress, adequate parking and layouts which consider the needs and accessibility of all highway users including cyclists and pedestrians.*
- (2) All development shall protect and enhance public rights of way, footways, cycleways and bridleways and facilitate improvements to existing or provide new connections to these routes where practical to do so.*

The proposal is for the removal of the existing hedgerow and the relocation of the existing access with a garden wall. The site is accessed via a private lane from the public highway located approximately 365 metres to the west of the site.

The existing private lane is a typical single country lane with no lighting or footways, and limited passing opportunities. Whilst not being suitable for carrying large volumes of traffic, it does, nevertheless serve the existing residential use. There is no through traffic for vehicles, however there are Public Rights of Way located to the east and west of the site. There is no evidence that the current level of use results in an unacceptable impact on highway safety.

On the evidence before me, the proposed development would not result in a significant increase in traffic movement to the site and the visibility splays are considered acceptable. Nonetheless, the business use of the site is not included within the consideration of this application, given it would appear that there is no lawful use of the site for business purposes.

It is acknowledged that the proposed development would provide the benefit of an additional vehicle passing bay, albeit over private land. The Council recommends a suitably worded condition restricting the placement of any bollards. Furthermore, the proposed access does improve the visibility splays for the wider site, which are currently limited on the existing access.

In light of the above, the proposal would not result in an unacceptable impact on highway safety or a severe residual cumulative impact on the road network and therefore is considered to be in accordance with policies ST10, DM05 and DM06 of the NDTLP and the NPPF.

5. Impact on Wildlife and Ecology

a. Ecological Impact

Local Planning Authorities have a statutory duty to ensure that the impact of development on wildlife is fully considered during the determination of a planning application under the Wildlife and Countryside Act 1981 (as amended), Natural Environment and Rural Communities Act 2006, the Conservation of Habitats and Species Regulations 2010 (Habitats Regulations 2010). This is further reinforced within NDTLP through Policies DM08 and ST14 which state that all developments must ensure that the importance of habitats and designated sites are taken into account.

The local planning authority also has a duty under Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 to have regard to biodiversity in exercising its functions. This duty includes the requirement to have regard to protected species.

Development proposals should avoid adverse impacts on existing features as a first principle and enable net gains by designing biodiversity features and enhancements and opportunities for geological conservation alongside new developments, however where adverse impacts are unavoidable they must be adequately and proportionately mitigated.

A number of public representations were received during the application process, which raised concerns in relation to the detailing of the hedgebank and whether the hedgebank has sufficient space to establish.

A Wildlife Trigger List was submitted as part of the application which indicated a further ecological impact assessment was required, given the proposal included the removal of a hedge. A 'Preliminary Ecological Appraisal Report' (reference: 2365/OC) was carried out by Orbis Ecology, in May 2022 and submitted to the Council for consideration, received 13th November 2024.

In addition to the above, an Ecological Impact Assessment (reference: 24-785-EclA-RT) was prepared by Lakeway Ecological Consultancy, in September 2024 and submitted to the Council for consideration, received 13th November 2024.

The proposed development, subject to this application, includes the removal of approximately 25 metres of hedgerow, with a further 20 metres of hedgerow being cleared. It is noted that the cleared hedgerow has re-established since its initial clearing and the updated Ecological Impact Assessment has assessed the re-established hedge. The exact date of the hedge removal is unknown, the application form states the works were completed on the 1st of March 2023.

The report concluded the following for each protected species and habitats:

Habitats and Flora

As the proposals involve the reinstatement of part of the hedgerow, and its extension to the east, with a new access formed in the centre of the hedge, no specific mitigation is required. However, the retained section of hedgebank will be enhanced to improve the species diversity, planting recommendations are provided in Appendix 3 of the report.

Bats

The Site presented negligible potential for roosting bats and so no adverse effects are predicted.

It is probable that local bat populations forage and commute along the site boundaries from time to time and although the Site boundaries are not considered to be a particularly important feature in the landscape, inappropriate lighting risks causing a barrier to foraging bats. Therefore, exterior lighting must be carefully placed to avoid illuminating boundary vegetation. Best practice guidance detailed in Guidance Note 08/23 - Bats and Artificial Lighting at Night (BCT, ILP, 2023) should be followed when siting lights both on and within buildings. Furthermore, security lighting will point downwards and be set on motion sensor with short duration (30s or less). This will ensure that no light barriers are introduced to foraging and commuting bats.

Breeding Birds

The current hedgerow contains little woody vegetation and is unlikely to provide good nesting habitat, however the previous hedgerow would have been suitable for a variety of nesting birds. The re-creation and extension of the hedgerow will enhance the Site for nesting birds such that residual effects will be positive.

Other Protected/Notable Species

The reinstatement of the hedgerow will be positive for other species. However, wildlife including hedgehogs and badgers may cross the Site. Therefore, best practice measures must be employed to avoid harm to wildlife during enabling/ construction and any pipe work should be capped overnight and any pits/ trenches covered or a means of escape provided. The layout provides continuity around the Site such that wildlife will be able to traverse the Site during operation and the habitat management recommendations and additional planting will benefit wildlife such that residual effects will be positive.

Enhancements

The compensation described above aims to ensure no net-loss in biodiversity caused by development. In addition, the following features will be installed, to provide a net-gain in biodiversity (see Lakeway 2024a and 20204b), in line with Local and National policy: enhancement of the existing hedgerow (c.21m).

In addition to the above, the proposed development includes landscaping within the wider site and is included within a Landscaping Condition.

Conclusion

Taking account of the above, subject to the proposed development being carried out in accordance with the relevant condition, it is the opinion of the Local Planning Authority that the proposal fulfils the

above statutory duties and the provision of Policies DM08 and ST14 of the NDTLP and the requirements of the NPPF.

The hedgebank has been specified by a suitably qualified ecologist and therefore the LPA are reasonably satisfied that the detailing is accurate and the hedge will be able to be established. In any case, the hedgebank will be managed and maintained in accordance with the BNG details as set out below and as part of the pre-commencement condition.

b. Biodiversity Net Gain

As of the 02nd April 2024, it is mandatory under the Schedule 7a of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021) that developments (unless exempt) must deliver a Biodiversity Net Gain of 10%.

A DEFRA Biodiversity Statutory Metric was prepared by Lakeway Ecologists and submitted for consideration, received 13th November 2024. The Case Officer would concur with the finding of the baseline assessment, insofar the Baseline of the hedge has been assumed as 'good' given that site clearance occurred prior to the submission of the application.

The habitat retention, enhancement and creation, is in accordance with the BNG Hierarchy, with the enhancement of the remaining hedge (20 metres), and the creation of hedgerow along the northern boundary (24 metres).

It is acknowledged that only the north hedgebank is included within the BNG calculations, given they fall within the application site. Additional landscaping is proposed within the wider site and this is controlled via planning condition but does not form part of the BNG Plan.

There are no habitats or watercourses impacted by the proposed development.

The Trading Summaries of the proposed development demonstrates that the total net (%) change is as follows:

- Habitat Units: N/A (0.00%)
- Hedgerow Units: 0.05 (10.12%)
- Watercourse Units: N/A (0.00%)

Taking account of the above, the trading rules are satisfied, subject to detailed consideration at a later stage.

7. Planning Balance and Conclusion.

For the avoidance of doubt, it is concluded that the proposed vehicular access is necessarily restricted to its countryside location, given it is to serve the existing residential dwellinghouse and any agricultural use of the site.

It is acknowledged there will be some degree of harm within the immediate setting in the short term, whilst the proposed hedgebank is to be established. However, once fully established the harm to the immediate setting will be greatly reduced and would be no more harmful than the existing character of the neighbouring site. The impact on distance landscape views would be negligible given the screening from the existing agricultural building and proposed planting; the topography of the land; and in any case the development would be seen in the context of the existing built form. The impact on the character and appearance of the undeveloped coast is given neutral weight.

The proposed development would result in an overall 22% increase in hedgerow across the site and subject to careful management would provide an improved habitat and ecological value, when assessed against the ecological baseline of the submitted ecology report. However, without an appropriate assessment of the existing hedge, this matter cannot be appropriately assessed. The impact on wildlife and ecology is considered neutral.

Weighing up the benefits of the proposal, the proposal would provide an informal passing bay for vehicles on the country lane. However, there is no through traffic and the lane serves only three residential properties and therefore the benefit would be minor.

Additionally, there would be a minor improvement to the highway impact and pedestrian safety, arising from the significant improvement to the visibility splays for the existing uses. Albeit, as previously stated there is no through traffic and the lane serves only three residential properties and therefore the benefit would be minor.

Taking account of the above, your Officer considers that the identified benefits of the proposal outweigh any long-term harm and a recommendation of approval is made, subject to the inclusion of necessary conditions.

Human rights

Consideration has been given to the Human Rights Act 1998.

Conclusion

It is therefore considered that subject to the compliance with the attached conditions and taking into account all other material planning considerations, including the development plan the proposal would be acceptable.

Recommendation

GRANT, subject to the following conditions:

- 1 The development to which this permission relates must be begun no later than the expiration of three years beginning with the date on which this permission is granted.

Reason: The time limit condition is imposed in order to comply with the time requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).
- 2 The development hereby permitted shall be carried out in accordance with the approved plans listed in the Plans Schedule.

Reason: To ensure the development is carried out in accordance with the approved plans.
- 3 Unless otherwise agreed in writing with the Local Planning Authority, within six months of the date of the Decision Notice, the element of the existing wall and panelling as detailed on the proposed access site plan (reference: 1 400 01 I, received: 20th November 2024) shall be permanently removed from the site.

Reason: In the interest of Character and Appearance of the Undeveloped Coast and to allow the provision of the required hedgebank, in accordance with Policies ST04, ST14, ST09, DM04, DM08, and DM08A of the NDTLP.
- 4 Unless otherwise agreed in writing with the Local Planning Authority, within six months of the date of the Decision Notice, the proposed hedgebank and planting along the North, South and West boundary, as shown on the proposed access site plan (reference: 1 400 01 I, received: 20th November 2024) shall be provided and maintained to a minimum height of 1.9 metres; and shall be retained in perpetuity.

Reason: In the interest of Character and Appearance of the Undeveloped Coast in accordance with Policies ST04, ST14, ST09, DM04, DM08, and DM08A of the NDTLP.

- 5 Unless otherwise agreed in writing with the Local Planning Authority, within six months of the date of the Decision Notice, the proposed timber boarding as shown on the proposed access elevation (reference: 1 400 02 E, received: 13th December 2024) shall be provided; and shall be retained in perpetuity.

Reason: In the interest of Character and Appearance of the Undeveloped Coast in accordance with Policies ST04, ST14, ST09, DM04, DM08, and DM08A of the NDTLP.

- 6 The proposed vehicle passing bay as detailed on the proposed access site plan (reference: 1 400 01 I, received: 20th November 2024), shall remain unobstructed in perpetuity.

Reason: In the interest of vehicular and pedestrian safety, in accordance with Policies ST10, DM05 of the NDTLP.

- 7 The landscaping hereby approved shall be implemented in accordance with the agreed details as shown on the Proposed Site and Location Plan (reference: reference: 1 400 01 I, received: 20th November 2024). The planting shall be completed within the first appropriate planting season following the development being brought into use. If within a period of five years from the date of the planting of any tree or shrub, that tree/shrub, or any tree/shrub planted in replacement for it, is removed, uprooted, destroyed, dies or becomes seriously damaged or defective another tree/shrub of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.

Reason: To ensure that the development assimilates into the surrounding area, in accordance with Policies ST04, ST14, ST09, DM04, DM08, and DM08A of the NDTLP.

- 8 The development hereby approved shall be carried out in accordance with the recommendations set out at Section 6 (Impact Assessment and Mitigation) and Section 7 (Enhancements) of the Ecological Impact Assessment Report (reference: 24-785-EclA-RT), prepared by Lakeway Ecological Consultancy Ltd, received 13th November 2024. The approved details shall be implemented prior to occupation and retained thereafter as such.

Reason: In the interests of ecology and biodiversity at the site.

- 9 Any external lighting on the application site, shall be in accordance with the recommendations put forward by the Institute of Lighting Professionals and the Bat Conservation Trust. For the avoidance of doubt these include:

- All luminaires should lack UV elements when manufactured. Metal halide, fluorescent sources should not be used.
- LED luminaires should be used where possible due to their sharp cut-off, lower intensity, good colour rendition and dimming capability.
- A warm white spectrum (ideally <2700 Kelvin) should be adopted to reduce blue light component.
- Luminaires should feature peak wavelengths higher than 550nm to avoid the component of light most disturbing to bats.
- Only luminaires with an upward light ratio of 0% and with good optical control should be used - See ILP Guidance for the Reduction of Obtrusive light.
- Luminaires should always be mounted on the horizontal, i.e. no upward tilt.
- Any external security lighting should be set on motion-sensors and short (1min) timers.
- As a last resort, accessories such as baffles, hoods or louvres should be used to reduce light spill and direct it only to where it is needed.

Reason: In the interests of protecting the protecting species present and enhancing the habitats of protected species in accordance with the duties outlined in the Wildlife and Countryside Act 1981 (as amended), Natural Environment and Rural Communities Act 2006 and the Conservation of Habitats and Species Regulations 2010 (Habitats Regulations 2010) and requirements of the NPPF.

10 The development shall not commence until a 30 year Habitat Monitoring and Management Plan (HMMP), prepared in accordance with an approved Biodiversity Gain Plan, has been submitted to and approved in writing by the local planning authority. The approved HMMP shall be strictly adhered to and implemented in full for its duration and shall contain the following:

- a) Description and evaluation of the features to be managed;
- b) Ecological trends and constraints on site that may influence management;
- c) Aims, objectives and targets for management - links with local and national species and habitat action plans;
- d) Description of the management operations necessary to achieving aims and objectives;
- e) Prescriptions for management actions;
- f) Preparation of a works schedule, including annual works schedule;
- g) Details of the monitoring needed to measure the effectiveness of management;
- h) Details of the timetable for each element of the monitoring programme;
- i) Details of the persons responsible for the implementation and monitoring;
- j) mechanisms of adaptive management to account for necessary changes in work schedule to achieve the required targets; and
- k) Reporting on year 1, 2, 5, 10, 20 and 30, with biodiversity reconciliation calculations at each stage.

Reason: To enhance biodiversity.

Plans Schedule

<u>Reference</u>	<u>Received</u>
1400 01 I	20.11.2024
24-785-P1	13.11.2024
24-785-P2	13.11.2024
1400 02 B	13.12.2024

Informatives

01. Biodiversity Net Gain Condition

Paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 states that planning permission is deemed to have been granted subject to the "biodiversity gain condition" which means development granted by this notice must not begin unless:

- a. a Biodiversity Gain Plan has been submitted to the planning authority, and
- b. the planning authority has approved the plan.

This permission will require the submission and approval of a Biodiversity Gain Plan before development is begun.

For guidance on the contents of the Biodiversity Gain Plan that must be submitted and agreed by the Council prior to the commencement of the consented development please see the link: Submit a biodiversity gain plan - GOV.UK (www.gov.uk)

Statutory exemptions and transitional arrangements

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These can be found at Paragraph: 003 Reference ID: 74-003-20240214 of the Planning Practice Guidance, which can be found at <https://www.gov.uk/guidance/biodiversity-net-gain>.

Irreplaceable habitat

If the onsite habitat includes irreplaceable habitat (within the meaning of the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024) there are additional requirements for the content and approval of Biodiversity Gain Plans.

Effect of Section 73(2D) of the 1990 Act

Under Section 73(2D) of the Town and Country Planning Act 1990 (as amended) where -

- a. a biodiversity gain plan was approved in relation to the previous planning permission ("the earlier biodiversity gain plan"), and
- b. the conditions subject to which the planning permission is granted:
 - (i) do not affect the post-development value of the onsite habitat as specified in the earlier biodiversity gain plan, and
 - (ii) in the case of planning permission for a development where all or any part of the onsite habitat is irreplaceable habitat within the meaning of regulations made under paragraph 18 of Schedule 7A, do not change the effect of the development on the biodiversity of that onsite habitat (including any arrangements made to compensate for any such effect) as specified in the earlier biodiversity gain plan.

the earlier biodiversity gain plan is regarded as approved for the purposes of paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990 (as amended) in relation to the planning permission.

Statement of Engagement

In accordance with paragraphs 39 of the National Planning Policy Framework (NPPF) in dealing with this application, the Council has worked with the applicant in the following and positive and proactive manner. We have made available detailed advice in the form of our statutory policies in the Development Plan, Supplementary Planning Documents, Planning Briefs and other informal written guidance, as well as offering a full pre-application advice service, in order to ensure that the applicant has been given every opportunity to submit an application which is likely to be considered favourably. In such ways the Council has demonstrated a positive and proactive manner in seeking solution to problems arising in relation to the planning application.