

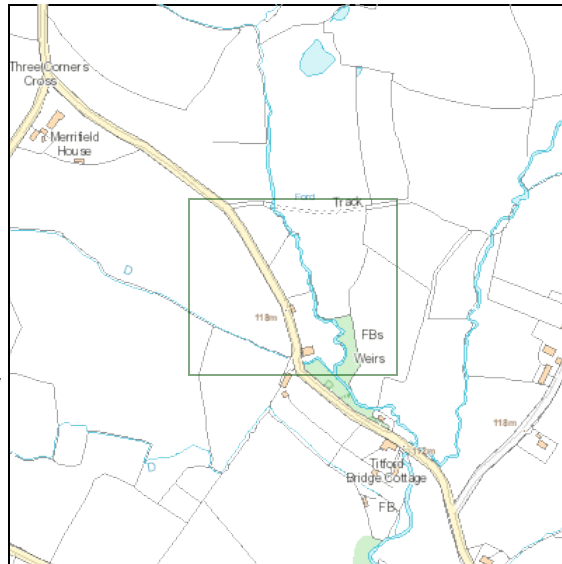
Ward Dunkeswell And Otterhead

Reference 21/2036/FUL

Applicant Mr James Healy

Location Titford Hold Awliscombe Honiton
EX14 3PS

Proposal The retention and modification of vehicular access comprising removal of gravelled track, bollard lights and gate, and replacement by wooden gate, stone track together with landscaping proposals including new Devon bank and wildflower meadow.



RECOMMENDATION: Refusal



		Committee Date: 24.11.2021
Dunkeswell And Otterhead (Awliscombe)	21/2036/FUL	Target Date: 23.09.2021
Applicant:	Mr James Healy	
Location:	Titford Hold Awliscombe	
Proposal:	The retention and modification of vehicular access comprising removal of gravelled track, bollard lights and gate, and replacement by wooden gate, stone track together with landscaping proposals including new Devon bank and wildflower meadow.	

RECOMMENDATION: Refusal

EXECUTIVE SUMMARY

This application is brought before the Committee because of a difference of opinion between officers and a Ward Member.

Titford Hold is a detached dwelling that sits within a large curtilage occupying a relatively isolated location within open countryside within the designated Blackdown Hills Area of Outstanding Natural Beauty (AONB).

It has long had the benefit of a vehicular access off of the adjacent unclassified lane positioned close to a comparatively recently constructed detached triple garage and connected to existing parking and turning areas within the curtilage of the property.

A former owner of the property submitted an application to the Council in 2019 (application 19/0297/FUL refers) to both regularise the change of use of an adjacent field to the immediate north of the recognised curtilage to form an extension to it and retain operations relating to the formation of a new wider splayed vehicular entrance to, and laying of a gravel driveway through, the land as well as low level bollard lighting alongside the latter and fencing along the edges of the splays and a pair of timber entrance gates.

The application was refused, under delegated powers, on the grounds of the detrimental impact of the development upon the rural character of the AONB. Enforcement action to secure the removal of the fencing, gates, driveway, lighting and hardstanding at the entrance, together with the reinstatement of a Devon bank and hedge across the majority of the width of the access, was also authorised.

However, further to the lodging of an appeal against the enforcement notice, it was deemed by the Inspector to be void owing to technical issues arising from the wording of its requirements in relation to the aftercare of the reinstated bank and hedge and the absence of any requirement to discontinue the use of the land for residential purposes in association with the principal dwelling.

The notice was therefore subsequently withdrawn by the Council, albeit without prejudice to the Authority's ability to take further action at its discretion to remedy the defects identified by the Inspector.

This current application, submitted by a new owner of the property, again seeks the regularisation of the operations to create the new vehicular entrance. However, in recognition of the Council's stance regarding the remainder of the unauthorised development, it omits the change of use of the land for residential purposes and proposes the replacement of the timber gates and fencing along the splay edges with a more traditional five bar gate and Devon banks and hedges respectively. It also seeks to remove the gravel driveway and lighting and replace them with a lower impact 'tram track' style driveway closer to the field edges with no associated lighting.

Although the proposals to mitigate the detrimental impact arising from the fencing, gates, driveway and lighting via the proposed modifications are clearly welcome, they are not thought to represent an acceptable substitute for their removal and, more importantly, the reinstatement of the bank and hedge in place of the unauthorised entrance, without which these other elements would not be necessary, in any form, in any event.

Whilst it is accepted that the new replacement entrance has been laid out to a higher standard in line with the standing advice relating to such developments provided by the County Highway Authority, it remains the view of officers that its purported benefits - principally in terms of facilitating better access for larger vehicles - do not outweigh the harm to the rural character and appearance of the lane and wider area resulting from its formation.

In this regard, due recognition is given to the previously long-established nature of the original access without any evidence as to any causal effect upon highway safety through any known record of any accidents or collisions, the lightly trafficked nature of the lane, the commonplace existence of similar access arrangements serving rural properties and alternative options that might be available to improve it without the level of intervention necessary that has resulted in the creation of the unauthorised entrance.

Refusal is therefore once again recommended along with the serving of a fresh enforcement notice, duly worded to take into account the observations of the previous appeal Inspector, to secure the discontinuance of the unauthorised use of the land for residential purposes, the removal of operational development connected with the entrance and driveway and the reinstatement of a bank and hedge in place of the unauthorised access.

CONSULTATIONS

Local Consultations

Parish/Town Council

The PC supports the retention of the vehicular access. The original gateway would have required enlarging simply for modern farm machinery. However we objected to the nature of the fencing and the elaborate wide entrance gates that were installed. The PC supports the applicant's proposal to re-landscape the entrance in keeping with the rural nature of the surrounding countryside.

Dunkeswell and Otterhead - Cllr David Key

I have no objection and so support.

Dunkeswell and Otterhead - Cllr Colin Brown

The new gateway is in a better position than the existing one but has to be reduced in width to that of the original gateway. Part of the Devon bank has to be reinstated that had been taken down. The drive itself also needs to be tram lines as you suggested.

I hope you will take these comments into account when making your decision.

Technical Consultations

Blackdown Hills AONB Project Partnership

The AONB Partnership supports its local planning authorities in the application of national and local planning policy in order to ensure that any development in the AONB conserves and enhances the natural beauty of this nationally designated landscape. In support of this, the Blackdown Hills AONB Management Plan 2019-2024 is the agreed policy framework for conserving and enhancing the AONB. It contains the following policy applicable to all types and scale of development proposals:

Planning and development PD2

All necessary development affecting the AONB will conserve and enhance natural beauty and special qualities by:

- Respecting landscape character, settlement patterns and local character of the built environment,
- Being sensitively sited and of appropriate scale,
- Reinforcing local distinctiveness, and
- Seeking to protect and enhance natural features and biodiversity

The Blackdown Hills AONB Management Plan seeks to ensure that all development in the AONB will be of the highest quality and would conserve or enhance natural beauty particularly by respecting the area's special qualities and reinforcing local distinctiveness. It can often be the seemingly minor proposals that can erode the area's distinctive character to the detriment of natural beauty; new accesses being a case in point, and it is understood that this was the key reason for a previous refusal. It appears that this application is in effect seeking a compromise solution to retaining the alternative access but proposing a more sensitive approach. Narrow lanes bounded by hedge banks are one of the defining characteristics of the AONB and so works that would replace wooden fencing with hedge bank are to be welcomed, as is

a gate more attuned to a traditional 5-bar farm gate and a low key approach to the access track. If the planning authority is minded to approve, we would support all these elements being retained and managed on an ongoing basis through suitable conditions along with controls on lighting.

Lisa Turner
AONB Planning Officer
Blackdown Hills Area of Outstanding Natural Beauty

Other Representations

No representations relating to the application proposals have been received from any interested third parties.

PLANNING HISTORY

Reference	Description	Decision	Date
19/0297/FUL	Provision of gated entrance, hard surfaced track and change of use of land from agricultural to garden (retrospective)	Refusal	07.08.2019

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 7 (Development in the Countryside)

Strategy 46 (Landscape Conservation and Enhancement and AONBs)

D1 (Design and Local Distinctiveness)

TC7 (Adequacy of Road Network and Site Access)

(There is no neighbourhood plan in force for Awliscombe Parish)

Government Planning Documents

NPPF (National Planning Policy Framework 2021)

ANALYSIS

Site Location and Description

Titford Hold is a detached dwelling that occupies an extensive curtilage around 0.5 hectares in area located in open countryside, within the designated Blackdown Hills Area of Outstanding Natural Beauty (AONB), approximately 1.5 km. to the north of Awliscombe.

It is positioned alongside an unclassified lane that connects Godford Cross, where it joins the A373, with Three Corners Cross at the junction with a lane that connects the same road with Dunkeswell.

The curtilage also incorporates, around 50 metres to the north of the main dwelling, a detached outbuilding housing a three bay garage with an attached external staircase providing access to the roof space, which is served by a series of dormers.

Immediately adjacent to this building is a vehicular access, now stopped up with a length of vertical boarded timber fencing, behind which is a substantial hardstanding/parking/turning area and driveway access to a further hard surfaced area alongside the main dwelling.

A field, currently laid to grass, to the north of the curtilage of the property is also within the applicant's ownership. The eastern boundary to both is defined by a stream and the majority of both areas also lie within flood zones 2 and 3.

Background

The previous owner/occupier of the property sought permission retrospectively (application 19/0297/FUL refers) for the retention of various operations, all involving the field, in the form of:

- The formation of a splayed vehicular access off the adjacent highway, in place of a simple field gateway that previously existed, through the removal of a length of roadside hedge and Devon bank amounting to approximately 10 metres. The access incorporates a pair of timber boarded gates that are set back around 8 metres from the entrance together with lengths of vertical boarded timber fencing along the edges of the splays on both sides and a gravelled surface treatment.
- The laying of a gravelled access track across the field to connect to the recognised curtilage of the property and hardstanding areas referred to above together with the installation of low level bollard lighting along both sides. This track is around 5 metres in width, although wider immediately to the rear of the entrance gates.
- The change of use from agricultural land to incorporate it as an extension to the curtilage of the property.

This application was refused, under delegated powers, in August 2019 for the following reason:

'The proposed extension of the domestic curtilage, by virtue of the resulting domestic appearance of the timber fencing and double gates, would result in an unacceptable intrusion in the countryside with a consequential intrinsic change in its rural character. In the absence of sufficient justification or need for the proposal it would be contrary to planning policies which seek to reinforce the key characteristics and special qualities of the area. The proposal is therefore considered to be contrary to the provisions of Strategies 7 (Development in the Countryside) and 46 (Landscape Conservation and Enhancement and AONBs) and D1 (Design and Local Distinctiveness) of the adopted East Devon Local Plan 2013 - 2031 and policy contained within the National Planning Policy Framework.'

Authorisation was also granted, at the same time, for the serving of an enforcement notice to secure the permanent removal of the gravel driveway, timber fencing, gates,

hardstanding and low level bollard lighting and the reinstatement of a Devon bank and hedgerow across much of the width of the unauthorised access.

The notice was served in March 2020. It specified the reasons for it being issued as follows:

'It appears to the Council that the above breaches of planning control have occurred within the last 4 years. The Land lies within the countryside and within the Blackdown Hills Area of Outstanding Natural Beauty.

The engineering works and associated change of use of the land from agricultural to residential curtilage in association with the dwelling Titford Hold are considered to represent unwarranted intrusion into the open countryside that detracts from the pastoral character and appearance of the wider landscape.

The removal of the two sections of Devon Bank has significantly altered the rural character of the immediate area.

The engineering works and associated change of use of the land from agricultural to residential curtilage in association with the dwelling Titford Hold are therefore considered to be contrary to the provisions of Policy D1 (Design and Local Distinctiveness), Strategy 7 (Development in the Countryside) and Strategy 46 (Landscape Conservation and Enhancement and AONBs) of the East Devon Local Plan 2013-2031 and policies contained within the National Planning Policy Framework.'

However, following a subsequent appeal against the serving of the notice (there was no separate 'section 78 appeal' against the refusal of planning permission), the appointed Inspector determined the notice to be void owing to the failure to require the alleged unauthorised use of the land (as an extension to the curtilage of the property) to cease and the open ended nature of the requirements in relation to the maintenance of the reinstated Devon bank and hedgerow.

The enforcement notice was subsequently withdrawn in September 2020, albeit without prejudice to the power of the Local Planning Authority to reissue another enforcement notice should it determine there has been a breach of planning control.

Proposed Development

The property has since been sold and the new owner wishes to again seek retrospective permission for the retention of the splayed vehicular access in the form in which it was created by the previous owner.

However, the proposals also now include amended operations involving the following:

- The removal of the timber gates and fencing to the rear of the access splays and their replacement with a traditional five bar gate and new lengths of Devon bank with hedge planting respectively.
- The removal of the gravelled access track and low level bollard lighting and the laying, along a different route closer to the field edges, of a new track of different design and surface treatment comprising a 'tram track' layout, with grass between two narrow lengths of compacted stone.

- The omission of the change of use of the field to form an extension to the curtilage of the property and its re-seeding as a wild flower meadow.
- The closure of the access alongside the detached outbuilding by way of infilling with a Devon bank and planting to match that intended to replace the fencing along the splays of the 'new' access.

These represent an acknowledgement of the need to address the Council's objections to application 19/0297/FUL and subsequent reasons for taking enforcement action and are offered as a means of mitigating the harm caused by the fencing, gates, lighting and access track upon which they were based.

Considerations/Assessment

The principal issue that is material to consideration of these latest proposals is the extent to which they may be regarded as satisfactorily addressing the objections to the previous scheme to retain the existing operations carried out on the land, subject of application 19/0297/FUL, and, more specifically, whether there are any material factors that may be regarded as outweighing the harm to the rural character and appearance of the area upon which they were based.

In this regard, the stated intention to omit the change of use of the field to form an enlarged curtilage and revert it to a wildflower meadow is welcome, particularly in the light of the previous absence of any robust justification for it, and more especially given the extensive area already attached to the property.

The associated removal of the low level bollard lighting alongside the gravelled driveway is also considered to represent a positive improvement in terms of the reduction in the domestication of the character of the field that it is accepted would result from the stated intention to revert its use back to that of a field.

Equally, the modifications to the alignment, design and layout of the driveway, as well as the treatment of the access splays and substitution of the entrance gates, of closed design, for a more traditional five bar gate, are, in themselves, thought to be appreciably more sympathetic to the rural character and appearance of this part of the designated AONB than the closed design double gates and splay fencing to either side. Furthermore, the sensitive nature of the treatment of the proposed closure of the older entrance to the property off the highway, adjacent to the garage building, also represents an improvement over the previous scheme for the site.

However, it remains the case that these elements, albeit in modified form, arise from the fundamental objective of seeking the retention of the unauthorised new access.

It is in recognition of this that the current application submissions include a more detailed reasoned justification for the 'repositioned' entrance, underpinned by a technical report prepared by a highway consultant, to add weight to the case in favour of its ongoing retention.

This mainly centres upon the improved safety and convenience benefits that are derived from the new entrance, which it is argued outweigh the harm to the rural character and appearance of the lane and wider area from the removal of the former roadside and the laying out of the splayed entrance itself.

More specifically, the previous - and now blocked - entrance serving the property was laid out with a width of 3.7 metres and set back 3.3 metres from the road with visibility splays of 2.4 metres by 6 metres in the northerly direction and 2.4 metres by 4.9 metres in the southerly direction.

The width of the access at the new entrance is described as also being 3.7 metres but, with the gates being set back 8 metres from the road, is laid out to allow for vehicles to stand clear of the highway while the gates are being opened or closed, which is considered to represent a significant improvement, whilst the splayed bell mouth area also makes manoeuvrability for larger vehicles far easier. The entrance also provides for improved visibility splays of 2.4 metres by 8.7 metres in the northerly direction and 2.4 metres by 9.1 metres in the southerly direction.

Overall, the visibility standards aside, the new entrance is laid out in accordance with the Devon County Council Highways Development Management Standing Advice guidance that is provided to local authorities.

The improvements that the repositioned entrance provides are summarised within the report as follows:

- It provides a superior arrangement in terms of layout, more than meeting the minimum standards in respect of access geometry, surfacing and the positioning of the entrance gate.
- Visibility splays are improved.
- Given the single vehicle width nature of the public highway, the geometry of the access provides an area where two vehicles could pass one another along this section of the lane.
- The proposed improvements in respect of the provision of new Devon hedge banks, the use of a traditional 5-bar gate, and the implementation of a farm-type track with central grass area would be more sympathetic and in-keeping with the area.

As already alluded to, the last of these points is agreed. However, it is only relevant because of the presence of the new entrance and the improvements upon the current unauthorised developments that they represent.

There can equally be little doubt as regards the other benefits that the new entrance provides or with any regard to the claim that 'the previous access arrangement was very significantly below the current relevant highway and access standards, such that its use would have been hazardous both for occupiers of Titford Hold and for users of the public highway passing the site.'

However, it is considered that these arguments fail to properly balance the visual impact arising from the removal of a significant length of hedge and bank and the laying out of a far more 'engineered' entrance and its effect upon the rural character and appearance of the lane and wider AONB when considered alongside the reality of the previously existing situation at Titford Hold.

The 'previous' entrance to the property, now blocked up by the erection of a length of fencing (which could easily be removed to enable the access to be re-opened and brought back into use), is not thought to be untypical of that serving many residential

properties in rural areas. Indeed, it had until recently continued to serve the application property, and had presumably done so for many years, without any known record of any incidents, accidents or collisions caused as a result of its inadequate width or poor standard of visibility for, and of, drivers of emerging vehicles.

Furthermore, it is not considered that the lane itself generates significant numbers of vehicle movements, or that those that are generated present a threat to vehicle or pedestrian safety. The road is of generally poor alignment and single vehicle width for much of its length with limited forward visibility and provision for vehicles to pass. It therefore gives rise to no more than limited traffic movements and modest vehicle speeds that are likely to be well within half of the national speed limit to which it is subject.

In addition, whilst it is recognised that the visibility standards of the 'previous' entrance are deficient, it is not felt that the level of improvement in this regard that has been created by the 'new' entrance is tantamount to the offer of a significant benefit, in wider highway safety terms and having regard to the wider planning balance, that outweighs the harm to the rural character and appearance of the lane and wider area resulting from such a substantial intervention.

Moreover, it is not considered that the 'previous' entrance would not be capable of being improved with modest enlargement to enable more practical manoeuvring of larger vehicles to be achieved where absolutely necessary. The site already has the benefit of substantial hard surfaced areas for vehicles within its recognised curtilage area and it is not envisaged that the need for a larger entrance - such as that created - is so pressing, or that demand for the same occurs on such a regular basis, as to justify its retention as an alternative solution to any limited issues or problems of access that may occur.

As such, whilst the design of the 'new' entrance may well, in the main, satisfy established standing advice provided by the Highway Authority, it is considered that it remains the case that its retention has not been appropriately justified having regard to the overall planning balance, which in this case also requires that its impact upon the rural landscape character and appearance of the AONB be factored in. It therefore remains the view of officers that the creation of the entrance results in material harm in this regard that is not outweighed by any of the factors in favour of its retention that have been advanced on the applicant's behalf.

Notwithstanding the nature of the proposals for the mitigation of the impact of the operations carried out by the former owner, which it is accepted, in isolation, would amount to improvements to the character and appearance of the site, these all stem from the presence of the unauthorised entrance which is itself, in the light of the foregoing balance of material considerations, still thought to be unacceptable.

Refusal is therefore once again recommended, along with the issuing of an enforcement notice, duly taking into account the issues raised by the previous appeal Inspector.

In recommending enforcement action the Human Rights Act 1998 and the European Convention on Human Rights have been considered with special attention being given

to Article 8 of the European Convention on Human Rights which provides a right to respect for one's "private and family life, his home and his correspondence", subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society".

In light of the harm identified, it is considered that the investigative actions undertaken and any subsequent and future enforcement action which may be undertaken are necessary and proportionate. In particular, such action would not conflict with the occupant's human rights.

RECOMMENDATIONS

1. That the application be REFUSED for the following reason:

In the opinion of the Local Planning Authority, the loss of a significant length of hedge and bank to create the existing unauthorised vehicular access, taken together with the layout of the splayed entrance, represents a significant intervention that detracts from the rural character and appearance of the adjacent lane and surrounding area and the wider landscape character and quality of the designated Blackdown Hills Area of Outstanding Natural Beauty of which they form a part. In the absence of sufficient justification for the provision of the access, or, therefore, the accompanying development, that would otherwise outweigh such harm, its retention would be contrary to planning policies which seek to protect the countryside, reinforce the key characteristics and special qualities of the area and conserve and enhance the natural beauty of the Area of Outstanding Natural Beauty. The proposal is therefore considered to be contrary to the provisions of Strategies 7 (Development in the Countryside) and 46 (Landscape Conservation and Enhancement and AONBs) and Policy D1 (Design and Local Distinctiveness) of the adopted East Devon Local Plan 2013-2031 as well as guidance contained within the National Planning Policy Framework (2021).

2. That an Enforcement Notice, under section 172 of the Town and Country Planning Act 1990, be served on the owner(s) to secure:
 - (i) The discontinuance of the use of the land for residential purposes in association with the dwelling known as Titford Hold.
 - (ii) The permanent removal of the gravel driveway, timber fencing, gates, hardstanding and ground lighting; and
 - (iii) Reinstatement of the previous Devon bank and hedgerow within 6 months of the date the enforcement notice comes into effect.

NOTE FOR APPLICANT

Informative:

In accordance with the aims of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 East Devon District Council seeks to work positively with applicants to try and ensure that all relevant planning concerns have been appropriately resolved; however, in this case the

development is considered to be fundamentally unacceptable such that the Council's concerns could not be overcome through negotiation.

Plans relating to this application:

	Location Plan	29.07.21
2090.0/300	Proposed Site Plan	26.07.21
2090.0/310	Proposed Elevation	26.07.21

List of Background Papers

Application file, consultations and policy documents referred to in the report.