

Application No. 18/01814/MFUL

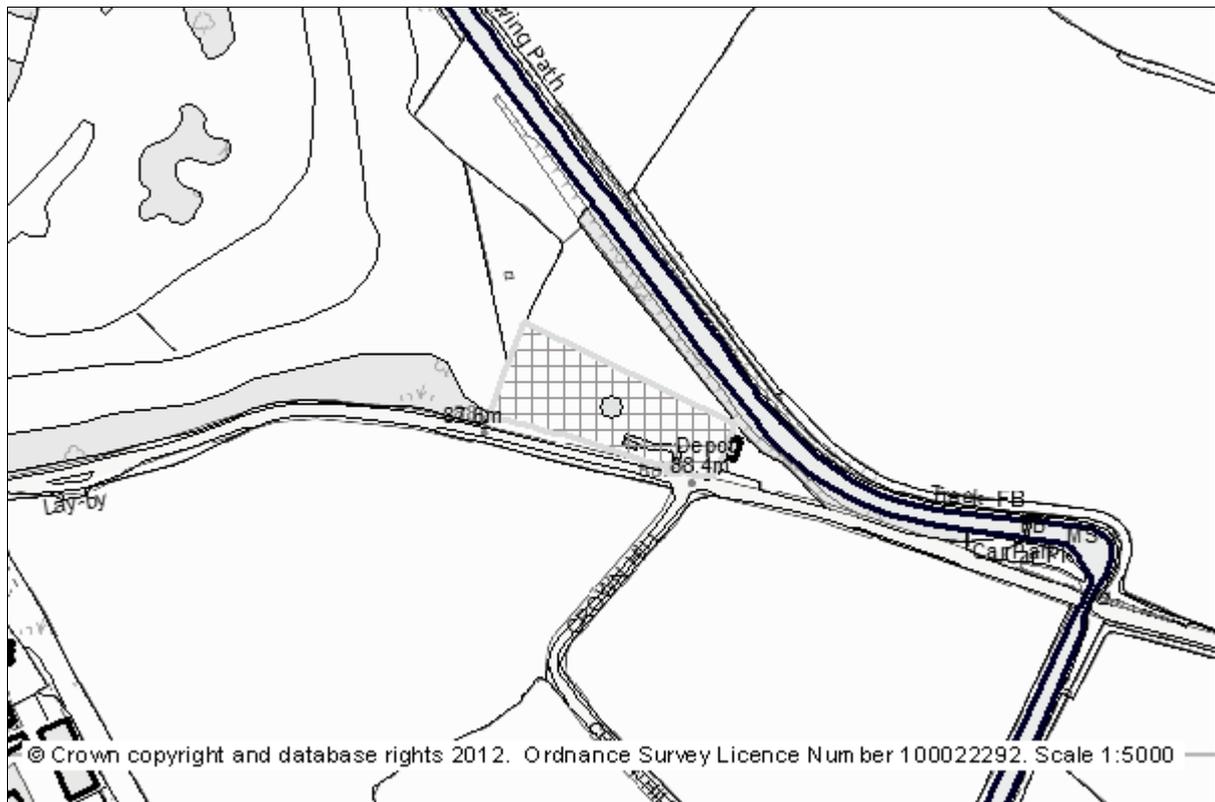
Grid Ref: 299541 : 113262

Applicant: Mr Alan Brine

Location: Land at NGR 299526 113232
Crown Hill
Halberton
Tiverton

Proposal: Change of use of agricultural land for the siting of 3 holiday lodges and alterations to existing access

Date Valid: 21st November 2018



PLANNING COMMITTEE
14TH APRIL 2021

Change of use of agricultural land for the siting of 3 holiday lodges and alterations to existing access on land at NGR 299526 113232 Crown Hill Halberton Tiverton

Cabinet Member(s): Cllr Richard Chesterton
Responsible Officer: Eileen Paterson (Group Manager for Development)

Reason for Report: At the Planning Committee on 10th March 2021 Members considered the officers report before them and resolved that they were minded to refuse the application and therefore wished to defer consideration for an implications report addressing the following reasons:

- 1) Insufficient justification has been provided to demonstrate that a countryside location is appropriate and necessary for this development, contrary to policy DM22 of the adopted Mid Devon Local Plan 2013-2033
- 2) The proposal would result in additional pedestrians seeking to use the main road to access the canal and other facilities to the detriment of public safety and contrary to policies S1 and DM1 of the adopted Mid Devon Local Plan 2013-2033
- 3) The location of the holiday units adjacent to the roadside hedge will have an adverse impact on the character and appearance of this countryside location contrary to policy DM22(a) of the adopted Mid Devon Local Plan 2013-2033

RECOMMENDATION:

Grant planning permission subject to conditions as set out at the end of this report.

Financial Implications: An appeal can be submitted in the event that the application is refused. The applicant may make an application for costs on any appeal against the Council and such costs claims are made by demonstrating that there has been unreasonable behaviour. That being the case, Members must be able to clearly justify each and every reason for refusal in line with the development plan and all other material considerations. If the Inspector found that the Council had behaved unreasonably in refusing the application, the Council may be required to pay the applicants appeal costs.

Legal Implications: The report identifies the views of the highway authority as statutory consultee in the planning process. If members resolve to refuse the application on highway (or other) grounds they must be able to clearly justify each reason for refusal. There would be no support at the appeal from the Highway Authority.

Risk Assessment: If Committee decide to refuse the application for reasons that cannot be sustained at appeal there is a risk of a successful appeal costs claim against the Council for reasons of unreasonable behaviour.

Equality Impact Assessment: Section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between different people when carrying out their activities. This is called the Public Sector Equality Duty or "PSED". No persons with protected characteristics have been identified in the determination of this application.

Relationship to Corporate Plan:

- Environment
- Economy

Impact on Climate Change: Section 70 (2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that in determining a planning application, the determination must be made in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework represents up-to-date government planning policy and is a material consideration that must be taken into account where it is relevant to a planning application or appeal. This includes the presumption in favour of development found at paragraph 14 of the Framework. The climate emergency shall be considered through existing planning policies and any subsequent development plans.

1.0 OFFICERS FURTHER ADVICE

1.1 This report focuses on the 3 areas of concern expressed by members and provides further information and assistance to enable members to reach a decision.

2.0 Reason for refusal 1)

Insufficient justification has been provided to demonstrate that a countryside location is appropriate and necessary for this development, contrary to policy DM22 of the adopted Mid Devon Local Plan 2013-2033

2.1 Policy DM22 of the adopted Mid Devon Local Plan 2013-2033 sets out the criteria for determining tourism and leisure development proposals as follows:

DM22 Tourism and leisure development

Proposals for new or expanded tourism, visitor or leisure facilities will be supported within or adjacent to defined settlements. Elsewhere, the nature of the proposed development must justify a countryside location and minimise environmental impacts, avoiding an unacceptable traffic impact on the local road network. Development proposals must:

- a) Respect the character and appearance of the location;*
- b) Where appropriate, involve conversion or replacement of existing buildings; and*
- c) Demonstrate that the need is not met by existing provision within nearby settlements.*

2.2 The supporting text goes on to say:

'Applications for tourism and leisure development in the countryside will need to be justified by the applicant. The Council will require a marketing strategy and business plan to be submitted, to explain how the development will achieve a high quality tourism product that meets demand. Proposals must demonstrate that their benefits outweigh any harm and that they do not cause an unacceptable impact to traffic on the local road network. Tourism and leisure development should benefit local businesses, the environment, communities and visitors in the long-term, so the Council will seek the right form of development in the right location, with evidence that the need is not already being met by existing provision. In demonstrating unmet need for tourism proposals outside settlement limits, applicants should have regard to the Council's Tourism Study, available on the Mid Devon District Council website. Evidence supporting a countryside location should be proportionate to the scale and nature of the tourism proposal...'

- 2.3 The application is accompanied by a Design and Access Statement and within that document are sections titled 'Marketing strategy' and 'Business Plan'. Members are advised to make themselves aware of the content of those sections.
- 2.4 Further advice and guidance on this issue has been sought from the Economic Development team. In summary, their advice is that:
'The 'business plan' and 'marketing strategy' in the Planning, Design and Access Statement does not provide sufficient detail to determine whether there is a market for the holiday lodges nor demonstrate its financial viability, and I believe there are serious flaws in the assumptions around the business concept. There is insufficient information to determine the need for the business (DM22) nor whether this is a financially 'sustainable rural tourism and leisure development' (NPPF 83, COR 18). The economic justification for the development is therefore not proven.'
- 2.5 A full copy of their response is provided at appendix 1
- 2.6 Given this further advice, Members may wish to refuse the application for the following reason:

Reason for refusal:

In the opinion of the Local Planning Authority, the submitted 'business plan' and 'marketing strategy' do not provide sufficient detail to adequately demonstrate that there is a market for the holiday lodges in this location nor demonstrate its financial viability. To this end, the Local Planning Authority are not satisfied that a countryside location is appropriate and necessary for this development, contrary to policy DM22 of the adopted Mid Devon Local Plan 2013-2033

- 2.7 Discussion around this issue also focussed on setting a 'precedent' which would lead to other development being approved which could 'close the green gap' between Tiverton and Halberton. Members are reminded that all applications are determined on their own merits, and against the development plan policy which prevails at that time. The site is in the open countryside, beyond any recognised settlement limit, where policies restrict the type and scale of development which is considered appropriate in such locations. Your officers do not consider that a reason for refusal citing 'precedent' would be appropriate for these reasons.

3.0 Reason for refusal 2)

The proposal would result in additional pedestrians seeking to use the main road to access the canal and other facilities to the detriment of public safety and contrary to policies S1 and DM1 of the adopted Mid Devon Local Plan 2013-2033

- 3.1 Policy S1 and DM1 seek the creation of safe and accessible development and providing a safe environment where the use of private car is limited and walking/cycling are encouraged.
- 3.2 At the meeting on 10th March 2021, Members expressed concern that any visitors to the holiday units would be required to walk along the main road outside the site to access the canal and other facilities (with the bus stop for services into Tiverton being located outside Hartnoll. Members were concerned that at this location traffic speeds are high, the road has a number of bends and there is no segregated pedestrian

footpath or other refuge. The committee report before members at that meeting set out the views of the Highway Authority as statutory consultee.

- 3.3 Your officers have sought further views from the Highway Authority, following the concerns expressed by Members. They have advised that the case officer considering the proposal for the Highway Authority undertook a site visit prior to providing the Local Planning Authority with their statutory consultation response and that they have nothing further to add to their original findings that the proposal, with the proposed alterations to the access and visibility splay is acceptable in highway safety terms.
- 3.4 On this basis, your officers advise that if Members resolve to refuse the application on highway and public safety grounds, they would not have the support of the Highway Authority at appeal and would need to produce cogent evidence of the 'harm' in order to avoid an award of costs at appeal.

4 Reason for refusal 3)

The location of the holiday units adjacent to the roadside hedge will have an adverse impact on the character and appearance of this countryside location contrary to policy DM22(a) of the adopted Mid Devon Local Plan 2013-2033

- 4.1 Policy DM22 (set out in full at para 2.1 above) seeks to ensure that any tourism or leisure proposals 'respect the character and appearance of the area' (criteria a)
- 4.2 During the discussion of this application at the committee meeting, Members expressly referred to the impact of the development from the road to the south of the site, particularly its visible nature given that the roadside hedge does not provide full screening of the development.
- 4.3 As a result, the applicants agent has been asked to consider the submission of a full and detailed landscaping scheme which was awaited at the time of writing this report. However Members are referred to condition 3 which requires the submission and approval of a planting scheme prior to work commencing on site and Members may wish to revise the wording of that condition to ensure that any approved planting scheme is implemented at an early stage in the development (in accordance with a timetable which shall be submitted to and approved in writing by the LPA). This way, concerns about the visibility of the development from outside of the site could be mitigated in the early stages of the development
- 4.4 On this basis, your officers advise that, in their professional opinion the site can be adequately screened by a landscaping scheme to prevent any adverse impact on the character and appearance of the area.

5 Summary

- 5.1 Having resolved that they are minded to refuse the application, Members need to consider the content of this implications report carefully before coming to a formal decision. 3 reasons for refusal were indicated to officers and these have been addressed in this report. Following the receipt of further information from the Economic Development team, your officers are of the view that only a single reason for refusal would stand up to scrutiny at appeal as follows:

- 1) In the opinion of the Local Planning Authority, the submitted 'business plan' and 'marketing strategy' do not provide sufficient detail to adequately demonstrate that there is a market for the holiday lodges in this location nor**

demonstrate its financial viability. To this end, the Local Planning Authority are not satisfied that a countryside location is appropriate and necessary for this development, contrary to policy DM22 of the adopted Mid Devon Local Plan 2013-2033

Contact for more Information: Ms E Paterson epaterson@middevon.gov.uk

Circulation of the Report: None

List of Background Papers: All documents submitted in relation to application 18/01814/FULL and development plan documents

APPENDIX 1

18/01814/FULL Crown Hill, Halberton

Economic Appraisal

Summary

The 'business plan' and 'marketing strategy' in the Planning, Design and Access Statement does not provide sufficient detail to determine whether there is a market for the holiday lodges nor demonstrate its financial viability, and I believe there are serious flaws in the assumptions around the business concept. There is insufficient information to determine the need for the business (DM22) nor whether this is a financially 'sustainable rural tourism and leisure development' (NPPF 83, COR 18). The economic justification for the development is therefore not proven.

Business Proposal	
Is the business product / service described in sufficient detail?	<p><i>Yes, there is sufficient detail to understand the business offer.</i></p> <p><i>'High standard holiday accommodation' providing 'a mix of two and three bedrooms, with all the key facilities in the self-contained lodges provided, as well as outdoor amenity space and hot tubs.'</i></p> <p><i>With the proposed development site situated adjacent to Tiverton Golf Club and the Grand Western Canal, this applicant is seeking to benefit from the natural idyllic assets of the surrounding locality to develop a high standard of holiday accommodation to attract families to visit the area for environmental, leisure and family-friendly breaks</i></p>
Is there a detailed business plan which sets out how the produce / service will be delivered and developed? (including any proposals to stage the delivery or further develop the business concept)	<p>No. The section titled 'business plan' is severely limited in scope and does not give adequate detail or justification for the business model.</p> <p>There are serious difficulties with the assumptions in the business concept, particularly around accessibility to the canal and golf course and the local amenities.</p> <p><i>"The aim of the business is to utilise the existing facilities and tourist attractions surrounding the site such as the Grand Western Canal and Tiverton Golf Club"</i></p>

	<p><i>“...with open views and access to the adjacent canal, this will become a key attraction with the proposal for example to encourage opportunities for boating, cycling, walking and fishing, as shown on the accompanying plans.”</i></p> <p>As is evident from the letters of objection, the applicants have not engaged with the Golf Club and Grand Western Canal about the possibilities of access and usage.</p> <p>As it is, it is likely that the plot will be fenced off from the Golf Club with a high fence to prevent stray golf balls creating a danger for visitors. Equally, they are unlikely to be able to negotiate direct access to the canal from the site, due to it being on the ‘offside’. This could potentially cause friction with the canal management, as it may prove difficult to police or restrict access to the canal by families – without fencing it off.</p> <p>To access both amenities would require visitors walking along a busy main road without any pedestrian walkway.</p>
<p>Is a countryside location justified for the proposed development?</p>	<p>Yes. The nature of the proposed development does justify a countryside location, as the development is predicated on it being in an ‘idyllic’ natural setting, with open views and access to the countryside.</p>
<p>Defined Market Position</p>	<p><i>Demonstrating Need - How do they know there is a market for the product?</i></p>
<p>Have they demonstrated sufficient understanding of local and national industry trends?</p>	<p><i>The document states “The applicant has comprehensively researched into what is needed in terms of the existing tourism within the area of Mid Devon”</i></p> <p>However, no evidence of this research has been provided</p>
<p>Have they sufficiently defined their target audience?</p>	<p><i>The target audience is ill defined as ‘a diverse range of groups, from individuals, friends and families wishing to visit these attractions, and take part in leisure activities from golfing, boating trips, cycling, fishing and walking.’</i></p>

	<p><i>'a family friendly environmental leisure complex to appeal to families and children'</i></p> <p>However, it has not demonstrated sufficiently how it is going to be attractive to families or be child-friendly.</p>
<p>Have they accurately identified potential competitors?</p> <p><i>Demonstrate that the need is not met by existing provision within nearby settlements</i></p>	<p>No evidence has been provided to demonstrate there is a need for the development, or that the need is not met by existing provision in the vicinity.</p> <p>A cursory look on the internet will provide plenty of evidence of competitors with equal or better offers</p> <p>https://www.lastminute-cottages.co.uk/hot-tub-lodges-mid-devon-district</p>
<p>Have they identified their competitive advantage? What will distinguish them from others in the market?</p>	<p>Again, this is poorly defined beyond its location</p>
Financial Viability	<i>Demonstrate sustainability - Will the business be financially viable within a reasonable amount of time?</i>
How will they finance the initial development costs?	<i>Not addressed</i>
What is their projected income?	<i>Not addressed</i>
What assumptions have they made in working out their turnover? (rentable value, expected occupancy rates, seasonal profiling, etc.)	<i>Not addressed</i>
Has a detailed cashflow forecast been included?	<i>Not addressed</i>
<i>How will the proposed development further farm diversification?</i>	<i>Not addressed</i>
	No financial information has been provided to prove that the lodges will be financially viable as a business unit.
Professionally run	<i>Demonstrate Sustainability - How do they intend to run and manage the project?</i>
How will the business be marketed and promoted?	<i>Not addressed</i>
Do they have sufficient skills and experience to run the business?	<i>Not addressed</i>
What expertise / skills will they be	<i>Not addressed</i>

buying in / employing?	
Benefits to the Local Economy	Wider Economic Benefits
Will the business create new paid employment?	Not addressed If bookings are done through a booking agency, then the only new paid employment created by the development beyond construction would be cleaning and servicing the chalets and therefore minimal.
Have they proven wider benefits to the local economy?	<i>'It is expected the proposal will add economically, in its own small-scale way to local business'</i> There is no analysis of how the proposed development will benefit the local economy nor any attempt to quantify this benefit.

Planning Policy

NPPF, paragraph 83

- a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings;
- b) the development and diversification of agricultural and other land-based rural businesses;
- c) **sustainable rural tourism and leisure developments** which respect the character of the countryside; and
- d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.

Policy S14 - Countryside

Development outside the settlements defined by Policies S10-S13 will preserve and where possible enhance the character, appearance and biodiversity of the countryside while promoting **sustainable diversification of the rural economy**. Detailed development management policies will permit agricultural and other appropriate rural uses, subject to the following criteria:

- a) Affordable and low cost housing to meet local needs, gypsy and traveller accommodation, residential conversion of appropriate existing buildings, replacement dwellings, housing essential to accommodate a rural worker and accommodation ancillary to a dwelling;
- b) Appropriately scaled retail, employment, farm diversification, **tourism and leisure related development (including appropriate conversion of existing buildings)**;
- c) Appropriately scaled and designed extensions and other physical alterations to existing buildings;
- d) Agricultural and equestrian development;
- e) Community facilities, such as educational facilities, buildings associated with public open space, transportation and infrastructure proposals (including green infrastructure); and
- f) Renewable energy and telecommunications.

DM22 – Tourism and Leisure Development

Proposals for new or expanded tourism, visitor or leisure facilities will be supported within or adjacent to defined settlements. Elsewhere, the nature of the proposed development must justify a countryside location and minimise environmental impacts, avoiding an unacceptable traffic impact on the local road network. Development proposals must:

- a) *Respect the character and appearance of the location;*
- b) *Where possible, involve conversion or replacement of existing buildings; and*
- c) *Demonstrate that the need is not met by existing provision within nearby settlements.*

COMMITTEE REPORT – 10TH MARCH 2021

APPLICATION NO: 18/01814/MFUL

MEMBER CALL-IN

Cllr Ray Radford has requested that the application comes before Planning Committee in order that the committee may consider whether:

- a) This would set a precedent for non-agricultural development on the green space between Halberton and Tiverton outside of settlement limits
- b) The development would be within the curtilage of the canal and thereby result in a negative impact on the views from the canal
- c) The lack of facilities accessible by footpaths would result in an increase in traffic on Post Hill
- d) The proposed access will have poor visibility from Tiverton bound traffic due to the humpback bridge by the canal car park
- e) There would be danger from stray golf balls due to proximity to the golf course
- f) There would be flooding if the canal is breached.

RECOMMENDATION

Grant permission subject to conditions

PROPOSED DEVELOPMENT

This application seeks the change of use of a parcel of agricultural land located on land to the north of the main road between Tiverton and Halberton for the siting of 3 holiday lodges and alterations to improve an existing access on to the class 2 highway at Crown Hill.

The site is bounded by the Grand Western canal conservation area to the north, the golf course to the west and the B3131 to the south. To the east of the site is the DCC depot site and beyond that, the car park for the canal at Tiverton Road bridge.

The site is a relatively flat agricultural field, enclosed by native hedges and trees on all 4 sides. On the southern side is an existing stable block.

When the application was originally submitted, it proposed 6 holiday lodges over a much larger area of land (2 hectares), with some of the units sited close to, and visible from public vantage points within the Conservation Area. Due to the site area, the application was registered as a major application. In recognition of the concerns raised during the consultation process, the application before members now, relates to just 3 holiday units on an area of land furthest from the canal and well away from the golf course.

APPLICANT'S SUPPORTING INFORMATION

Design and access statement
FDA1 form relating to foul drainage disposal
Wildlife trigger sheet
Canal breach flood investigation assessment
Drainage strategy

RELEVANT PLANNING HISTORY

00/00373/FULL - PERMIT date 25th October 2000 Erection of stables consisting of two loose boxes and tack room

DEVELOPMENT PLAN POLICIES

Mid Devon Local Plan Review 2013 – 2033

S1 Sustainable development priorities

S9 Environment

S14 Countryside

DM1 High Quality Design

DM5 Parking

DM22 Tourism and leisure development

DM25 Development affecting heritage assets

CONSULTATIONS

Relevant latest responses:

HALBERTON PARISH COUNCIL - 28th November 2019 - Halberton Parish Council's objections to this application remain in place, the reasons are as per my email to you on 13 November 2019.

HALBERTON PARISH COUNCIL - 13th November 2019 - Halberton Parish Council's objections to this application remain in place - namely:

A) non-agricultural development on the green space between Halberton and Tiverton outside of settlement limits setting a precedent for non-agricultural development in this area

B) development within curtilage of the canal

C) negative impact on the views from the canal - the Council notes screening is proposed, but this would block current views of open countryside

D) lack of facilities accessible by footpaths therefore increased traffic on Post Hill

E) the proposed access will have poor visibility from Tiverton bound traffic due to the humpback bridge by the canal car park

F) Other concerns raised were danger from stray golf balls due to proximity to the golf course and flooding if the canal is breached. It was also reported that the stable currently on the site was approved by MDDD in error and no buildings should be on site

DEVON, CORNWALL & DORSET POLICE - Re Holiday lodges at Crown Hill Tiverton - 11th November 2019

Thank you for this application (revised drawings).

Police have no further comments.

Highway Authority - 10.12.18

The highway authority has visited the site and has no objections to the proposal. The improved access and visibilities should be maintained in perpetuity and the drawing PAB2/LACH/2018 should be conditional of any consent

ENVIRONMENT AGENCY - 5th November 2020

We have no objection to the proposal.

Reason

The submitted Flood Risk Assessment (dated October 2020) and drawing Layout plan and Sections 1003 P02, have addressed our flood risk concerns.

Devon County Council have improved their 'warning' and control mechanisms, and with the raised floor level (88m or higher) and the Defence Bund, flood risk has been mitigated.

We advise that the LPA should ensure by some mechanism, that the Defence Bund's ownership (& future maintenance) is linked to the three holiday lodges, and cannot be split.

HISTORIC ENVIRONMENT TEAM - 11 November 2019

I refer to your recent consultation regarding the revised drawings and reduced number of holiday lodges. The Historic Environment Team have no additional comments to those already made, namely:

The proposed development lies in an area of archaeological potential within a landscape that contains evidence of prehistoric funerary activity. As such, groundworks for the construction of the proposed development have the potential to expose and destroy archaeological and artefactual deposits associated with these heritage assets. The impact of development upon the archaeological resource here should be mitigated by a programme of archaeological work that should investigate, record and analyse the archaeological evidence that will otherwise be destroyed by the proposed development.

The Historic Environment Team recommends that this application should be supported by the submission of a Written Scheme of Investigation (WSI) setting out a programme of archaeological work to be undertaken in mitigation for the loss of heritage assets and archaeological interest. The WSI should be based on national standards and guidance and be approved by the Historic Environment Team.

If a Written Scheme of Investigation is not submitted prior to determination the Historic Environment Team would advise, for the above reasons and in accordance with paragraph 199 of the National Planning Policy Framework (2018) and the supporting text in paragraph 5.3 of the Mid Devon Local Plan Part 3: Development Management Policy DM27 (2013), that any consent your Authority may be minded to issue should carry the condition as worded below, based on model Condition 55 as set out in Appendix A of Circular 11/95, whereby:

'No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.'

Reason

To ensure, in accordance with Policy DM27 and paragraph 199 of the National Planning Policy Framework, that an appropriate record is made of archaeological evidence that may be affected by the development'

THE GRAND WESTERN CANAL JOINT ADVISORY COMMITTEE - 09.01.2019

Comments: The Grand Western Canal Joint Advisory Committee objects to this Application but asks that the following Conditions should be attached to the development, should it be Approved;

1 The Developer shall contribute to the canal's extra tree management costs associated with the increased hazards to people and their property on site as a result of the presence of the lodges.

2 If the revised tree management reduces the existing tree screening of the site, the Developer shall undertake additional suitable screening planting approved by the Planning Officers at his own expense.

3 The canal's offside ground shall not be entered by the owner, his agents nor users of the holiday lodges without Devon County Council's permission in order to protect its integrity as part of the canal's established offside wildlife habitat.

4 The Developer shall provide and maintain effective fencing to prevent users of the site entering the canal's Maintenance Depot where they could be at risk of harm.

NATURAL ENGLAND - 13.12.18

Natural England has no comments to make on this application.

PUBLIC HEALTH - 06.12.18

Contaminated Land	No objection to these proposals
Air Quality	No objection to this proposal
Environmental Permitting	No objection to this proposal
Drainage	No objection to these proposals
Noise & other nuisances	No objection to these proposals
Housing Standards	No comment
Licensing	No comments
Food Hygiene	No objection to this proposal.

Informative: If food or drink is provided, stored, processed this is considered a food business. All new food businesses are required to register with their Local Authority 28 days prior to opening. The appropriate form can be found in this link.

<https://www.middevon.gov.uk/media/114739/foodregistrationform.pdf>

Free advice on requirements can be given by Environmental Health. For structural requirements this is ideally sought before works start. The Food Standards Agency's website is also a useful source of information <https://www.food.gov.uk/>.

Private Water Supplies If a private supply is to be used by more than one property or has a commercial function, The Private Water Supply (England) Regulations 2016 as amended will apply. A risk assessment and sampling regime will be necessary. The supply must not be used until the Local Authority (Mid Devon District Council) is satisfied that the supply does not constitute a potential danger to human health, including single domestic use.

Please contact Public Health at Mid Devon District Council on completion of proposal.

If mains water is to be used, would have no comment.

Health and Safety No objections to this proposal.

Earlier consultation responses:

FLOOD and COASTAL RISK MANAGEMENT TEAM - 08.11.19

As details regarding the soakaway have yet to be submitted as per our previous response we will not be making further comment at this stage. We await further details regarding the proposed soakaway.

HISTORIC ENVIRONMENT TEAM - 10.12.18

I refer to the above application and your recent consultation. The proposed development lies in an area of archaeological potential within a landscape that contains evidence of

prehistoric funerary activity. As such, groundworks for the construction of the proposed development have the potential to expose and destroy archaeological and artefactual deposits associated with these heritage assets. The impact of development upon the archaeological resource here should be mitigated by a programme of archaeological work that should investigate, record and analyse the archaeological evidence that will otherwise be destroyed by the proposed development.

The Historic Environment Team recommends that this application should be supported by the submission of a Written Scheme of Investigation (WSI) setting out a programme of archaeological work to be undertaken in mitigation for the loss of heritage assets and archaeological interest. The WSI should be based on national standards and guidance and be approved by the Historic Environment Team.

If a Written Scheme of Investigation is not submitted prior to determination the Historic Environment Team would advise, for the above reasons and in accordance with paragraph 199 of the National Planning Policy Framework (2018) and the supporting text in paragraph 5.3 of the Mid Devon Local Plan Part 3: Development Management Policy DM27 (2013), that any consent your Authority may be minded to issue should carry the condition as worded below, based on model Condition 55 as set out in Appendix A of Circular 11/95, whereby:

'No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.'

Reason

To ensure, in accordance with Policy DM27 and paragraph 199 of the National Planning Policy Framework, that an appropriate record is made of archaeological evidence that may be affected by the development'

This pre-commencement condition is required to ensure that the archaeological works are agreed and implemented prior to any disturbance of archaeological deposits by the commencement of preparatory and/or construction works.

I would envisage a suitable programme of work as taking the form of the archaeological supervision of all groundworks associated with the construction of the proposed development to allow for the identification, investigation and recording of any exposed archaeological or artefactual deposits. The results of the fieldwork and any post-excavation analysis undertaken would need to be presented in an appropriately detailed and illustrated report, and the finds and archive deposited in accordance with relevant national and local guidelines.

I will be happy to discuss this further with you, the applicant or their agent. The Historic Environment Team can also provide the applicant with advice of the scope of the works required, as well as contact details for archaeological contractors who would be able to undertake this work. Provision of detailed advice to non-householder developers may incur a charge. For further information on the historic environment and planning, and our charging schedule please refer the applicant to:

<https://new.devon.gov.uk/historicenvironment/development-management/>

FLOOD and COASTAL RISK MANAGEMENT TEAM - 18.01814.MFUL

DEVON, CORNWALL & DORSET POLICE - Re Change of use of agricultural land for siting of 6 holiday lodges, Crown Hill, Halberton - 5th December 2018

Thank you for this application

The Police have no comments at this time, and unless the local authority has any specific concern in relation to crime and disorder will have no future comment to make.

ENVIRONMENT AGENCY - 24 April 2020

Thank you for your consultation of 30 March 2020 following submission of additional information in respect of the above change of use application.

Environment Agency position

We maintain our objection to the proposal on the grounds that further detail is required in respect of the bund to ensure that the proposed accommodation units would not be vulnerable to a breach of the adjacent canal embankment.

Reason - Further information required (bund detail)

We are unable to recommend that the detail design of the bund be conditioned. The full detailed design needs to be agreed before prior to any decision being made on the application. This is to ensure that it is demonstrated that the bund will be an acceptable mitigation measure both in principle and detail.

It needs to be demonstrated that the size (height, width, foundations) of any bund, the required access area, maintenance regime and cost can be accommodated with the proposed design. This will also allow your Authority to be able to properly assess the visual impacts.

ENVIRONMENT AGENCY - 20 December 2019

Environment Agency position

We note the revised position of the proposed holiday lodges which are further away from the canal embankment than originally proposed. Despite this, our position remains unchanged from that detailed in our response dated the 21 March 2019. The wording from that previous letter is provided below:

"From the development and flood risk perspective we object to the proposal and inform your authority that the proposed accommodation units would be vulnerable to the consequences of a breach of the adjacent canal embankment.

Reason

The National Planning Policy Framework (NPPF) is explicit in that 'According to the information available, other forms of flooding should be treated consistently with river flooding in mapping probability and assessing vulnerability to apply the sequential approach across all flood zones.'

Whilst Devon County Council have carried out extensive risk reduction measures to control water levels in the canal since a collapse of the nearby embankment in November 2012, an undetermined risk of collapse of embankments along the length of the canal still exists.

Although the site lies within Flood Zone 1, (i.e. it is at a 'low' probability of flooding from rivers or streams), there is risk, to site from the above scenario. Considering the close proximity of the units to the canal it could be considered that they would be situated within a 'rapid inundation zone' should a breach occur which risks harm to people.

Advice to the LPA

We will maintain our objection unless the applicant can supply information to demonstrate that the flood risks posed by the development can be satisfactorily addressed.

If you are minded to approve the application at this stage contrary to this advice, we request that you contact us to allow further discussion and/or representations from us.

ENVIRONMENT AGENCY - 22.03.19

Thank you for consulting us on this application.

Environment Agency position

From the development and flood risk perspective we object to the proposal and inform your authority that the proposed accommodation units would be vulnerable to the consequences of a breach of the adjacent canal embankment.

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REPRESENTATIONS

6 objections were submitted in respect of the initial proposal for 6 units of holiday accommodation. 2 objections were received in respect of the current scheme under consideration, advising that their objections remain. The objections received are summarised as follows:

- 1) Submission is lacking in detail in terms of site and finished floor levels
- 2) No agriculture takes place on site so cannot be described as agricultural diversification
- 3) Intrusion into open countryside, loss of green 'wedge' between Tiverton and Halberton and setting a precedent for development to 'close the gap'
- 4) Impact on and visual intrusion into conservation area
- 5) Traffic generation, including for serving of cabins from applicants home together with traffic speeds outside site and type of traffic attracted to bio-digester nearby
- 6) Occupants unable to walk to canal or golf course as no footways
- 7) Drainage provision inadequate and unproven
- 8) Impact on 2nd tee, fairway and green in adjacent golf course

- 9) Trespass onto golf course from occupiers of holiday units – including foraging for golf balls and stray dogs
- 10) Suitable fencing should be provided between site and golf course
- 11) Requirement for further works to canal-side trees to ensure no health and safety risk to occupiers
- 12) Canals offside ground should not be entered
- 13) Further fencing should be provided to protect council depot adjacent to the site
- 14) Any breach of canal would flood the site

MATERIAL CONSIDERATIONS AND OBSERVATIONS

The main issues in the determination of this application are:

- 1) Policy**
- 2) Visual impact**
- 3) Impact on conservation area and heritage assets**
- 4) Impact on surrounding land uses**
- 5) Flood risk and drainage**
- 6) Highway safety**
- 7) Protected species**

1) Policy

The site is located outside the settlement limits of both Tiverton and Halberton and is therefore located in the open countryside. Policy S14 seeks to preserve (and where possible) enhance the character, appearance and biodiversity of the countryside whilst promoting sustainable diversification of the rural economy. Policy S14 specifically permits 'appropriately scaled ... tourism and leisure related development'. Therefore the principle of 3 units of holiday accommodation on this site is acceptable subject to other policies in the adopted development plan.

Policy DM22 sets out specific criteria for determining planning applications for tourism developments in the open countryside. It permits proposals within or adjacent to defined settlements and states that elsewhere a countryside location must be justified along with minimising environmental impacts and avoiding an unacceptable traffic impact on the local road network. Specifically, development must respect the character and appearance of the location and demonstrate that the need is not met by existing provision within nearby settlements. Whilst the site is close to Tiverton, it cannot be said to be within or adjacent to the defined settlement and therefore its location in open countryside must be justified. The applicant states that this is proposed to be a high quality development within easy reach (on foot or bike along the canal or by bus) to Tiverton. Occupiers of the units will be drawn by the close proximity of the canal and golf course and the recreation opportunities these present. Your officers are satisfied that its location has been justified and further discussion over the impacts of the proposal are set out below.

Concern has been expressed that approval of these 3 holiday units will set a precedent for development in this area of open countryside between Tiverton and Halberton. However, all applications are assessed on their own merits and against the policies set out in the development plan.

2) Visual impact

Policies S1, S9 and DM1 seek high quality developments which are visually attractive and well integrated with their surroundings. The initial site was larger than the one before members for consideration here. The land in question sloped up towards and was highly visible from, the Grand Western Canal towpath. The subsequent reduction in site area,

relating to the single field set well down from the canal, means that the visual impact of the proposal is now very limited from the canal towpath. However, the site is visible from the main road. The frontage boundary consists of native planting but is sparse in some areas so there will be views into the site from the road. However, the existing planting could be thickened by way of a condition on the consent requiring a landscaping plan. Given that the site is located between the Devon County Council depot and the golf course, it is not considered that the visual impact would be so wide ranging as to result in a harmful impact. The proposal is therefore considered to comply with policies S1, S9 and DM1 in that it is acceptable on visual impact grounds, with the addition of a landscaping condition.

3) Impact on conservation area and heritage assets

Policy S9 and DM25 relate to the protection and enhancement of heritage assets. The application site is located adjacent to but set well down from the Grand Western Canal and its Conservation Area. The initial scheme involved locating some holiday units close to the canal on the highest part of the application site. Officers expressed concerns to the applicant about the impact this would have on the duty placed on Local Planning Authorities to preserve or enhance the character and appearance of the Conservation Area. In response to this, the application was reduced to 3 units and these are set in the lower field, adjacent to the road and grouped together, with a reduced area for communal amenity. As such, it is not considered that the scale or siting of the proposed 3 no. holiday units would have any impact on the character and appearance of the Conservation Area and as such, any impact would be considered to be neutral, thereby preserving the character and appearance of the Grand Western Canal which at this location, sits well above the application site.

With regards to the comments of DCC Historic Environment Service relating to the possible historic assets below ground, their recommended condition has been imposed. The proposal is therefore considered to comply with policy S9 and DM25.

4) Impact on surrounding land uses

As well as bordering the canal, representations have been received from the 2 other immediately adjoining land uses – Tiverton Golf Club and the GWC Devon County Council Depot. The case officer met with a representative of the golf club in respect of the initial application for 6 holiday units, and understood their concerns to relate to the 2nd tee, fairway and green and in particular the impact of stray balls from the golf course, landing in close proximity to the proposed holiday units in the adjacent field. It was understood that the impact currently from stray balls was limited due to current agricultural use of the land but that expensive fencing or re-positioning of the tee may be required to prevent stray golf balls injuring occupiers of the holiday units and that the costs of these works should not fall to the golf club. Amending the scheme to remove any of the units from the adjoining field was understood to overcome their concerns but their subsequent letter of objection relating to the revised scheme, raised the issue of the possibility of holiday makers (or their dogs) trespassing onto the golf course and foraging for stray balls. This would be a civil or criminal matter should this arise and is not a matter which the LPA could control or prevent.

A letter of objection was also received from the GWC Joint advisory committee in relation to the application for 6 units. Their main concern related to the extra costs which would fall to the GWC in relation to additional tree management, where holiday units were to be located in close proximity to the existing trees aligning the canal. Their concerns also related to the need to prevent unauthorised access to the canal 'offside' and the DCC depot. Again, the scheme was amended to site the 3 holiday units in the far corner of the site, furthest away from the canal so that issues regarding additional maintenance do not arise. Unauthorised access to land not in the control of the applicant, is addressed above – trespass is a separate civil or criminal matter and is not a matter which the LPA could control or prevent.

5) Flood risk and drainage

Policy S1, S9 and DM1 relate to providing suitable drainage facilities and reducing the impact or risk of flooding. The initial responses from the Environment Agency indicated their concerns about the risk to occupiers of the site, from a possible breach of the canal. The site lies below the embankment of the canal and therefore at risk of inundation should the canal banks breach, as was the case elsewhere along the canal in November 2012.

A reduction in the number of holiday units and their relocation did not alleviate their concerns and as a result the applicant has included the provision of a bund within the application. The Environment Agency have subsequently advised that as Devon County Council have improved their 'warning' and control mechanisms, and with the raised floor level (88m or higher) and the proposed Defence Bund, in their view the flood risk has been mitigated. The bunds provision prior to first occupation, ownership and future maintenance can be controlled by a condition on the consent. To this end, the Environment Agency's concerns have been addressed and the proposal complies with policies S1, S9 and DM1.

The application is accompanied by a detailed report and drainage strategy for dealing with foul drainage. The site is not located close enough for practical connection to a mains drain and the proposal to deal with foul drainage via a septic tank rather than a package treatment plant has been justified, due to the fluctuations in use throughout the year.

6) Highway safety

Policy S1 states that applications which support sustainable forms of travel such as walking and cycling and a reduction in the need to travel by car (recognising the rural locality of Mid Devon) are to be supported. Objections have been raised about the location of the site in terms of its accessibility to facilities and services on foot and also relating to the access to the site itself. The application states that occupiers of the holiday units may wish to use the golf course and canal during their stay. The site is located close to the canal and the golf club but there is no segregated access on foot to either. Both involve walking along a busy road without pedestrian footways. Whilst this is not ideal, there are pedestrian refuge areas for the most part and the canal is so close that occupiers of the site are considered most likely to walk rather than drive to the car park. Accessing the golf club by car would be likely, albeit a short journey. The site is also located on a main bus route, so there is easy access to shops, facilities and services in Tiverton. The Highway Authority, as statutory consultee, advise that they have visited the site and have no objections to the proposal subject to the works set out to improve visibility at the access, being suitably conditioned. They have not advised that the proposal gives rise to any harmful highway safety impact and accordingly the proposal complies with policy S1 as your officers consider that the sites close proximity to the canal would encourage occupiers of the units to leave their cars on site and explore the canal on foot or bicycle.

7) Protected species

Given that the site is currently a maintained agricultural field and there is no native planting that needs to be removed to accommodate the proposal, there is no identified impact on protected species in this instance.

8) Public Sector Equality Duty

Section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between different people when carrying out their activities. This is called the Public Sector Equality Duty or "PSED". No persons that could be affected by the development have been identified as sharing any protected characteristic.

Summary

The site is located in the open countryside where new tourism developments, including accommodation are acceptable in principle subject to ensuring that the proposal can be justified and does not adversely affect its surrounding or highway safety. This revised scheme is considered to have a neutral impact on the Grand Western Canal Conservation Area and all other issues can be successfully mitigated via condition. On this basis the proposal is considered to comply with policies S1,S9,S14, DM1, DM5, DM22 and DM25 of the adopted Local Plan.

CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule on the decision notice.
- 3) No development shall begin until there has been submitted to, and approved in writing by the Local Planning Authority, a landscaping scheme, to include landscaping of the proposed flood defence bund and along the site boundary with the road. All planting, seeding, or turfing comprised in the approved details of landscaping shall be carried out within 9 months of the substantial completion of the development, (or phase thereof), and any trees or plants which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species. Once provided, the landscaping scheme shall be so retained.
- 4) (i)the holiday units hereby permitted shall be occupied for holiday purposes only.
(ii)the holiday units shall not be occupied as a person's sole or main place of residence
(iii)the owners or operators shall maintain an up-to-date register of the names of all occupiers of the individual units on the site, their arrival and departure dates and their main home addresses, and shall make this information available at all reasonable times to the Local Planning Authority
- 5) No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.
- 6) No unit shall first be occupied until the improved highway access and visibility splays as shown on drawing number PAB2/LACH/2018 have been provided, and once provided shall thereafter be retained.
- 7) The flood defence bund as shown on drawing number 182 1003 included in Appendix A of the Canal Breach Flood Impact Assessment by Sands Engineers shall be constructed in accordance with those approved details prior to the first occupation of any unit on site. Thereafter, the bund shall be retained and maintained in accordance with a management plan which shall be submitted to and approved in writing by the LPA prior to the first occupation of any unit.
- 8) The use of land in connection with the approved holiday units shall be limited to the area outlined in red on drawing number BPT2/LACH/2018 rev 4 received by the LPA on 8th Nov 2019. Details of the means of enclosing this area, shall be submitted to and approved in writing by the LPA. The agreed details shall thereafter be provided on site prior to the first occupation of any unit and thereafter retained.

REASONS FOR CONDITIONS

- 1) In accordance with the provisions of Section 51 of the Planning and Compulsory Purchase Act 2004.
 - 2) For the avoidance of doubt and in the interests of proper planning
 - 3) To ensure that the development makes a positive contribution to the character and amenity of the area in accordance with policies S1, S9 and DM1 of Adopted Mid Devon Local Plan
 - 4) The site is outside defined settlement limits in the open countryside, where permanent dwellings with unrestricted occupation would be contrary to adopted planning policy, however the application is considered to be in accordance with policy DM22 of the Adopted Mid Devon Local Plan relating to tourism proposals in the open countryside.
 - 5) To ensure, in accordance with Policy DM25 and the National Planning Policy Framework, that an appropriate record is made of archaeological evidence that may be affected by the development
 - 6) To ensure that the access and visibility splays are provided to enable safe access for all users of the site in accordance with policy DM1 of the adopted Mid Devon Local Plan
 - 7) To ensure that occupiers of the site are protected in perpetuity from inundation, should the canal bank be breached in accordance with policy S9 of the adopted Mid Devon Local Plan
 - 8) The area of land associated with the approved use must be defined and limited to that shown on the plan to limit the impact of the development on adjacent land uses and to protect the occupiers of the site from those adjoining uses (e.g. stray golf balls) and to limit the impact on the open countryside in accordance with policy S14 of the adopted Mid Devon Local Plan.
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INFORMATIVE NOTE

The details required by condition 8 shall include the provision of a post and rail or post and wire fence and planting and shall not provide access for residents of the site but may include access for maintenance purposes only.

REASON FOR/ APPROVAL OF PERMISSION/GRANT OF CONSENT

The site is located in the open countryside where new tourism developments, including accommodation are acceptable in principle subject to ensuring that the proposal can be justified and does not adversely affect its surrounding or highway safety. This revised scheme is considered to have a neutral impact on the Grand Western Canal Conservation Area and all other issues can be successfully mitigated via condition. On this basis the proposal is considered to comply with policies S1, S9, S14, DM1, DM5, DM22 and DM25 of the adopted Local Plan.

The Human Rights Act 1998 came into force on 2nd October 2000. It requires all public authorities to act in a way which is compatible with the European Convention on Human Rights. This report has been prepared in light of the Council's obligations under the Act with regard to decisions to be informed by the principles of fair balance and non-discrimination.
