The Planning Inspectorate

# Appeal Decision

Inquiry held on 25-28 March, 1-2 April, 4-7 November and 11-14 November 2014
Site visit made on 31 March 2014

**by Paul Dignan MSc PhD**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 3 February 2015**

**Appeal Ref: APP/X1165/A/13/2205208**
**Land at Churston Golf Club, Churston, Devon, TQ5 0LA.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Bloor Homes Ltd and Churston Golf Club against the decision of Torbay Council.
- The application Ref. P/2013/0019/MPA, dated 7 January 2013, was refused by notice dated 28 March 2013.
- The development proposed is: Site 1 - Development of golf club house, coach facility, buggy store, car park, vehicular access, works to Bridge Road and Bascombe Road; and Site 2 - Change of use and re-grading of 7.7 hectares of land for use as a golf course; change of use of 1.3 hectares of land from equine use to use for cattle grazing, and all associated infrastructure, engineering works and landscaping.

## Decision

1. The appeal is dismissed.

## Background and preliminary matters

2. Churston Golf Club has its clubhouse and 1st and 18th holes on a roughly triangular piece of land between Bascombe Road and the A3022. The remaining 16 holes commence on the other side of Bascombe Road, running out and back in a roughly east-northeast direction, initially as a thin strip of open land surrounded by housing development, then extending into the open countryside along the coast between Galmpton/Broadsands and Brixham. Much of the north-eastern end of the golf course is within the South Devon Area of Outstanding Natural Beauty (AONB).

3. Outline planning permission was granted in 2012[1] for housing on the site of the clubhouse and 1st and 18th holes. This proposal seeks permission to erect a new/replacement clubhouse on the golf course to the north of Bascombe Road and to incorporate agricultural land into the golf course to accommodate the replacement of the 1st and 18th holes.

4. The proposal is accompanied by unilateral undertakings (UUs) made under section 106 of the 1990 Act which would secure highway improvements as part of the development and on- and off-site mitigation for environmental effects. Amendments to the submitted agreements were discussed at the Inquiry and final completed UUs were subsequently provided, dated 5 December 2014. The Inquiry was closed in writing on 5 December 2014.

[1] Council reference P/2011/0829

5. The Churston Galampton and Broadsands Community Partnership, Residents against Golf-Club Sell-Off (or RAGS) and Churston Traditional Farm Shop appeared at the Inquiry as Rule 6[2] parties.

## Applications for costs

6. At the Inquiry applications for costs were made by the appellants against Churston Traditional Farm Shop, one of the Rule 6 parties, and by the combined Rule 6 parties against the appellants. These applications are the subject of a separate Decision.

## Main Issues

7. The main issues are:

- the effect of the development in terms of its impact on traffic flow and highway safety;
- the effect of the development on the character and appearance of the area; and
- whether the development, either alone or in combination with other development, is likely to have significant environmental effects, including effects on protected species and habitats.

## Reasons

*Traffic Flow and Highway safety*

8. This issue relates to the relocation of the golf clubhouse. At present the clubhouse carpark is accessed directly from the A3022 Dartmouth Road. There are no issues raised concerning traffic flow or highway safety, and the site is well served by public transport. The proposed clubhouse site would be accessed from Bascombe Road or Bridge Road. Bascombe Road leaves the A3022 on the Paignton side of the present clubhouse and runs towards Churston Ferrers, passing alongside the golf course in the vicinity of the proposed clubhouse site. It eventually leads to Brixham via Copythorne Road. Carriageway widths along Bascombe Road vary from 3m to 5m. Substantial parts are effectively single track, and forward visibility is limited in places due to alignment and roadside vegetation. Although there are a number of dwellings along Bascombe Road, it has the character of a rural lane with no footways or street lighting. It is subject to a 30mph limit.

9. Bridge Road leaves the A3022[3] a short distance to the south-east of the current clubhouse and runs towards Bascombe Road, which it meets just opposite the proposed clubhouse site. Bridge Road varies in width from 3.4m to about 6.12m, being effectively single track for a stretch of about 80m. Forward visibility is also restricted in places due to alignment, both horizontal and vertical, the latter in the vicinity of a humpback railway bridge near the junction with Bascombe Road.

10. The proposed clubhouse site is alongside a single track lane crossing the course which serves about 11 houses on the northern side of the course. I understand the lane is both a private road and a public footpath, or is used as such. This lane is directly opposite the junction of Bridge Lane and Bascombe Road, and its

[2] Rule 6(6) of The Town and Country Planning (Inquiries Procedure) (England) Rules 2000
[3] Also the A379 at this point

junction with Bascombe Road has very limited visibility due to a pair of stone pillars on the roadside edge. Access to the new clubhouse would be via the Bascombe Road end of the private road. It would see the provision of adequate visibility splays at this junction on both sides of Bascombe Road, along with additional improvements to Bridge Road. These include widening Bridge Road for the first 30m or so to enable the provision of a right-hand turn lane at the A3022 junction, a separate footpath through an adjoining field for the first 100m or so from Bascombe Road, which would rejoin Bridge Road on the golf course side of the single track section, and the setting out of the 80m single track section as a shared surface. Footpath improvements would also be carried out up to the junction with the A3022, including the provision of new sections of footpath. These are aimed, in particular, at mitigating the potential impacts of increased use of Bridge Road on the efficiency of the Bridge Road/A3022 junction and on pedestrian safety.

Bridge Road/A3022 junction

11. The A3022 is the main highway link in the area, connecting Torquay and Paignton through to Brixham and Dartmouth. As such it is heavily trafficked and vehicles joining from side roads will often have to wait for a gap in the traffic.

12. The junction of Bridge Road and the A3022 is considered to be part of a four arm staggered priority junction, with the main road being the A3022 and the minor roads being Bridge Road, leading north-eastwards, and Greenway Road on the opposite side and offset to the north-west by about 55m, leading south-west towards Galmpton. The entrance to Churston Ferrers Grammar School, with approximately 900 pupils, is a short distance up Greenway Road.

13. Modelling of traffic flows at the junction, using PICADY to model the junction and TEMPRO to derive traffic flows, indicates that it will exceed capacity under 2018 base conditions with the clubhouse relocated and other committed development, including the redevelopment of the existing clubhouse site. This is mainly due to growth of traffic using the A3022, but the additional traffic using Bridge Road due to the proposed clubhouse relocation would exacerbate problems at the junction. With the proposed junction improvements, the model indicates that the junction would still operate over capacity in the evening peak if the traffic was arriving at regular intervals over the period (flat profile). Changing the profile from 'flat' to 15 minute segments would see the junction significantly exceed capacity in the peak 15 minute segment, with vehicles arriving at the junction along Bridge Road and seeking to turn right onto the A3022 having to wait about 7 minutes, compared to about 3 minutes for a flat profile. Waiting times of this order can lead to driver behaviour prejudicial to highway safety. Further, when queues develop along Bridge Road, informal car parking along Bridge Road, which is common, can block vehicles turning down Bridge Road from the A3022, which in turn could interfere with the free flow of traffic on the A3022. Congestion at the Bridge Road/A3022 junction could also result in drivers using the unsuitable Bascombe Road as an alternative route.

14. The modelled scenarios use the appellants' estimates of traffic generation. These data are derived from recording of vehicles using the golf club car park on a single weekday in May 2010, along with analysis of golfer's home post codes for trip distribution. A 10% uplift in distributed trips was applied to account for the need to increase the use and membership of the club.

15. Reservations have been expressed about the robustness of this data and the validity of the 10% uplift. It appears that there were no particular events, functions competitions etc on that day, no delivery vehicles were recorded, the weekday selected, a Thursday, is amongst the lowest in terms of tee-time usage, and it takes no account of the impact of tourism. A CCTV based exercise undertaken by local residents over 10 days in August/September 2012, presented as part of Mr Billings evidence, recorded higher car park usage on 7 days, higher vehicle movements in every morning peak hour and on 8 evening peak hours. The differences were substantial in many instances.

16. In respect of the 10% uplift, the justification for this given in the Transport Assessment submitted with the application is that it was to reflect the need to increase the use and membership of the club. It considered that the new clubhouse would provide a similar range of facilities both for golfing and general leisure purposes and that the overall floor area would remain effectively the same. However, the clubhouse as proposed has some 30% more floor area, and is designed to be more flexible so as to accommodate a broader range of social and business events alongside the main golfing programme. This suggests that the uplift factor selected is likely to underestimate the impact of the development in terms of additional traffic on the network.

17. It is clear from the appellants' PICADY models and the sensitivity analysis[4] undertaken for the Council that even with the junction improvements proposed it would take little additional traffic for the Bridge Road/A3022 limb of the junction to fail to function in a satisfactory way. It was suggested that platooning of vehicles on the A3022 and driver courtesy could substantially reduce or negate this, but there is no cogent evidence that it would. Even if the appellants' arguments on the correct profile to adopt for the modelling (ie flat or 15-minute segment) and the likely traffic growth to apply to the network are accepted, given the generally unsatisfactory nature of Bascombe Road and the sensitivity of the Bridge Road A3022 junction, a robust estimation of the amount of traffic likely to be generated by the proposed clubhouse is crucial. There is ample evidence that the use of the existing clubhouse car park varies considerably from day to day, so it is difficult to see how a single days data could be a reliable basis for the quantum of vehicle movements upon which the traffic impact of the proposal is tested, particularly when that day had one of the lowest tee time bookings on average. Further, there is little or no evidential basis for the use of 10% as an uplift factor which would realistically reflect the increased size and flexibility of the new clubhouse. On balance I consider that the appellants have probably underestimated the amount of vehicle movements that the proposal would generate.

18. Higher traffic generation would be likely to lead to increased queuing at the Bridge Road/A3022 junction. Were this to result in injudicious driver behaviour due to impatience or frustration, accidents could occur. No serious accidents have been recorded at the Bridge Road/A3022 limb of the junction in the last 10 years, but there have been 3 serious accidents at the Greenway Road/A3022 limb, 2 of which resulted in fatalities. Greenway Road typically has longer waiting times than Bridge Road for vehicles to join the A3022, and all 3 collisions occurred as vehicles emerged from Greenway Road into the path of on-coming vehicles, behaviour which is commonly associated with lowered gap acceptance of drivers delayed in queuing traffic. Any increase in delays at the

[4] Document 8

Bridge Road /A3022 junction could also result in drivers leaving the new clubhouse by Bascombe Road, which itself has a history of collisions, some involving vulnerable users such as pedestrians or cyclists.

Bridge Road pedestrian safety

19. The route from the A3022 along Bridge Road to the new clubhouse location includes a 70m section of narrow laneway, 3.5m or less in width with no footways. Aside from a driveway access about midway serving 2 houses, it is flanked by hedgerows with shallow ditches or little or no verge. This section has a bend at its eastern end which limits forward visibility. At present it is likely to be a relatively hostile environment for pedestrians and cyclists, which includes schoolchildren. For example, the existing driveway provides the only refuge space in the event that a wide vehicle is encountered. The additional traffic to and from the new clubhouse would increase the likelihood of conflict between vehicles and pedestrians/cyclists on this stretch. There is also likely to be more pedestrians and cyclists using Bridge Road as a result of the proposal since it would be used by many of those who would access the clubhouse by non-car means. The nearest bus stops are on the A3022 near the Bridge Road junction, and the development Travel Plan proposes to encourage the use of public transport and cycling by staff and golf students.

20. The proposal originally intended to provide a separate pedestrian route from the A3022 to the clubhouse, but that required access to private land which is no longer available. What is now proposed is to formalise the 80m long narrow stretch as a 'shared space' using blue "Share space" signs and gateway/entry features at either end. It is argued that this improves and formalises what is already effectively operating as a shared surface. However, while the anticipated traffic flows are within that considered acceptable for shared space use, there would be an increased frequency of encounters between vehicles and more vulnerable road users without incorporating important shared space features such as lighting and comfort space. The lack of comfort space[5] is particularly striking due to the narrow carriageway width and the very high likelihood that a pedestrian would encounter a vehicle. Wheelchair users, a guided visually impaired person or a parent and child would already find this narrow section difficult to use, but given the physical constraints of the useable carriageway, it is difficult to see how improved driver behaviour, if it did occur, would make such users feel safer, particularly with the inevitable increased use of Bridge Road by larger service vehicles.

21. In all likelihood, despite the pedestrian improvements which the proposal would provide at the eastern and western ends of Bridge Road, the increased traffic flows through the narrow central stretch would make it a more hazardous environment for pedestrians in particular and would discourage its use. By contrast, the government guidance on shared space[6] defines it as a street or place designed to improve pedestrian movement and comfort by reducing the dominance of motor vehicles and enabling all users to share the space.

*Traffic Flow and Highway safety - Conclusion*

22. Even with the junction improvements proposed to the Bridge Road/A3022 junction, it has a limited capacity to satisfactorily accommodate additional

[5] An area of the street predominantly for pedestrian use where motor vehicles are unlikely to be present.
[6] Local Transport Note 1/11 Shared Space – Dept. of Transport October 2011

traffic. I am not satisfied on the evidence provided that it has been demonstrated that the relocation of the clubhouse as proposed could proceed without harm to highway safety and the free flow of traffic. Further, while there is no documented history of serious accidents on Bridge Road, the likely increased frequency of vehicles using it would be detrimental to the safety of pedestrians and other vulnerable road users. This would be mitigated to an extent by the proposed improvements, but the harm would not be overcome.

23. Saved Policy T26 of the Torbay Local Plan 1995-2011 (LP) provides that new development will not be permitted unless the effects of the development in terms of traffic and road safety are acceptable. The proposal conflicts with this development plan policy. It also fails to accord with paragraph 35 of the National Planning Policy Framework (NPPF), which expects development to be designed and located so as to create safe and secure layouts which minimise conflicts between traffic and cyclists and pedestrians. In terms of paragraph 32 of the NPPF, I consider that the residual cumulative effect of the proposal on highway safety would be severe.

*Character and appearance*

24. This issue also relates to the relocation of the clubhouse. The proposed site is on what is currently the 3rd tee and fairway, with the clubhouse building to be located roughly in the middle of the course and the associated carpark occupying the land between the building and Bascombe Road. This part of the golf course is a narrow strip of open land largely bounded by residential development of varying density on its north, west and southern sides. To the north-east it extends into AONB designated open countryside, finishing near Fishcombe Point just north-west of Brixham.

25. The local landscape character is described in the Council's Landscape Character Assessment of Torbay (2010). Broadly it is considered to be within Character Type 1 – Rolling Farmland. More specifically it is part of a discrete area called character type 1R Broadsands and North Churston. This includes land within the AONB and covers the golf course north of Bascombe Road, pasture land, woodland and part of the coast. The proposed clubhouse site is also on land designated as Countryside Zone for the purposes of LP Policy L4. This policy seeks to avoid development within the Zone which would lead to a loss of open countryside. It seeks to prevent the merging of urban areas and settlements. Development associated with outdoor sport and recreation is acceptable provided that rural character, amongst other things, is not adversely affected.

26. The proposed clubhouse would be a sizeable and prominent structure. By virtue of its siting within the golf course and its legibility as a facility type building, its departure from the scale and grain of the nearby residential properties would not be perceived as incongruous or discordant. However, it would be visually dominant in views from the laneway alongside, from the junction of Bridge Road and Bascombe Road, and on the approach along Bascombe Road from the Paignton direction. The openness of the site at present makes a very significant contribution to the open and semi-rural character of the area, maintaining separation between patches of built development and a tangible connection with the open countryside. The erection of a large and prominent building in this location would perceptibly merge the developed areas on either side of the golf course and sever the connection to the open countryside. This would harm the

character and appearance of the area. It is not an impact that could be mitigated by landscaping. The proposal would thus conflict with LP Policy L4.

27. In promoting good design as a key aspect of sustainable development indivisible from good planning, the NPPF encourages local planning authorities to have local design review arrangements in place, and to have regard to their recommendations. An earlier iteration of the clubhouse proposal was reviewed by the Torbay Design Review Panel, and it found the impact of the proposal on the landscape setting to be too great. It considered this to be an inevitable consequence of the choice of site. The building considered was of a different design, but its siting and scale were comparable. Insofar as it relates to the current proposal, my conclusion on this matter accords with that of the Design Review Panel.

*Environmental effects*

28. This issue relates to the extension of the golf course itself. Agricultural land and land currently in equestrian use would be reconfigured to, amongst other things, replace the current 1st and 18th holes. The land adjoins the existing golf course to the east of Churston Court Farm. Of particular concern is the potential impact of the change of use of this land, which is referred to as the Golf Course Extension (GCE), and the physical works, on greater horseshoe bats[7], cirl buntings and badgers.

*Greater horseshoe bats*

29. The greater horseshoe bat (GHB) is one of Britain's rarest bats. It is strictly protected under Annex II and Annex IV of the Habitats Directive[8], transposed into UK law by The Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations). Annex II species are those whose conservation requires the designation of Special Areas of Conservation (SACs). Conservation of the GHB is a primary reason for the designation of the South Hams SAC. The SAC is a composite area comprising five component Sites of Special Scientific Interest (SSSI) centred on GHB maternity roosts. One of these is the Berry Head to Sharkham Point SSSI, about 2.5km from the golf course on the other side of Brixham. The GHB maternity roost is in caves in the cliffs at Berry Head.

30. Greater horseshoe bats usually forage within approximately 4km of their roosts, and part of the management strategy for GHB is the designation of 4km radius sustenance zones to support the roosts. In the case of the Berry Head roost, due to the extent of sea within the 4km circle the sustenance zone has had to be adjusted to ensure that sufficient foraging habitat is available to sustain the population. Important foraging habitats include cattle-grazed permanent pasture. Greater horseshoe bats need to be able to move through the landscape between their roosts and their foraging areas to maintain favourable conservation status. Commuting GHB generally follow linear features, such as hedgerows, woodland edge and vegetated stream lines. They are sensitive to light and tend to avoid urban areas or areas with street lighting.

31. The Berry Head maternity roost is considered to be particularly fragile, partly due to colony size, somewhere between 60 and 100, and local micro-climate, but there are also important spatial constraints. Most of the nearby surrounding

[7] Numerous bat species use the GCE, but GHB are likely to be amongst the most sensitive and consideration of the impact on GBH is likely to encompass the effects on other bats.
[8] Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora

land is urban, and most of the sustenance zone for the roost is beyond Brixham to the south and west, which, if the sea is to be avoided, must be accessed via a narrow coastal corridor, a pinch point for commuting bats. The GCE falls within the sustenance zone for the Berry Head roost beyond the coastal strip pinch point. Radio tracking and expert local knowledge has been used to establish routes used by GHB to access the sustenance zone, what are referred to as strategic flyways. One of these terminates[9] in the vicinity of the GCE.

32. The development of the GCE would affect components of GHB habitat, cattle-grazed permanent pasture and hedgerows. Development within the sustenance zone that affects GHB habitat may have an effect on the viability of the local population, and hence on the integrity of the SAC, defined as "the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified."[10] Regulation 61(1) of the Habitats Regulations[11] restricts the granting of planning permission for development which is likely to significantly affect an SAC.

Hedgerows

33. In view of the potential impact on GHB in particular, bat activity surveys were carried out on the GCE site in 2010. For the period May to August these comprised manual surveys twice monthly, in accordance with the extant best practice guidance. Natural England (NE) published revised guidance for the South Hams SAC consultation zone in June 2010 which advised that manual surveys should be augmented by automatic bat detector systems. This was incorporated into the survey methodology for August-October 2010 in consultation with NE[12]. The automatic bat monitoring concentrated on hedgebank/linear features. Between the adjournment of this Inquiry in April 2014 and its resumption (April to October 2014), further manual and automated survey work was undertaken. These latter surveys did not include the agricultural land outside of the Golf Club's ownership due to access restrictions.

34. Overall, the extent of bat survey work that has been undertaken is considerable. However, shortcomings of the surveys were raised at the Inquiry, including the methodology, the presentation of results and the analysis of data. Many of the criticisms are valid. Some data are aggregated, but presented without measures of variance, so it is not possible to see how accurately they represent the observations or whether the data can provide a basis for effective monitoring of impacts. The surveys were, in the main, limited to the GCE site itself, and within that area the vast majority of the survey effort was devoted to the linear features. Even given the extent of the surveys, they are not sufficient in my view to fully understand how GHB are using the site for foraging or commuting over an extended period such as a full breeding season. In this context, and in view of the acknowledged limitations[13] of the Anabat devices used for automated monitoring, the headline figure of an average of 2.95 GHB passes

[9] This may be due to radio tracking limitations.
[10] Circular 06/2005 Biological and Geological Conservation – Statutory Obligations and their impact within the Planning System.
[11] The Conservation of Habitats and Species Regulations 2010
[12] Two automated bat monitoring devices had also been used to supplement the May-August manual surveys.
[13] Bats which echolocate at a high frequency, have quiet calls, or calls which are highly directional, such as horseshoe species, may not always be picked up and may only be detected at distances of typically less than 5 metres.

recorded per night is difficult to interpret as an accurate characterisation of GHB use of the site, even in very broad terms.

35. Having said that, how the Berry Head colony uses the wider landscape does not appear to be particularly well understood, and there is evidence of GHB in the locality of the GCE that may not be part of the maternity roost. What the surveys do establish is that the GCE is used regularly by GHB, but that intensive use is very infrequent. In 2014, for example, there was at least one GHB pass recorded on 61-89% of nights between May and September (monthly averages), and there were occasions, albeit infrequent, when very high levels of activity were recorded, possibly due to a single foraging bat. Also in 2014, ten manual bat activity surveys of the GCE, starting before sunset and last for at least 3 hours post sunset and undertaken by two experienced surveyors, recorded only 10 GHB passes, with no passes at all recorded on 4 of the nights. In 2010, 10 broadly comparable surveys, albeit on a larger area, recorded 31 GHB passes. Of these, 12 were recorded close to Churston Court Farm and the adjoining orchard, areas where GHB foraging/commuting habitat is likely to be either unaffected or enhanced by the proposal. The qualitative aspects of these manual surveys also provide evidence that the most important linear features on and around the GCE site are those linked to the area of woodland to the east, and that most GHB observed or recorded were commuting, on the basis either of their behaviour or the timing of the records relative to sunset/sunrise.

36. Turning to the impact of the proposal on physical habitat features, the GCE development would see the creation of gaps in two of the existing hedgerows and the removal/relocation of a significant section of one hedgerow. Alternative linear features are proposed for the two gaps. These are the creation of a ha-ha about 2m high across a gap of about 45m on a roughly north-south hedgerow and a shadow embankment across a gap of some 85-90m on a roughly east-west hedgerow. Although they are untried as alternative navigation features to hedgerows, they are considered to be strong linear features whose physical characteristics are amongst those known to be used by bats for navigation. The Council's ecologist and NE have agreed these features as mitigating the loss of hedgerow connectivity. These features are proposed to be constructed during the bat hibernation period.

37. The hedgerow section proposed for relocation is about 85m in length and crosses a field in a roughly north-south direction just to the west of a large area of woodland. It would be relocated to link directly with the western end of the woodland, again during the bat hibernation period. Artificial hedge features would be erected along the new hedge line to provide reinforcement of the route until successful establishment.

38. The timing of these works should avoid direct disturbance of bats during construction, and all would be carried out under the supervision of an ecologist. However, the disruption of existing linear features on the site which are known to be used by bats, including GHB, does have the potential to make navigation across the site more difficult, with potential adverse implications for foraging and commuting. In mitigation, a suite of enhancement measures are proposed. These include the planting of linear bands of native trees and shrubs, in advance of any hedge removal, to provide alternative foraging/commuting routes across the site, the reinstatement and strengthening of a hedgebank that was recently cleared, the provision of new bat roosts, and a commitment to a long term landscape and ecological management plan (LEMP). This would see the

provision and long term maintenance of a wider range of habitats on the 32 ha golf course land.

39. The Council's view is that the hedgerow network that would be retained on the GCE site is strong enough to allow continued movement of GHB across the site, hence minimising any short-medium term impacts on GHB. I see no reason to disagree. In terms of the commuting environment for bats this is a fairly benign development. It is not known to be within a strategic flyway, the landscape would remain dark and there would be good connectivity across the site. Even if, as suggested, GHB are flying directly across Brixham harbour from the Berry Head roost to access the countryside, the GCE would not be an impediment.

40. I acknowledge that some of the new linear features are untested, but they are nonetheless proposed by an experienced ecologist with expertise in GHB ecology and are based on species-specific commuting characteristics. Further, any GHB arriving at the GCE from the Berry Head SAC via the closest designated strategic flyway, a journey of some 3.9km, would have already crossed much less favourable terrain, including built up areas. In addition, habitat availability in the vicinity of the GCE is not particularly constrained spatially, and there is a open countryside to the east, south and south-west that can be exploited. In short, there is no lack of alternative commuting features.

Cattle grazed pasture

41. About 4.36ha of permanent pasture that is regularly grazed by cattle would be incorporated into the golf course. Herbivore grazed pasture is considered to be particularly important foraging habitat for GHB, mainly due to the production of dung beetles, a food source which is of particular importance for juveniles. Cattle dung has the highest level of dung beetle production. GHB are considered to be particularly susceptible to loss or deterioration of foraging habitat. A loss of foraging habitat of this magnitude within the Berry Head maternity roost sustenance zone would be likely to have a significant effect on its viability.

42. It is proposed to mitigate the loss of this habitat by introducing cattle grazing to a 1.2 ha area of golf club land currently used for equestrian purposes, and to establish a specific cattle grazing regime on a nearby 4.35 ha block of farmland (referred to as the "off-site mitigation land" or OSML). The OSML is permanent pasture that is not currently grazed by cattle, for reasons which I deal with below. The Off-site Mitigation UU commits the owners of the land to provide ecological mitigation for the appeal development. In essence, the land would be managed in perpetuity[14] for the benefit of GHB. Central to this is cattle grazing at prescribed times. Aside from issues regarding the deliverability of such a programme, the value of this approach as mitigating the loss of the farmland to be incorporated into the golf course, or indeed whether it can be accepted as mitigation, as opposed to compensation, for the purposes of the Habitats Regulations, was raised at the Inquiry.

43. On the first point, whilst there are differences between the two blocks of land, and there is no information on the GBH carrying capacity of the OSML land or its current level of use by GHB, the OSML land has characteristics that are associated with ideal GHB habitat, it is beside and partly within a strategic flyway and it is closer to the Berry Head SAC. In physical/structural terms it is no less suitable, and the ability to manage it for dung beetle production at

[14] Defined as 125 years in this case

critical times for the maternity roost, regardless of the vagaries of commercial farming enterprises, has significant advantages. The NE guidance on managing landscapes for the GHB notes that effective conservation depends on the management of the farmed landscape around maternity roosts and other sites used by the bats, and it has accepted this scheme as appropriate mitigation, provided that delivery can be guaranteed. I agree.

44. Whether this approach amounts to mitigation or compensation has implications for how this component of the development is treated under the Habitat Regulations. It would not favour the development if it could only be considered as compensation. The differences between mitigation and compensation are not clearly defined, but broadly speaking the term mitigation would apply to measures which are incorporated in the development and are directed at addressing the likely effects of the development on the SPA. In this case, although the scheme is put forward with the development proposal, it is not part of it in a functional or physical sense. On the other hand, the scheme is intended to directly address the impact of the proposal on the SPA in terms of the potential loss of a specific food source, and to do so in relatively close proximity and without any time lag. For this reason I am satisfied that it can be considered as a mitigation measure.

45. To provide effective mitigation for the loss of cattle grazed pasture to the golf course, the OSML land must be grazed by cattle during the key periods when GHB are heavily reliant on dung beetles as a food source. The farmer who last used the land for cattle grazing, Mr Haddock, one of the Rule 6 parties, stopped doing so when animals from his herd were found to be bovine tuberculosis (bTB) reactors whilst grazing the land. He now believes that the land is part of the territory of a bTB infected badger sett and that cattle should not be grazed there at all due to the risk of infection. As a result the appellants have had to find an alternative grazier, which has proven difficult in the local area. I deal with this below.

46. Mr Haddock had bTB reactors in cattle grazing on two parts of his farm at the same time, the OSML and land at Lupton Meadows. Along with his vet he came to the conclusion that both parcels of land were in the territory of a badger sett near Lupton Meadows. They came to the view that this sett was the source of the bTB infections on both sites. Since keeping cattle off those parcels of land the farm has been bTB free. In essence this is the evidence that the OSML land is a bTB 'hotspot'.

47. Notwithstanding that most bTB infections in cattle result from contact with other cattle, unless infection by badgers has been ruled out then any land on which cattle are suspected to have been infected with bTB must be considered as having a higher risk for subsequent cattle grazing. Beyond that I consider that there not persuasive evidence that the OSML is a bTB hotspot. There is no other evidence that the specified badger sett contains infected animals, either direct or by implication. There are cattle grazing nearby within the purported territory which do not appear to have been infected. Further, access to the OSML from the rest of the territory said to be used by the relevant sett is quite tortuous, involving access through a long wet culvert. There is no evidence that badgers use this culvert. There is evidence that the land is used by badgers, but no evidence that these are from the same sett as those that use Lupton Meadows.

48. Nonetheless, local farmers appear reluctant to undertake cattle grazing of the OSML. This may be due to its reputation locally as a bTB hotspot, but there are in any case particular difficulties with grazing small isolated parcels of land such as the OSML and the 1.2 ha on-site grazing land. Mr Williams, an agricultural consultant who also farms on a small scale, albeit a considerable distance away, has undertaken to graze the on-site and off-site mitigation land for one year for a fee, by agreement with the golf club. Day to day supervision of the stock would be the responsibility of golf club staff, who would receive training. In the event that the land could not be grazed by cattle due to Government restrictions[15], grazing would be by sheep, and ultimately horses if sheep were also precluded. Mr Williams would undertake sheep grazing if need be, but not horse grazing.

49. This arrangement would get the cattle grazing aspect of the proposed GHB mitigation underway in advance of any works of development. Once the development has been carried out, there is a sanction for the failure of this mitigation measure under certain circumstances. The on-site UU provides that a failure to appropriately graze the on-site and off-site mitigation land for a continuous period of more than 14 days in a designated grazing period would cause the golf club to cease the use of the new fairways created on the GCE, and not to be used until the grazing resumes or the designated grazing period comes to an end. Notwithstanding that these terms are open to a degree of circumspection which could significantly abbreviate the relevant grazing periods, it would clearly be in the golf club's interests to ensure that appropriate grazing contracts were in place. Nonetheless, such a sanction could not be construed as replacing the loss of an important food source for GHB, and there are no alternative mechanisms by which this loss could be mitigated. If the OSML could not be grazed by cattle due to an outbreak of bTB, a risk that would remain higher than that of the GCE land, even allowing for the badger vaccination programme proposed by the appellants, there would also be no contingency that would avoid the loss of a GHB food source. Grazing with sheep would not be adequate as mitigation, and the land is already grazed by sheep in any case.

50. Mr Oxford, the ecologist for the Council, has experience with grazing management for conservation. He describes the proposals put forward to secure cattle grazing on the OSML as fraught with problems. I agree. The problems already encountered finding a grazier suggests to me that the necessary arrangements would be difficult to sustain in perpetuity. Allied to the small, but nonetheless significant, risk that cattle grazing would be impractical due to bTB, and the lack of any contingency or fall-back that would directly address the impact on GHB within the GHB sustenance zone of the Berry Head SAC, I can only conclude that the proposal carries with it a not insignificant element of risk to the long term viability of the Berry Head GHB maternity roost, and hence to the integrity of the SAC.

*Cirl buntings*

51. The cirl bunting (CB) is the UKs rarest resident farmland bird[16]. It is listed in the Birds of Conservation Concern red list and is subject to a UK Biodiversity Action Plan. Species action plans have been produced for cirl bunting by both NE and the RSPB. Once common across southern England, it is now largely confined to

[15] Or if the Council gives its consent to non-grazing for reasons of animal welfare and/or good animal husbandry. The on-site UU and the attached Agricultural Management Plan (AMP) are inconsistent on this point.
[16] The last national survey recorded an estimated 862 pairs.

South Devon. It is territorial in the breeding season and nests in hedges and scrub that provides dense cover. It habitually forages close to the nest, up to a maximum of 250m but usually closer. Suitable foraging areas are unimproved or semi-improved rough grassland and field margins. It is not thought to forage in improved or closely mown grassland.

52. The GCE site currently provides suitable breeding habitat and supports a breeding population. Surveys[17] in 2010 identified, and mapped approximately, five cirl bunting breeding territories overlapping or adjacent to the GCE. The surveys were carried out by experience ornithologists with previous experience of cirl bunting surveys. The surveys and interpretation were the subject of some criticism by Mr Robinson, the expert ornithological witness appearing for the Rule 6 parties. His interpretation of the results of the survey was that there could be between 6 and 10 breeding territories on or adjacent to the GCE. The significance of this is that the RSPB considers that sites supporting populations comprising 1% or greater of the national population should be considered to be of national importance and accordingly afforded greater protection, preferably conservation in situ. The site was re-surveyed for the appellants by the same ornithologists in 2014. This set of surveys could not access the GCE agricultural land so this was surveyed from the nearest accessible points. The surveys also took in a wider area. A total of 10 territories were identified (there were some significant habitat changes outside of the GCE in the interim), but only 2 within or occupying part of the GCE. Both of these territories also included parts of the existing golf course. There was also criticism of these surveys and their interpretation, but it does indicate that the number of breeding pairs likely to be directly affected by the development of the GCE land would be relatively low. Further, it indicates that the local population is capable of adapting its breeding sites to changes in available habitat.

53. The works proposed would remove some existing potential nest sites and grazed pasture habitat. The loss of potential nesting sites would not necessarily result in the abandonment of territories, any hedgerow removal would take place outside of the CB nesting season, and the new planting proposed can be expected to improve nesting opportunities as it matures. The new fairways would not provide any foraging areas for CB, so there would be a net loss of habitat suitable for foraging. However, it is proposed, through the LEMP, to manage the off-fairway grass on the golf course as a whole to provide the grassland structure preferred by CB invertebrate prey, which would provide some benefits. The new hedgerow planting would also be managed with the needs of CB in mind.

54. CB are known to tolerate human presence and the 2014 surveys indicate that they are already using territories that straddle fairways, so that future use of the golf course in itself should not adversely affect the population provided that its habitat needs are met. There would be some disturbance of the local population in the short term during construction of the new fairways, but this can be minimised by the timing of works and establishment of new habitats in advance of excavation and profiling works. Overall I consider that the benefits of the scheme in terms of improving CB habitat, and that of birds generally, across the 32 ha of the golf course would just mitigate the short term harm.

[17] The survey used a methodology that was in fact superseded at the time. However, it had been approved by an RSPB staff member.

*Badgers*

55. There is an active badger sett on the southern boundary of the GCE. Badgers and their setts are protected under the Protection of Badgers Act 1992 (as amended). It is an offence to kill or injure a badger or to interfere with a badger sett that is displaying signs indicating current use by a badger. In this case the possibility of disturbance has been considered and measures are proposed which I accept will satisfactorily avoid disturbance of the sett and its occupants.

56. However, there is also a sett in the valley bottom of one of the agricultural fields within the GCE which was not identified during the relevant surveys, and, aside from the Inquiry site visit when the sett was visited and agreed as being potentially an active badger sett, its status and usage has not been established. It is located in an area to be developed as a fairway or as a water feature (pond) within the fairway line and hence its retention is incompatible with the proposed layout, and no mitigation or compensation has been proposed.

57. The law emphasises prevention of cruelty to badgers and is not intended as a measure to prevent development. However, any works that may interfere with a sett displaying signs indicating current use by badgers would require a licence from NE. For the purpose of development, licences cannot be issued to kill or translocate (physically capture and relocate) badgers. A licence to close the sett could not be issued until it has been established how the sett is being used, which would require a period of monitoring.

58. The presence of a protected species is a material consideration. Current advice in Circular 06/2005 is that the extent to which they may be affected by a proposed development should be established before the planning permission is granted. Since that has not been established in this case, for whatever reason, Circular 06/2005 indicates that planning permission should be refused.

*Conclusion on environmental effects*

59. The approach to development which may affect the integrity of an SAC is well established. Where, as here, there are not imperative reasons of overriding public interest, planning permission should not be granted for a proposed development that would adversely affect the integrity of the SAC. The *Waddenzee*[18] judgement establishes that it can only be ascertained that a proposal will not adversely affect the integrity of the SAC where there is no reasonable scientific doubt remaining as to the absence of such effects. Due to the uncertainty which I have identified regarding the cattle grazing of the OSML, and the lack of satisfactory contingency, that test is not met in this case. The proposal would therefore conflict with LP Policy NC1.

60. The potential harm to badgers also indicates that planning permission should be withheld. The appellants' surveyors were denied access to monitor the sett once they had been made aware of it, which is unfortunate, but the fact remains that this is nonetheless a material consideration about which I do not have adequate information.

*Other matters*

61. The GCE is close to a number of listed buildings, including Churston Court Farm and farm buildings including a granary, pound and stables. The potential harm

[18] Case C-127/02, [2004] ECR-I 7405

to the setting of these buildings due to the impact on their setting of the conversion of nearby agricultural land to golf course was raised prior to the Inquiry. However, it was not dealt with in any detail at the Inquiry. From the limited evidence before me I consider that the proposed conversion of agricultural land to golf course would not harm the relevant heritage asset settings.

62. The question of the need for an Environmental Impact Assessment (EIA) was also raised before the Inquiry opened. Both the Council and the Secretary of State screened the proposal and concluded that it was not EIA development. In closing Mr Jones QC made a further request for the application to be screened by the Secretary of State, in the light of the evidence adduced at the Inquiry, if I was minded to allow the appeal. In view of my conclusion below, this is not a matter that I need to deal with.

**Conclusions**

63. The proposal would facilitate the provision of housing at the existing clubhouse site. The need for this housing is disputed, with the Council maintaining that, whilst welcome, it is not essential to enable it to demonstrate a 5 year housing land supply. Regardless, the additional housing would clearly be valuable and weighs in favour of the proposal. A more flexible clubhouse design would be of benefit to the club, which in turn would be likely to have benefits for tourism in the area and would accord with development plan policies on recreation and leisure. There would also be some additional jobs created. Other benefits include the more positive approach to managing the golf course for environmental benefits that could be secured through the LEMP.

64. However, I have identified significant harm, and conflict with the development plan, in terms of highway safety, the effect on the character and appearance of the area, the integrity of the South Hams SAC and protected species. I consider that the benefits associated with the scheme are not sufficient to show that the development should be allowed to proceed in the face of the failings that I have identified. The harm to the SAC alone indicates that planning permission should not be granted.

65. I conclude accordingly, having considered all other matters raised, that the appeal should be dismissed.

*Paul Dignan*
INSPECTOR

## APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|---|---|
| Richard Ground | Of Counsel, instructed by Torbay Borough Council Solicitor |
| He called | |
| Andrew Wilson BA(Hons) BArch RIBA | Director, Stride Treglown Ltd |
| Emma Dalton BSc MSc MCIHT TPP | Technical Director, Jacobs |
| Andrew Renshaw BA MA MRTPI | Senior Associate, Stride Treglown Ltd |
| Michael Oxford BSc MSc CEcol FCIEEM | Chartered Ecologist, Kestrel Wildlife Ltd |
| David Pickhaver | Strategic Planner, Torbay Borough Council |

FOR THE APPELLANT:

| | |
|---|---|
| Chris Young | Of Counsel, instructed by Ian Tant, Barton Willmore |
| He called | |
| Richard White BSc(Hons) MScTPM MICILT MCIHT MIPENZ FFB | Director, FMW Consultancy Ltd |
| Timothy Goodwin BSc(Hons) MSc MIEnvSc MCIEEM MIALE | Director, Ecology Solutions Ltd |
| Gareth Howell BA(Hons) DipArch RIBA | Barton Willmore |
| Peter John Williams BSc(Hons) MBIAC | Director, Reading Agricultural Consultants |
| Simon Kale CMLI | Director, Nicholas Pearson Associates |
| Ian Tant | Senior Partner, Barton Willmore |
| Neil Bromwich<br>Noel Doran | Solicitors, Osborne Clarke, to explain and answer questions about the s106 UUs. |

FOR THE RULE 6 PARTIES:

| | |
|---|---|
| Gregory Jones QC and David Graham, of Counsel | Instructed by Roger Richards Solicitors |
| They called | |
| Adam Billings MA | Chairman, Churston Galampton and Broadsands Community Partnership |
| Mark Smith BA MRICS MBA | Golfing consultant, Smith Leisure |
| Richard Haddock | Churston Traditional Farm Shop |
| Prof John Altringham | Prof. of Animal Ecology and Conservation, Univ. of Leeds |
| Peter Robinson | Consultant Ornithologist |

INTERESTED PERSONS:

| | |
|---|---|
| Mr Trott<br>Peter Dijksfor<br>David Watts<br>Carole Box<br>Mike Brown<br>Roger Fordham<br>Ian Russell<br>Helen Boyles<br>Roger Matthews<br>Stan Trott<br>Ted Scaife<br>Joan Mazumdar<br>Christopher Hodson<br>Eileen Billings<br>Jennifer Walters<br>Eileen Simpson<br>Richard Mayo<br>John Triance<br>Gerard Wills<br>Cecile Edwards<br>Len Eden<br>Isobel Mayo<br>Dee Jardine<br>Jane Washington | Local Residents |
| Cllr Ken Pritchard<br>Cllr Derek Mills | Ward Councillors, Torbay Council |

## DOCUMENTS SUBMITTED AT THE INQUIRY

1 Agricultural Management Plan (A)[19]
2 Appellants' (22/3/14) response to Rule 6 Parties' note of 20/3/14 (A)
3 Representations – V Hatton 24/3/14
4 Appellants' opening submissions
5 Rule 6 Parties' opening submissions
6 Note on floor areas (31/3/14) (A)
7 Comparative building plans (TC)
8 PICADY junction modelling (TC)
9 Natural England email re current position (25/3/14)
10 Road junction diagrams (R6)
11 Photos of car parking in Links Close (R6)
12 PICADY junction modelling (A)
13 Mark Smith Rebuttal of Taylor proof of evidence (R6)
14 Speaking notes - David Watts
15 Site 1 plan showing contours and tree locations (R6)
16 Representations – Dr S Woolaston MP 24/3/14
17 Site visit plan and itinerary (R6)
18 Natural England (NE) consultation response to earlier proposal (21/9/11) (A)

[19] A – Appellants; TC – Torbay Council; R6 – Rule 6 parties

19 Bloor Homes letter re contract with Churston Golf Club (A)
20 Richard Haddock – written statement of evidence, plus attachments (R6)
21 Adam Billings – written statement of evidence (R6)
22 Photos of cattle grazing (31/3/14) (A)
23 Representations – CPRE - 24/2/14 and 20/2/14
24 Speaking notes – Michael Brown
25 Speaking notes – Ian Russell
26 Speaking notes – Roger Matthews
27 Speaking notes – Len Eden
28 Speaking notes – Ted Scaife
29 Speaking notes – Eileen Billings
30 Speaking notes – Christopher Hodson
31 Photographs (2) Pennsylva from 4th green (R6)
32 Planning application for Mariners (P/2008/1138) - Officer's Report (R6)
33 Note re Archaeological evidence in planning documents (R6)
34 Maps and diagrams to accompany Oxford evidence in chief (TC)
35 CIEEM Mitigation/Enhancement guidance plus IEEM guidelines for EIA (R6)
36 Updated bat survey results (to October 2014) (A)
37 Peplow (vet re bTb testing) letter dated 4/11/14 (R6)
39 Representations re bat observations – C Box
40 Extracts from Bird Census Techniques (Bibby et al) and JNCC guidelines (R6)
41 RSPB Cirl Bunting survey guidelines (21/3/14 version) (R6)
42 Torbay Local Plan Habitats Regs. Assessment (HRA) Feb 2014 (TC)
43 Torbay Local Plan site appraisal HRA Oct 2014 (TC)
44 Wall Park and Riviera development proposals HRA screening (TC)
45 Extract E.9 from HRA Handbook (Tyldesley) Sep 2013 (TC)
46 NE consultation response to Torbay Local Plan 4/4/14 (R6)
47 Note re distance from Berry Head SSSI/South Hams SAC (A)
48 Forestry Commission felling notices (Aug 2014) Ball Copse and The Grove (TC)
49 Email comms between appellants and RSPB re Cirl Bunting surveys (A)
50 Table of symbols used in bird surveys (A)
51 Diagrams accompanying Wilson response to Howell addendum proof (TC)
52 Legal cases relied upon in submissions (A)
53 Peplow (vet re bTb testing) letter dated 10/11/14 (R6)
54 Letter to Inquiry from Solicitor representing R Haddock 10/11/14 (R6)
55 NE consultation response to Torbay Local Plan proposed modifications 15/8/14 (R6)
56 Supplementary Statement of Common Ground – Housing Nov 2014
57 Comments on submitted Unilateral Undertakings (R6)
58 Torbay Council Overview and Scrutiny Board report re proposed Churston Golf Club covenant 16/10/14 (A)
59 Letter of confirmation of notice served to R Haddock re OSML land (A)
60 Appeal decision APP/P1133/A/11/2158146 (A)
61 Photograph of Site 1 taken from Bascombe Road outside Four Winds (R6)
62 DEFRA/AHVLA TB test interpretation (R6)
64 Environmental Statement (ES) for Replacement Golf Course Facilities and Residential Development, Churston July 2011 (R6)
65 Draft list of conditions
66 Torbay Council Overview and Scrutiny Board report re proposed Churston Golf Club covenant – additional information
67 Draft Statement of Common Ground – Deliverability of housing on 1st and 18th (R6)

68 BIAC code of conduct (R6)
69 Bat surveying sites map - Wall Park (A)
70 NE Environmental Stewardship Handbook – Entry Level Stewardship (A)
71 Seymour Vets – website (R6)
72 Suggested LEMP revisions (TC)
73 Note re differences between Ecological Assessment versions (A)
74 Legal cases relied upon in submissions (R6)
75 R6 Closing submissions
76 Torbay Council Closing submissions
77 Appellants' Closing submissions
78 NE Higher Level Stewardship Agreement Maps – Churston Farm (R6)
79 List of application plans
80 Costs claim - appellants
81 Costs response – R Haddock
82 Costs claim – R6