

Appeal Decisions

Hearing held on 20 September 2016

Site visit made on 20 September 2016

by P N Jarratt BA DipTP MRTPI

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

Decision date: 4 November 2016

The appeals are made by Mr Dan Nettelfield in respect of land at Strawberry Fields, Whippenscott Hill, South Molton, EX36 4PP

Appeal A Ref: APP/X1118/C/16/3143669

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is against an enforcement notice issued by North Devon District Council.
 - The enforcement notice, numbered ENF8093, was issued on 6 January 2016.
 - The breach of planning control as alleged in the notice is without planning permission and within the last 10 years, the siting and residential occupation of a mobile home whose approximate position is shown edged blue on the plan attached to the notice.
 - The requirements of the notice are:
 - 1) Cease the residential use of the land shown edged red on the plan attached to the notice.
 - 2) Remove the mobile home, whose approximate position is shown edged blue on the plan attached to the notice, from the land edged red on the plan attached to the notice.
 - 3) Remove all debris and other rubbish resulting from complying with Step 2 from the land edged red on the plan attached to the notice.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - **Summary of Decision: appeal allowed, notice quashed and planning permission granted subject to conditions.**
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Appeal B Ref: APP/X1118/W/16/3151414

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refuse to grant approval required under Class A of Part 6 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is against the decision of North Devon District Council.
 - The application Ref 60916, dated 22 March 2016, was refused by notice dated 27 April 2016.
 - The development proposed is the erection of one agricultural storage building.
 - **Summary of Decision: Appeal dismissed**
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Appeal C Ref: APP/X1118/W/16/3151415

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Class A of Part 6 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is against the decision of North Devon District Council.
 - The application Ref 60917, dated 22 March 2016, was refused by notice dated 27 April 2016.
 - The development proposed is the erection of one agricultural polytunnel.
 - **Summary of Decision: Appeal dismissed**
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Preliminary matters

1. A Statement of Common Ground (SoCG) was submitted at the hearing (Document 1).
2. In respect of the ground (a) appeal in Appeal A, the appellant indicates that he is seeking planning permission for a temporary three year period.

Relevant Planning History

3. A retrospective application was granted in April 2012 for a forestry building and a polytunnel, together with the proposed erection of an agricultural building and a polytunnel although this permission has now lapsed.
4. An appeal was dismissed in January 2013 (APP/X1118/A/12/2180401) for a retrospective application for a mobile home as an agricultural/forestry workers dwelling, the erection of a turbine and a composting toilet.

The appeal site and its surroundings

5. The appeal site is located in open countryside and comprises some 2.8 ha of pasture and 3.2 ha of mixed woodland. Vehicular access to the site is from the unclassified public highway on its southern boundary.
6. The site contains the mobile home the subject of the allegation and a variety of other structures not the subject of the allegation. These include a composting toilet, a small towing caravan used for storage, a small polytunnel, an unused chicken coop, a solar panel, bee hive, small general purpose shed, a charcoal kiln and a wooden shed used for storing bagged charcoal and related material.
7. Whilst most of the open land is pasture, at my site inspection there was an area that was not currently being cultivated, an area under cultivation for blackcurrants and rhubarb, together with a vegetable patch with a variety of plants. The appellant estimates that there are 500 sqm of vegetable beds ready for production.

Appeal A: The appeal on ground (a) and the deemed planning application

Main issues

8. I consider that the main issue in this appeal is whether there is an essential need for the appellant to live permanently on the site.
9. Paragraph 55 of the National Planning Policy Framework (the Framework) states that new isolated homes in the countryside should be avoided unless there are special circumstances such as an essential need for a rural worker to live permanently at or near their place of work in the countryside.
10. In terms of the functional need, the appellant's case is based on sustainable land management and biodiversity enhancement. There is little evidence that since the previous dismissed appeal that the horticultural side of the appellant's enterprise has developed. In fact based, on my site inspection, it seems to be very limited, although I note that the appellant is building up the soil in an organic manner. The appellant's longer term intentions are to produce fresh salad leaves and vegetables and he contends that an on-site presence is required for the effective maintenance of the polytunnel, for low impact watering, ventilation and pest control.

11. However, since the previous appeal decision, the appellant has started a charcoal business and he markets bags of charcoal to a range of customers locally, including to a restaurant where Mr Nutt, at the hearing, praised the quality of the charcoal. The accounts submitted at Document 5 show a turnover from charcoal sales of £2161 in 2015/16, about £6000 for 2016/17 and increasing to £8000 in 2019/2020. Whilst the turnover and growth is modest, it does show evidence that the enterprise is becoming established.
12. The appellant has carried out 40 burns in the current year which produces about 40 bags of 2.5 kg of charcoal which he wholesales at £4 per bag. The burns last between 18-24 hours and need to be checked every 3 to 4 hours, including overnight. He considers that the constant monitoring of the burn is necessary to protect the charcoal rather than to prevent fire hazards, although I heard at the hearing from Mr Grugeon, who spoke in support of the appellant, that he always advises the Fire Service when he lights his kiln.
13. The Council acknowledges that some charcoal businesses in the district have demonstrated a functional need but due to the limited extent of woodland in this case, they doubt whether sufficient charcoal could be generated to warrant someone living on the site and why routine burns could not be supervised using normal safety measures. Notwithstanding the size of the woodland, I am satisfied that there is a functional need for residential accommodation
14. The appellant has referred to the Framework making no reference for a financial test to be met. However saved Policy HSG19 of the North Devon Local Plan 2006 refers to temporary accommodation on new farm or forestry enterprises being subject to a number of criteria, including intention, functional need, the enterprise being planned on a sound financial basis and no alternative accommodation being available. Whilst this pre-dates the Framework I still attach some weight to it, notwithstanding that the Framework at Paragraph 55 refers only to essential need¹. The fact that it makes no distinction between functional and financial need does not preclude policies in the Development Plan from considering the question of essential need in broader terms.
15. Policy DM28 of the emerging North Devon and Torridge Local Plan 2011-2031 relates to rural workers accommodation and is subject to a number of criteria. For permanent dwellings economic viability is relevant although where an enterprise does not meet the criteria to support a permanent dwelling, then the provision of temporary accommodation would be considered for an initial period of three years. As the plan is at an advanced stage and has been subject to examination and modifications (which are currently out for consultation), I am also able to attach some weight to it.
16. The appellant has chosen to follow a particular lifestyle and an approach to his rural enterprise that does not provide a level of turnover or income that others may wish to secure. This limits opportunities for living off-site, purchasing watering systems, CCTV or other means of monitoring the premises in the appellant's absence. His original unsuccessful attempts should not prejudice his current enterprise which largely depends on charcoal burning rather than salad

¹ In R (Embleton PC) v Northumberland Council [2013] EWHC 3631 (Admin) it was held that under paragraph 55 of the Framework, the test is different from the test under Annex A para 12(iii) of PPS7. The Framework test simply requires a judgement of whether the proposed agricultural enterprise has an essential need for a worker to be there or near there.

and vegetable production. I am satisfied that whilst the business is not sufficiently established to justify an essential need for a permanent dwelling, the retention of the caravan for a period of three years would provide the opportunity for the business to become more sustainable within the limitations of the appellant's business model.

17. I note the support from a number of local people in respect of the appellant's endeavours and also to Dr Rix's supportive statement (Document 5) regarding the appellant's long term management plans for the land at Strawberry Field. I have also had regard for the need for security and to protect the woodland from wildlife.
18. I conclude therefore that with the development limited by condition to a three year temporary permission and restricted in occupancy, it would accord with national guidance, saved Policy HSG19 and Policy DM28 of the emerging plan.
19. For the reasons given above I conclude that the appeal on ground (a) should be allowed.

The appeals on grounds (f) and (g)

20. As I have allowed the appeal on ground (a), the appeals on these grounds do not need to be determined.

Appeals B and C

21. The Council considers that there is little evidence of a commercial agriculture business taking place and that the proposals do not satisfy the provisions of Class A of Part 6 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015. In particular, the interpretation set out under D1(1) of Part 6 defines "agricultural land" as meaning 'land which, before development permitted by this Part is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business.'
22. The Council refers to the 2013 appeal decision where the Inspector did not find any evidence that the small holding was an operative commercial farm business. His decision was based on the evidence before him at that time. Since then, there has been disruption to the business due to the Council's enforcement action and there has been some change in activities on the land. The appellant has been pursuing a charcoal business based on the woodland assets of the land. The accounts submitted at Document 5 illustrate the nature of the business and the turnover attributed to charcoal sales.
23. However, no turnover from vegetables is forecast until 2017/18. Whilst the appellant may have intentions to develop the salad crops side of his business, the extent of the current market gardening activity on the land is minimal based on his own accounts and from what I observed on my site inspection. It is not at a level that I consider fulfils the requirements of Class A.
24. Whilst I note that the appellant considers that the agricultural building and the polytunnel are necessary for the enterprise to become fully up and running, my conclusion is based on the provisions of the GPDO and not on the planning merits of the polytunnel or agricultural building, for which the appellant is not precluded from applying for express planning permission should he wish to do so in the future.

25. For the reasons given above I conclude that the appeals should be dismissed.

Formal decisions

Appeal A Ref: APP/X1118/C/16/3143669

26. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land at Strawberry Fields, Whippenscott Hill, South Molton, EX36 4PP as shown on the plan attached to the notice, for the siting and residential occupation of a mobile home whose approximate position is shown edged blue on the plan attached to the notice subject to the following conditions:

- 1) The occupation of the mobile home shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.
- 2) The use hereby permitted shall be discontinued and the mobile home removed from the site and the land restored to its former condition on or before three years from the date of this decision.

Appeal B Ref: APP/X1118/W/16/3151414

27. Appeal dismissed

Appeal C Ref: APP/X1118/W/16/3151415

28. Appeal dismissed

P N Jarratt

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Simon Rushton BSc(Hons) MA PhD MRTPI - Ruston Planning Ltd
Mr Wood – Forester
D Nettelfield - appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms T Blackmore, Senior Planning Officer

INTERESTED PERSONS:

A Nutt - Restaurateur
Ms S Ferdinando – local resident
L Goudiaby – local resident
P Grugeon – Bulwothy Project
D Cronk Parish Councillor
D Fergie, Parish Councillor

DOCUMENTS

- 1 Statement of Common Ground
- 2 Appeal decision APP/X1118/A/14/2218358 and
APPP/X1118/C/14/2220547 Umberleigh
- 3 Appeal decision APP/D0840/W/14/3132813
- 4 Appellant's sales flier
- 5 Appellant's revised accounts