
Appeal Decisions

Hearing held on 19 October 2016

Site visit made on 19 October 2016

by Mrs H M Higenbottam BA (Hons) MRTPI

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

Decision date: 16 December 2016

Appeal A: APP/X1118/C/16/3149669

Appeal B: APP/X1118/C/16/3149670

Appeal C: APP/X1118/C/16/3149671

Rivercross Meadow, Burrington, Umberleigh, Devon EX37 9JR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mrs Kate Burrows, Appeal B is made by Mr Alan Burrows and Appeal C is made by Mr William Rook against an enforcement notice issued by North Devon District Council.
 - The enforcement notice was issued on 5 April 2016.
 - The breach of planning control as alleged in the notice is:
Without planning permission within the last 4 years, unauthorised operational development consisting of the following works:-
 - The erection of a dwelling (as identified marked A on the attached Location Plan);
 - The erection of a compost toilet (as identified marked B on the attached Location Plan);
 - The erection of a shed (as identified marked C on the attached Location Plan);
 - The erection of two sheds (as identified marked D on the attached Location Plan);
 - The erection of a two metre roundhouse (as identified marked E on the attached Location Plan);
 - The erection of a polytunnel (as identified marked F on the attached Location Plan).
- Without planning permission and within the last 10 years, the unauthorised material change of use of the Land to a mixed use of agricultural and residential use.
- The requirements of the notice are:
 1. Cease the residential use of the Land shown edged red on the enclosed Location Plan.
 2. Remove the dwelling as identified marked A from the land edged red on the attached Location Plan.
 3. Remove the compost toilet as identified marked B from the land edged red on the attached Location Plan.
 4. Remove the shed as identified marked C from the land edged red on the attached Location Plan.
 5. Remove the two sheds as identified marked D from the land edged red on the attached Location Plan.
 6. Remove the two metre roundhouse as identified marked E from the land edged red on the attached Location Plan.
 7. Remove the polytunnel as identified marked F from the land edged red on the attached Location Plan.
 8. Remove all debris and other rubbish resulting from complying with Steps 2 to 7 from the land as shown edged red on the attached Location Plan.
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- The period for compliance with the requirements is six months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 (1990 Act) as amended. Appeals B and C are proceeding on the grounds set out in section 174(2)(f) of the 1990 Act. Since the prescribed fees have not been paid within the specified period for Appeals B and C, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended in relation to those appeals have lapsed.

Summary of Decisions: The appeals succeed in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decisions.

Appeal D: APP/X1118/W/16/3146602

Rivercross Meadow, Burrington, Umberleigh, Devon EX37 9JR

- 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 Mrs Kate Burrows against the decision of North Devon District Council.
- The application Ref: 60356, dated 23 November 2015, was refused by notice dated 17 February 2016.
- The development proposed is a retrospective application for temporary 3 year low impact sustainable essential works dwelling.

Summary of Decision: The appeal is dismissed.

Preliminary matters

1. At the time of my site visit the polytunnel (identified as F) and two sheds (identified as D) had been removed from the land and there were other structures which appear to have been brought onto/erected on the appeal site since the Notice was issued. I will determine the Appeals A, B and C on the basis of what is identified in the Notice.
2. At the Hearing the Appellants sought an extended period for compliance with the Notice were I to dismiss the ground (a) and (f) appeals. This is clearly a ground (g) argument as the Appellants consider that the time period for compliance is too short. I shall deal with it under the ground (g) heading. Since the Council were able to respond to this point at the Hearing I am satisfied that there would be no prejudice from so doing.

Appeal A ground (a) appeal and Appeal D

Main issues

3. In relation to both Appeal A on ground (a) and Appeal D the main issues are:
 - a) Whether or not the dwelling and compost toilet would be sustainable having regard to flood risk and the implication for risk to the property and people;
 - b) The effect of the dwelling and compost toilet on the character and appearance of the rural area, having regard to national and local policy in respect of development in the countryside and the needs of the Appellant's agricultural activities, more specifically whether there is

sufficient justification to permit a residential dwelling in connection with the Appellant's agricultural operation; and

- c) In addition, for Appeal A only, the effect of the other structures on the character and appearance of the rural area and whether there is sufficient justification for their retention.

Flooding

4. The appeal site lies next to the River Taw, upstream of Newnham Bridge and is on the other side of the valley from Kings Nympton Railway Station. The River Taw is a large river and there are numerous records showing that the majority of the site floods. There have been large flood events in 2012, 2000, 1999, 1970, 1968 and 1960. The Environment Agency (EA) states that the majority of the site lies within Flood Zone 3 which is defined as having a high probability of flooding. In this case flooding relates to river water. Furthermore, the EA considers that the majority of the flood risk area is Flood Zone 3b which is the functional floodplain.
5. Appeal A attacks structures both within the main field, serving the livestock on the appeal site and a polytunnel. The dwelling and compost toilet are located in the woodland area. The main field is relatively flat and is entirely within the functional floodplain. The EA states that the main field will flood several times a year to differing degrees, that flooding will be deep with fast flowing water and would represent an extreme hazard that is it would pose a risk to life.
6. Paragraph 103 of the National Planning Policy Framework (the Framework) requires that a Flood Risk Assessment (FRA) is provided in relation to development within Flood Zones 2 and 3. Although the Appellant for Appeals A and D has provided information relating to a FRA the EA consider that it does not adequately address the flood risk at the appeal site, particularly in relation to the location of the dwelling and compost toilet.
7. The woodland, where the dwelling and compost toilet are located, rises up from the main field. The dwelling and compost toilet are sited at a higher ground level than much of the appeal site. The EA states the woodland will flood to differing depths dependent on the storm size, but the area will not flood in its entirety. The flood levels for Flood Zones 2 and 3 have not been properly assessed in the Appellant's FRA and the EA, is thus, unable to confirm which parts are likely to remain free from flooding over the lifetime of the development.
8. The Framework requires that the Sequential Test to development in Flood Zones 2 and 3 is applied. This states that development should not be permitted if there are reasonably available sites appropriate for the proposed development with a lower probability of flooding. There is no substantiated evidence that the provision of a single dwelling could not be sited in Flood Zone 1. I appreciate that the dwelling and other structures are located on land owned by the Appellant; however this of itself is not a justification for locating such development at the appeal site. On the evidence before me there is nothing to demonstrate that the dwelling and structures could not be sited in Flood Zone 1. As such, the development in both Appeal A and Appeal D fails the Sequential Test.

9. Paragraph 102 of the Framework advises that only where it is not possible, consistent with wider sustainability objectives, for the development to be located within Flood Zones with a lower probability of flooding the Exception Tests can be applied. However, the appeal developments could be located outside Flood Zone 3 and as such the Exception Tests are not relevant.
10. On the basis of the evidence before me, the developments in both Appeal A and Appeal D fail the Sequential Test and as such would be unsustainable having regard to flood risk. The implications of this are that it will put the property at risk and people who might protect livestock or those who might seek to help them. The developments would therefore be contrary to Policy DVS6 of the North Devon Local Plan 1995 to 2011 (adopted July 2006) (LP) which resists development where there is an unacceptable risk of flooding. Furthermore, the developments fail the Sequential Test and are, thus, contrary to the Framework.

Justification for the development

Policy Framework

11. The Framework states that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances. One of the examples given of such special circumstances is the essential need for a rural worker to live permanently at or near their place of work in the countryside.
12. The Framework is a significant material consideration; nevertheless, it does not change the statutory status of the development plan as the starting point for decision making. Proposals that conflict with the development plan should be refused permission unless material considerations indicate otherwise.
13. LP Policies ENV1, HSG9 and HSG10 relate to development in the countryside and restrict development, particularly housing unless certain criteria are met in relation to agricultural or forestry workers. Policy HSG9 relates to permanent dwellings in the countryside and Policy HSG10 relates to temporary accommodation. The Council have also produced a Supplementary Planning Document (SPD) entitled *Agricultural, Forestry and Other Essential Occupational Dwellings Guidance* (adopted 2009). The SPD and Policy HSG9 follow the superseded guidance set out in Planning Policy Statement 7: *Sustainable Development in Rural Areas* (PPS 7).
14. LP Policy HSG9 refers to both a functional need and the holding being financially sound and the SPD follows the superseded PPS 7 which at Annex A sets out the principle functional and financial tests for agricultural and forestry dwellings.
15. LP Policy HSG10 requires the accommodation to be of a temporary nature, clear evidence of a firm intention and ability to develop the enterprise concerned, a functional need, planned on a sound financial basis to demonstrate that no alternative accommodation is available and, that it would be appropriately related to the whole of the holding.
16. The appeal site is within an Area of Great Landscape Value (AGLV) wherein LP Policy ENV6 resists development which detracts from the particular landscape qualities and characteristics of the area.

17. In terms of the policies of the LP there is a high degree of consistency with the Framework. Consequently, in having regard to paragraph 215 of the Framework, the age of the policies should not, to any significant degree, weigh against them. Whilst the functional and financial tests of LP Policy HSG9 are no longer explicit features of the Framework I see no reason to discount them as potentially useful tools when seeking to establish whether or not a permanent or temporary dwelling can be justified.

Need

18. The appeal site is just over 3 hectares in size, with the majority of this area being pasture land and the remainder being woodland. The wooded area rises steeply in places to approximately 6m above the pasture.
19. The Appellant has provided a business plan in support of the appeals. At the Hearing the Appellant acknowledged that while the business plan drawn up to support Appeal A and Appeal D indicated an enterprise that was forecasted to have a total profit by 'year 3' of over twenty thousand pounds this is not something which the Appellant is actually aiming for in terms of the agricultural operation at the appeal site. I therefore consider it is difficult to rely on such forecasting contained within the business plan with any degree of confidence. Rather it is clear from oral evidence that this is not how the agricultural operation will be pursued.
20. The Appellant stated that the enterprise is a complex subsistence permaculture operation where no one element would justify the provision of a dwelling on the appeal site. However, the sum total of all the elements was, in her view, enough to justify a dwelling. The Appellant considered it was a life choice and that she and her family were all happy to live 'off-grid' and be sustainable.
21. The agricultural appraisal submitted on behalf of the Appellant stated the intention to diversify the land to create a sustainable permaculture small holding. This would include a seven layer food system, animals and a variety of crops. It is intended to use holistic grazing techniques ('mob grazing') where animals graze a small piece of land for just one or two days and then move on to another area. This is to allow the pasture to be managed more intensively. It is also proposed to create a food forest, and the afforestation of the grassland area would, in the Appellant's view, help to mitigate flood damage and erosion of the soil.
22. Appeal A targets not only the dwelling but also a number of small animal housing structures and a polytunnel, some of which were not on the appeal site at the time of my site visit. In relation to the future development of the permaculture activity, the Appellant acknowledged that some built facilities would be required. The Appellant's intentions, as stated at the Hearing, were to build a fully mobile barn/housing unit on caravan bases. This would be located in the highest part of the woodland. The business plan also states that a new style of mobile polytunnel, to enable the growing of year round salad crops, would be constructed.
23. At the time of the Hearing, the Appellant confirmed that there were 11 sheep including one ram; six goats; two turkeys; five geese, two ducks, three chickens and three chicks. The Appellant also confirmed that the proposal to introduce guinea fowl into the operation had not worked. The business plan indicated that in addition to increasing numbers of existing animals it was

intended to keep pigs, guinea fowl, rabbits and bees as well as grow salad crops, perennial vegetables and herbs, and pursue an agroforestry system. It is also intended to produce charcoal for use on the holding and for sale to generate some income.

24. I note that no planning application or lawful development certificate relating to animal housing/or mobile polytunnels has been sought or approved. In the light of the flood risk issues on the appeal site, particularly in the main field, I am not convinced that if planning permission were required for such structures they would meet the Sequential Test. Moreover, if they did meet the Sequential Test it is not clear on the evidence before me that they would comply with the Exception Tests. While the EA considers it likely that some parts of the site would, in flooding terms, be able to accommodate some structures exactly where is not clear. Therefore, on the evidence available, I am not satisfied that these facilities would be available for the future growth of agricultural activities on the appeal site.
25. On the basis of what exists on the appeal site at present, I am not satisfied that an essential need for someone to live at the site has been demonstrated. I appreciate it is convenient to live on site and that it supports the lifestyle that the Appellant and her family have chosen. I have considered the concept of whether or not the specific subsistence level of permaculture proposed by the Appellant, taken as a whole, would amount to an essential need. The Appellant's intentions in expanding the agricultural operation are less than clear and one part of the business plan, namely to introduce guinea fowl has not been successful. Little substantiated evidence as to whether the appeal site could accommodate and sustain the numbers of animals and variety of 'crops' or produce envisaged in the business plan has been provided. While it was stated that the holding takes 14 or 15 hours of work per day it is not clear what tasks are undertaken in that time. The feeding and care of the limited number of animals and poultry on the land at present would not, on the evidence before me, necessitate that amount of time per day to look after.
26. I appreciate that the Appellant considers matters of security and animal/poultry safety in the event of a flood require a presence on site 24 hours a day. I have no doubt that the production of charcoal, production of firewood; and agroforestry works are labour intensive and occupy the family's time. I note that Mrs Burrows works off site as a carer and the business plan refers to her felt making classes. These activities are the basis on which the Appellant and her family consider that it is essential to live at the site. However, I do not, on the evidence before me, consider that these limited activities would warrant a permanent residence at the appeal site. Indeed some of the activities, such as the growing of food arise from the Appellant and her family living on the appeal site rather than the activities taking place on the appeal site warrant a permanent dwelling. I therefore find that the existing activities on the appeal site do not amount to an essential need for someone to live there. Thus, the development is contrary to LP Policy HSG9 and the SPD.
27. The business plan provides one way that the Appellant may seek to operate and expand, but it was clear from oral evidence that it was not necessarily the way that the agricultural operation would mature. Moreover, in order to expand their operation the numbers and variety of stock would need to increase and I am not satisfied that it would be possible to do this on the appeal site without permanent housing for the livestock. In the light of the

appeal site's location within Flood Zones 2 and 3 I am not convinced that this can be achieved and as such the agricultural activity on the appeal site may well stay at its current level.

28. I have considered whether or not a temporary planning permission is appropriate as the Appellant put this forward on the basis that the dwelling was easy to dismantle and that it could be viewed as a temporary structure, albeit it could also remain for many years on the appeal site. However, on the basis of the evidence, it has not been demonstrated that there is a firm intention and ability to develop the agricultural operation, such that it would be essential for the proper functioning of the enterprise for one or more persons to be readily available most of the time, even for a temporary period. Thus it would be contrary to LP Policy HSG10 and the SPD.

Other matters

29. The Appellant, her family and a number of third parties spoke of other agricultural holdings they were aware of that had been granted planning permission for dwellings on the basis of a subsistence and/or permaculture operations. However, neither the specific details of those cases nor the appeal decisions are before me. In my view, such cases turn on the specific evidence and circumstances of the particular case and it is for the Appellant to demonstrate the essential need to live on this site. On the evidence before me this has not been demonstrated.
30. Both Mr and Mrs Burrows refer to health issues and how living at the appeal site has resulted in a significant improvement in their health. Mrs Burrows' doctor has confirmed that since living at the appeal site her asthma has improved, her psoriasis has cleared up completely and she no longer suffers from any allergies and her fibromyalgia has completely settled. Mrs Burrows has, as a result of her increased wellbeing, been able to obtain work as a carer. Mrs Burrows' homeopathic practitioner has also confirmed her health improvements and states that in his opinion her health would deteriorate if she was forced to move. However, I am not satisfied that suitable accommodation to maintain Mr and Mrs Burrows health could not be found elsewhere.
31. The dwelling has straw bales for the walls, with a cob covering and a turf roof with plastic sheeting underneath. It is supported by timber poles underneath. At the time of my site visit it blended in to the woodland setting and was not prominent in views from the railway station or the bridge over the river. However, it was viewed from the rural road running along the top of the site. The introduction of a dwelling within the woodland detracts from the AGLV as it introduces a dwelling within the setting. That said the dwelling is not prominent in many views, but it still detracts from the character of the woodland. In relation to Although small in scale, the other structures located in the main field, appear as ad hoc clutter in this open pastureland and detract from the landscape character of the site. As such the development is contrary to LP Policy ENV6.

Conclusion on Appeal A ground (a) and Appeal D

32. I appreciate that the Appellant and her family are seeking to live a low impact, sustainable lifestyle, and that there have been benefits to the health of Mr and Mrs Burrows, especially to Mrs Burrows, from living at the appeal site.

33. However, on the evidence before me I am not satisfied that there is a need for dwelling, whether permanent or temporary, to support the agricultural operation at the appeal site such that it would outweigh the harm to the countryside. Thus, the development fails to accord with the Framework and the requirements of LP Policy HSG9, HSG10, ENV1 and ENV6.

Appeals A, B and C ground (f) appeal

34. This ground of appeal is that the requirements of the notice are excessive and lesser steps would overcome the objections. In appealing on ground (f) the Appellants must specify specific lesser steps which, in their view, would overcome the objections to the appeal development.
35. The Appellants consider that the requirement to remove all the buildings is excessive and that they should be able to retain buildings A and B keeping a mixed residential and agricultural use on the appeal site. The Appellants confirmed that they would remove, or have removed, buildings C, D, E and F. However, the purpose of the Notice is stated by the Council as being to remedy the breach of planning control. The removal of buildings A, B, C, D, E and F from the appeal site and ceasing the residential use would achieve this purpose and would be proportionate. Therefore, in the absence of cogent evidence to the contrary, I conclude that the requirements of the Notice in Appeals A, B and C are not excessive. Accordingly, the Appeals A, B and C on ground (f) fails.

Appeal A, B and C ground (g) appeal

36. This ground of appeal is that the time given to comply with the notice is too short. The Council have given six months for compliance. The Appellants seek a period of a year or two for compliance.
37. The Appellants all live at the appeal site and it is their only home. Mr Rook is due to take his 'A' level exams in 2017 and he and Mr and Mrs Burrows consider it would not be conducive to his education to look for an alternative place to live during the period leading up to the exams. After the exam period the Appellants would also require time to look for alternative suitable residential accommodation and time would be required to remove the structures from the land.
38. I appreciate the Council's concerns that a period of two years would be too long and would be tantamount to a temporary permission. However, the Council did consider a period of 12 months would allow for Mr Rook to complete his exams and allow adequate time following that to comply with the Notice.
39. The dwelling is the Appellants only home. The Human Rights Act 1998, and specifically Article 8 of the Convention, says that everyone has the right to respect for their private and family life and their home. It advises that there shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society. One permitted interference is for the protection of the rights and freedoms of others. While the loss of their home would be a substantial interference in the Appellants rights, I consider that for the reasons set out above it is necessary and proportionate for the protection of the rights and freedoms of others.

40. Whilst I consider that the maximum two year compliance period sought by the Appellants would be excessive, I accept that given the educational needs of Mr Rook, and the need to look for a suitable alternative place to live, that an extended compliance period would be justified. I therefore consider it would be reasonable to extend the compliance period to 12 months. This would enable Mr Rook to complete his 'A' level studies and exams and allow the Appellants time to look for alternative suitable accommodation and comply with the requirements of the Notice in a reasonable period of time.
41. For the reasons given above I conclude that a reasonable period for compliance would be twelve months and I am varying the enforcement notice accordingly, prior to upholding it. The appeals under ground (g) succeed to this extent.

Conclusions Appeals A B and C

42. For the reasons given above I conclude that Appeals A, B and C should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application in Appeal A.

Formal Decisions

Appeals A, B and C

43. The appeal is allowed on ground (g), and the enforcement notice is varied: by the deletion of 6 months and the substitution of 12 months as the period for compliance. Subject to these variations the enforcement notice is upheld and in Appeal A only planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal D

44. The appeal is dismissed.

Hilda Higenbottam

Inspector

APPEARANCES

FOR THE APPELLANTS':

Mrs Burrows	Appellant
Mr Burrows	Appellant
Mr William Rook	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms T Blackmore MA MRTPI	Senior Planning Officer, North Devon District Council
Mr S Dart BEng (Hons) Civil Engineer	Environment Agency Technical Advisor

INTERESTED PERSONS:

Mr D Aggett	Interested party
Miss Z Griffiths	Interested party
Miss Eve Cotgrove	Interested party
Mr Sid Griffiths	Interested party
Mr Clive Madge	Local resident
Ms Annie Jeffs	Interested party
Ms Kathryn Mills	Interested party
Mrs A Johnson	Interested party
Mr Ben Stephens	Interested party
Ms Jyoti Fernandes	Interested party
Ms Maria Morgan	Interested party
Francesca Harris	Interested party

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Statement of common ground submitted jointly
- 2 Appeal decision reference APP/X1118/A/14/2223970 submitted by the Council
- 3 Four photographs of the appeal site submitted by a local resident