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## Appeal Decision

Inquiry held on 28 February - 1 March 2017

Site visit made on 1 March 2017

**by H Baugh-Jones BA(Hons) DipLA MA CMLI**

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

**Decision date: 11 April 2017**

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**Appeal Ref: APP/P1615/W/16/3155826**

**Sandyway Nurseries, Redmarley Road, Newent, Gloucestershire GL18 1DR**

- 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 Sandyway Nurseries against the decision of Forest of Dean District Council.
  - The application Ref P0028/16/FUL, dated 4 January 2016, was refused by notice dated 7 July 2016.
  - The development proposed is use of land for the stationing of 23 mobile homes for occupation by persons employed in the locality in agriculture.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. At the Inquiry an application for costs was made by Forest of Dean District Council against Sandyway Nurseries. This application is the subject of a separate Decision.

### Preliminary matters

3. At the Inquiry, the Council raised a concern that it had not had sight of the appellant's Operational and Commercial Needs Statement prior to the Inquiry. Nevertheless, a copy was provided during the proceedings and the Council was able to refer to the document in cross examination. Notwithstanding this, the Council subsequently confirmed that the document had in fact been received and its original understanding was the result of an internal administrative error. On the basis of the above, I am satisfied that the Council's case has not been prejudiced.
  4. A location plan at 1:10,000 scale is included in the submitted plans showing only land leased to Haygrove Nurseries with no red line drawn around the appeal site. The appellant confirmed that this does not form part of the application drawings and I have not therefore taken it into account in my decision.
  5. The application is retrospective and I have dealt with the appeal on this basis. However, I note that the Council sought to take enforcement action to remove the mobile homes which became the subject of an appeal that was
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subsequently dismissed<sup>1</sup>. Nevertheless, this has no bearing on my consideration of the appeal in light of the main issue below.

6. Although the appeal relates to 23 mobile homes, I was informed and subsequently observed that two of these are no longer in situ as they are due to be replaced.

### **Main issue**

7. In light of all the submissions before me, the main issue in this appeal is:
  - whether there is sufficient justification to permit the siting of 23 mobile homes for occupation by persons employed in the locality in agriculture in the countryside.

### **Planning policies**

#### *The development plan*

8. The development plan comprises the Forest of Dean Core Strategy (February 2012) (CS). The reasons for the refusal of the application cite conflict with CS Policy CSP.1 which requires that the design of new development conserves, preserves or otherwise respects the important characteristics of the environment. The policy's strategic objective is to provide quality environments and in order to achieve this, it sets out a number of bullet pointed requirements that development will be assessed against.
9. CS Policy CSP.4 sets out the principle that development should be concentrated at settlements and that it should be of a scale and nature which is compatible with the role of the settlement concerned. It acknowledges that there will be cases where development is not located at settlements (for example agricultural development) because of its nature, but will require justification.

#### *Emerging policies*

10. The Council is in the process of preparing its Allocations Plan (AP) and is undertaking a further review following the Inspector's response to the Council's Main Modifications. Further public consultation will be required before further progress can be made on the AP. However, Policy AP 1 is an overarching policy which seeks to ensure that proposals meet the terms of sustainable development and it closely reflects national policy. In closing, the Council did not seek to rely on the AP. I agree that it is not a significant factor in the circumstances of this appeal.

#### *National policies*

11. National Policy is contained in the National Planning Policy Framework (the Framework) and elaborated upon in the Planning Practice Guidance (PPG).

### **Reasons**

#### *Background*

12. Sandyway Nurseries and Newtown Farm are neighbouring soft fruit growing businesses. The latter is in the control of Haygrove Ltd and is a very substantial operation with land leased by the business over a wide area around

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<sup>1</sup> APP/P1615/C/14/2224532

Newent. The Haygrove fruit picking operation is staffed predominantly by Eastern European workers who reside for the season in either mobile homes or in what was referred to as 'the barracks'. This is essentially a collection of portacabins. Toilet and shower facilities are provided in a separate block. The mobile homes, the barracks and the facilities block are located in the same substantial area within the Newtown Farm site. In addition to those employed to pick fruit, a number of workers also work throughout the winter months.

13. Sandyway Nurseries is a separate operation and lets its glasshouses, water storage tank, pumps, mixing facility, electricity supply and a borehole to Haygrove. However, control over the mobile homes in question is retained by the appellant and they are let directly, albeit not exclusively to Haygrove workers.

*Considerations on the main issue*

14. There is agreement between the parties that the appeal scheme would not result in harm to the character or appearance of the area. Therefore, the crux of the appeal is whether there is a justified essential need for the mobile home accommodation at Sandyway Nurseries to meet the operational requirements of the Haygrove fruit growing enterprise.
15. The wording of CS Policy CSP.1 does not include any reference to a requirement to demonstrate need in relation to rural workers accommodation. The Council sought to argue that such a test could be implied from the wording of the supporting text. However, the supporting text cannot impose a policy requirement which is not part of the policy itself. Aside from the point about need, the Council did not suggest that there would be any breach of the various criteria set out in the policy. I have not identified any conflict with those criteria and therefore conclude that the proposal would accord with Policy CSP.1.
16. Nevertheless, although not included in the putative reasons for refusal, reference was made in the Council's written and oral evidence to CS Policy CSP.4. The appeal site lies outside any settlement so the proposal therefore requires justification.
17. In addition to this, paragraph 55 of the Framework says that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work, in the countryside. At the Inquiry, the appellant provided a register of occupation covering one week per each of the winter months. This clearly indicates that many of the mobile homes are occupied outside of the main fruit harvesting season. It was also clear from the evidence that they would be permanent fixtures.
18. Taking into account the terms of Policy CSP.4 and Framework paragraph 55 there is broad alignment between these development plan and national policies in seeking to promote sustainable development in rural areas and a clear basis for requiring the appellant to demonstrate an essential need for the mobile homes. Therefore, I do not consider the development plan to be silent in respect of the proposal as the appellant suggests. However, the Council accepts that it cannot currently demonstrate a five-year supply of deliverable housing sites. Because Policy CSP.4 seeks to guide the location of housing, it is a relevant policy for the supply of housing. As a result of this, under the

terms of Framework paragraph 49, Policy CSP.4 cannot be considered up-to-date and the presumption in favour of sustainable development applies as expressed in paragraph 14 of the Framework.

19. However, the Framework does not prescribe the weight to be attached to policies which are deemed not to be up-to-date. In this case I attach significant weight to Policy CSP.4 because it is generally consistent with the Framework in seeking to promote a sustainable pattern of development. I return to this matter later on in my decision.
20. I pause here to consider the relevance or otherwise of Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7). Annexe A of PPS7 set out 'functional' and 'financial' tests for permanent and temporary dwellings. The Council has used it in its assessment of the appeal scheme but the appellant argues that as this was replaced by the Framework, it no longer has any status as national planning policy. I agree and instead, it is for local planning authorities to decide on any detailed policy criteria they consider it appropriate to apply when preparing their local plan. Accordingly, for the above reasons, the PPS Annexe can no longer be relied upon.
21. That said, the Framework requires consideration of whether there is an essential need for rural workers' accommodation. To my mind it is pertinent to consider whether any need which may exist could be met nearby, including at Newtown Farm. Paragraph 28 of the Framework supports the sustainable growth and expansion of all types of businesses and enterprise in rural areas so it is also appropriate as part of the overall assessment to consider the extent to which the business may grow in the future.
22. The appellant's Operational and Commercial Needs Statement identifies that the temporary seasonal workforce for the 2016 season ranged between 80 and 386. However, the higher figure represented a requirement that occurred for only one week in June. Therefore, recruitment for the 2016 season was capped at 371 workers per week. At the Inquiry, the appellant was unable to give a figure for the 2017 workforce requirement. Instead, reliance was placed on the *likelihood* of further growth in the business based on recent trends across all of the Haygrove operations, not just those pertinent to this appeal.
23. My attention was drawn to the discussions between the Council and the appellant that resulted in Haygrove having been granted permission for an increase in accommodation (of 9 mobile homes) at the Newtown Farm site that now provides for a total of 375 workers. Particular concern was raised that this arose from the Council's instigation and that once permission was granted, the Council would then be in a position to take enforcement action against the siting of the mobile homes subject to this appeal. However, such matters are not for me to address and I deal with the situation as it now stands.
24. Therefore, regardless of how it came about, the accommodation at Newtown Farm now exceeds the requirement for the previous year. In any case, the addition of 9 mobile homes was considered to meet the requirement of on-site accommodation for seasonal workers. Thus, even without these 9 units, there is no justification for the provision of 23 units at the Sandyway site.
25. In summary, the figure of 375 exceeds the recruitment cap of 2016. Moreover, there is no empirical evidence regarding the level of growth anticipated in 2017. It therefore seems likely that the need for seasonal workers'

accommodation could be met at Newtown Farm without any reliance on the appeal proposal. Notwithstanding this, the Operational and Commercial Needs Statement says that any modest shortfall can be met by bussing in workers from Haygrove sites elsewhere.

26. Moreover, even in the event that there was some level of growth, it is unclear from the written and oral evidence, whether there is a significant prospect of it matching that between 2001 and 2015 and in particular, how this might relate specifically to the Newtown Farm site. The various graphs within the Operational and Commercial Needs Statement relate to the UK's soft fruit production as a whole, so do not give a clear picture of any actual forecasted labour requirements for 2017 on the land leased by Haygrove around Newtown Farm.
27. There is no dispute between the parties that there is a general need for seasonal workers' accommodation to serve the Haygrove operation and I have no reason to disagree. However, the Register of Occupation shows that whilst most of the mobile homes at Sandyway Nurseries are occupied by Haygrove workers, some are taken up by those from three other businesses. Although the Register details only brief periods within the selected winter months, I have no evidence to conclude that this would not be replicated during other periods of the year. Accordingly, not all of the 23 mobile homes need to be occupied permanently by Haygrove employees.
28. I recognise that the use of polytunnels and glasshouses allow for extending the soft fruit growing season and also that workers are required all year round for some non-picking operations. However, the accommodation requirement in the winter months is less than that during peak periods. Although I recognise that the mobile homes permitted under the recent planning permission<sup>2</sup> cannot be occupied between November and February, this does not account for the total accommodation at Newtown Farm. Furthermore, it follows that if the peak period accommodation requirement can be met by the permitted number of mobile homes at the Newtown Farm site, there is sufficient accommodation for the other months of the year. I am not therefore persuaded that the additional mobile homes at the Sandyway site are needed to fill any accommodation shortfall.
29. I acknowledge that there may be some additional labour requirements following the lease by Haygrove of the neighbouring Southfield Nurseries. However, no substantive evidence has been provided in relation to the facilities at that site and in particular whether there would be any need for additional labour that could not be accommodated at Newtown Farm. Furthermore, the Southfield site does not form part of the justification for the application within the Operational and Commercial Needs Statement and I note it has been mentioned only in passing. Neither was any clear evidence presented to the Inquiry that would otherwise lead me to a different conclusion on accommodation need in respect of the Southfield site.
30. In giving evidence, the appellant accepted that 'the barracks' in combination with the mobile homes at Newtown Farm, do meet the numerical requirement for accommodating seasonal workers. Nevertheless, he argued that this does not provide for a "wide choice" of high quality homes as expressed in paragraph 50 of the Framework. However, read in context, this advice appears

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<sup>2</sup> Ref P0619/16/FUL

to me to be directed more to permanent housing rather than accommodation for seasonal workers.

31. I nonetheless accept that some seasonal workers – particularly couples, may not be inclined to return year after year if they deem the accommodation on offer to be of an unacceptable standard. Indeed I heard exactly that from two workers. It was apparent that their clear preference is to be accommodated in the units at the Sandyway site because of the better living conditions on offer, and in particular, integral toilet and washing facilities. Whilst I have sympathy with their views, preference does not equate to an essential need or any certainty that hiring good quality seasonal labour would be necessarily hampered. Given the appellant's acceptance that the barracks can meet the numerical need during winter and that there is sufficient accommodation provided by the Newtown Farm mobile homes during other periods<sup>3</sup>, I can see no clear justification for the need for those at Sandyway Nurseries on the basis of preference.
32. Notwithstanding the above, although the Sandyway site is leased by Haygrove, this agreement does not extend as far as the 23 mobile homes on the site. The evidence is clear that these are retained within the full control of the appellant. I do not therefore consider that the mobile home units form an integral part of the local Haygrove enterprise regardless of any physical or visual links between the various sites. As such, the appeal scheme is not justified on this basis.
33. Whilst the Framework promotes the growth of rural businesses, this must be balanced against the provisions of the development plan and other Framework policies that seek to restrict the location of development in the countryside. I have not found there to be a convincing case that the growth of the Haygrove business would be hampered without the 23 mobile homes in question.
34. I have had regard to a previous appeal decision<sup>4</sup> wherein the Inspector highlighted that had there not been an absence of sufficient evidence, there might have been a different outcome to that appeal. In this current appeal, and for the reasons set out above, I do not find there to be any convincing evidence that the 23 mobile homes at the Sandyway site are necessary to meet an essential need in relation to Haygrove's business operation. The appeal scheme thereby runs counter to CS Policy CSP.4 and Framework paragraph 55.
35. Notwithstanding these findings, given that the Council cannot demonstrate a 5 year housing land supply, I have assessed the proposal against the presumption in favour of sustainable development set out in Framework paragraph 14.
36. The Framework sets out three strands of sustainable development: economic, social and environmental. As I have found that the need for seasonal workers' accommodation can already be met at Newtown Farm, there are no clear economic benefits over and above those which may already exist. The mere provision of additional mobile home units does not in itself result in an increased contribution to Haygrove's business or the local economy. Similarly, although the units at Sandyway Nurseries are considered by some workers to provide a better level of accommodation, the overall communal living

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<sup>3</sup> Mr Huntley in cross examination

<sup>4</sup> Linked appeals APP/P1615/C/14/2224532 and APP/P1615/A/14/2222169

arrangements would not be sufficiently different to result in material social benefits. Whilst there is no disagreement between the parties that there would be no landscape harm, its absence is a neutral factor so cannot lend any weight in support of the appeal scheme as an environmental benefit.

### **Other matter**

37. The appellant considers the mobile homes subject to this appeal benefit from permitted development rights under the provisions of Schedule 2, Part 5, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). This says that permitted development is *the use of land, other than a building, as a caravan site in the circumstances referred to in paragraph A.2*. Paragraph A.2 provides the interpretation of Class A, setting out that the 'circumstances' mentioned are those specified in paragraphs 2 to 10 of Schedule 1 of the Caravan Sites and Control of Development Act, 1960 (the Act). The Council disagrees but this is not a matter for me to resolve in the context of the appeal.

### **Planning balance and conclusions**

38. The proposal would result in adverse consequences by way of its conflict with CS Policy CSP.4 and paragraph 55 of the Framework. I have not identified any significant economic, social or environmental benefits of the proposals. It follows that in this case the adverse effects would significantly and demonstrably outweigh the benefits and the proposal would not represent sustainable development.
39. Having considered all of the matters raised, none alters the above conclusions. Accordingly, for the reasons set out, the appeal does not succeed.

*Hayden Baugh-Jones*

Inspector

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Christian Hawley, of Counsel

No5 Chambers

He called:

Mr Stephen Colegate  
BA(Hons) MPLAN MRTPI  
Mr Robert Fox  
BSc (Hons) FRICS FAAV

Principal Planning Officer

Consultant Fox Rural

### FOR THE APPELLANT:

Ms Saira Kabir Sheikh, of Queens Counsel

Francis Taylor Building

She called:

Mr Rob Huntley  
BSc DipTP MRTPI  
Mr Jan Van Der Lely  
Mr Ovidu Bercu

Rob Huntley Planning Consultancy

Mr Adrian Anrei

Son of the appellant  
Haygrove Ltd worker; Sandyway  
Nurseries mobile home resident  
Haygrove Ltd worker; Sandyway  
Nurseries mobile home resident

### INTERESTED PERSONS:

None



## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- 1 Document 1 - Mobile Homes at Sandyway Farm Register of Occupation Winter Months 2015/16 submitted by the appellant
- 2 Document 2 - Full text of Core Policies from the Forest of Dean Core Strategy (February 2012) submitted by the Council
- 3 Document 3 - Officer report in relation to planning permission Ref P0619/16/FUL submitted by the Council
- 4 Document 4 - Email correspondence between Mr Colegate from the Council and Louise Clayton from Haygrove dated between 27-29 June 2016 submitted by the Council
- 5 Document 5 - Signed Statement of Common Ground dated 27 February 2017
- 6 Document 6 – Gloucestershire County Council Highways response to planning application Ref P0028/16/FUL dated 4 July 2017 submitted by the Council
- 7 Document 7 - Gloucestershire County Council Highways response to planning application Ref DF.12/1310/02056 dated 4 February 2014 submitted by the Council
- 8 Document 8 - Closing submissions by the Council
- 9 Document 9 - Closing submissions by the appellant
- 10 Document 10 – Costs application by the Council