
Appeal Decisions

Inquiry held on 23 May 2017

Site visit made on 23 May 2017

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

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

Decision date: 18 July 2017

Appeal A: APP/W1145/C/16/3159713/14

Crooked Oak Nursery, Bovacott Lane, Holsworthy, Devon EX22 7YA

- 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 made by Mr and Mrs Webb against an enforcement notice issued by Torridge District Council.
 - The enforcement notice was issued on 30 August 2016.
 - The breach of planning control as alleged in the notice is unauthorised operational development by the erection of a log cabin for residential purposes.
 - The requirements of the notice are (i) cease the residential use of the land and (ii) remove the unauthorised log cabin from the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/W1145/X/16/3164618

Crooked Oak Nursery, Bovacott Lane, Holsworthy, Devon EX22 7YA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Webb against the decision of Torridge District Council.
 - The application Ref 1/0743/2016/CPE, dated 23 July 2016, was refused by notice dated 8 November 2016.
 - The application was made under section 191(1)(a) & 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The use & development for which a certificate of lawful use or development is sought is a log cabin and land for residential use.
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Procedural Matters

1. It was agreed that the considerations in relation to the ground (d) appeal and LDC appeal are the same and the small difference in the start date for consideration of the relevant period has no material implications in relation to the evidence presented.

Decisions

Appeal A

2. 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 this variation the enforcement notice is upheld and

planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

3. The appeal is dismissed.

Application for costs

4. Prior to the inquiry an application for costs was made by Torridge District Council against Mr and Mrs Webb. This application is the subject of a separate decision.

Reasons

Ground (d) and Lawful Development Certificate

5. The appellant notes that the building was complete by the 1st April 2011 when he moved in with his wife and child. His father, the owner of the land and other interested parties confirm this information. Prior to this the appellants lived at Beech Wood, Ashwater, which was rented.
6. The Council has a record of the return for Beech Wood in relation to provision of information of the Register of Electors. It notes at the beginning 'You are required by law to provide this information. It is an offense to give false information when completing this form'. The form had indicated that Rebecca Carroll (Mrs Webb's maiden name) lived in the property. This was corrected to show the appellant's married name, Mrs Rebecca Webb. The form also indicated that Mr Webb was at the property. The date was 25 June 2012.
7. The Council Tax account for Beech Wood shows the appellants being responsible for Council Tax up to September 2012. Mrs Webb informed the Office that the tenancy at Beech Wood was going to end on 30 September 2012 and subsequently indicated that any refund should be sent to her parents' address.
8. An experienced Revenue and Benefits Visiting Officer from the Council visited the appeal site and saw it was being occupied, but no one was there. In a follow up telephone call to Mrs Webb on 10 June 2016, she confirmed that she moved out on 30 September 2012; this was when the lease ended on the Beech Wood premises. It was confirmed that this was the time of the move to Crooked Oak Nursery.
9. The appellant indicated at the inquiry that the property was kept on so that the apparent residence of it was 'maintained' to ensure that credit references were continued. This is a significant conflict in the information and given the legal importance of filling in the Electoral Registration form correctly it seems to me that it would be more important to comply with the law.
10. The Court has held in relation to LDCs, and it is similar for ground (d), that the appellants' own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the Council has no evidence of their own, or from others, to contradict or otherwise make the appellants' version of events less than probable, there is no good reason to refuse an LDC application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

11. On this matter I conclude that the evidence from the appellants is not sufficiently precise and unambiguous to justify the grant of the certificate on the balance of probability in terms of the stated occupation, as there is a clear discrepancy between occupation from 1 April 2012 and 30 September 2012. Occupation from September 2012 would not give the required 4 years of occupation.
12. The Council also provides aerial photographs which it says shows that the roof was not complete, there being a significant difference between the roof in June 2014 and April 2015. There is a clear difference in the photographs with the finish in 2015 reflecting what is now the roof finish of shingle and timber battens. At the inquiry the appellant indicates that the roof finish that is now on the roof was changed from that which was originally placed on the roof in 2012. The finish in 2014 as seen in the first aerial photograph is actually the first part of the later roof finish, being a breathable membrane, the original finish being replaced. The replacement was because the original roof was noisy, with some of the felt at the ridge flapping about. The appellant says it was not the intention to replace the original roof, but because of the noise they decided that a grass finish would be desirable and that is what they are currently working towards completing.
13. It seems surprising to me that a new roof finish would fail or cause problems within about 2 years. In answer to questions, the appellant said that funds did not allow him to put a proper roof on the property. It seems clear to me that the building was not completed, but that a 'proper' roof, as was commenced around 2014, was the intention, even if at that time a grass finish had not been contemplated. The roof of the building is a significant part of the building and I conclude that on the balance of probability the roof as originally constructed was not, as the appellant put it, 'a proper roof' and at that time the building was not complete. I would also note that the roof is not complete as the appellant intended and is still awaiting the grass finish.
14. I conclude overall that the appellants' evidence is not sufficiently precise or unambiguous to demonstrate that the building has been completed and in use for 4 years and the Council has evidence to contradict or otherwise make the appellants' version of events less than probable, so the appeal fails on ground (d).
15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the log cabin and land for residential use was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Ground (a) and deemed planning application

16. The development plan includes the Torridge Local Development Plan [LP]. LP Policy DVT6 relates to local distinctiveness, indicating that development is expected to maintain, restore, or enhance local vernacular and sense of place through the layout, having regard to the distinctive character of the surroundings and the important attributes and special qualities of the area. LP Policy DVT2C relates to development in the open countryside. It notes that in the countryside away from villages development should not detract from the character and appearance of the area. Policy HSC8 relates to Agricultural Workers' Dwellings. A new dwelling will be permissible in the countryside where

there is a requirement to service a well established agricultural or forestry enterprise and provided there is independent evidence of a genuine and sustained need for the additional dwelling, based on an operational requirement for full-time worker(s) to be resident on the holding; and there is demonstrable evidence of the financial viability of the enterprise. LP Policy HSC10 relates to temporary agricultural dwellings. A temporary dwelling will be permissible in the countryside for agricultural enterprise provided that the enterprise requires a resident full-time worker and siting on the holding is essential and there is clear evidence that the enterprise has been planned on a sound financial basis and there is a realistic prospect of it being implemented.

17. The LDC application was made for a log cabin and land for residential use. There was no mention of agricultural use. The agricultural justification in relation to the ground (a) and deemed planning application appeal appears to have come later and coincides with the appellant's application for an agricultural building on the land.
18. It was agreed at the inquiry that what is constructed is not a temporary dwelling. Technically the appropriate policy for consideration is HSC8 where it would have to be associated with a well established unit with demonstrable evidence of its viability. Neither is relevant here as the agricultural enterprise has not properly commenced. While some pigs are kept, up to now these have generally been for home use. Policy HSC10 is for temporary dwellings and as built this is not the case. However, the effect of the notice would be for the building to be demolished, so I shall treat it as being a temporary building and this could be controlled by condition.
19. The appellants indicate that there is a lease for the property that was prepared in 2011. The Council note that the plan attached to the lease was produced by the Council in 2016, but the signatures on it related to the lease are dated 2011. The appellant says the plan was lost and was simply replaced with the 2016 plan and signed as being from 2011. There is discrepancy over the lease in the Planning Contravention Notices produced by the appellant and land owner. The lease, which is for over 10 years, has not been properly registered and does not carry the weight of a lease that has been registered. However, the landowner notes that he is prepared to do what is necessary to make the lease sound.
20. Even if that is the case the terms and conditions of the lease are unusual. The lease gives the tenant the right to use the land as he sees fit but also notes that the owners, their family and associates have the right to use the land and the driveway at any time as they feel fit. So even if the lease is taken as being sound, there cannot be a realistic prospect that the appellant would be able to continue the agricultural enterprise in the future if the owners wanted to use the land as they felt fit, which could conflict with the appellants' proposed use.
21. In terms of the agricultural viability, the two experts unfortunately used different base sources for their figures. It is accepted that where the enterprise is not up and running generic figures are appropriate for projections. However the difference between the parties seems to be how the generic figures are chosen and if they realistically reflect what would be likely to occur.
22. The Council's expert identified one significant difference related to the pigs. Her reference indicates that figures for pigs produced inside and outside result in significant differences in outcome. The outcome identified by the appellants

- more equated to the figure for internal rearing. The appellant's expert indicated there was no specific figure available for this, but that it had been produced using various sources and depends on a number of factors.
23. The Council's expert indicates that Soilscape describes the land as 'slowly permeable, seasonally wet acid loamy and clayey soils with impeded drainage and low fertility' and the met office indicates relatively high average rainfall. Certainly at the site visit the land was seen to be very wet over a considerable part of the appeal site. Concern is expressed, because of the nature of the soil, rainfall and fact that much of the land is woodland, that the proposal would not actually reasonably be able to be accommodated on the site. Stocking guidelines suggest 10 sows per acre or 20 weaners per acre in ideal conditions but 'on marginal soil types, in high rainfall areas or where management is less experienced, stocking densities should be considerably lower. I note the appellant has leased some land nearby, but I have some concerns about the level of stocking that would be able to occur on this land.
24. The Council is also concerned that little has been included in terms of ability to deal with unexpected situations such as illness. The appellant says that this is not normal and is taken into account in the generic figures. It seems to me that there should be some anticipation and planning for these problems, but I attach limited weight to it.
25. I consider that, as might be expected, the appellants' agent has been very optimistic in terms of the way the business would run and the Council is taking a more pessimistic view. The appellant's figures show that there potentially could be financial viability and that there could be employment for just over one person. The Council also accept that there might be employment for just over one person, but with all the concerns raised it considers that this is not probable.
26. It is for the appellant to demonstrate on the balance of probability their case in a precise and unambiguous way and for the Council not to have evidence, to contradict or otherwise make the appellants' version of events less than probable. When the lease and its contradictions and potential limit on the use of the land, the type of soil, rainfall and woodland and some of the concerns raised in the Council's expert report are taken into consideration I conclude that the appellant has not demonstrated on the balance of probability that the stock levels and degree of viability anticipated are likely to be achieved. Without the levels of stock, and particularly the potential conflict in the land use between leasee and owner, I do not consider that there would be an essential need for a rural worker to live permanently at or near their place of work in the countryside.
27. I appreciate that the aim is to enable the appellant to demonstrate the use over a period of 3 years, but in this situation I do not agree that is reasonable and would simply result in the unacceptable building being in place for longer than is necessary.

Character and Appearance

28. The Council's witness indicated that there was no harm to the character and appearance of the countryside as the design of the unit is relatively simple and the wooden materials are appropriate to a countryside location, with it being reasonably screened from view. While I accept that the design is simple and

- low key, it is the presence of the residential unit and the associated comings and goings that are harmful to the character of the countryside and this would be the case whether the building could be seen or not. The presence of a unit here is also contrary to the development plan policies and the Framework.
29. The personal circumstances and potential effect of dismissal of the appeal has to be taken into consideration, particularly the best interests of children which should be an integral part of the proportionality assessment under article 8 of the European Court of Human Rights. The Supreme Court's judgment in *ZH (Tanzania) v SSHD* [2011] UKSC 4 establishes that the 'best interests' of children should be a primary consideration, reflecting Article 3(1) of the United Nations Convention on the Rights of the Child.
30. In an assessment of proportionality there is an explicit requirement to treat the needs of children that live on a site as a primary consideration and that such matters can weigh significantly in favour of allowing an appeal. These considerations are separate from those of the parents.
31. While the interest of children is a primary consideration, they are not always necessarily determinative of the planning issues. These must be considered in the context of the individual case and kept at the forefront of the decision maker's mind and to assess whether the adverse impact of such a decision on the interests of a child is proportionate and I have had this in mind in coming to these decisions.
32. The appellants say there is a shortage of accommodation in the area, but there is no detailed evidence to explain the situation. The Council indicate that the appellant rented a house in the area before and there is no evidence to suggest they would not be able to revert to something similar. The appellant runs his agricultural engineering business based from the appeal site and he says that it would be anti-social to do this from a normal residence because of such things as early starts. To my mind that does not make living in a residential area unacceptable as many people start from their homes early. I appreciate that there are considerable benefits to the appellant in having the appeal site and to have a workshop separate from his house would be inconvenient. However, some of his work is away at farms.
33. Refusing the appeal could have an effect on the appellant's business, but I consider overall that would be likely to be limited and that if a small workshop is required a more appropriate location could be found.
34. I accept that it is possible that the appellants might have to move to another area, resulting in a change of schools, doctors etc. but there is little to indicate whether there are particular consequences for one or another child or anything to conclude on the balance of probability that might be the case and the appellant may well find a house, as before, close to the appeal site, so the impact would be limited. However, I acknowledge that to find the right accommodation both in terms of business and home might take some time and that is considered in ground (g).
35. Overall, I recognise that dismissal of the appeal could potentially interfere with rights under Article 8 and Article 1 of the First Protocol and affect the appellant's business. However, given the harm identified, the action is in accordance with the law and pursues legitimate aims of protecting the environment and is proportionate to the situation.

Planning Balance

36. A new home would have benefits in terms of social and economic benefits, including through the appellant's business, proposed agricultural holding and supporting jobs, with the appellant and his family making use of local services and facilities in the area. However, having a house in the countryside is against development plan policy without sufficient agricultural justification and would cause substantial harm to the character of the area and on balance I conclude that the environmental harm outweighs the social and economic benefits and that the development is not sustainable development in terms of the Framework. The appellant puts forward the lack of a five year housing supply, which I attach weight to. However, paragraph 14 of the Framework is a presumption in favour of sustainable development and I have found that this would not be sustainable development. While providing a house would be beneficial, for a single house this would be limited. I have also considered the Human Rights implications and benefits to the children, but overall I conclude these matters do not outweigh the harm identified.

Ground (g)

37. I acknowledge that the appellant has to find alternative accommodation to live in and also to find somewhere to base his business. It would be reasonable that he should have time to try to find something locally to minimise disruption to him and his family and I consider that 6 months is not a reasonable time for this and shall vary it to 12 months. The appeal succeeds on ground (g).

Graham Dudley

Inspector

APPEARANCES

FOR THE APPELLANT:

Stephen Evans	Coodes Solicitors
He Called	
Kevin Webb	Appellant
David Webb	
James Whilding	Acorus Rural Property Services
Kevin Hookway	
Leonard Saunders	

FOR THE LOCAL PLANNING AUTHORITY:

Stacey Dorey	Torridge District Council
She called	
Nigel Marshall	Torridge District Council
Lewis Andrews	Torridge District Council
Marina Fursdon	Torridge District Council
Sally-Anne Cockerill	Landsense Professional Ltd

DOCUMENTS

Document	1	Notification letter
	2	AcorusTelephone note 19 April 2017
	3	Draft Parish Council minutes 10 May 2017
	4	Appeal Decision APP/W1145/W/16/3165640
	5	Letter from Mr Orchard
	6	Plan of curtilage