



Appeal Decision

Site visit made on 27 November 2017

by Robert Parker BSc (Hons) Dip TP MRTPI

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

Decision date: 20th December 2017.

Appeal Ref: APP/X1118/W/17/3181464

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 62807, dated 12 April 2017, was refused by notice dated 16 June 2017.
 - The development proposed is described as "wood framed and clad agricultural storage barn for animal housing when not on the pasture. It will also be used as an animal feed and bedding store as well as secure area for tool and machinery used as part of our business. Also creating alongside it a hardstanding of flag stones on sand base from the existing access gateway".
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - a) whether there is a genuine functional need for an agricultural building of the size proposed and, if so, whether its siting and design would be acceptable in terms of the effect on the surrounding countryside; and
 - b) whether the proposal represents an acceptable form of development having regard to its flood zone location and the provisions of the National Planning Policy Framework (the Framework).

Reasons

Functional need

3. The appeal relates to an agricultural smallholding which lies immediately adjacent to the River Taw, upstream of Newnham Bridge and on the opposite site of the valley from Kings Nympton Railway Station. The holding covers approximately 3.4 ha and mainly comprises pasture within the functional flood plain of the river. This area is used to graze the appellant's herd of 8 goats. The land rises up in the north-west corner to meet a narrow rural lane. This part of the site is wooded and contains a charcoal burner together with various mobile structures which are used by livestock, including approximately 30 free range hens.

4. It was also in this area that I saw what has been described as a “low impact sustainable dwelling”. The appellant presently resides in this dwelling but is being required to remove the building and cease the residential use of the land as a consequence of formal enforcement action taken by the Council¹.
5. According to the appellant, the site is being set up and run as a smallholding with the aim of building a successful permaculture / agricultural venture to supply produce such as meat, eggs and fibres to the local market and community. As the business grows there is a hope to employ local people. No business plan or accounts have been supplied but based on progress to date I consider it unlikely that the enterprise would develop to a stage when it would provide a significant boost to the local rural economy. The practical constraints resulting from the site’s location within the flood plain will be a major barrier to the establishment of any business on the site.
6. Be that as it may, the proposal is for an agricultural building on the land and an associated hardstanding. The building would have a footprint of 9m x 3.5m and would be laid out with four animal pens together with a chicken housing area, all of which would be served by a walkway running the length of the building. There would also be a mezzanine level which the appellant proposes to use for the dry and secure storage of tools, charcoal and animal feed and bedding.
7. The appeal proposal is being justified on the basis that a building is necessary to ensure the livestock the best quality of welfare, to comply with the Animal Welfare Act. I am referred to guidelines from the British Goat Society which set out the basic accommodation requirements. The proposal would meet these standards but I remain unconvinced that permanent housing is essential for such a small goat herd. I accept that it may be desirable during birthing or when animals are unwell, but there is no reason why this requires a building of the scale proposed. Whilst it may be necessary for the goats to be brought onto higher ground during flood events, temporary refuge need not involve a permanent building and could take the form of a simple shelter or animal pen.
8. Although there are obvious advantages in keeping tools and machinery secure, I have been given no detailed information regarding the nature of the items to be stored or precise volumes of animal feed and bedding. Accordingly, there is no certainty that the amount of storage being proposed would be reasonably commensurate with the needs of the holding.
9. The appellant contends that the building would be appropriately designed to minimise its visual impact, using natural wood cladding and a green bitumen corrugated roof. The structure would blend into the scenery in distant views from the opposite side of the valley. However, it would be more prominent from the adjacent lane from where it would detract from the character of the woodland. The elevation drawings are rudimentary and give me no confidence regarding the finished appearance. Although planting is proposed, no details are provided and thus there can be no guarantee that this would adequately mitigate the adverse impact.
10. Policy ENV1 of the North Devon Local Plan (2006) (NDLP) places strict controls over development in the countryside. It states that development will only be permitted where a rural location is required and where it provides economic or social benefits to the local community and protects or enhances the

¹ Appeal Refs APP/X1118/C/16/3149669/ 3149670/ 3149671 & APP/X1118/W/16/3146602

environment. Policy ECN7 sets out guiding principles for agricultural buildings, stating, among other things, that they will be permitted where the building size does not exceed the functional requirements and where its siting, design and landscaping minimises any impact on the countryside. Although these policies pre-date publication of the Framework they are consistent with its core principle to recognise the intrinsic character and beauty of the countryside.

11. Whilst I accept that the appellant keeps livestock on the site and undertakes various other small scale agricultural and rural-based activities, the evidence fails to convince me that there is a genuine functional need for a building of the size proposed. Moreover, the development would cause material harm to the character and appearance of the surrounding area. Thus the proposal is in conflict with Policies ENV1 and ECN7 of the NDLP.

Flood risk

12. The majority of the smallholding lies within Flood Zone 3 which is defined as having a high probability of flooding. The Environment Agency (EA) has numerous records of the majority of the site flooding, with large flood events recorded in 2012, 2000, 1999, 1970, 1968 and 1960. The main field is known to flood several times a year to varying degrees, with deep and fast flowing water representing a risk to life.
13. The proposed building would be located on higher ground. The Flood Risk Assessment states that the site lies within Flood Zone 1 but on the edge of Flood Zone 2. The Council has assessed the proposal based on EA advice that it lies within Flood Zone 2.
14. The EA refers the local planning authority to its standing advice. The appellant interprets this to mean that there is no objection. However, the Framework is clear that the Sequential Test should be applied to development in Flood Zones 2 and 3. Development should not be permitted if there are reasonably available sites appropriate for the proposed development with a lower probability of flooding.
15. Assuming that the EA advice regarding flood zones is correct, and I have no reason to think that it is not, there is no compelling evidence to convince me that the development could not be sited in Flood Zone 1. That the appellant may not own a suitable parcel of land is not adequate reason to allow the appeal. Neither am I persuaded by the argument that livestock could be loaded into transport trailers and moved off site until flood waters recede. This is not always practical and would be dependent upon reliable flood warning which cannot be guaranteed.
16. Accordingly, I conclude that the proposal would be contrary to Policy DVS6 of the NDLP and national policy within the Framework. Even if I am wrong and it subsequently transpires that the site does lie within Flood Zone 1, my findings in relation to the first issue mean that the appeal must fail.

Other Matters

17. I have been supplied with a committee report relating to a retrospective planning application for a general purpose storage building at Valle Vue Bouchland Farm. Despite the positive officer recommendation, this application was refused and dismissed on appeal. Thus it does not support the appellant's case.

18. All other matters referred to in the representations have been taken into account, but none is of such strength or significance as to outweigh the considerations that led me to my conclusions. Previous unauthorised developments on the smallholding have already been dealt with by the Council and have had no bearing on my decision.

Conclusion

19. The proposal would conflict with the development plan. There are no material considerations to justify a decision otherwise than in accordance with the Council's adopted planning policies.

20. For the reasons given above, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR