



Appeal Decision

Hearing Held on 18 September 2018

Site visit made on 18 September 2018

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

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

Decision date: 26 September 2018

Appeal Ref: APP/R2520/W/18/3193385

Edens Rest Wholesale Nursery, Mareham Lane, Spanby, Sleaford, Lincolnshire, NG34 0AS

- 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 Mr and Mrs Davis against the decision of North Kesteven District Council.
 - The application Ref 17/0838/FUL, dated 3 June 2017, was refused by notice dated 9 November 2017.
 - The development proposed is described in the application as: "Amendment to approval 10/0840/FUL modification to approved layout and addition of mobile home for permanent occupation."
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Decision

1. The appeal is allowed and planning permission is granted for the siting of a temporary dwelling for permanent occupation and revision to: the siting of 2no. polytunnels; and the siting, design and layout of an agricultural building, permitted under planning permission Ref 10/0840/FUL – part retrospective at Edens Rest Wholesale Nursery, Mareham Lane, Spanby, Sleaford, Lincolnshire, NG34 0AS in accordance with the terms of the application, Ref 17/0838/FUL, dated 3 June 2017, subject to the following conditions:
 - 1) Subject to the requirement for landscaping of the site and the identification of a residential curtilage pursuant to condition 7, the development hereby permitted shall be carried out in accordance with the following approved plans: 1:2500 scale location plan; 1:100 scale proposed agricultural building elevations and layout; 1:100 scale existing elevations layout re dwelling, office/staff room and store; 1:200 scale approved polytunnels elevations and floor layout; and 1:500 scale proposed site layout plan.
 - 2) The temporary dwelling hereby permitted shall be removed and the land restored to its former condition on or before the date 3 years from the date of this decision in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.
 - 3) The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture as defined in section 336(1) of the Town and Country Planning Act 1990 or in forestry, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.

- 4) No works comprising the erection of the agricultural building, excluding foundations, shall take place until details of the materials to be used in the construction of the external surfaces have been submitted to and approved by the local planning authority in writing. Development shall only be carried out in accordance with the approved details.
- 5) There shall be no retail sales from the development hereby approved without the prior benefit of planning permission.
- 6) The arrangements shown as part of the "proposed layout" on the approved layout plan submitted on 11 June 2017 for the parking/turning/manoeuvring/loading/unloading of vehicles shall be available at all times when the site is in use.
- 7) The temporary dwelling hereby permitted shall be removed within 12 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 2 months of the date of this decision a scheme for the landscaping of the site and the identification of a residential curtilage for the temporary dwelling hereby permitted shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 5 months of the date of this decision the local planning authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 8) Any trees or plants planted in accordance with a scheme approved under condition 7 which, within the lifetime of the permission for the dwelling specified in condition 2, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species save that the requirement for replacement shall not apply beyond the lifetime of the permission specified in condition 2.
- 9) The residential use of the site shall be restricted to the approved curtilage identified in accordance with condition 7.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargement to the dwelling shall be constructed and no building or enclosure, swimming or other pool such shall be erected and no hard

surface shall be constructed within the approved curtilage defined in accordance with condition 7.

Preliminary matter

2. Notwithstanding the description in the application, the Council's decision notice described the development as: "Siting of mobile home for permanent occupation and revision to layout approved under planning permission 10/0840/FUL (including siting of 2no. polytunnels and agricultural building) – part retrospective." This was not agreed by the appellants, but the matter was discussed at the hearing.
3. It was agreed in any event that the timber clad dwelling already on site is not strictly a mobile home. Leaving aside any other considerations, section 5(1) of the Mobile Homes Act 1983 says that "mobile home" has the same meaning as "caravan" in Part I of the Caravan Sites and Control of Development Act 1960, but section 13 of the Caravan Sites Act 1968 says that a structure will not be a caravan if certain size limits are exceeded. In particular, the length of a caravan is limited to 20 metres, whereas the appellants' dwelling is 22.5 metres long. It was agreed that the structure should be described as a temporary dwelling, rather than a mobile home, albeit that it is intended for permanent residential occupation, that is to say occupation as a dwelling all year round.
4. It is also apparent that whilst planning permission Ref 10/0840/FUL (the 2010 permission) authorised the erection of 2no. polytunnels and an agricultural building, the appeal scheme involves amended siting of the polytunnels and amended siting, design and layout of the agricultural building approved under that permission. In all the circumstances, it was agreed that the appeal scheme should be described as: "The siting of a temporary dwelling for permanent occupation and revision to: the siting of 2no. polytunnels; and the siting, design and layout of an agricultural building, permitted under planning permission Ref 10/0840/FUL – part retrospective."

Main Issue

5. The main issues are:
 - whether there is an essential need for a rural worker to live on the site;
 - whether residential occupiers of the site would have adequate access to services and facilities; and
 - the effect of the development on the character and appearance of the area, having regard to the existing planning permission Ref 10/0840/FUL.

Reasons

Need

6. The appellants accepted during the hearing that, in terms of Policy LP2 of the Central Lincolnshire Local Plan (LP), adopted April 2017, the appeal site lies in the countryside. The nearest grouping of dwellings is at Spanby, some 300 metres to the north/north-east as the crow flies, or 600 metres by road. However, this comprises just a church and a few scattered dwellings and agricultural buildings.

7. To the west of the appeal site, on the other side of Mareham Lane, lie open fields and to the east there is woodland. Though not visible from the appeal site, the Highfields Country Fishing Retreat is located to the south and south-east. This includes log cabins and static caravans restricted to holiday use, but it is separated from the appeal site by an open field and woodland. On a field adjoining Mareham House to the north of the appeal site, just beyond a drain on the site boundary, planning permission Ref 13/0449/FUL was granted for a touring caravan park and fishing lake with access roads, footpaths and a toilet block. This permission has never been fully implemented, but the Council indicates that it remains extant by virtue of some engineering works related to the fishing lake.
8. Unless allowed by other LP policies, Policy LP2 restricts development in the countryside to that which is demonstrably essential to the effective operation of, among other things agriculture and horticulture. Policy LP55 reinforces this, specifically in relation to applications for new dwellings, which it says should be accompanied by evidence of various matters, to which I shall return.
9. As the appeal site is in the countryside, the development does not have the support of Policy LP4, which concerns growth in villages. Nevertheless, the appellants suggest that the dwelling is not an isolated home in the countryside in terms of paragraph 79 of the National Planning Policy Framework (the Framework), which carries forward the guidance in the previous version of the Framework from 2012. This is a matter of fact and planning judgement. However, notwithstanding the few dwellings and other buildings at Spanby, the Highfields Country Fishing Retreat to the south and the prospect of a touring caravan site nearby to the north, I am satisfied that the appellants' dwelling is isolated, in the sense of being separate from a settlement.
10. LP Policies LP2 and LP55 are recently adopted and consistent with the Framework in seeking to restrict development in the countryside. The LP and the Framework allow for new dwellings where there is an essential need for a rural worker to live permanently at or near their place of work in the countryside. Whilst the Framework does not elaborate on how this should be assessed, Policy LP55 does so by identifying the evidence that should be provided, namely: (a) details of the rural operation that will be supported by the dwelling; (b) the need for the dwelling; (c) the number of workers (full and part time) that will occupy the dwelling; (d) the length of time the enterprise the dwelling will support has been established; (e) the ongoing concern of the associated rural enterprise through the submission of business accounts or a detailed business plan; (f) the availability of other suitable accommodation on site or in the area; and (g) details of how the proposed size of the dwelling relates to the enterprise.
11. When the 2010 permission was granted, no details of what was to be grown on site were submitted. No such information was provided with the application the subject of this appeal. Back in 2015, the Council received a pre-application advice request from the appellants in connection with a proposal for a change of use to a holiday lodge site, based around an equestrian centre. At that stage, the appellants said they had concluded that a wholesale garden centre would not be profitable due to cheap imports and poor quality soil on the field. When the Council visited the site in October 2017, just before refusing the latest application, it found: the uncovered frame of a polytunnel; some trees planted within the site, though these did not seem to have been grown for

- sale; and a small display of bedding plants, which did not appear to have been grown on site. The agricultural building has never been constructed.
12. Although the grounds of appeal said it was obvious that the proposal was to be used in conjunction with a horticultural business, no details of the proposed business were provided until the hearing itself. At the hearing, the appellants explained that, whilst the soil on the site is not good, the operation is based on the sale of trees in pots, which will be big enough and ready for customers to plant as hedging straightaway and at any time of the year. They explained that, if they buy in a plant at £1.30, it could be sold for £5.00 after a year and £30.00 in year 3. Hazel hedging stock can be purchased for £0.79, but can be sold for £10.00 each. Furthermore, customers could buy 3 trees around 3 feet high in pots for about the cost of a fence panel, but would have a more aesthetically pleasing feature, which they could grow to whatever height they choose. Although the appellants grow about 25 different trees, they said the most popular are Laurel, Hazel and Copper Beech/Green Beech. The intention is also to plant on site so customers can see the potential.
 13. Using this business model, to cater for a demand for "instant hedging", the appellants are confident that cheap foreign imports would not pose a problem. Indeed they said this factor has reduced since 2015 as a result of the weakening of sterling anyway. Furthermore, whilst this element of the plan was too vague to carry much weight, and it was only mentioned in passing, the appellants also said they wanted to keep pigs on site to enable the soil to be enriched with manure.
 14. Since October 2017, the then existing polytunnel frame has been covered in polythene and a second one erected and covered with green wind screen material to protect trees from wind burn. I saw during my site visit that, to the left of the site access road, an area had been marked off with wind screen fencing to a height of around 1 meter. That area was about 1/3 full of potted plants. A triangular area to the right of the access road was similarly enclosed and there were some plants in pots within that area and others in the ground. Some of these appeared dead or dying, which the appellants attributed to the poor soil conditions. Overall, there were few plants in this area. To its north, there were around 50 trees up to 3 or 4 metres in height and perhaps 50 smaller hedge bush plants. The majority of the appeal site, which the Council said measures some 2.5 hectares overall, was not cultivated.
 15. One of the polytunnels was around half full of potted perennials and plugs and the other was about half full of Laurels in pots, which the appellants said would be ready for sale next year. Outside the polytunnels there were a small number of plants in pots, along with some stacks of new pots and bags of compost etc. There was also some machinery in the polytunnels.
 16. Although the scale of the operation was still limited at the time of my visit, the appellants have made significant progress since the Council visited the site in October 2017 and said they had invested about £100,000 in the site. This covered: £3,000 for a tractor; £2,500 for a cutter; £1,000 for a topper; £1,000 for each polytunnel; electricity installation; mains water; drainage; the roads; broadband; and the office/staffroom and W.C. However, it also included £60,000 for the cost of the land and they had invested in the dwelling structure.

17. At present, only Mrs Davis works full time on the site. Mr Davis does seasonal work away from the site and, whilst their 17 year old daughter lives with them, she works as an apprentice elsewhere and their son is at university. A bore hole on the site provides water for the plants, but there are no automated systems and all watering is done by hand, twice daily. The appellants were not able to tell me anything about the work itself which would necessitate the presence of a worker on the site at most times of the day and night, all year round. It was suggested that the polytunnels could be damaged by high winds during the night and this would need to be attended to quickly. However, this eventuality would not require a permanent on-site presence, as opposed someone just living locally.
18. Whilst the appellants said in their grounds of appeal that this would not in itself justify a dwelling, much emphasis was placed during the hearing on the need for security. The appellants have suffered regular petty vandalism in the past, as well as major thefts of tools, equipment and furnishings in 2009 and 2013, despite lighting on the site. In this relatively isolated location, with easy access from the highway and nearby leisure park, the appellants are especially vulnerable to thieves and said that people come onto the site regularly in the early hours; indeed their dog alerted them to the presence of people on the site as recently as 2 days before the hearing. I am satisfied that there is a genuine problem and the appellants are not merely anticipating a theoretical, generalised risk of theft and vandalism in order to excuse their action in establishing the dwelling without permission.
19. It will often be possible to address security through other measures. However, adequate security fencing could be unsightly in this location. The appellants said that real-time CCTV monitoring is problematic, because of poor internet provision in the area, recorded CCTV footage would not prevent thefts and the presence of cameras and security lighting alone is not an effective deterrent. They said the police have advised that living on site would be the only real answer and furthermore, they cannot get insurance without living there. I accept that potted trees are relatively easy to steal, and trees that have been growing for 2 or 3 years are hard to replace. Though I was not provided with any direct evidence from the police, the appellants quoted crime reference numbers and I have no reason to doubt their evidence.
20. The Council refers to an appeal decision Ref APP/Z2505/A/01/1066519 from 2001. This concerned a proposal for a new dwelling in connection with a horticultural operation involving the growing of trees, shrubs and plants. The Inspector said: "I do not consider that the need to protect the site against theft is sufficient justification in itself for allowing a permanent dwelling on the site. The acceptance of such an argument would lead to a proliferation of permanent dwellings in the countryside without proper agricultural justification." I am aware that this approach was in line with government guidance at the time. However, the decision says little about the precise nature of the operation, or the location and the Framework does not now comment on the weight to be attached to the issue of security.
21. As well as the risk of theft and vandalism, the appellants highlight the potential for damage from deer, which are prevalent in the area, especially given the woodland to the east. Whilst sufficiently tall deer proof fencing could be obtrusive as well as expensive, a human presence on site tends to keep them away and the appellants are alerted when their dog barks. This adds to the

security argument. The appellants also said that they personally would not be able to afford to establish and run the business if they had the added costs of housing elsewhere, travel to the site and additional security measures, such as fencing. I cannot attach significant weight to the appellants' finances. However, given the particular nature of the business proposed and the characteristics of the location, I am persuaded that the need to effectively safeguard the business from theft and vandalism, along with the need to prevent damage from animals, does necessitate a presence on site at most times of the day and night. I do not expect the precise circumstances of this case to be replicated often.

22. There appears to have been little horticultural activity on the site until after October 2017 and indeed the only financial information, which was provided for the first time at the hearing, covers the period January to September 2018. The information is limited, as Mrs Davis prepared it herself, explaining that their accountant had not been able to provide evidence in time because of a bereavement. In short, it comprises a single A4 sheet¹ setting out the plants that have been purchased and sold over the period and the value of the stock. It indicates that £2,626 has been spent on stock and that sales have totalled £3,752. However, the appellants also have some £9,825 worth of stock ready for sale and a quantity of Cherry Laurel, which should be ready for sale in 2021, for a total of £7,500 - £12,500. The figures presented do not cover perennials, as Mrs Davis said that they have more stock coming in, but it was "hard to get that down on paper."
23. The appellants said that about 1% of the plants fail, though this can be as high as 30% for Beech, especially Copper Beech. This year, they expect to spend £3,500 on plants, £400 on pots, £400 on compost and £1,000 on topsoil. The appellants estimate that sales will total £12,000 next year, £18,000 the year after with a further increase in year 3.
24. The written details identify no costs, other than the cost of plants, but the appellants said that their overheads are limited, especially as the land, polytunnels, dwelling and equipment were financed through the sale of the appellants' house, without the need for borrowing, and water is obtained from the bore hole. The cost of electricity for the borehole pump is minimal.
25. On the basis of the written information, the 'profit' achieved so far is very small, but the appellants said this ignores the value of stock ready for sale and they expect to show a modest profit at the end of this year. They are hoping to get a contract with a landscape gardener, though this is dependent on him securing another contract. At the moment, the appellants have relied on 'networking' to secure orders. The only other advertising or promotion of the business appears to be through a sign at the entrance, on a road which has limited passing traffic. This must be limiting the progress of the business, but the appellants intend to set up an effective website, which they anticipate will cost around £3,000.
26. Neither of the appellants has any previous professional experience in horticulture, but Mrs Davis says she has done a lot of research and both appellants demonstrated considerable knowledge, passion and commitment. The anticipated returns are modest, but this is a "lifestyle choice" for the appellants who have both suffered significant health problems in recent years

¹ Hearing document 1.

- and they are content to manage on a smaller income than others might contemplate.
27. Notwithstanding the fact that planning permission was granted for polytunnels and an agricultural building in 2010, the business only really commenced in January 2018, after the refusal of the latest application. It has not been operating long enough for business accounts to be available. Whilst the Council did not object to the submission of some written and verbal information at the hearing, what has been provided falls short of a "detailed business plan". The Council remained unconvinced of the likely profitability of the enterprise, especially given the limited polytunnel space of around 256 sqm and the small percentage of the overall 2.5 hectare site which has been cultivated.
28. However, although the financial information could have been presented more thoroughly and convincingly and much more remains to be done, for example on the marketing/advertising front, it is clear that significant time, effort and money has been invested this year in establishing a business. This is a marked change from the position considered by the Council at the application stage.
29. Whilst not actively supporting the appellants, the chair of the Threeringham Parish Meeting fairly acknowledged the progress that has been made since the Parish Meeting objected to the application, along with others. The limited written evidence of sound business planning has to be considered in that context. I am persuaded that the appellants are serious about the business, whilst the uncertainty over the appeal has naturally inhibited investment to date. Leaving aside other considerations, there is enough evidence of a sound business proposal to justify a trial period to determine whether the business and need for a dwelling is likely to be sustained in the long term. In this regard period of 3 years is reasonable, especially given the amount of time which has elapsed since the 2010 permission was granted.
30. With regard to alternative accommodation, the Council says the 'Rightmove' website shows 21 properties for sale for under £200,000 within 1 – 3 miles of the appeal site. No specific examples were given and the appellants say they could not afford this, or a likely rent of £700 per month for a suitable property. More importantly however, they say that living within a few miles of the site would not overcome the concerns over security and damage from animals; for the reasons already considered only an on-site residential presence will do that.
31. Although, from my own inspection, it appears that the area shown on the submitted plans as an "office staff room" is also used as living accommodation, the 2 bedroom dwelling on site is modest in size and could be removed. Having regard to all the factors which fall to be considered under LP Policy LP55, I am satisfied that the dwelling is essential to the effective operation of the appellants' rural, horticultural business. The proposal therefore complies with Policies LP55 and LP2.

Access to services and facilities

32. The site is not within walking distance of services. It is approached along countryside lanes with no footways or lighting and where the national speed limit applies. Although a "Call Connect" bus service is available, there is no regular scheduled service within easy reach and it is likely that occupiers of the site will be reliant on the private car to access services and facilities.

33. The appellants argued that visits to a supermarket need only be made once a week and other visits to health facilities etc. even less frequently. On the other hand, living on site will remove the need to travel to work, thus reducing the overall vehicle movements. However, this ignores the fact that not everyone living on the site is likely to work there and the appellants will probably be visited by friends and family.
34. On balance, residential occupation of the site is likely to result in more private vehicle movements. LP Policy LP13 requires development proposals to have regard, among other things, to the objective of minimising travel and maximising the use of sustainable transport modes. However, as it complies with LP2 and LP55, this development cannot really be considered as contrary to LP13, as those policies seek to restrict development in the countryside, but recognise that it can be justified in certain circumstances. Furthermore, whilst the Framework promotes sustainable transport solutions, and seeks to focus significant development on locations which can be made sustainable, it also recognises that the opportunities to maximise these will vary between urban and rural areas. I take the appellants' point that, even if they lived in the village of Threekingham, with its public house and bus stop, they would be likely to rely on the car, for example for shopping, as well as getting to work.
35. Whilst occupiers of the site would have poor access to services and facilities, other than by means of the private car, this factor carries limited weight against the development in the circumstances of this case.

Character and appearance

36. No objection has been raised to the proposed re-siting of the polytunnels and the re-siting and amended design of the agricultural building, subject to the use of appropriate materials. These structures are of a kind which one would expect to see in a rural location and the external materials of the agricultural building can be controlled by condition.
37. Although its fenestration is domestic in character, the single-storey form and design of the temporary dwelling are not dissimilar to the proposed agricultural building. The dwelling's green stained timber clad exterior finish is unobtrusive and sympathetic to the location. It is also set back from the road in the far north-eastern corner of the site, against a woodland backdrop. In these circumstances and given the proposed siting of the polytunnels and agricultural building, the dwelling itself does not have a harmful urbanising effect.
38. I accept that a proliferation of domestic paraphernalia across the site would harm the area's rural character and appearance. However, there is scope for sympathetic landscaping of the site and to define a residential curtilage in a way which would enhance the site and need not appear unduly incongruous. The residential use could be restricted to that defined curtilage and it would be appropriate to remove permitted development rights to enable control of extensions and the provision of outbuildings, structures and hardstandings within the curtilage. These controls can be achieved through the imposition of conditions requiring the submission, approval and implementation of a scheme.
39. Subject to appropriate conditions being imposed, I conclude that the development would not harm the character and appearance of the area. In this regard, I find no conflict with LP Policies LP2 and LP26, which seek to safeguard local character.

Overall conclusion

40. I conclude that there is no objection to the revision to the siting of polytunnels or to the revision to the siting, design and layout of the agricultural building, permitted under the 2010 permission. At this point, I am satisfied in the specific circumstances of this case that the temporary dwelling is essential to the effective operation of the appellants' horticultural business. The proposal is therefore in conformity with the development plan and the Framework, notwithstanding poor access to services and facilities, and no other material considerations indicate that the appeal should be dismissed. However, a temporary permission of 3 years is appropriate to determine whether the business is likely to be sustained in the long term. Permission should be granted on that basis, subject to conditions.

Conditions

41. A list of suggested conditions was included in the Council's statement. A condition requiring the temporary dwelling to be removed after 3 years is necessary, as a new dwelling would not normally be permitted in this location and the likelihood of the rural enterprise being sustained in the longer term needs to be tested. Similarly, as the permission is only justified by essential need in connection with horticulture², a condition limiting occupation of the dwelling to an agricultural worker and dependants is necessary.
42. A condition requiring approval of the materials to be used in the exterior of the agricultural building is necessary to safeguard the character and appearance of the area and a condition prohibiting retail sales from the site is necessary in the interests of highway safety and sustainable transport objectives. It is also necessary, in the interests of highway safety, to ensure that the parking/turning/manoeuvring/loading/unloading arrangements shown on the approved plans remain available. I will also impose a condition specifying the relevant drawings, as this provides certainty.
43. As discussed, in order to safeguard the character and appearance of the countryside, I shall also impose conditions concerning landscaping, the definition of a residential curtilage and the removal of permitted development rights. Given that the dwelling is already in place and occupied, it is necessary to require its removal if approved measures are not implemented. Having regard to the disruption that removal of the dwelling would cause to the appellants and the business, a requirement to remove it within 12 months of a failure to comply is reasonable and proportionate.

J A Murray

INSPECTOR

² Horticulture being included within the statutory definition of agriculture.

APPEARANCES

FOR THE APPELLANT:

Keith Baker	Keith Baker Design and Management
Terry Davis	Appellant
Deborah Davis	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Alan Oliver	Area Planning Officer, North Kesteven District Council
Nick Feltham	Principal Planning Officer, North Kesteven District Council

INTERESTED PERSONS:

Brent Henry	Chair of the Threackingham Parish Meeting
Councillor Kate Cook	North Kesteven District Council Ward Member

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Details of purchases, sales and remaining stock for the period January to September 2018
- 2 List of persons notified of the appeal