
Appeal Decision

Site visits made on 15 and 23 January 2019

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 March 2019

Appeal Ref: APP/X1118/W/18/3213463

Land off Pool Lane, Mortehoe

- 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 Trevor Jordan against the decision of North Devon District Council.
 - The application Ref 65186, dated 1 July 2018, was refused by notice dated 23 August 2018.
 - The development proposed is the erection of an agricultural shelter for a temporary period of 3 years to serve an establishing fruit and vegetable business on the site.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of an agricultural shelter for a temporary period of 3 years to serve an establishing fruit and vegetable business on the site at land off Pool Lane, Mortehoe in accordance with the terms of the application, Ref 65186, dated 1 July 2018, and the plans submitted with it, subject to the following condition:
 - 1) The building hereby permitted shall be removed within 3 years from the date of this decision and the land restored to its former condition in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.

Application for costs

2. An application for costs was made by Mr Trevor Jordan against North Devon District Council. This application will be the subject of a separate Decision.

Procedural Matter

3. I visited the site on 15 January 2019 and was able to inspect the inside of the building and walk around the holding to view the site itself. However, the weather at the time did not allow me to see the building in the context of the surrounding landscape. I therefore made a second visit on 23 January 2019 when the weather conditions were suitable for considering the impact of the building on the landscape.
4. The building has already been erected and remains on site following the expiry of a previous temporary planning permission, therefore the proposal seeks to retain the building for a further temporary period.
5. The Council's reasons for refusal refer to a number of policies from the North Devon Local Plan (2006). Since the Council's decision, these policies have been superseded by those in the North Devon & Torridge Local Plan 2011-2031 (the

NDTLP), which was formally adopted on 29 October 2018 and now forms part of the Development Plan. The Council has drawn my attention, in particular, to policies DM14 – Rural Economy; ST09 – Coast and Estuary Strategy; and ST14 – Enhancing Environmental Assets. My attention has also been drawn to Policy ST07 – Spatial Development Strategy by a third-party representation. The appellant has had the opportunity to comment on the implications of the change in status of the NDTLP since the Council's decision.

Main Issue

6. The main issue is whether the appeal site is a suitable location for the agricultural building, having particular regard to the functional need for the development and its effect on the character and appearance of the area.

Reasons

7. The appeal building is sited on an area of land covering about 2.52 Hectares. The land is in use as a mixed agricultural enterprise known as Morteohoe Fruit Farm. During my site visit I observed that there is a plantation of mixed fruit trees, and that conifer hedging had been planted to protect these trees from damaging winds. I also saw sheep grazing amongst the trees. There was some small-scale herb cultivation in the polytunnel near the building, and a small tree nursery near the entrance to the site off Pool Lane. A pond is currently under construction towards the centre of the site. Although these other activities are embryonic, and part of the land is not currently under cultivation, the fruit trees are well-established and there is clear evidence of investment and a commitment to sustain a rural enterprise on the site.
8. The building has a planning history that includes a dismissed appeal against a refusal for its retention in February 2014. This was followed by the grant of a 3-year temporary planning permission in November of the same year. Although the earlier appeal was dismissed, the Inspector did accept the functional need for a building in his decision letter dated 6 March 2014¹. The identified need at that time was based on the fact that the appellant was the sole worker and needed to spend long hours on the site away from his home. As such, there was a need for a building to serve as a shelter in bad weather and for washing hands and equipment. It was also accepted that additional storage may be required to serve the developing rural enterprise.
9. The Council's grant of planning permission for retention of the building was on a temporary 3-year basis. This was to allow the implementation of a business plan for the development of the enterprise, which proposed amongst other things, increasing the market gardening element, commercial cropping of the fruit trees, establishing an egg laying business, planting more trees and the creation of a lake for wildfowl. The business plan predicted income from the sales of fresh fruit and vegetables. It is evident that not all of these ventures have come to full fruition. However, it is also evident that there has been some progress; the lake is under construction and fruit is being sold to a local supplier. Progress has been slower than predicted, but there remains clear evidence of a commitment to develop the business.
10. For the above reasons I therefore consider that there remains a functional need for a building to provide shelter and welfare facilities to support the existing

¹ Appeal Decision: APP/X1118/A/13/2206170

enterprise at the appeal site. There are no other buildings on the site that could meet this need if the appeal building was to be removed. I turn now to the size and design of the building and its impact on the landscape.

11. The appeal site lies within the North Devon Coast Area of Outstanding Natural Beauty (the AONB), Heritage Coast and Coast and Estuary Zone. The AONB is a nationally important landscape covering an extensive coastal area of North Devon. I observed that the landscape value of this part of the AONB results from the predominance of the rolling patchwork of open agricultural fields over the loose scatter of surrounding development. Although the appeal site is not particularly prominent, it does contribute towards the overall open character of the AONB. Paragraph 172 of the NPPF requires great weight to be given to conserving and enhancing landscape and scenic beauty in AONBs.
12. In dismissing the previous appeal, the Inspector considered the criteria set out under Policy ECN7 of the development plan that was in place at the time. In assessing these criteria, he concluded that there was a functional need for a building in this location, but it was larger than necessary, was designed for purposes other than agriculture, and was not sited and designed to minimise its impact on the landscape. His overall conclusion was that the building, in its existing form, was not sustainable development.
13. Since that appeal decision the development plan has changed, and the building has been altered. After the appeal decision, but before the Council granted temporary permission, timber shutters were installed over the glazed windows and doors, resulting in the building having a more utilitarian appearance. From the evidence before me, and my observations on site, it also appears that the building has darkened, either with age or through staining, and that landscaping within the site has matured since the appeal decision. So, although the previous appeal decision remains a material consideration, subsequent changes in circumstances are also material in this case.
14. The overall site is bounded by mature hedges to Pool Lane and Morteheo Station Road, and also on the two field boundaries to the south and east. It is also separated from the adjacent residential property to the east, The Wynds, by a hedge, which I observed was higher than the building. Additional hedges within the site, which may not have been mature at the time of the previous appeal decision, provide further screening. As a result, I found that the building could not be seen from the Pool Lane or Morteheo Station Road frontages. Neither was it visible through the site entrance. From the south west corner of the site, just beyond the entrance, the roof of the building was visible above the on-site hedges. However, from here it was visible against the backdrop of the much larger and more prominent house behind. I therefore find that it has little impact on the landscape from nearby viewpoints.
15. Observed from more distant viewpoints I found that the small size of the building, its subdued colour, and the level of screening within the site meant that it was barely discernible in the landscape. It was also seen in association with much larger and more prominent residential buildings. The building therefore does not have a harmful impact on the character and appearance of the landscape.
16. The Council suggests that the welfare needs of the enterprise could be met in a smaller building in a more discreet location. The building only has an internal floorspace of about 25 square metres. At the time of my site visit a grass

mower occupied a fair proportion of the building, which further limited the space available for shelter, tea-making, drying clothes, maintaining equipment and the other activities that may reasonably be required as part of the agricultural use of the land. Whilst it may be possible to provide the necessary facilities in a slightly smaller building, I have found there to be no landscape harm from the existing building that would justify this requirement.

17. Concern has also been raised about the range of fittings within the building, which, it is claimed, are more of a domestic nature, beyond that which would be expected in an agricultural building. At my visit I noted that there was a sofa in the building, and there was a bar area where food and drink could be prepared. There were also pictures and other ornaments on the walls. However, there was nothing to suggest that the building was being used for residential purposes. None of the fittings prevent the building from being used as an agricultural shelter and they do not affect the external appearance of the building or its impact on the landscape.
18. Taking the above points together I conclude that there is a functional need for a shelter and welfare building to support the existing enterprise, and that the existing building does not have a harmful impact on the character and appearance of the landscape from near or distant viewpoints. The retention of the building is therefore justified. Consequently, the development accords with Policies DM14, ST07, ST09 and ST14 of the NDTLP, which, in combination, seek to support the rural economy whilst limiting development in the countryside, conserving the setting and special character and qualities of the AONB and protecting the undeveloped character of the Heritage Coast.

Conditions

19. The application was for a temporary permission for 3 years. Neither party has suggested that I impose any conditions in the event that I allow the appeal. However, if I allowed the appeal without conditions the effect would be to grant a permanent permission for the building. I have considered the advice in the Planning Practice Guidance, which states that it will rarely be justifiable to grant a second temporary permission – further permissions should normally be granted permanently or refused if there is clear justification for doing so. I am mindful, however, that the application was for a temporary permission and interested parties were consulted on that basis. There also remains some uncertainty about the long-term prospects of the enterprise. Therefore, I have imposed a condition requiring the removal of the building after 3 years.

Conclusion

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

Nick Davies

Inspector