
Appeal Decision

Hearing held on 22 October 2019

Site visit made on 22 October 2019

by Thomas Shields MA DipURP MRTPI

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

Decision date: 12 December 2019

Appeal: APP/J1860/C/18/3209724

Ridding Coppice, Worles Common, Stockton, Worcestershire

- 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 Act").
 - The appeal is made by Mr N Birchley against an enforcement notice issued by the Malvern Hills District Council.
 - The enforcement notice was issued on 17 July 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the land from forestry to a mixed use of forestry and the siting of a caravan for residential purposes as shown in the approximate position hatched green on the attached plan.
 - The requirements of the notice are:
 - 5.1 Permanently cease the use of the land for residential purposes
 - 5.2 Permanently remove the caravan as approximately shown hatched green on the attached plan from the land
 - 5.3 Lawfully remove all resulting materials and reinstate the land to its previous condition before the breach took place.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Formal Decision

1. The appeal is allowed and the enforcement notice is quashed. Temporary planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the use of the land for a mixed use of forestry and the siting of a caravan for residential purposes, subject to the conditions set out in Annex A to this Decision.

Ground (a)/deemed planning application

Background and Preliminary matters

2. Ridding Coppice is in the open countryside. It is a steep sided valley approximately 3km from the village of Abberley. It includes a mix of ancient woodland, Ancient Semi Natural Woodland (ASNW) and Plantation on Ancient Woodland Site (PAWS). The appellant has in the past occupied the land in yurts and carried out forestry work under a 2 year temporary planning permission 12/00526/FUL which expired in November 2014. A planning application (14/01586/FUL) in November 2014 which sought to continue that use on a

permanent basis was refused and dismissed on appeal on 25 May 2016 (APP/J1860/W/15/3133352).

3. The Council has recently declared a “climate emergency”. No written material has been submitted in respect of it, but at the Hearing both parties agreed it was a material consideration. As to what weight should be attached to it, the Council confirmed that the declaration was yet to inform the development of future planning policies. Both parties agreed that it highlighted the importance of local and national planning policies in respect of environmental sustainability. I have taken account of it on that basis.
4. An appeal on ground (a)/deemed planning application seeks planning permission for the development described in the alleged breach of planning control at Section 3 of the enforcement notice. Hence, planning permission is sought for use of the land for a mixed use of forestry and the siting of a caravan for residential purposes. At the Hearing it was confirmed that the deemed application is for a 3 year time limited period.

Main Issue

5. The main issue is whether there is an essential need for a rural worker to live permanently at the site.

Reasons

6. In the 2016 appeal the Inspector tested whether a functional need for a permanent on site presence and financial viability had been demonstrated, concluding that they had not. It differs from this appeal in that it was concerned with a proposal for a full permanent planning permission, for which no substantive details of income or costs had been submitted. Additionally, the full specific details of processes and activities that the previous Inspector took into account, while summarised in his Decision, are not before me.
7. In contrast, this appeal is for a temporary period. In such circumstances the temporary permission sought is in effect for a “trial period”, at the end of which any future application for a full planning permission can be assessed by the Council on the basis of how well the enterprise has operated and performed. In this regard the appellant has submitted a new business plan¹ together with fully detailed information as to proposed future activities and financial stability, and a forestry appraisal². Consequently, while the previous appeal decision is a material consideration to which I attach due weight, I have determined this appeal on its own merits, as I am required to do so.
8. Policy 19B of the South Worcestershire Development Plan (SWDP) requires that proposals for temporary dwellings for rural workers in the countryside must satisfy the functional and economic tests set out in Annex G, paragraphs 1(a) and (b), and 2(a). The policy reflects the provisions of paragraph 79(a) of the National Planning Policy Framework (2018) (NPPF) and the national Planning Practice Guidance³ as to what considerations (including financial) may be relevant to take into account when applying paragraph 79(a).

¹ Appellant’s appendix RS01: Waywood Business Plan

² Appellant’s appendix RS02: Forestry Appraisal

³ Reference ID: 67-010-20190722

9. The parties confirmed at the Hearing, and in the agreed Statement of Common Ground, that the business plan and financial information submitted in support of this appeal demonstrates that the business has been planned on a sound financial basis, and I have no reason to disagree. As such, I find that the financial test at Annex G 2(a) is satisfied. I turn next to whether there is an essential functional need.
10. Equipment openly stored at the site includes a tractor, winch, charcoal kiln, trailer and other items related to the operations. The appellant does not want to have a secure storage container on site, arguing that a permanent presence would negate the need for one. Full details of the proposed business activities to be undertaken are set out in the appellant's business plan. These include the production of charcoal and various timber products using coppicing methods associated with a more traditional way of managing smaller woodland areas.
11. The peak seasons⁴ for charcoal production are said to be between March and August, with less produced in the off peak months of September to February. Production typically includes kiln loading, followed by 14-16 hour burns, then shutting down, cooling, grading and packaging. This would extend to a need for an on-site presence of 90 days (30 x 24 hour burns per year by 2022) following the planned purchase of a larger kiln. The majority of the burns would take place outside of the coppicing season (November to March).
12. I am satisfied that a permanent presence is required during the process of charcoal production. Although, by itself, production of charcoal would not amount to the need for a full time worker to live permanently at the site in the first year, I consider it forms an increasingly integral element of the overall coppicing/forestry management of the site and the enterprise as a whole.
13. The Council fairly accepted that in terms of environmental sustainability, in particular sustaining and enhancing biodiversity, the appellant's lifestyle choice and planned methods for forestry management would be beneficial, and that these were material considerations that should also be taken into account and weighed against the effect of a permanent dwelling in the countryside. The appellant's case is that whilst the sustainable lifestyle is a choice, it is also integral to and forms part of the functional need for a permanent on-site presence. On this particular point it seems to me that the appellant's whole enterprise is dependent upon his sustainable way of living on the land through a traditional and careful method of woodland management. As such, the cutting, stacking, drying of wood, and production therefrom of charcoal and other timber products as set out in the business plan are all inter-linked components of the low-impact methodology and of the enterprise as a whole. Consequently, my decision should also take account of functional need on this basis.
14. The appellant's proposed woodland management also includes cutting rotation which in turn enhances biodiversity, for example by increasing the insect population and allowing wild flowers to grow. It was additionally argued that a permanent monitoring presence of the woodland would significantly deter and mitigate damage from deer and squirrels, being essential to management of the woodland, thereby ensuring the successful production of wood products and the operation of the enterprise overall. I accept that these form part of the proposed sustainable low-impact management of the woodland in terms of

⁴ Document 2

functional need and would produce benefits that need to be weighed in the overall balance.

15. The submitted evidence of purchase and rental cost of housing in the local area, relative to the low income levels likely to be achieved by the enterprise in the early years, indicates to me that living off-site would not be financially viable. Furthermore, I consider that it would be very difficult to grow and develop what would essentially be a near subsistence-level business, including by way of committing to planned future financial investment, in the second and third years (and potentially beyond) from its planned first year position, without a permanent on site presence. The envisaged biodiversity benefits of the proposal, which forms part of the appellant's justification for a permanent presence, would also be unlikely to materialise by living off site.
16. It was common ground at the hearing that, in the event the appeal were allowed, a woodland management plan to replace the expired Ridding Coppice Management Plan would be necessary, to ensure the proper management of the woodland and the associated biodiversity benefits. I also consider that to be the case.
17. Taking account of all the above factors I conclude that a functional need for a full time worker to live on the site for most of the year has been demonstrated. As such the proposal would accord with SWDP Policy 19B and Annex G and the appeal on ground (a) succeeds.
18. In reaching my decision I have also taken into account the views of third party representations submitted both against and in support of allowing the appeal.

Conditions

19. In accordance with the terms of the deemed application for planning permission, a condition (1) is necessary to limit the life of the permission to 3 years. It will enable both the appellant and the Council at the end of that period to fully review the operation and success of the enterprise in the event that a full permanent planning permission is sought. In addition, a condition (2) to limit occupancy of the caravan to a forestry worker is necessary, along with a condition (3) to secure an appropriate location for the caravan.
20. A condition (4) to control lighting on the site is necessary to ensure a satisfactory level of amenity during darkness. In order to ensure that the site is occupied and the woodland managed appropriately in accordance with the functional need evidenced by the appellant, a condition (5) is necessary to ensure implementation of such management through a woodland management plan.

Conclusion

21. For all the above reasons, and taking account of all other matters raised, the appeal on ground (a) is allowed. Accordingly, the enforcement notice is quashed and hence the appeal on ground (g) does not need to be determined.

Thomas Shields

INSPECTOR

Annex A

Conditions

- 1) The residential use hereby permitted shall be discontinued and the caravan shall be removed from the site on or before 3 years from the date of this decision.
- 2) The occupation of the caravan shall be limited to a person solely or mainly working, or last working, in the locality in forestry, or a widow or surviving civil partner of such a person, and to any resident dependants.
- 3) The caravan shall be sited in the location shown on the plan attached to enforcement notice ENF/18/0005 unless any other location is first approved in writing by the local planning authority.
- 4) There shall be no external lighting within the site other than in accordance with details which shall have first been submitted to and approved in writing by the local planning authority.
- 5) Unless within 6 months of the date of this decision a woodland management plan (WMP) is submitted in writing to the local planning authority for approval, and unless the WMP is implemented within 4 months of the local planning authority's approval, the occupation and residential use of the caravan shall cease and the caravan shall be removed until such time as a WMP is approved and implemented.

If no WMP in accordance with this condition is approved within 10 months of the date of this decision, the occupation and residential use of the caravan shall cease and the caravan shall be removed until such time as a WMP is approved and implemented.

The operation of the business and management of the site shall thereafter be carried out in accordance with the approved WMP.

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.

End of Conditions

APPEARANCES

FOR THE APPELLANTS:

Dr Simon Ruston MRTPI	Consultant
Mr Dave Wood NDF	Consultant
Mr N Birchley	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Simon Rowles	Malvern Hills District Council
Aaron Black	Malvern Hills District Council

DOCUMENTS SUBMITTED AT THE HEARING:

1. Copy of internet search for housing in local area
2. Monthly activity table relating to functional need
3. Statement of Common Ground

DOCUMENTS SUBMITTED POST HEARING:

1. *Petter and Harris v Secretary of State for the Environment, Transport and The Regions and Another, CA, (2000) 79 P. & CR 214*
2. *The Queen (on the application of William Ellis McLennan) v Medway Council, Ken Kennedy [2019] EWHC 1738 (Admin), 2019 WL 02996014*