



Appeal Decisions

Hearing Held on 12 November and 19 December 2019 and 14 January 2020

Site visit made on 14 January 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2020

Appeal A) Ref: APP/Q1153/C/18/3217615

Land known as Skywood, Spreyton, Crediton EX17 5AF

- 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 D Bifulco against an enforcement notice issued by West Devon Borough Council.
 - The enforcement notice was issued on 7 November 2018.
 - The breach of planning control as alleged in the notice is carrying out operational development without planning permission, namely the erection of a steel-framed agricultural building shown in the approximate position hatch in red on the attached plan.
 - The requirements of the notice are:
 - 1) Demolish the steel framed agricultural building; and
 - 2) Remove the resulting building materials from the land.
 - 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 (f) of the Town and Country Planning Act 1990 as amended.
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Appeal B) Ref: APP/Q1153/W/18/3217614

Land known as Skywood, Spreyton, Crediton EX17 5AF

- 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 D Bifulco against the decision of West Devon Borough Council.
 - The application Ref 4168/17/FUL, dated 5 December 2017, was refused by notice dated 22 October 2018.
 - The development proposed is described as the "retention of existing building. Retrospective approval of hedge removal and replacement to north of barn to be retained."
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 27 January 2020.

Decision - Appeal A

1. The appeal is allowed and the enforcement notice is quashed. 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 erection of a steel-framed agricultural building on land known as Skywood, Spreyton, Crediton EX17 5AF referred to in the notice, subject to the conditions at the schedule at the end of this decision.

Decision – Appeal B

2. The appeal is allowed and planning permission is granted for the “retention of existing building. Retrospective approval of hedge removal and replacement to north of barn to be retained” on at Land known as Skywood, Spreyton, Crediton EX17 5AF within the terms of the application, Ref 4168/17/FUL, dated 5 December 2017, the conditions at the schedule at the end of this decision.

Application for costs

3. An application for costs has been made by Mr Bifulco against West Devon Borough Council. This is the subject of a separate Decision.

Preliminary Matters

4. The hearing took place over 3 days, with the third day only involving the site visit. I closed the hearing at the end of the site visit.
5. The Plymouth and South West Devon Joint Local Plan (JLP) has been adopted since the Council made their decisions. The Council’s appeal statement has confirmed which policies from the JLP are relevant to consider and which have superseded the previous policies. The parties to the appeal have had an opportunity to consider the revised policies and the Council confirmed at the hearing that they do not consider the adoption of the JLP has not altered their position in this case. When the Council’s decisions were made, the JLP policies were at an advanced stage towards adoption and although there has been a reconfiguring of policy references, the emerging policies were considered.

Appeal A) ground (a) and Appeal B)

Main Issues

6. The first main issue in both Appeal A with respect to ground (a) and in appeal B is the justification for the building, with particular consideration of its size, with respects to agricultural and forestry needs. The second main issue is the effect of the development on living conditions at nearby residential properties, in particular at Weeke Farm.

Reasons

Need for the building

7. The Council confirmed in the hearing that they are not suggesting that the building harms the landscape character of the area or that it is an isolated location. JLP Policy TTV26 was stressed by the Council which it was confirmed is the main policy relied upon with respect to this main issue. The policy states, amongst other things, that the special characteristics and role of the countryside will be protected and it was pointed out that the consideration of these matters goes beyond just the visual impacts of the development. The policy goes on at part iv) to state that development proposals should, where appropriate, respond to a proven agricultural, forestry and other occupational need that requires a countryside location. JLP Policy DEV15 is also relevant and this supports proposals in suitable locations which seek to improve the balance of jobs within the rural areas and which diversify the rural economy. This includes support for development which meets the essential needs of agricultural or forestry interests.

8. The land within the appellant's ownership covers some 30 acres which is approximately 12.14ha. There is a scattering of surrounding development including the dwelling and former agricultural buildings at Weeke Farm but the appeal site is within the countryside. The building is positioned on an area to the south of the appellant's holding, close to his residential mobile home. That home is proposed to be replaced with a permanent dwelling on the appellant's land and planning permission was given for that, on 16 October 2017.
9. The appellant in this case by his own admission, carries out his farming and forestry activities at a modest level. He currently has a herd of 6 beef steers that are kept out in the fields and then overwintered in the building. Hay is also cut from the fields in the summer and is kept in the building along with tractors, other farm machinery, including a trailer which had a saw bench on it at the time of my site visit. The saw bench needs to be placed on the trailer using the tractor with a fork-lift attachment. There was a discussion at the hearing regarding whether the hay produced on the holding would be sufficient for the beef stock over the winter and the appellant said that if not, he would buy in more or supplement feed in other ways. He again stressed that he wanted the enterprise to sustain itself and doesn't want to make a loss but that he was also not expecting to make big profits. Whether feed is produced on site or is bought-in, it will need to be stored under cover.
10. The saw bench is used as part of the appellant's forestry operations as he owns woodland to the east of his land-holding. Although he has no felling licence it was clarified at the hearing that up to 5m³ per calendar quarter can be felled without requiring a licence. Felling and operating the saw bench is primarily carried out near the woodland with the bench being towed down on the trailer using a tractor. There is no suggestion even from objectors that the bench has been used frequently within the building.
11. As well as the bench being stored in the building, planks are also laid down on a rack inside. There is also space for logs to be seasoned and for wood-chip to be stored. The appellant said that if there are felled trees suitable for planking then his intention would be to continue to do that although it was not a main part of his activities. The appellant estimates that he has felled around 20m³ of timber since he has owned the land. A framed 'poly' tunnel is positioned within one of the fields close to the site which is partly covered in plastic and partly in netting. Saplings are currently being grown for re-stocking of the woodland in the netted side of the tunnel.
12. Part of the building has been partitioned off from the other areas and used as a workshop with various tools, storage shelves and equipment present within it. The appellant has also pointed out that his current dwelling is very modest with little space and so there may be some use ancillary to him living at the site. I can accept that there is a need for a covered area to keep equipment in, to help with maintenance of machinery as well as for other incidental purposes.
13. Councillor Pearce who spoke at the hearing explained that the members who carried out the committee site visit were sceptical about the likely use of the building. However, the Council did not issue an enforcement notice with respect to any alleged change of use. Although I am not dealing with a proposed or material change in use of the appeal site, the building as proposed for retention can, if approved, due to s75(3) of the Act, be used for the purpose for which it is designed. The building has been designed for mainly

- agricultural purposes along with the storage of some machinery and materials related to forestry as well as some incidental workshop activities. The Council officers referred to the likelihood that a more significant degree of processing of timber for example within the building would result in a material change in the use of the building which they would be able to consider if it occurred. As such, a planning condition is unnecessary to control these matters further.
14. The building has been the subject of a previous appeal which related to the refusal of a planning application (ref APP/Q1153/W/17/3166440). In that case, the first main issue was similar. The relevant development plan policies were different at that time in 2017 but it was confirmed by the Council at the hearing that they consider that Policy ED18 of the then applicable West Devon Borough Council Local Plan Review (March 2005) was more explicit in requiring an assessment of what is an appropriate size for the proposed function. At that time, the Inspector considered that based on the evidence he had, there was very little if any agricultural activity ongoing at the site and adjoining land which was at that time in different ownership and occupation. The previous decision has little weight in my consideration of these cases which I have considered on the merits of the evidence at this time.
 15. The appellant is currently undertaking agricultural and forestry operations on his land in a modest, self-sustaining level which is clearly far more significant than was the case when the previous appeal was considered. There is no requirement within the relevant policies for a business to show actual or likely profitability. However, it is legitimate to be concerned when a business is not able to show clear financial sustainability. The failure of the business would leave a large building without a use which could go against the requirements of JLP Policy TTV26 to protect the special characteristics and role of the countryside which in this case are related to agricultural and forestry activity. As such, the Council's suggested condition to seek the removal of the building if the current use ceases within 10 years is justified in my view. Although this is not a purely agricultural building, such a condition is a similar provision to those relating to agricultural buildings that can be constructed through the provisions of the GPDO¹.
 16. From the submitted evidence it seems to me that the further establishment of the agricultural activity in the knowledge that the building is not immediately at risk, will provide some additional confidence to the appellant to move forward with his plans. This requires the utilising of large equipment and storage of bi-products as explained above. A building with sufficient height clearance and floor area is clearly necessary. As well as these storage requirements, use as a livestock shelter and for animal feed also requires a significant amount of additional space. The building in terms of its size and location responds to a proven agricultural and forestry need that clearly requires a countryside location. The use of agricultural contractors is not unusual in my experience particularly if the farmer is otherwise working on his own and suffers some health difficulties. This does not undermine the functional need for the building on this holding in my opinion.
 17. In relation to the first main issue, the building at this size is justified by the agricultural and forestry needs of the appellant's activities. As such the development complies with JLP Policies TTV26 and DEV15.

¹ Article 3, Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Living conditions

18. The south and south western boundary of the site adjoins a track that leads through Weeke Farm. The building is off-set from that joint boundary with the appellant's existing dwelling and a small garden positioned between the boundary and the building. The dwelling at Weeke Farm is also off-set substantially further to the south from that joint boundary.
19. Much of the debate in the hearing and in correspondence leading to it, has related to the prospects of different activities taking place within and around the building and in particular the use for wood processing rather than what has been experienced. As I explain above, the building is required in relation to the present use of the site which is the purpose for which it has been designed. The Council and objectors are however concerned that the even occasional use of the saw bench within the building could cause disturbance due to noise. I have no evidence from the appellant to indicate whether the building would adequately contain such noise given its single timber board construction, without insulation and with an open front for much of 1 elevation.
20. The appellant makes the point that occasional use of the saw bench could take place in the open air, with or without the building in place. One of the objectors was also concerned that preventing use of the saw bench within the building could lead to further use outside. However, given that the building provides a significant amount of undercover space, in periods of poor weather conditions, it could in my view provide a greater propensity for the building to be used by the appellant to operate the saw bench. Uncontained noise, even within the scope of the current use of the site, could cause increased noise.
21. I established at my site visit that the track leading through Weeke Farm is private and is not used by the farmers who rent land. A noise assessment relating to a wind turbine proposed for North Beer Farm, Spreyton was submitted by the occupants of Weeke Farm. This relates to a very different type of development which is not directly comparable to this case. However, it does confirm that the general ambient noise levels of the area are low given the distance of the site from main road and other sound sources, which is not disputed by the appellant.
22. There is a distinct possibility therefore, in the absence of evidence to the contrary, that the use of the building could lead to an increased likelihood of disturbance for the nearest neighbours from the use of powered forestry equipment. This could lead to a loss of amenity for those residents unless there is a reasonable and enforceable way of preventing that.
23. I also heard evidence from the occupiers of Weeke Farm about the health conditions of a family member. I will not repeat this personal and sensitive information in detail here. However, it is sufficient to say that the family member is extremely sensitive to loud noises and that this can bring about catastrophic medical problems. These substantial and long-term health conditions therefore affect that person's ability to carry out normal day to day activities such as playing or relaxing in the open air as well as within the buildings at Weeke Farm. Under the provisions of the Equality Act 2010 (EA) this person has a disability which is a protected characteristic and I am therefore under a duty to have due regard to this under the provisions of s149 of that act and in particular subsection (c) is of relevance. I therefore need to

have due regard to the need to advance equality of opportunity between persons with the protected characteristic and other persons who do not.

24. I consider therefore that it is necessary to prevent the use within the building, of high-powered forestry machinery, which in my experience can be intensely loud. The appellant suggested a condition to that effect. The Council were concerned about whether such a condition would meet the test of being enforceable, as set out in the National Planning Policy Framework (the Framework). I consider however, that such machinery would be distinguishable from lower powered hand tools for example. I therefore consider a condition to this effect would meet the tests for conditions set out in the Framework. The use of such machinery in the open air may occur whether or not planning permission is given for the building and it would not be reasonable or directly related to the development under consideration, to widen the scope of the condition to relate to land outside of the building.
25. Subject to the conditions set out below therefore, I consider that the development will not have a harmful impact upon living conditions at nearby residential properties, in particular at Weeke Farm. With regard to my public sector equality duty under the EA, I consider that approving the development in these terms will have no greater impact upon the equality of opportunity between the person with the protected characteristic and other people, when considered in comparison with the use that could take place at the appeal site without the building in place. The health and amenity of members of the local community will be safeguarded, particularly in relation to noise and disturbance. As such JLP Policies DEV1 and DEV2 will be complied with.

Other Matters and Conditions

26. There is a large lorry trailer parked to the immediate east of the site. The appellant admits that this contains materials related to his proposed construction of the replacement dwelling. This and traffic impacts of this and other vehicles in use at the site are not material considerations of significant weight as they do not directly relate to the retention of the existing building.
27. The nearest Listed Building (LB) to the appeal site is the house at Weeke Farm. The house at Weeke Farm is a Grade II LB and it is a substantial distance from the building. There is a significant amount of open space between the nearest part of this LB and the building as well as other buildings. A substantial hedge separates the sites. It is difficult to see the building and the house at Weeke Farm in the same view. The development does not affect the context within which Weeke Farmhouse can be seen or how its enjoyed and as such preserves the setting of the LB. The setting of other LBs drawn to my attention are also preserved as they are even further away from the appeal site.
28. Some concerns have been expressed about where the surface water from the structure drains. However there is no evidence that this has caused harmful impacts upon surface water drainage nearby.
29. I have insufficient evidence to indicate that the proposal has affected wildlife habitats or biodiversity on and around the appeal site. I agree however that with respect to these interests, no external lighting should be installed around the building. It was clarified at the hearing that there is currently no external lighting.

30. It is unnecessary to attach conditions related to the bringing into use of the building and accordance with the plans because the development has been carried out and is already in use. The appellant suggests a condition to prevent the bringing in of timber from elsewhere for processing. However, as agreed by the Council if that occurred to a significant extent, it would be an industrial processing activity beyond the scope of the current use of the building and land. I do not consider that such a condition is necessary.
31. The building is not being used solely for agricultural purposes and therefore the suggested condition relating to future permitted changes of use under the provisions of the GPDO, is not necessary.
32. With respect to Appeal B, it is necessary to secure the hedgerow reinstatement as proposed with a slight alteration to make the wording more precise. I cannot include the condition on the deemed grant of planning permission being considered in Appeal A, as those separate operations are unrelated to the alleged unauthorised development.

Conclusion – Appeal A

33. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the erection of a steel-framed agricultural building as described in the notice. The appeal on grounds (f) and (g) do not therefore fall to be considered.

Conclusion – Appeal B

34. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Andy Harwood

INSPECTOR

Appeal A)

Schedule of Conditions:

- 1) Where the development hereby permitted ceases to be used for agriculture as well as the storage of machinery and materials related to forestry, within 10 years from the date of this decision and planning permission has not been granted authorising development for purposes other than those set out above within three years of the permanent cessation of the use, and there is no outstanding appeal, the development must be removed and the land restored to its former condition.
- 2) No processing of timber using powered tools and/or equipment shall be undertaken within the building hereby permitted.
- 3) No lighting shall be installed on the exterior of the building hereby approved.

Appeal B)

Schedule of Conditions:

- 1) Where the development hereby permitted ceases to be used for agriculture as well as the storage of machinery and materials related to forestry, within 10 years from the date of this decision and planning permission has not been granted authorising development for purposes other than those set out above within three years of the permanent cessation of the use, and there is no outstanding appeal, the development must be removed and the land restored to its former condition.
- 2) No processing of timber using powered tools and/or equipment shall be undertaken within the building hereby permitted.
- 3) No lighting shall be installed on the exterior of the building hereby approved.
- 4) The hedgerow reinstatement (as shown on drawing reference 'BIF/SIT') shall be carried out within the first planting season following the date of this decision. The hedgerow shall thereafter be permanently retained and maintained. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

APPEARANCES

FOR THE APPELLANT:

Mr Venners BSc(Hons), MA, MRTPI	Planning Consultant
Mr Bifulco	The appellant

On the first day only:

Ms Madden	Not specified
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FOR THE LOCAL PLANNING AUTHORITY:

Ms Henderson-Smith MRTPI	Planning officer
Mr Pearce	Councillor
Mr Gibbins BA(Hons), DipTP	Planning Officer
Mr Booty	Planning Enforcement Officer

At the site visit only:

Mr Willings	Planning Enforcement Officer
Mrs Ormsby BSc MSc	Planning Officer

INTERESTED PARTIES:

Dr Barker	
Mr Barker	Local residents
Dr Bain	Relative of local residents
Mr Gallop	Chair of Spreyton Parish Council
Mr Denton	Local resident

DOCUMENTS

- 1 Appeal notification letter dated 28 May 2019
- 2 Copy of a letter from Mr P Clark dated 19 September 2019
- 3 Copy of letter from Mr and Dr Barker dated 1 October 2019
- 4 Copy of further letter from Mr and Dr Barker dated 1 October 2019 enclosing photographs and Wind Turbine Noise Assessment relating to North Beer Farm
- 5 Policy DEV1 of the Plymouth and South West Devon Joint Local Plan 2014 – 2034, adopted March 2019
- 6 Map showing locations of Listed Buildings
- 7 Appellant's written comments on the suggested conditions