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## Appeal Decision

Hearing held on 29 September 2020

Unaccompanied site visit made on 1 October 2020

**by David Nicholson RIBA IHBC**

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

**Decision date: 13 October 2020**

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### **Appeal Ref: APP/D0515/W/20/3244101**

Land North of Bar Drove, Friday Bridge PE14 0JE

- 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 Bjorn Hope against the decision of Fenland District Council.
  - The application Ref F/YR19/0499/F, dated 14 January 2019, was refused by notice dated 6 August 2019.
  - The development proposed is:
    - Change of use from agriculture to residential.
    - Timber clad off grid eco caravan/site office.
    - Timber clad storage shed.
    - Timber clad off grid workshop.
    - Clay rendered single story off grid eco tyre house.
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### **Procedural matters**

1. The proposed change of use has already happened, the buildings are all but complete, and I had the benefit of seeing them in place.
2. A previous enforcement appeal<sup>1</sup> was dismissed, upholding a notice requiring the removal of the caravan and to cease residential use of the land.

### **Decision**

3. The appeal is dismissed.

### **Main Issues**

4. The main issues are: a) the effect of the proposals on the character and appearance of the area, with particular regard to the 2014 Fenland Local Plan policies LP3, LP12 and LP16; and b) whether the public and personal benefits of the scheme would outweigh any harm, and conflict with policy, with particular reference to sustainability, security, biodiversity and personal circumstances.

### **Reasons**

#### *Character and appearance*

5. Friday Bridge is surrounded by flat, open farmland. Bar Drove is a narrow tarmac road with grass verges. It runs alongside new residential development on the edge of the village before turning at right angles through agricultural

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<sup>1</sup> Appeal Ref: APP/D0515/C/16/3196429 Land north of Bar Drove, Friday Bridge, Cambridgeshire

land. The Appellant owns around 4.5 acres on the corner, bounded by two sides of the Drove and now surrounded by largely evergreen hedging. Most of the land is in use as a tree nursery (which falls within the definition of agriculture) while the hedging is not development. The appeal site is a rectangular plot at the north end of the Appellant's land, furthest away from the village. It is neither within nor adjacent to the village but one step away. Equally, in my view nor is it isolated using the criteria established in the *Braintree Judgments*<sup>2</sup>.

6. The previous Inspector found that, when compared to the former agricultural use, the residential element had brought about a significant change in character, that the caravan and the associated driveway and fencing have had a noticeable visual impact, and that these emphasise that change in character. Apart from the gateway, the Appellant's hedging has now grown enough to pretty well conceal the structures from public view. The exceptions are where I was told some of the hedging was stolen at an early stage but has been replanted. A condition was discussed that could require further hedging to conceal even the views through the entrance. Nevertheless, just as hedging does not count as development, it is not necessarily permanent and whether it can currently be seen or not, a residential use on the appeal site has altered its previously agricultural character.
7. The starting point for deciding the appeal is whether it would comply with the local plan. The site's location outside a Limited Growth Village means that it is defined as in the countryside by Policy LP3 which restricts development to that which is demonstrably essential to the effective operation of certain activities, including horticulture. Any essential development would be subject to a restrictive occupancy condition, to which the appellant has no objection. I find that it would also conflict with Policy LP12 which sets criteria for villages including that new development should be in or adjacent to the existing developed footprint, not have an adverse impact on the character and appearance of the surrounding countryside and farmland, and not extend existing linear features of the settlement, or result in ribbon development.

### *Sustainability*

8. While the site is defined as countryside under Policy LP3, the Council did not dispute that there is some access to goods and services, albeit along an unlit rural lane without footpaths. With regard to National Planning Policy Framework (NPPF), given my finding against the *Braintree Judgments*, I find that the site is not isolated and so the exceptions in NPPF§79 e) do not apply. Rather, policy in NPPF§131 is relevant which states that: ... *great weight should be given to outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.*
9. As well as lawfully using most of his land as a tree nursery, the Appellant's aim is for him and his family to live a sustainable off-grid lifestyle, with no mains services, so that the whole residential and growing area forms an ultra-low emission site to reduce its carbon footprint and global warming. This includes minimising the energy embedded in the materials and methods of building, and rainwater harvesting. I was told that the tyre house is made of worn-out tyres

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<sup>2</sup> *Braintree District Council v Secretary of State for Communities and Local Government & Others* [2017] EWHC 2743 (Admin) of 15 November 2017, and subsequently in the Court of Appeal judgment of 28 March 2018

filled with compacted earth on concrete-free foundations, a clay render with a limewash finish, and a roof of rejected and recycled timber fixed down with long screws. Also, that it was built by hand without the use of powered machinery. I saw that the house is virtually complete and has a certain charm from its undulating walls and roof so that many people might find it an attractive place to live.

10. The construction of the off grid eco tyre house is undoubtedly unusual, and I was told that there are no other tyre houses in the district. There may be other tyre structures in the country, but I was only made aware of those where the tyres are effectively formed into a hillside (referred to as Earthships) and so are quite different.
11. The extent to which the dwelling could *promote high levels of sustainability, or help raise the standard of design* would depend on how widely details of the *innovative design* are communicated. The Appellant told me that he had neither recorded its construction, though he had meant to, nor has he approached anyone with a view to promoting what he has achieved, although he has plans to do so in the future. The parties agreed that a condition could be attached to promote the tyre house as a more sustainable construction through an information board, limited visits, and a website. Consequently, the second hurdle in NPPF§131 could be partially met.
12. On the information before me, I accept that the construction could count as *innovative*. However, in order to do so, and to promote sustainability or raise design standards, the dwelling would need to be habitable, i.e. healthy and safe, and have a degree of permanence. The easiest way to demonstrate this would be through compliance with the Building Regulations, which is also a legal requirement. The Council's Building Control service, which the Appellant had not approached, advised that while the proposal *has the potential to achieve compliance with the Building Regulations ... The services of a Structural Engineer and energy assessor/architect will be required (that's no different from any other new dwelling) and the tyre wall structure would need to be made fire resistant*.
13. While generally outside the scope of planning decisions, the Building Regulations are intended to protect people's safety, health and welfare and there is reference to them on the Planning Portal<sup>3</sup>. They are referred to under policy LP14 – *Responding to Climate Change*. The Appellant should have been aware of the Regulations and the need to comply before starting work. He explained his resistance to rules that could lead to more conventional construction with its high use of concrete and other unsustainable materials. However, while the Approved Documents provide guidance on ways to meet the Building Regulations, these are not the only solutions. The actual Regulations generally just set out the required standards for the building work, for example, that a home must be structurally sound, not at risk from instability, high winds, or ground movement such as swelling, shrinkage or freezing subsoil, but they do not usually say how this should be achieved.
14. From the application, discussion and my visit, I have very little information on how the tyre house would satisfy the necessary standards. To my mind, it is implicit in the *great weight* to be given to *innovative designs* by NPPF§131 that these should meet the requirements for safety, health and welfare. In the

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<sup>3</sup> [https://www.planningportal.co.uk/info/200128/building\\_control/38/building\\_regulations/3](https://www.planningportal.co.uk/info/200128/building_control/38/building_regulations/3)

absence of a Building Regulations certificate, or comparable evidence that the walls and foundations are stable, that the roof can't blow away or catch fire, and many other matters, I cannot be sure that this innovative construction is robust, safe, resistant to damp penetration, or meet all other reasonable standards.

15. On this issue, I find that the absence of evidence that the tyre house is habitable, the dwelling is not assisted by policy in NPPF§131 which, in other circumstances, might outweigh the conflict with policies LP3 and LP12. Nor does it gain support from policy LP14 which sets out a number of sustainability criteria including: the urgent need to combat the causes of climate change, the need to compensate for the embodied energy of new buildings, the increasing need to use water more efficiently, and expects all dwellings to explicitly demonstrate what reasonable contribution the development will make towards minimising resource consumption above and beyond what is required by Building Regulations.

#### *Security and essential need*

16. As the site is not isolated, the business is not required to show an essential need for a dwelling on site under NPPF§79 a). On the other hand, it is defined as in the countryside under policy LP3 which restricts development to that which is *demonstrably essential* for activities such as horticulture.
17. The Appellant's need for security was originally based on incidents that occurred in 2016, prior to the occupation of the site, although he added that he believed that problems would be likely to return if he was obliged to leave. He also explained that alternative security arrangements would involve the unnecessary use of electricity, which he is committed to avoiding and, in his view, would be unlikely to work. The Council questioned the financial viability of the site, until the trees reach their optimum value, to which the Appellant explained that he had few financial needs, was sustained by an additional job, and that he and his family supply the labour to tend the trees.
18. Taken together, now that the hedging has grown up, I am not persuaded that an on-site presence is essential for security or that the business is yet financially viable. I conclude on this point that the scheme does not comply with the test of being *demonstrably essential* which would justify its location under policy LP3. Nevertheless, I accept that an on-site presence is a benefit, albeit personal rather than public.

#### *Biodiversity*

19. The Appellant has catalogued 4 pages of wild flora and fauna that he has seen on the site as a result of the way the land is managed. The Council accepted that the biodiversity of the site has been enhanced through the actions of the Appellant but argued that these benefits are as a result of the management of the nursery operation rather than the residential presence. I find that, while the proposals satisfy the biodiversity requirements of policies LP12, LP14 and LP16, through protection and enhancement, they gain little support from them.

#### *Personal circumstances*

20. The Appellant explained his family's health to me and how this has improved dramatically since their move to the site in January 2016. The Council felt that this was anecdotal, with little real evidence from health professionals to

demonstrate a significant benefit just as a result of living on site. While I have no reason to doubt what I was told, I agree that to give this matter substantial weight I would need more evidence that the improvement was more to do with moving onto the site rather than any other reason such as medication.

21. Dismissing this appeal would deny the Appellant's family the right to live on the site, within the caravan, the tyre house or otherwise, and so without a home. Their son is in education nearby and any move might disrupt this. Although an earlier enforcement notice was upheld, and the appeal dismissed, it did not address whether the permission should be granted on its merits (ground a) as no fee was paid. Consequently, I must consider the Appellant's home and family life, and to take account of the best interests of their child. Dismissing this appeal could potentially leave the Appellant and his family homeless and so interfere with their rights under Article 8(1) of the European Convention on Human Rights. A settled base is particularly important for children, to maintain continuity of education and to provide security and stability.
22. Nevertheless, taking into account all material considerations, I am satisfied that the legitimate aim of protecting the countryside can only be achieved by dismissing the appeal. Interference with the human rights of the Appellant's family, and potentially with education, are both necessary and proportionate.

#### *Overall balance*

23. I have studied the Council's concern that allowing the appeal might set a precedent for other undesirable development in the countryside. However, I find that the unusual combination of innovative design (which would no longer be novel if repeated) and the security, biodiversity and personal benefits would make this highly unlikely.
24. Nevertheless, in the absence of evidence that the tyre house uses a healthy and safe form of construction, I find that the conflict with countryside policies outweighs the benefits of sustainability, security, biodiversity and personal circumstances such that the appeal should fail.
25. For the reasons given above I conclude that the appeal should be dismissed.

*David Nicholson*

INSPECTOR