



Appeal Decisions

Site visit made on 18 August 2020

Hearing Held on 30 September 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2020

Appeal A) Ref: APP/U1105/W/20/3249070

Hill View Nursery, Dunkeswell, Honiton, Devon EX14 4SZ

- 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 Miss Donna Delamain against the decision of East Devon District Council.
 - The application Ref 19/1299/FUL, dated 12 June 2019, was refused by notice dated 24 February 2020.
 - The development proposed is described as "Change of use and extension of storage building to form a live-work unit."
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Appeal B) Ref: APP/U1105/C/20/3249072

Land at Hill View Nursery, Dunkeswell, Honiton, Devon EX14 4SZ

- 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 Miss Donna Delamain against an enforcement notice issued by East Devon District Council.
 - The enforcement notice, was issued on 12 February 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission and where no permitted development rights exist, the carrying out of a material change of use of the Land from an agricultural use to a mixed use of the Land for agricultural and residential use (C3) by the siting on the Land of a mobile home for residential purposes shown in the approximate position edged and cross hatched in blue on the plan attached.
 - The requirements of the notice are:
 - (I) Permanently cease the use of the Land for residential purposes and return the Land to agricultural uses;
 - (II) Permanently remove from the Land the mobile home used for residential purposes shown edged and cross hatched blue on the plan;
 - (III) Permanently remove from the Land all domestic paraphernalia;
 - (IV) Permanently remove from the Land all materials and debris associated with compliance with steps (I) (II) and (III) above
 - The period for compliance with the requirements is Nine months.
 - The appeal is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.
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Decision - Appeal A

1. The appeal is dismissed.

Decision – Appeal B

2. It is directed that the enforcement notice is corrected and varied by:

- the substitution of the plan annexed to this decision for the plan originally attached to the enforcement notice
- the deletion of "Nine Months" and the substitution of "Twelve Months" as the time for compliance

Subject to the correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. These appeals were originally being determined by the written representations procedure. Following my site visit, I decided that due to some of the matters raised, a hearing was necessary. A virtual hearing was therefore organised. It was agreed at the hearing that there is no need for me to re-visit the appeal site.
4. Since submitting the appeals, the appellant's surname has changed. It was agreed that the appeals can proceed in the name entered on the appeal forms.

Appeal A)

5. I have used the description of the proposal as set out on the Council's decision. It was confirmed by the appellant that a change to the wording had been agreed by them before the Council issued the decision.

Appeal B) – The Enforcement Notice

6. It was confirmed at the hearing that the position of the mobile home as shown on the plan that accompanied the notice, is incorrect. Through the course of the hearing, both parties very helpfully co-ordinated the compiling of a plan which provided confirmation of the accurate position of the mobile home and other spatial characteristics of the site that I had asked for clarification about. Neither party is in any doubt as to which mobile home the notice is targeted at. Another mobile home which has been the subject of an approved Lawful Development Certificate (LDC) is not within the red-line and it was agreed at the hearing that it is within a separate planning unit. The precise position of the mobile home does not affect whether a material change of use as alleged has occurred or not. For accuracy I can consider substituting the previous plan with a corrected one, using my powers under the provisions of S176(1)(a) of the Act, where it would not cause injustice to the Council or the appellant.
7. The extent of the planning unit was also discussed. Land owned, occupied and used by the appellant in connection with the nursery extends further than indicated by the red line on the notice plan. The planning unit appears to therefore extend further than shown. However, there is no argument put forward by the appellant that the mix of uses taking place as alleged on the notice is incorrect. It has been held that it may not be critical to identify the planning unit as long as the notice tells the recipient what they have done wrong and what they must do to remedy it.

I therefore consider that it would be in the interests of having a precise notice to correct the position shown for the mobile home on a substituted plan and that would not cause injustice to either main party. I cannot extend the scope of the notice to reflect the wider planning unit but I do not consider that I need to do so for the above reason.

Appeal A)

Main Issue

8. Whether this is an appropriate location for the type of residential accommodation being proposed given relevant planning policies as well as the business use of the appeal site.

Reasons

9. There is no dispute between the Council and the appellant that the appeal site is located in a rural area within Dunkeswell Parish. It is also accepted that housing development in this area is normally restricted to the circumstances allowed for by policies within the East Devon Local Plan 2013-2031, adopted 28 January 2016 (LP) and also, in this parish, the Dunkeswell Neighbourhood Plan 2014 to 2031, adopted 7 December 2017 (NP).
10. The appeal site including most of the land within the appellant's ownership is in use as part of a plant nursery along with, at the moment, the siting of a mobile home for residential purposes which is addressed by the notice the subject of Appeal B). There is no dispute in Appeal B) that the mobile home is unlawful. There are also a number of large buildings and structures including polytunnels, plant-houses and a large timber building which appears to be used as a general workshop and storage area.
11. The proposal would involve the conversion of an existing building that is close to the entrance of the site and which adjoins some dilapidated polytunnels that would be removed to enable a modest extension to provide a work office. The development would also involve the cladding of the exterior walls with timber and replacement of asbestos roof sheets with steel cladding.
12. The proposal is advanced on the basis that it would be a live-work unit to support the nursery rather than solely a dwelling, with the extended ground floor. Within their design and access statement that accompanied the planning application, the appellant refers to paragraph 11 of the National Planning Policy Framework (the Framework) and the presumption in favour of sustainable development. The appellant suggests that paragraph 11(d) is applicable. In particular they rely upon the part that explains that where there are no relevant "development plan" policies or the policies which are most important for determining the application are out of date, granting permission unless "any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole." However, as was discussed at the hearing, there are a number of relevant "development plan" policies.
13. The appellant's case relies upon NP Policy LE1 which relates to live-work space. At paragraph A) this sets out that proposals for development to enable or facilitate working or living in the same building or site should demonstrate that:
i) the proposed units would be well-related to the uses of the surrounding land and buildings (preferably located on the existing industrial estate); ii) The employment floorspace would be equal or greater than that of the residential living space.
14. The proposal would facilitate working and living in the same site as the proposed accommodation. Part A) of NP Policy LE1 is aimed at achieving that. This is however subject to 5 criteria and of those, the Council considers the

only one not complied with is requirement ii). That states that it is necessary to demonstrate that employment floorspace would be equal or greater than that of the residential living space. There is no dispute by the appellant that the employment floorspace would be significantly less than the proposed living accommodation. The appellant considers that the wider floorspace within the nursery holding should be considered. The proposal does not comply with entirely with the policy, but I do take into account that the aim of the policy to facilitate living and working within the same site would be achieved. The approval of a live-work unit by the Council at Turberry Farm which is also within Dunkeswell Parish is similar in some ways to the appeal proposal. This scheme included a much larger building but also a much larger working area. It was agreed at the hearing that the main significance of that decision is that a position on the Dunkeswell industrial estate is not essential and I agree given that Policy LE1 only refers to that being a preferable requirement.

15. There are also however other relevant policies within the development plan as a whole that I also need to consider and which were discussed at the hearing. Although not mentioned within the Council's reasons for refusal, LP Policy D8 was discussed and had been referred to within the submissions. This policy relates to the re-use of buildings outside of settlements as in this case. It was agreed by the Council that many of the criteria for residential conversion would be complied with. I consider that by reason of the improvements to the appearance of the building and also the removal of outworn polytunnels, the proposal would enhance the building and its setting as required by this policy. However, the policy requires that such development is close to a range of accessible services and facilities to meet the everyday needs of residents. The site is accessed from a long, straight section of a busy main road which has no footpaths alongside it. There are no everyday services within what I consider would be a safe walking distance and reaching the nearest facilities within the village of Dunkeswell without the use of a vehicle would require a challenging cycle ride or an even more challenging walk even to get to the nearest bus stop. This in my view is a remote, isolated location which is not easily accessible to the services needed to live here as required by LP Policy D8. In such locations, the Framework at paragraph 79 states that planning policies and decisions should avoid isolated homes unless a number of circumstances apply.
16. LP Policy H4 is concerned with dwellings related to rural businesses and it is clearly relevant to this case given the location of the site. This policy allows for dwellings for people employed in the rural businesses subject to a number of criteria which are similar circumstances as those allowed for within paragraph 79 (a) of the Framework.
17. First of all, this policy requires the proving of an essential need for the occupier of the proposed dwelling to be housed permanently on the unit or the specific rural location for functional reasons. Evidence about the ongoing business activity is very limited. The appellant explained the nature of the business to me at the hearing and it clearly supports several employees and enables the payment of wages and other costs whilst still being profitable. It has been established for far more than the 3 years required by LP Policy H4. The nursery grows plants for sale including to the building trade for landscaping schemes. Part of the business is also related to the events industry, growing specimen plants for displays. Two of the employees are involved in the events

side of the business and the others, including the appellant herself, are involved in the nursery side of things.

18. The need for 1 dwelling here was substantiated at the time of the planning application submitted in 2008. That has been constructed (the 'existing dwelling'). It cannot be assumed that the functional needs of the business are as they were at that time, which is a significant length of time ago. Little evidence was produced within the supporting Design and Access Statement or within the appeal statement to address this. The Council did not have an opportunity to take account of the business needs when making their decision. The appellant stated that this was due to her reliance mainly upon NP Policy LE1 but that is only one policy within the development plan.
19. LP Policy H4 also requires an assessment of whether there are buildings suitable for conversion to meet the residential need but does not provide criteria for assessing what happens if, such as in this case, there are such buildings. I have only been made aware that of LP Policy D8 which I consider above in relation to this.
20. Of significance in this case, Policy H4 also requires an analysis of whether existing dwellings are "available now or likely to be available within a nearby location." The existing dwelling was previously approved and constructed on the basis of the needs of the nursery business. That existing dwelling is located close to the entrance to the site but has since been separated from the nursery due to a change of personal circumstances of the appellant. This led to the appellant occupying the mobile home which is the subject of the enforcement notice being considered in Appeal B). The existing dwelling is currently not available and has been transferred to different ownership. Although this was not through a "sale" of the property, which LP H4 requires consideration of, the transferring of that property which was only being finalised in March of this year. These personal circumstances and have very limited weight in my decision.
21. Furthermore, within the appellant's ownership is the lawful mobile home. Whilst that is rented out on an annual tenancy basis and is in a different but adjoining planning unit, it provides living accommodation nearby which is reasonable to be taken into account in the assessment of Policy H4. If the appellant were to occupy that lawful mobile-home it would result in a loss of income and cause some difficulties for the current tenant. The written submissions and discussion at the hearing did not analyse the significance of those factors to the business.
22. The proposal has not been put forward as a replacement for the residential use of the site containing the lawful mobile home. It was agreed at the hearing that there was no mechanism such as through planning conditions, that would be reasonable to impose through this appeal which could achieve that. The application and this appeal have not been publicised on that basis. That mobile home is also in a less central position than the unlawful mobile home but again, little consideration appears to have been given to constructive alternative proposals involving the replacement of that residential use.
23. It was agreed at the hearing that the policies referred to me are consistent with the Framework and I agree with that assessment. NP Policy LE1 would not be entirely complied with but I am mindful that its aims would be achieved. An important consideration however in the overall decision is the existing

residential accommodation close to the appeal site. Some of this accommodation is either currently in the appellant's control or was until recently and that must be of significant weight in my decision. The overall aim of the relevant policies within the development plan is not to enable the gradual growth of a cluster of residential properties in a location that is isolated from main settlements.

24. In relation to the main issue, I therefore consider that this is not an appropriate location for the proposed residential accommodation. The proposal does not comply with NP Policy LE1 or LP Policies D8 and H4 or therefore the development plan as a whole. This does not comply with the advice of the Framework to avoid the development of isolated homes in the countryside.

Other matters

25. I have taken into account further cases that have been drawn to my attention by the appellant. The cases in the Teignbridge District Council and the Carlisle City Council areas show that live-work units may be accepted in relation horticultural enterprises and that is not disputed. I do not question the justification in those cases although I have very limited information and they are not within areas subject to the development plan that applies in this case. I also need to consider this case on the basis of the merits as I see them including the evidence presented.
26. There would be a visual enhancement of the site although that would have very limited effect when seen from outside of the site. I agree however with the consensus of the parties at the hearing that the proposal would conserve the landscape and scenic beauty of the Area of Outstanding Natural Beauty.
27. These factors do not however outweigh my consideration of the main issue.

Appeal A) Conclusion

28. For the reasons given above and having considered all other matters raised, I conclude that Appeal A) should be dismissed.

Appeal B) on ground (g)

29. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The notice currently allows 9 months for compliance.
30. The appellant's main concern regarding the ability to comply with the enforcement notice relates to the consequences of Appeal A) being allowed and the time it would take to complete the development. Given my decision in Appeal A), that is now an academic point.
31. The appellant will need to find alternative accommodation for her, her son and also some of the livestock would need to be taken off site. I can understand that finding alternative accommodation can be very difficult particularly in close enough proximity to the site which is remote from the nearest settlement.
32. One option for alternative accommodation would be the existing lawful mobile home site within her ownership. That is occupied with the tenant having a 12 month tenancy.

33. I am mindful that these difficulties are during the Covid-19 pandemic which makes them even more difficult to resolve than in more normal times. I have not had to consider the planning merits of the development addressed by the notice however the harm alleged relates to matters of planning policy. There are no suggestions by the Council that the harm relates to impacts upon nearby residents or significant impacts upon the local environment.
34. The Council does have powers to extend the compliance period at any time. However, I consider that in present circumstances due to the public health crisis and given the nature of the harm caused, it would strike a reasonable and proportionate balance to extend the period for compliance to 12 months. Making this decision now will give the appellant at least some certainty about their accommodation and will provide a longer period to find alternative arrangements during challenging times.
35. The appeal on ground (g) therefore succeeds.

Appeal B) Conclusion

36. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

A Harwood

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Kim Walker Dip TPS, MRTPI	Planning Consultant
Donna Gant (nee Delamain)	The appellant

FOR THE LOCAL PLANNING AUTHORITY:

Nigel Barrett	Senior Planning officer
Jacqueline Webster	Planning Enforcement Officer

DOCUMENTS

- 1 Additional policies from the East Devon Local Plan 2013-2031, adopted 28 January 2016 (Strategy 28, Strategy 46 and Policy D8)
- 2 Documents and Council decision for 19/0671/RES, Turbery Farm
- 3 Plan agreed by both main parties showing areas within the site



Plan

This is the plan referred to in my decision dated: 20 October 2020

by Andy Harwood CMS MSc MRTPI

Land at: Hill View Nursery, Dunkeswell, Honiton, Devon EX14 4SZ

Reference: APP/U1105/C/20/3249072

Refer to scale bar (1:1250 is the original base scale)

