



Appeal Decision

Hearing Held on 8 February 2021

Site visit made on 11 February 2021

by P N Jarratt BA DipTP MRTPI

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

Decision date: 2 March 2021

Appeal Ref: APP/W3330/C/20/3249313

Lawsons Burgess, Shurton Lane, Stogursey, Somerset, TA5 1QL

- 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 appeal is made by Mr Terry Buller against an enforcement notice issued by Somerset West and Taunton Council.
- The enforcement notice was issued on 11 February 2020.
- The breach of planning control as alleged in the notice is the use of the land for the siting of a mobile home together with the porch and decking and its use as permanent residential accommodation.
- The requirements of the notice are:
 - 1 Permanently cease the use of the land for the stationing of a residential mobile home.
 - 2 Remove the mobile home from the land.
 - 3 Remove the porch and decking attached to the mobile home and remove all materials formerly comprising the porch and decking from the land.
 - 4 Remove all domestic items and paraphernalia from the land.
- The period for compliance with the requirements is 9 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land at Lawsons Burgess, Shurton Lane, Stogursey, Somerset, TA5 1QL, as shown on the plan attached to the notice, for the siting of a mobile home together with the porch and decking and its use as temporary residential accommodation subject to the following conditions:
 - i) The siting and occupation of the mobile home dwelling hereby permitted is limited to a period of three years from the date of this permission. After a period of three years from the date of this permission the mobile home, porch and decking and all domestic paraphernalia associated with the mobile home shall be removed from the site.
 - ii) The occupation of the temporary dwelling shall be limited to a person solely or mainly working at the Quantock Steamers business at Lawsons Burgage, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.

Procedural Matters

2. In view of Covid restrictions, a virtual hearing was held.
3. For the purposes of the ground (a) appeal the appellant has requested that permission be granted for a limited period of three years for the unauthorised development to provide time for more permanent live/work arrangements to be achieved which would replace the temporary mobile home. I have therefore considered the appeal on this basis.
4. An application for an award of costs was made by the appellant against the Council. This is the subject of a separate decision.

The site and relevant planning history

5. The site is located in open countryside just to the north of the village of Stogursey, identified as a Primary Village in Policy SC1(2) of the West Somerset Local Plan to 2032. Sturton Lane runs along the east side of the site.
6. A mobile home of 12.7 x 6.5m is situated to the south of a former agricultural building currently used for the manufacture of sweet and savoury steamed puddings. The mobile home is occupied by the appellant and his family who sold their home in Stogursey and invested their funds in relocating and expanding their business, Quantock Steamers, on the appeal site. The former agricultural building is used for general and vehicle storage and as kitchens for the steam pudding preparation process, including toilets and washing facilities. Products are retailed at weekend events from a trailer.
7. The planning history of the site includes permission for the agricultural building in 2008; permission for storage of agricultural vehicles and repair and use as automotive workshop in 2012; refusal of prior approval application for conversion of light industrial building to dwelling in 2018; resubmission and refusal of the same in 2018 and appeal dismissed (APP/H3320/W/3217536); retrospective application for siting of mobile home for manager's residential use refused 2019 and resubmission of the same in 2019 (Ref 3/32/19/034).
8. Following the most recent refusal and the appointment of the current agent a detailed business and planning appraisal was prepared which was intended to accompany a revised planning application. These were discussed prior to submission with the planning officer in January 2020 but the enforcement notice dated 11 February 2020 was issued.

The appeal on ground (e)

9. An appeal on this ground is that the notice was not properly served. The appellant states that although the notice is dated 11 February 2020, it was not found in the box at the entrance of the premises until 17 March. This is confirmed in a statutory declaration by Mrs Buller dated 12 November 2020. She adds that the notice indicated that a copy was served on the appellant at his former house in Cannington although this was sold in 2011. Mrs Buller says it was distressing that the notice was received whilst the planning consultant was engaged in pre-application discussions with the planning officer and by the Council refusing to withdraw the notice or hold it in abeyance, thereby leaving little time to respond to the appeal.

10. The Council chose not to serve a Planning Contravention Notice as they considered that the breach and the site location were clear. The Council referred to Land Registry records which indicated that Mr Terry Buller at 6 East Street, Cannington was the registered freeholder of the appeal site. The Council state that the notice was posted through the letter box at this address and at the appeal site on 11 February 2020 by two officers of the Council.
11. It is evident that the appellant did not receive a copy of the notice until 17 March and I note that the appellant states that the Land Registry records that the Cannington house was sold in 2011. The Council has not provided any officer notes or photographs confirming that a copy of the notice was duly posted at the appeal site on 11 February.
12. On the basis of the evidence before me, the notice was not served effectively in that there was a delay before its receipt by the appellant. In reaching this conclusion I attach considerable weight to Mrs Buller's statutory declaration. However, in order for the appeal on this ground to be successful it is necessary to show that a person with an interest in the land has been 'substantially prejudiced'. The appellant confirmed at the hearing that although being distressed by the delay in receiving the notice, this was not 'substantial prejudice' in the context of a ground (e) appeal. It was further confirmed that there were no other persons with an interest in the land upon whom the notice should have been served.
13. Consequently, although the appellant may have been distressed by the notice not being served in the manner it should have been, the fact that a valid appeal has been made leads me to conclude that there has not been substantial prejudice and the appeal on ground (e) therefore fails.

The appeal on ground (a)

14. An appeal on this ground is that planning permission should be granted for what is alleged in the notice.
15. The reasons for refusal of the 2017 and 2019 applications and the reasons for issuing the enforcement notice refer to conflict with Policies OC1, SC1, EC1 and EC6 of the West Somerset Local Plan to 2032 and also to the National Planning Policy Framework (the Framework) at paragraphs 78 and 79. The Council consider that the development represents unsustainable development in the open countryside where the location of the mobile home is not well related to the services and facilities of the settlement.
16. The Framework at paragraph 79 seeks to avoid isolated homes in the countryside except where particular circumstances apply including where there is an essential need for a rural worker to live permanently at or near their place of work; or where the development would re-use redundant or disused buildings and enhance its immediate setting.
17. Policy OC1 reflects national policy and seeks to restrict development outside existing settlements except in exceptional circumstances. The policy permits development in five categories including where 'such a location is essential for a rural worker engaged in eg: agricultural, forestry, horticulture, equestrian or hunting employment'. This is a list of examples of rural worker employment types and the policy does not indicate that this is an exclusive list, only examples of work engagement, similar to the approach of the Framework.

Policy OC1 also permits development through the conversion of existing, traditionally constructed buildings in association with employment or tourism purposes as part of a work/live development, although the former agricultural building on site is not of traditional construction. The policy requires applications for dwellings to be subject to a functional and economic test and consideration being given to a permission being granted initially on a temporary basis.

18. In terms of the functional test, the appellant states that it is necessary to have a person to manage the steaming process overnight and Mrs Buller confirmed that there could be 5 or 6 production cycles per day in a 72 pot steamer and requiring overnight attendance in two and a half hour sessions on average three times per week. Whilst an overnight shift by a person appears to be required as part of the production process it does not follow that such a person needs to live on the premises. Additionally, the situation in pudding production is very different to that pertaining to emergencies that could arise, for example, where the welfare of livestock is affected. The potential for losses through power cuts or the security of the premises are not adequate justifications for a dwelling on site. I also note that the Bulls sold their house in Stogursey to invest in their business and there is no evidence to indicate that there are no other suitable dwellings in the locality that could accommodate the appellant.
19. The submitted business appraisal and financial information indicate that the business has expanded since it was established in 2017 and to 2019, and has won a supply contract with 'Somerset Larder' with a total manufacturing capacity requirement to 1400 puddings per week which would lead to production at 12-15 hours per day for up to 5 days. The submitted accounts do not show any profits except for the half year to September 2019, largely due to the investment costs associated with the modernisation of the premises, the cost of equipment and other one-off costs. The effect of Covid-19 and the lockdown has significantly affected the business with the main points of sale through country fairs and shows not taking place. Notwithstanding this, the business appears to have been planned on a sound financial basis which under normal circumstances indicates that there would be a reasonable expectation of potential future financial viability. It is accepted that the appellant has requested that a temporary permission be granted for the mobile home and this would normally allow a period of time to review the financial aspects of the business.
20. Policy SC1 identifies the hierarchy of settlements where development will be acceptable. It also permits development in close proximity (within 50 metres) of the contiguous built-up boundary of certain settlements (including Stogursey which is identified as a primary village) subject a number of safeguards. These safeguards require development to be well-related to existing essential services and social facilities within the settlement which should have safe and easy pedestrian access. The Council indicate that the site is some 230m from Stogursey although the appellant refers to the entrance to the appeal site from the lane being 143m. The lane is narrow and does not have any lighting, like most other country lanes in Somerset, but I do not consider the distance from the services in the village to be at an unreasonable walking distance. Nevertheless the location of the appeal site is in conflict with Policy SC1.

21. Policy EC6 supports new build or conversion of existing buildings to work/live developments. Whilst this does not apply to the stationing of a mobile home, it would be relevant in the context of the appellant's request for a three year temporary permission and his intentions for the conversion of the former agricultural building. The policy is subject to the employment and residential elements being integrated; there being no adverse impact on employment elsewhere; and there being no significant traffic impact. New build will only be allowed where an open countryside location is essential to the business and cannot be provided elsewhere. However, as no new build is involved, an essential need does not have to be demonstrated.
22. The purpose of the policy is to encourage the development of viable work/live accommodation that remains in the long term and the wording of the policy is quite clear. I note however that the policy justification indicates that work/live accommodation should, wherever possible, be sited within or adjacent to existing settlements, which is not the case here, but non-compliant locations are not necessarily rejected by the policy, otherwise the wording of the policy would have specifically stated that to be the case. Additionally, although there are no proposals for a conversion scheme before me, Mr Lawrey at the hearing considered that a work/live unit should look like a house with a ground floor work use. However, the policy does not specify the form that a work/live unit should take.
23. Although policy EC6 is not relevant to the development alleged in the notice, as there are no adverse impacts on employment elsewhere, or traffic implications arising, the principle of the conversion of the former agricultural building to a work/live unit is not expressly excluded by the policy wording.

Fallback Position

24. A fallback position is an important material consideration¹ on the merits of any deemed planning application of which there must be a realistic and not merely theoretical prospect. The appellant must show that a different use is likely to be carried out on the balance of probability and there are no insuperable practical drawbacks to its implementation. The question is whether the fallback would take place and be less desirable than that for which permission is sought.
25. It is contended by the appellant that although the prior approval route for the conversion of part of the former agricultural building is not available, there is a very realistic prospect that planning permission can be obtained for the Buller's original intention to create a manager's dwelling in part of the existing building. Whilst this is a possibility, it is nevertheless speculation until such time as the Council has such an application before them to determine.
26. A second fallback position is also considered to be possible. Should the business fail and the building become redundant then the whole building could be converted to a dwelling in accordance with paragraph 97 of the Framework. This indicates that one of the exceptions to the development of isolated homes in the countryside is where it would involve the re-use of redundant or disused buildings and enhance its immediate setting.

¹ *Mansell v Tonbridge & Malling BC* [2017] EWCA Civ 1314

27. The effort by the appellant to seek prior approval for a partial conversion of the former agricultural building and the subsequent attempt to negotiate an acceptable solution with the Council indicates a serious intention to achieve lawful residency on the site. However, the Council disputes that there is any fallback position as no planning permission exists for residential accommodation on the appeal site and any proposal for a dwelling would be contrary to policy on sustainability grounds. I agree with this assessment inasmuch as the prospect of planning permission is only theoretical as partial or complete conversion of the building cannot lawfully take place without such a permission. Whether it would be the case that sustainability considerations outweigh the conformity of future conversion proposals when assessed against Policy EC6 would be a matter for the Council to determine in the event such an application for the conversion of the building is made.
28. Whilst I accept that it is more than probable that the appellant would pursue one of these options, neither course of action would cause more planning harm than the continuation of the siting of the mobile home for residential purposes, which is the subject of the allegation. I therefore attach limited weight to the appellant's claimed fallback position.

The Planning Balance

29. The appellant is seeking only a temporary permission for the mobile home pending the preparation and submission of an application for the conversion of the building to a work/live unit, which he considers will take some 18 months to prepare and submit. Whether such an application would be successful will be for the Council to determine at the appropriate time.
30. The existing siting of the mobile home is contrary to Policies OC1 and SC1 of the Local Plan. Although the term 'rural worker' in paragraph 79 of the Framework and in Policy OC1 is not defined, it is unlikely for it be interpreted so broadly so as to incorporate the occupation of the appellant. Nevertheless, the business is a small manufacturing business that has employed part-time workers and which makes a contribution to the local economy. There is no essential need for a person to reside permanently on the site and the longer term financial viability of the business has yet to be demonstrated, partly due to the Covid-19 pandemic.
31. The appellant fears for the future of the business if it cannot be supported on site by accommodation and whilst there are no proposals before me for the conversion of the former agricultural building, it appears that in principle a work/live conversion of that building is not expressly excluded by Policy EC6, although this would be for the Council to determine taking into account all relevant policies and other material considerations.
32. On balance, there is a case for the granting of a three year temporary planning permission for the use of the land for the stationing of the mobile home to enable the appellant to progress with and submit a planning application for the conversion of the former agricultural building to work/live premises. The appellant considers that it would take about 18 months or so for approval to be obtained for conversion and occupation of a work/live development. A three year permission should therefore be more than adequate to achieve this, or in the event that no permission is forthcoming, for alternative off-site accommodation arrangements to be made. In order for progress to be achieved, I therefore intend to grant planning permission subject to conditions

restricting permission to be for a period of three years and to an occupancy condition.

33. The Council's proposed condition regarding foul and surface water details is unnecessary as the premises are connected to a digester system serving the mobile home and the building for foul drainage, with surface water running to a soakaway. The appellant advises that these arrangements have been approved by Building Control.

34. The appeal on this ground succeeds.

Conclusions

35. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (g) does not therefore need to be considered.

P N Jarratt

Inspector

APPEARANCES

FOR THE APPELLANT:

Clive Miller MBA BA(Hons) DipTP	Director, Clive Miller Planning Ltd
Helen Lazenby BSc (Hons) Dip TP MRTPI	Director, Clive Miller Planning Ltd
Mike Warren BIACS FEDI	Director, Mike Warren Consultancy
Mrs Anne Buller	Appellant's wife

FOR THE LOCAL PLANNING AUTHORITY:

Alex Lawrey BA (Hons) MCD L- RTPI	Specialist (Planning) Communications
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INTERESTED PERSONS:

None