The Planning Inspectorate

Appeal Decision

Site visit made on 18 January 2022

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07th February 2022

Appeal Ref: APP/U1105/C/21/3282796
Land at Woodcroft Copse, Weston Lane, Awliscombe, Devon, EX14 3NY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Steven Goldring against an enforcement notice issued by East Devon District Council (the 'Notice').
- The notice, numbered 18/F0437, was issued on 9 August 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a single storey timber storage building of 6 metres by 4 metres with dual pitched roof of ridge height 3.73 metres, in the approximate position marked with a blue rectangle on the attached plan.
- The requirements of the notice are: 1 Permanently remove from the Land the timber storage shed; and 2, Permanently remove from the Land all material associated with compliance with step 1.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. 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.

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 1990 Act, as amended, for the development already carried out: namely, the erection of a single storey timber storage building at Land at Woodcroft Copse, Weston Lane, Awliscombe, Devon, EX14 3NY as shown on the plan attached to the notice and subject to the following conditions:

   (1) The erection of the timber storage shed hereby permitted shall be removed and all materials resulting from the demolition shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:

   i) Within 2 months of the date of this decision a scheme for the external finishes to be applied to the timber storage shed shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

   ii) If within 5 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

   iii) If an appeal is made in pursuance of ii) above, that appeal shall have

been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme for the external finishes to be applied to the timber storage shed specified in this condition, the approved external finishes shall thereafter be maintained.

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.

(2) The premises shall be used for agricultural purposes on the land shown in red on the Notice and for no other purpose (including any other purpose in Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Reasons

2. An appeal made under Ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

3. The main issues in this appeal are the effects that the timber shed has on: the character and appearance of the area; and biodiversity.

Character and Appearance

4. The land on which the shed has been erected lies at the northern end of Weston, a small linear settlement in the countryside that is close to the town of Honiton. It consists of a fairly narrow, yet quite long, copse that falls northwards from higher ground at the edge of the village down to the River Wolf, which forms its northern boundary. I have not been told whether Weston has a development boundary, and whether the shed lies within it. In my opinion, the site lies outside the settlement, albeit very close to it, and is therefore in the open countryside.

5. Vehicular access to the site is gained via a gate at the village end of the site, behind which is a parking area. The shed that is the subject of the Notice lies close to the parking area. The shed is incomplete, work seemingly having ceased following the Council's enforcement action. It has a timber frame, which has been clad in timber in part. However, large parts of the shed are unclad. In these areas, thick black plastic has been affixed that provides a waterproof outer.

6. The Notice states that insufficient justification has been brought forward to justify the erection of the building. It would seem that this is based on terms within Policy D7 of the East Devon Local Plan 2013-2031, adopted 28 January 2016 ('LP'). This relates to the erection of agricultural buildings. Given this, and that the terms of the condition proposed by the Council should the appeal be allowed, I deduce that the Council accepts that the land and building are in

agricultural use. LP Strategy 7 similarly requires justification for development in the countryside, in its aims to protect it from harmful development.

7. In assessing the use of the land and shed, I have taken note of the references to "unauthorised development" in the Delegated Report. However, as these are not defined in the Council's submissions, and the Notice refers to the shed alone, I have not given any weight to those references. This is not to say that there is no unauthorised development, just that none has been demonstrated.

8. Around the parking area and shed, close to the gate, I saw that a variety of materials were stored. This included rubbish that I was told was left on the site by previous owners, asphalt excavated from the site of the shed, and stone from works to a hedge on the site.

9. The shed is entered by a single door. At the time of my visit, for its most part it was being used for a mixture of storage of a variety of materials and tools. Close to the door I saw a cage that had some birds within it. These were in the building due to an outbreak of Avian Flu, during which they have to be kept apart from wild birds.

10. An informal path leads through the woods. Along its route are a variety of structures. These include a small touring caravan that I was told was used for purposes incidental to the land, an oil tank used to power a small generator in a small shed to power a pump taking water from the lower part of the site to the top, and a small polytunnel that was being used for growing plants. A bird house and feed bin lay within a chicken wire enclosure about half-way down the site. Below this, amongst other things, I saw fruit cages and 3 small ponds under construction.

11. The shed is used for storage purposes to serve these various activities. The shed is not large, and I found its size to be commensurate with this purpose. In the light of the evidence before me, I find that the justification required by LP Policy D7 and Strategy 7 exists.

12. The only public views of the shed come from Weston Lane, the road that runs north from Weston. At the gateway, this lane is roughly at the same level as the land on which the shed sits. However, by reason of corrugated metal that has been added to the gate from the Lane, the shed is little seen from here. Given its limited size, and that its gable end faces the gate, even were the corrugated metal to be removed the shed would not appear an incongruous feature.

13. The Lane falls away quite steeply as it runs along the site and is at a far lower level. Given this, and that the shed is on the opposite side of the land from the lane, only its uppermost part is seen from the lane. As one moves northwards on the lane, it is soon lost from sight entirely. It is not prominent in the landscape.

14. For the above reasoning, I find that there is justification for the shed and that it does not cause harm to the character and appearance of the area. Therefore, it accords with the terms of LP Policy D7 and Strategy 7 and the Government's National Planning Policy Framework.

Biodiversity

15. The Council's Delegated Report, save for details regarding Avian Flu in its statement submission, forms the sum of the Council's written arguments. This report states, in its conclusion, that the shed detracts from the land's biodiversity value, and this is repeated in the reasons for refusing the application and issuing the Notice. However, at no point does the report provide any reasoning to support this contention.

16. Amongst its terms, LP Strategy 47 requires developments to conserve biodiversity, maximise the opportunities for restoration, enhancement and connection of natural habitats, and incorporate beneficial biodiversity features. The Council's evidence does not point to any harm that has been caused to biodiversity as a result of the development. Given the very small scale of the development that has occurred, I find that the Appellant's incorporation of a bat box into the development is an adequate response to the latter strands of the strategy.

17. For the above reasons, I find that the development does not cause any harm to the area's biodiversity and that it provides adequate enhancement measures. Therefore, it accords with the terms of LP Strategy 47.

Other Matters

18. Whether the shed is suitable for the keeping of birds during the Avian Flu outbreak is a matter that is covered by other legislation. It is not, therefore, a matter that I should address.

Conditions

19. The tests for conditions are set out in paragraph 56 of the Framework. The Council proposed a condition restricting the use of the shed to agricultural activities. The Appellant raised no objection to this and I find that it meets the tests in the Framework.

20. As the shed was incomplete when I visited, it appeared that a condition was required to ensure that the shed's external finishes are appropriate to its rural location. Although not greatly visible from public vantage points, the plastic that forms the current, albeit temporary, finish is not appropriate.

21. In the light of this, I wrote to the parties suggesting a condition to address this. The reason for the condition is to ensure that the scheme of external finishes is submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively-worded condition to secure the approval and implementation of the scheme of external finishes before the development takes place.

22. The condition will ensure that the development can be enforced against if the scheme is not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

23. The Council had no objections in principle, but suggested some minor changes to the numbering. I have made these. The Appellant's reply suggested the use

of waney edged boarding to clad the walls and cedar shingles for the roof. A photograph was provided showing the former, but not the latter. Given that the Council might perhaps require details of the size of the shingles, and that the submission did not have a timetable for implementation, I will attach the condition.

Conclusion

24. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the erection of a single storey timber storage building of 6 metres by 4 metres with dual pitched roof of ridge height 3.73 metres as described in the notice.

R Curnow

INSPECTOR