



Appeal Decisions

Hearing Held on 19 April 2023

Site visit made on 22 February 2023

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2023

Appeal Refs: APP/P1133/C/22/3295998, 3295997 and 3295965 Land at Mistleigh Copse Cabin, Ashton Lane, Doddiscombsleigh, Devon EX6 7RF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Howson (3295998), Mrs Geraldine Howson (3295997) and Mr Michael Howson (3295965) against an enforcement notice issued by Teignbridge District Council.
 - The notice was issued on 17 February 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised construction of a dwelling house in the approximate position hatched blue on the attached plan.
 - The requirements of the notice are to:
 - a) Demolish the dwelling house shown in the approximate position hatched blue on the attached plan, and remove the resulting debris from the land, and
 - b) Remove from the land all the domestic paraphernalia associated with the unauthorised residential use.
 - The period for compliance with the requirements is: 12 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(f), (g) of the Town and Country Planning Act 1990 as amended.
 - In addition, appeal 3295998 is proceeding on the ground set out in section 174(2) (a) and an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. The appeals were originally being dealt with by way of the written representations procedure. However, following my site visit it was decided that the case required further discussion and that I needed to ask questions. As such, in line with the advice in Annexe K of the 'Procedural Guide: Planning appeals – England', the procedure was changed to a hearing.

The Enforcement Notice

3. The appellants explained within further statements submitted after the change of procedure that Mr M and Mrs G Howson had found alternative accommodation and that the appellants only require the retention of the building as a store and shelter for their agriculture and forestry use of the land. The terms of ground (a) is set out in s174(2)(a) and is on the basis that

planning permission ought to be granted “in respect of any breach of planning control which may be constituted by the matters stated in the notice.”

Similarly, the deemed planning application is defined by s177(5) and such an application is “in respect of the matters stated in the enforcement notice as constituting the breach of planning control”.

4. At the hearing the circumstances leading to the issuing of the notice were explained. This was in part due to my questions about whether the allegation was correctly made in order to consider whether the appeal on ground (a) and the deemed planning application could relate to the appellants’ changed circumstances. Furthermore, as well as my duty to ensure that the notice is in order, it also sets the context for the appeal on ground (f).
5. Mr J Howson explained that the building was constructed in sections at his property near Exeter and was brought onto site and assembled. He also said that construction on site commenced around March 2019 with the shell in place with windows installed around August 2019 after which it was used to store items. The building, following some further adaptations to install a bathroom, was occupied in March 2021 when Mr M and Mrs G Howson became homeless. The appellants confirm that the building has never been fully completed and its use whilst being constructed was utilised to store things related to its construction and the activities on site. The Council became aware of the building of what was referred to them as the construction of a dwellinghouse, in May 2020.
6. It would seem, and the Council does not dispute, that the original intended purpose of the building was related to the use of the land rather than for residential occupation. There was no convincing evidence that the building had been completed and used for those intended purposes before being altered to a dwellinghouse. The building looks like a dwellinghouse albeit a very modest one. The lack of any clear completion and clear use for another purposes prior to being residentially occupied indicates that, on a fact and degree basis, the building was adapted as a work in progress during construction rather than being completed and then converted. Therefore, the building appears to me to have been erected as a dwellinghouse. As such I consider that the allegation is correctly made and defines the terms of the ground (a) appeal and the deemed planning application.

The Appeal (ref 3295998) on Ground (a) and the deemed planning application

Main issues

7. It was agreed by the main parties that my proposed main issue relating to biodiversity within the Special Protection Area (SPA) and Special Area of Conservation (SAC) could potentially be overcome by payment of money to compensate for harmful effects in accordance with the agreed approach by the South-East Devon Habitat Regulations Partnership. The Council provided an additional document to explain this procedure. I return to this later in my decision but I do not consider that this subject matter warrants being a main issue, given the overall outcome of the appeal. Similarly, it was also agreed that a further reason for issuing the notice regarding surface water and foul drainage could be overcome by way of a planning condition, if I were minded to allow the appeal.

8. Taking account of this and the discussion at the hearing clarifying some other matters, the main issues are therefore:
- 1) The suitability of the location for the dwellinghouse taking account of any needs for the farming and forestry business; and
 - 2) The effect of the dwellinghouse upon biodiversity within and around the site; and
 - 3) The effect of the dwellinghouse along with the associated domestic activity on the character and appearance of the area.

Suitability of the location for the dwellinghouse

9. The appeal site is located in a rural area within a woodland setting. There are no other dwellings in the immediate setting of the building. The village of Doddiscombsleigh is a short drive north of the site. Policy S22 of the adopted Teignbridge Local Plan 2013-2033 (LP) explains that land outside of defined settlements is "open countryside" where, amongst other things, development will be strictly managed. Criteria for the limited acceptable uses in open countryside include affordable housing, replacement dwellings as well as dwellings for agricultural, forestry and other necessary rural workers. LP Policy S21 defines village settlements where some "limited development" will be acceptable. However, whilst the appeal site is not far by vehicle from one of those villages, that being Doddiscombsleigh, it is in my view distinctly detached from and not within it. The detachment is emphasised by the narrowness of the rural lane leading to the village which has no footpaths and is not conducive for walking to the pub and other facilities. As such, the appeal site is within the open countryside.
10. LP Policy WE9 however provides for the detail of how rural workers' dwellings will be considered. This states that such dwellings will be permitted in open countryside provided that: a) there is an essential functional need arising from the business for a full time worker to be housed on the site; b) the business unit is of sufficient size to require a full time employee, is economically viable and has clear prospects of remaining so; and c) there are no dwellings on the holding which could meet the need, and no such dwellings have been sold in the previous 3 years. This is reasonably consistent with the National Planning Policy Framework (the Framework).
11. The appellants own the land and also have use of 7 acres around 3 miles away on the outskirts of Idestone. That land is held on a licence which Mr M Howson assured me had a long notice period. Mr H and Mrs G Howson who formerly lived on the site in the building now live at Whitestone near Exeter.
12. The current agricultural enterprise on the land in combination with the other land, involves the keeping of 25 breeding ewes as well as a 'Highland' heifer with a calf which was born on the site. The sheep are brought onto the appeal site during the lambing season when there is the most need to live near to the flock to react to issues as they crop up. Mr M Howson is primarily engaged in these activities although further expansion has been severely hampered by his significant health problems. The site is also used to a large extent by Mr J Howson for forestry activities. Management of the woodland including coppicing is assisted by the keeping of a horse to haul timber. There are plans to develop these elements of the use and there may at times, during lambing

in particular, be a need for a continual presence. However, as the Council point out, seasonal temporary accommodation can satisfy such functional requirements during lambing, given the modest size of the flock. The forestry activities do not provide a particular need to live at the site and Mr J Howson undertakes that work, whilst living near Exeter where his main business is as a blacksmith. Although living at the site in the building will undoubtedly help the appellants expand their business activities, the evidence does not indicate that these are essential needs or needs that cannot be met by living more remotely such as they are now, with occasional seasonal occupancy.

13. There is no financial information relied upon to explain the trading record of the business. The appellants are very open about the lack of profits. There are no business plans to provide forecasts of future trading or aims although there are hopes to expand the forestry side of things. In particular, there are some plans to make products related to forestry such as fencing and possibly garden buildings. Such processes do not include essential needs that require occupation of the site and although travelling from the appellant's current address may be inefficient, such activities do not meet the requirements of LP Policy WE9.
14. On this basis, it has not been established that there is an essential functional need arising from the business for a full-time worker to be housed on the site, that the business unit is of sufficient size to require a full-time employee or that it is economically viable and has clear prospects of remaining so.
15. In relation to the first main issue, this is not a suitable location for the dwellinghouse taking account of any needs for the farming and forestry business. As such, for reasons stated above, the development as alleged does not comply with LP Policies S21, S22 or WE9.

Biodiversity within and around the site

16. Mrs Murdoch for the Council elaborated upon the Council's submission and explained that the site is within a landscape connectivity zone and sustenance zone for Greater Horseshoe bats. There are also various nesting and roosting sites within the area. The Council's main concern seems to be the lack of information to explain what the baseline ecological situation was before the development took place. Therefore it is difficult without further evidence to know whether such interests have been harmed or whether they can be enhanced.
17. Mrs Howson said that she had contacted Devon Wildlife about the case who had confirmed to her that the site is not on a flightpath although I was provided with no documentation about that. Mrs Jenking speaking in support of the appellants' case explained that she is an ecologist with experience of setting up nature reserves, amongst other related things, in a professional capacity. She said that the activities that were taking place on the site such as the coppicing, control of vegetation and protection of native wildflowers were all of benefit. Furthermore, she questioned the presence of Greater Horseshoe bats and suggested that Pipistrelles were more likely to be found here.
18. I am confident that the appellants have been and are intending to work further towards some sound biodiversity objectives including the management of the woodland, encouraging wildflowers and encouraging species diversity. However, for the purposes of assessing the planning merits of the

development, in order to attribute weight to the benefits it is necessary to know with some degree of reliability, what the baseline position was before the development took place. Control over artificial lighting which could be achieved through a planning condition may help to prevent some harmful impacts. Furthermore, as Mrs Jenking pointed out, some low-level lighting may even attract insects which in turn could help attract some other species. However, the appellants did not have an ecological appraisal carried out before commencing development and in the absence of that, no detailed expert evidence has been provided to give any reliable indication of what the baseline situation may have been. There has been no detailed survey carried out and provided assessing any likely effects or benefits.

19. The lack of such evidence submitted in support of the case means that the Council haven't had anything upon which their own ecologist could engage with. Consequently, in relation to this main issue, it is not possible to know with any certainty that impacts of the dwellinghouse upon biodiversity within and around the site have been harmful or whether such impacts could be mitigated. In the absence of being able to confidently know that the development has protected, enhanced and restored biodiversity within the area, LP Policy EN8 has not been complied with.

Effect on character and appearance

20. The dwellinghouse is located within a wooded area and is constructed of timber with a corrugated tin roof. It is a modest building with basic accommodation.
21. Mrs Murdoch for the Council described the area as being characterised by the steep sided wooded river valleys and that apart from settlements, it is mostly quiet, dark and tranquil. The site is typical of this general character being in a wooded valley in a dark and tranquil area. The Council accepts that the building itself is not harmful to the landscape character and appearance of the area as described to me. I agree that the modest cottage with a simple design appears nestled within the trees, a substantial distance from the nearest road leading to Doddiscombsleigh and is not at all imposing upon the rural scene. I heard that there are some isolated situations where the conversion of barns to residential use has started to erode the typical character outside of settlements, as have some new large scale buildings. However, there are reasons why these matters have not been in the control of the Council and generally, in spite of those other examples, this part of Devon retains its overall pleasant rural character.
22. However, the Council consider that the residential use of the building could lead over time to an erosion of the present character as is gradually happening elsewhere. This relates primarily to external impacts from residential activity such as washing lines, vehicles, ornamental planting, other paraphernalia and the potential for the creation of a residential plot around the house. The appellants explained how the site had previously been quarried and that when they took ownership, they had to clear a lot of rubbish from the land. Compared with that, some details of which are shown in submitted photographs, they have made visual improvements to the site.
23. I saw at my site visit how the land was being used jointly for domestic, farming and forestry purposes. The lack of an obvious residential-only garden means that it is difficult to distinguish the domestic activities and items from the broader uses. The residential use is also very modest with the dwelling only

capable of occupation by 1 or 2 people. Furthermore, those broader uses will inherently assist with woodland management and appropriate agricultural use of the area which would in many ways help to conserve and enhance the natural and cultural landscape character.

24. The occupation of the building would not over time lead to a suburban character and, given the discrete woodland position, does not have an intrusive impact upon the wooded valley setting. In relation to this main issue, the dwellinghouse along with the associated domestic activity does not cause a harmful impact upon the character and appearance of the area. For reasons set out above, this would comply with LP Policy EN2A.

Other matters

25. The appeal site is partly at least a former quarry and evidence has shown that there has been a great deal of detritus on it in the past which the appellants have systematically removed. This is to the appellants' credit and their active forestry and agricultural use of the land are appropriate here. These benefits have some limited weight in my decision.
26. It was agreed by the appellants, given the change of circumstances with Mr and Mrs Howson having found alternative accommodation, that there are no Human Rights issues that weigh in favour of the continued use of the building as a dwellinghouse.
27. At the hearing the Council explained more about the sensitivity of any residential development within 10km of the Exe estuary. It is agreed by the main parties that money was paid to compensate for the effects of the residential use upon biodiversity within the Exe Estuary SPA and SAC. That was undertaken at the time that the previous planning application was made. Given the overall outcome of this case, it is unnecessary for me to carry out an appropriate assessment of the significance of these effects or then go on to consider the mitigation measures. Had I needed to, I would have been concerned about whether an existing mechanism was in place to suitably secure the use of the money paid for the purposes it was paid for. However, I may have been able to delay my decision to allow for a planning obligation to be entered into.
28. There are therefore some benefits of the current activities that weigh in favour of the proposal and I have considered that the development is not harmful in relation to the third main issue. However, overall the benefits and lack of harm in other respects do not outweigh the harm in relation to the first and second main issues. For the reasons given above, I conclude that the development does not comply with the development plan as a whole and there are no other material considerations that outweigh that harm.
29. The appeal under ground (a) fails and the deemed planning application will be refused.

The Appeal on ground (f)

30. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice.
31. Within the preliminary matters, above, I have determined that the allegation as set out on the notice is correct. A dwelling house has been constructed and it

was confirmed at the hearing that the purpose of the notice, is that within s173(4)(a) of the Act, to remedy the breach of planning control. This ground of appeal therefore concerns whether the requirements of the notice go too far in attempting to achieve that purpose.

32. The appellants confirmed that they would be agreeable to the cessation of the residential use but would like to retain the building to assist with the work on the site. However, if I were to vary the requirements to enable that, the purpose of the notice would not be achieved and it has also been held that I cannot attack the substance of the notice in that way by changing its purpose. With respect to the planning merits discussion under ground (a), there was a degree of agreement by the Council representatives that a building on the site could be reasonable and may not have the effects that living within the current structure has had or would have if that use continued. However, another process would need to be gone through following this appeal in order to consider the appropriateness of retaining this building, or an alternative building, for non-residential purposes.

33. The appeal under ground (f) therefore fails.

The Appeal on ground (g)

34. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The notice requires compliance within 12 months after the notice takes effect. The appellants at the hearing agreed that 12 months would be sufficient although did not formally withdraw the ground of appeal.

35. Given that Mr M and Mrs G Howson have vacated the premises and have alternative accommodation, 12 months to comply is a generous period. It would also allow time for both main parties to discuss the options for a building on the site and to submit a planning application.

36. A period of 12 months provides a reasonable and proportionate balance between achieving compliance due to the harms caused by the use of the dwellinghouse whilst allowing for further discussions about alternative solutions to satisfy the need for a building on site for agriculture and forestry use.

37. The appeal on ground (g) fails.

Conclusion

38. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

Andy Harwood

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr J Howson	Appellant
Mrs G Howson	Appellant
Mr M Howson	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mrs H Murdoch	Senior Planning Officer
Mr Hobbs	Planning Enforcement Officer
Mrs M Spragg	Planning Support Officer

INTERESTED PARTIES

Mr L Beart-Albrecht

Mrs C Jenking

Miss E Regan

DOCUMENTS

- 1 LP Policy S21
- 2 Additional information about the South East Devon Habitat Regulations Executive committee