



Appeal Decisions

Site visit made on 1 August 2023

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2023

Appeal A Ref: APP/W1145/C/22/3309842

Land at Blackboards AKA Wolfs Meadows Farm, High Bickington, Umberleigh, Devon, EX37 9BE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Wolf Meadows Farm Limited against an enforcement notice issued by Torridge District Council.
- The notice, numbered E/21/0080/UMOB, was issued on 26 September 2022.
- The breach of planning control as alleged in the notice is without planning permission and within the last 10 years, the change of use of the land to a mixed use incorporating residential use comprising of the use of a Motor Home for human habitation identified on the Schedule attached to this notice as Appendix B.
- The requirement of the notice is to cease any residential use of the land and remove the motor home from the land identified in the schedule attached to the notice as Appendix B.
- The period for compliance with the requirement is one year.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) 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.

Appeal B Ref: APP/W1145/C/22/3309843

Land at Blackboards AKA Wolfs Meadows Farm, High Bickington, Umberleigh, Devon, EX37 9BE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Russell (Wolf Meadows Farm Limited) against an enforcement notice issued by Torridge District Council.
- The notice, numbered E/21/0080/UMOB, was issued on 26 September 2022.
- The breach of planning control as alleged in the notice is without planning permission and within the last 10 years, the change of use of the land to a mixed use incorporating residential use comprising of the use of a Motor Home for human habitation identified on the Schedule attached to this notice as Appendix B.
- The requirement of the notice is to cease any residential use of the land and remove the motor home from the land identified in the schedule attached to the notice as Appendix B.
- The period for compliance with the requirement is one year.
- The appeal is proceeding on the ground set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Decision

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

- i) The deletion of the allegation and its replacement with "The material change of use of agricultural land to a mixed use for agriculture and for the stationing of a mobile home for human habitation."
 - ii) The deletion of Appendix B attached to the notice.
 - iii) The deletion of the requirement of the notice and its replacement with "Cease the use of the land outlined in red on the attached plan for the stationing of a mobile home for residential purposes and remove from the land the mobile home."
 - iv) The deletion of the compliance period of one year and its replacement with 18 months.
2. Subject to the corrections and variations 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

3. At the site inspection it was evident that the motor home referred to in the allegation and sited to the northern part of the land had been removed. It had been replaced in December 2022 by a two bedroom mobile home situated in an elevated position towards the southern part of the land and which appears to be the same or similar location proposed for a mobile home in a planning application refused in August 2022 and referred to in the submitted Flood Risk Assessment (RAB Consultants 14/04/22 Version 1.0). As I have a duty to get the notice in order, I intend to correct the allegation to delete reference to the motor home and replace it with reference to the mobile home, together with other changes to the allegation and consequential changes to the requirement of the notice. As the notice refers to a change of use of land shown by a red line on the plan attached to the notice, the change in the location and type of residentially occupied unit does not materially affect the standing of the notice. I am satisfied that the corrections and variations will not cause injustice to the parties.
4. I therefore propose to correct and amend the notice as set out in the decision above.

The site and relevant planning history

5. The site is located in open countryside either side of the railway line which passes along an embankment and over two bridges linking both sides of the site. The River Taw curves around the eastern boundary of the site. Vehicular access is gained from the A377. The site is located in Flood Zones 2 and 3 and extends to about 11.8 ha of grassland and small areas of woodland.
6. To the west of the railway embankment is a track and numerous stored items including farm machinery, trailers, skips. Some 8 pigs were contained in an enclosure. To the east of the railway is a recently excavated large pond and three enclosures, one containing about 29 cattle, one was empty and the third was being prepared for no dig potato growing. A small chicken run contained about 17 hens. There are four glamping pods situated around the site together with two timber toilet huts and one camper's tent at the time of my visit.

7. In the southern part of the site and slightly elevated above the flood plain, is a mobile home with a double pitched roof and stove pipe, external domestic paraphernalia, a water container and septic tank. Timber structures are under construction, one of which is at an advanced stage and said to be for an office. There are a number of storage boxes, sheds and containers used for a variety of purposes including for the storage of frozen meat and for cultivating hydroponic plants. Two old agricultural buildings are located in proximity of the office under construction, one of which the appellants state will be used as a temporary calving building in the absence of a permanent agricultural building.
8. An application for the temporary change of use of land for the siting of a caravan to act as an agricultural worker's dwelling was refused in August 2022. (1/0408/2022/FUL). No appeal was made against the decision.
9. Application 1/0322/2022/AGR for an agricultural building for the housing of livestock was refused in May 2022. Application 1/0908/2022/AGR for the erection of agricultural building for storage of agricultural equipment, machinery and associated goods was refused in March 2023.
10. A response to a Planning Contravention Notice dated 20 February 2022 indicated that the motorhome had been in use on the site since February 2021 and that those residing on the land were John Russell-Murphy, Marcus Murphy and J'Mariah Russell.
11. The carrying out of operational or engineering development such as the creation of the pond, the erection of various structures on the site such as the office building, the toilet facilities for campers and the external domestic paraphernalia associated with the mobile home do not form part of the allegation as drafted, or as corrected.

The appeal on ground (a)

12. An appeal on this ground is that planning permission should be granted for what is alleged in the notice. The main issues are whether there is an essential functional need for a temporary resident worker; whether the occupants of the mobile home would be in danger at times of flood, and, whether the use of the existing access would be prejudicial to highway safety.

Essential need

13. Policy ST07 of the North Devon and Torridge Local Plan requires development in the countryside to be limited to what is needed to meet local economic and social needs, rural building re-use and development which is necessarily restricted to a countryside location. Policy DM28 regarding rural workers accommodation sets out the detailed requirements that need to be met and also indicates that where an enterprise is not well established, the provision of temporary accommodation will be considered for an initial period, normally for three years. The operational need for the temporary dwelling will have to be demonstrated and that the enterprise has been planned on a sound financial basis.
14. The appellants purchased the holding in January 2021 and have introduced a livestock enterprise comprising a suckler herd of pedigree Belted Galloway and Highland cattle along with pigs and poultry. The agriculture appraisal report by Reading Agricultural Consultants Ltd (dated November 2022) indicates that some 10.5ha of grassland and 7.68ha of agroforestry land located elsewhere

are available to the enterprise and that the appellants have entered 9.87ha of the appeal site into the DEFRA Sustainable Farming Incentive Agreement.

15. The appellant's appraisal concludes that there is an essential need for a temporary dwelling in view of the proposed increase in stock numbers over a three year period to a herd of 106 beasts. In order for the welfare of the stock not to be compromised a full-time worker needs to live on the unit. Additionally it is indicated that the developing enterprise will return a profit after three years sufficient to provide a notional charge for labour and return on capital invested. No other suitable residential accommodation has been identified.
16. The Council's appraisal, provided by LandSense, concludes that as the proposed level of stocking within the business plan is reliant on an agricultural building for which no permission exists, it cannot therefore be demonstrated that an essential need exists or that the business is sustainable. Accordingly the development does not accord with relevant policies.
17. It is evident that the expert advisors of the parties have reached different conclusions based on the business plan and the appraisal of an essential need for a resident worker for the enterprise. It is also apparent that the absence of an agricultural building is holding the enterprise back, albeit that the appellants have unsuccessfully attempted to resolve this. Although there is a stated intention to utilise a traditional agricultural building on the site, there is no evidence before me to suggest that this a realistic proposition in the near future. This indicates that the realisation of the business plan is ambitious in the circumstances.
18. On this basis it has not been demonstrated that an essential need exists for a temporary dwelling and that the stationing of a mobile home for human habitation fails to comply with Local Plan Policy DM28 or the Rural Workers SPD (January 2020).

Flood Risk

19. The appellants' statement of case refers to the motor home in its original location, referring to there being no Flood Zone 1 land suitable for the siting of a motorhome within 'site and sound' of the livestock. The statement is silent on the introduction of a mobile home on a different part of the site although the current location of the unauthorised mobile home appears to be that indicated in the refused application 1/0408/2022/FUL and also referred to in the appellants' submitted Flood Risk Assessment by RAB Consultants (14/04/22 Version 1.00).
20. This assessment concludes that the site is located in Flood Zone 2 and 3 according to the Environment Agency's flood map for planning. A simple 2D modelling exercise, proportionate to the scale of development, has been undertaken to assess the site-specific flood risk from the River Taw. No flooding is expected at the proposed location of the mobile home in a 1% Annual Exceedance Probability design flood event given the raised level of the site relative to the river and surrounding ground. The assessment states that risk to the mobile home will be managed by locating it on the upper level of the site, where the ground level is at least 1.2m above the design flood level. Risk to residents will be further managed by a flood warning and evacuation plan, with emphasis on early evacuation. Given the small-scale nature of the proposal and the remote rural setting, no impact on surface water runoff and

downstream receptors is expected. It is concluded that the proposed development is appropriate for the flood risk and is not expected to increase the flood risk elsewhere. The assessment recommends that the mobile home be set on the upper level of the site, on ground no lower than 27.85m AOD; the mobile home floor level be at least 300mm above local ground; residents must sign up for the Environment Agency's Flood Warning Service and a detailed Flood Warning and Evacuation plan produced, with early evacuation the priority.

21. The Environment Agency does not object to the mobile home with it being sited in Flood Zone 2 but indicate that flood risk should not be under-estimated. There is no safe access or egress to this site (which is in Flood Zone 3) during a flood event which would have a rapid onset with little warning or time for evacuation, particularly in the event of a flash flood.
22. I note the Council recognises its responsibility to undertake a sequential test of development in Flood Zones 2 and 3 in relation to flooding impacts, particularly in relation to access and egress from the site.
23. The appellants have not provided substantiated evidence which shows that the mobile home could not be located in Flood Zone 1.
24. The National Planning Policy Framework (the Framework) indicates that the aim of the sequential test to development is to steer development to areas with the lowest risk of flooding. Where it is not possible for development to be located in areas of lower risk, an exception test may need to be applied. Annex 3 of the Framework identifies caravans, mobile homes and park homes intended for permanent residential use to be in the 'highly vulnerable' category of development.
25. Paragraph 164 of the Framework indicates that for development to pass the exception test the development would provide wider sustainability benefits to the community that outweigh the flood risk; and the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere and, where possible, will reduce flood risk overall.
26. Although the appellants' FRA indicates that the site of the mobile home is not expected to flood in the design event, access to the site could see depths of up to 1.5m which is associated with a hazard rating of 'Danger for All'.¹ The proposed evacuation route would involve travelling across the flood plain and passing under the railway line before travelling upwards towards the A377. This does not indicate that such an escape route would be safe in the event of a severe flood.
27. The absence of a safe escape route indicates that the site of the mobile home is inappropriate and is contrary to Local Plan Policies ST03 and DM04 and to relevant paragraphs of the Framework.

Highway safety

28. The highway authority is concerned about increased trip generation from the site and objects to the development. Egress for traffic emerging from the site onto the A377 is on a stretch subject to the national speed limit which is sub-standard with very poor visibility to the south due to the acute angle that the

¹ Paragraph 4.2.1 of the Flood Risk Assessment

private access track meets the main road which is aggravated by foliage and the adjacent fence.

29. The appellants' submitted traffic statement by Jubb (Transport Consultants November 2022) indicates that prior to living on the site, some 12 vehicle trips per day took place compared to 4 trips per day since living on the site. The appellants also refer to other planning applications for temporary agricultural workers dwellings where access was found to be acceptable, despite poor visibility. However the site in this appeal has a junction onto a Class A road, which by its very nature, is likely to carry more traffic. Notwithstanding this I am satisfied that the number of trips per day is reduced as a result of an agricultural worker living on site and that there is unlikely to be any adverse impact on highway safety.
30. I conclude on this issue that the highway impacts are such that the development should not be refused on highway grounds on the basis set out in Paragraph 111 of the Framework.

Overall conclusions on the ground (c) issues

31. Although the appellants clearly wish to progress with their farming enterprise, the absence of an agricultural building is an impediment in respect of justification of an essential need for a temporary dwelling for an agricultural worker. The absence of a safe escape route in the event of flooding also weighs against the development. These factors are not outweighed by my findings on highway safety. Planning conditions would not overcome the practical problems such as to make the development acceptable, even for a temporary period. The appeal on ground (c) fails.

The appeals on ground (g)

32. The compliance period is one year but the appellants considers that a period of 18 months is necessary in order not to completely jeopardise the farming enterprise. It is claimed that without a residential management presence it would not be possible to keep all the livestock on the holding and it would take time to find an alternative site. To sell the animals would represent a loss of pedigree breeding stock which forms a fundamental part of their business plans.
33. I note that the Council have consistently applied 12 months on similar enforcement notices but would accept a variation to 18 months.
34. Having had regard to the nature of the holding and the farming enterprise, I am satisfied that a compliance period of 18 months would be reasonable. I shall vary the notice accordingly. The appeal on ground (g) succeeds.

Conclusion

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

P N Jarratt

INSPECTOR