



## 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: 1 September 2023**

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### **Appeal A Ref: APP/W1145/X/22/3305767**

**Great Potheridge House, Merton, Okehampton, EX20 3DN**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Encompass Training SW Ltd against the decision of Torridge District Council.
  - The application ref 1/0120/2022/CPE, dated 10 March 2022, was refused by notice dated 3 August 2022.
  - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
  - The use for which a certificate of lawful use or development is sought is for the siting of a mobile home as ancillary accommodation at Potheridge House, Merton, Devon.
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### **Appeal B Ref: APP/W1145/W/22/3305711**

**Great Potheridge House, Merton, Okehampton, EX20 3DN**

- 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 Encompass Training SW Ltd against the decision of Torridge District Council.
  - The application Ref 1/0764/2021/FUL, dated 28 June 2021, was refused by notice dated 5 August 2022.
  - The development proposed is retention of one mobile home for staff accommodation - temporary for 3 years.
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## **Decisions**

### **Appeal A**

1. The appeal is dismissed.

### **Appeal B**

2. The appeal is dismissed.

### **Applications for costs**

3. An application for costs was made by the Council against the appellants. This is the subject of a separate decision.

### **Preliminary Matters**

4. For the avoidance of doubt, in Appeal A, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under s195 of the Town and Country Planning Act 1990 as

amended, which relates to an application for an LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority. The onus of proof rests firmly with the appellants and the level of proof is on the balance of probabilities.

### **The site and relevant planning history**

5. The site is in open countryside and comprises a Grade I listed building known as Great Potheridge and a number of outbuildings to the east and a Grade II\* garden wall. The site is in use as a C2 educational and activity centre with the main house and some of the outbuildings providing accommodation for the capacity of 75 students.
6. Within the setting of the listed buildings to the rear are two mobile homes which provide temporary staff accommodation which have previously benefitted from a temporary 2 year planning permission that has now lapsed. An enforcement notice is in place in respect of the mobile homes which took effect on 4 October 2022. The allegation related to the unauthorised change of use of the land to a residential use by the siting and use of two mobile homes for human habitation marked as 1 and 2 on the plan attached to the notice. The requirement of the notice is to cease the use of the land and removal of the mobile homes within one year from when the notice took effect (4 October 2022). No appeal was made against the notice.
7. The mobile home identified as 2 on the notice is the subject of Appeal A and that identified as 1 is the subject of Appeal B.

### **Main Issues**

8. In appeal A, the main issue is whether the Council's decision to refuse to grant an LDC was well-founded.
9. In Appeal B, the main issues are, firstly the effects of the development on the settings of the Grade I and II\* listed buildings and secondly, whether a functional and essential need has been demonstrated for a resident full-time worker.

### **Appeal A**

10. Section 191(2) states that for the purposes of the Act, uses and operations are lawful at any time if:
  - (a) no enforcement action may then be taken in respect of them (whether they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason; and
  - (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
11. As the granting of a certificate would be in breach of the enforcement notice in force, the appeal must fail.
12. It is therefore unnecessary to consider the appellant's arguments relating to the definition of caravans, the quoted appeal decisions and case law.

## **Appeal B**

13. The application subject to appeal was originally for the siting of two mobile homes. Following discussions between the appellants and the Council and a recognition by the Council of the impact of the covid pandemic on the business, the application was amended to relate to one static caravan for staff accommodation. This was supported by the appellant's business plan and heritage statement.

### *Heritage assets*

14. There is a statutory duty at s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest that they possess.
15. In this case, the mobile home subject to this appeal adversely affects the settings of a Grade I listed building and the Grade II\* listed wall. Although there are a number of more recent agriculture related developments in proximity to the listed buildings which compromise the landscape setting of the heritage assets, the location of the mobile home and its uncompromisingly modern appearance causes harm to the setting of the house which otherwise makes a considerable contribution to Great Potheridge's significance. The views to and around the house are an important part of the setting. I note that Historic England in responding to the location of the mobile homes has strong concerns over the impact that they have on its setting and have recommended that alternative locations be negotiated to minimise or remove the harm caused.
16. The harm caused by the caravan is less than substantial in the context of paragraph 202 of the National Planning Policy Framework (the Framework) and this is acknowledged in the appellant's heritage statement. I agree that the harm is less than substantial but it is necessary to weigh up the harm against the public benefits of the development.
17. The appellant has stated that the accommodation is necessary for the continuation of the business and the application is for a temporary period of three years. Whilst the needs of the business carry some weight, they do not outweigh the harm to the setting of the listed building which continues for as long as the caravan remains in situ.
18. I therefore conclude on this issue that the development adversely affects the heritage assets in that the siting of a mobile home fails to preserve the setting of these assets, contrary to the Framework and to Policies in the North Devon and Torridge Local Plan.

### *Functional and Essential need*

19. The appellants point out that the Council considered that two mobile homes were justified when approving permission 1/1078/2010 in 2010 and that the centre has grown in the last 12 years, except for the pandemic period, thereby increasing the need for the two units. Due to safeguarding issues associated with children, the staff accommodation cannot be provided within the house. It is stated that the mobile home is a temporary arrangement prior to the conversion of one of the outbuildings to more permanent staff accommodation which is being explored with the landowner. The appellants' business plan

indicates that it has rebounded well after the pandemic with bookings in 2022 being at 70-80% pre-covid levels and the business is now focussing more on quality than numbers which has wide ranging benefits.

20. The Local Plan strictly controls development in the open countryside. Policy DM28 relates to rural workers dwellings and sets out a range of criteria that need to be met. The tests for assessing a functional need are elaborated in the Council's adopted Rural Workers' Dwellings SPD.
21. The Council does not consider that an essential operational need for a full-time worker to be resident at Great Potheridge has been demonstrated by the appellant and that the long-term viability of the business is not considered to be sustainable.
22. The appellant's submitted documents provide only limited information to demonstrate a primary reason to justify an essential need, concentrating on security of the students, which alone is insufficient to establish need. I note that the Council conclude that the mobile home is considered "to amount to ease, convenience and the preference of the business model and thus not constituting an essential need". The Council also doubt the longer term economic sustainability of the business in the light of the challenges from competitors, changes in Government schemes and workforce availability.
23. In general terms I share the Council's concerns but regard should be had to a number of factors. The mobile home subject to this appeal has been on site for many years so the planning harm caused is hardly new, albeit that it represents a continuing harm that the Council has been seeking to resolve in the interests of the business to the extent of encouraging an application for one mobile home supported with the necessary plans and statements. Notwithstanding this, the harm to the setting of the listed building and to established policies aimed at strictly controlling development in the countryside are on-going harms with no realistic prospect of being resolved in the short term. Whilst one of the purposes of a temporary permission is to provide time for confidence to increase in the sustainability of a business or for alternative accommodation to be provided, the likelihood of this does not appear to be great.
24. Whilst the appellants refer to exploring alternative accommodation arrangements, no details or costings of any emerging proposals for the conversion of the permanent buildings on site have been submitted with this appeal. This raises concern that the appellants are perhaps not pursuing such a course with sufficient vigour. Additionally Historic England's recommendation that the mobile home could be relocated to a less harmful position within the grounds does not appear to have been responded to by the appellant.
25. Additionally, there is insufficient information to demonstrate that there is no suitable accommodation within the general area which would overcome the need for a mobile home on the site, or that alternative security measures cannot be introduced that do not require an on-site residential presence.
26. In the light of these factors I conclude that the retention of a mobile home on site fails to accord with Policy DM28 of the Local Plan, the Rural Worker's Dwellings SPD and the Framework at paragraph 80 which seeks to avoid the development of isolated homes in the countryside.

27. The appeal on this ground fails.

### **Conclusions**

#### **Appeal A**

28. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the siting of a mobile home as ancillary accommodation at Potheridge House, Merton, Devon was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the 1990 Act as amended.

#### **Appeal B**

29. For the reasons given above I conclude that the appeal should be dismissed.

*P N Jarratt*

INSPECTOR