



Appeal Decision

Hearing held on 28 September 2023

Site visit made on 28 September 2023

by Colin Cresswell BSc (Hons), MA, MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th October 2023

Appeal Ref: APP/X1118/W/23/3319545

Land lying to the east of Kingsland Farm, Burrington, Umberleigh, EX37 9LU

- 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 Mr Jim Budden against the decision of North Devon District Council.
 - The application Ref 75015, dated 15 March 2022, was refused by notice dated 20 October 2022.
 - The development proposed is described as “retrospective siting of a caravan for a rural workers dwelling, 1 no. polytunnel, 1 no. shed, and 1 no. compost toilet”.
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Decision

1. The appeal is allowed and planning permission is granted for a development described as “retrospective siting of a caravan for a rural workers dwelling, 1 no. polytunnel, 1 no. shed, and 1 no. compost toilet” at land lying to the east of Kingsland Farm, Burrington, Umberleigh, EX37 9LU in accordance with the terms of the application, Ref 75015, dated 15 March 2022, subject to the conditions set out in the Schedule at the end of this Decision.

Background

2. The appeal concerns a small organic farming venture (Jim’s Organic Veg) which is situated in the open countryside on an independently managed part of Higher Hacknell Farm. Business activity is mainly focused on growing and selling vegetables, although eggs and poultry are also produced.
3. The site covers approximately 10 acres and is divided into two separate fields. The smaller field to the south contains 3 polytunnels and a storage shed. Retrospective planning permission is sought for one of the polytunnels as well as the shed. While these particular aspects of the proposal are acceptable to the Council, it objects to the static caravan and compost toilet which have been placed on the larger field to the north. The appellant has lived permanently in the static caravan since late 2020 and seeks a temporary planning permission to remain living on the site for a further 3 years.

Main Issues

4. The main issues in this case are:
 - whether there is an essential need for a rural worker to live permanently at the appeal site.

- the effect of the proposal on the character and appearance of the area.
- the effect of the proposal on the living conditions of surrounding occupiers, having particular regard to privacy.

Reasons

Whether an essential need

5. Policy DM28 of the Local Plan¹ supports rural worker's accommodation in the countryside provided that certain criteria are met. In this case, the main areas of contention between the parties are whether the business is capable of supporting a full-time worker, whether there is an essential need for that worker to live permanently on the site and whether the accommodation needs can be met elsewhere in locality. These matters formed the main basis for discussion at the Hearing.

Labour requirements

6. The Rural Worker's Dwellings SPD² says that standard man day calculations should be used to assess whether a rural enterprise generates the need for a full-time worker. This should be based on figures from the Nix Pocketbook³ or similar farm budgeting book. While I agree that a standardised approach to calculating labour requirements is preferable, my attention has been drawn to a statement within the Nix Pocketbook which says that it is *designed to reflect commercial scale agriculture and so will be of limited value to smallholder scale production operations*. Given that the enterprise in question is a small scale organic food producer, it seems to me that calculations of standard man days using the Nix Pocketbook (or similar) are unlikely to provide an accurate reflection of labour requirements in this particular case.
7. The Council refers to an Appeal Decision⁴ which dismissed a proposal for a rural workers' dwelling at East Worlington. In this case, the appellant's labour requirements were expressed in terms of standard man days which were calculated using the Nix Pocketbook. Although the Inspector determined the appeal on the basis of this information, it was acknowledged (in paragraph 15) that the Nix Pocketbook did not contain figures for the particular combination of species grown on the site. This highlights the fact that standard man day calculations can give a misleading picture of labour requirements on smallholdings with a wide diversity of produce.
8. The appellant has instead produced a schedule of hours worked on the site for various weeks during 2021. This follows the approach taken in paragraph 3.11 of the SPD which says *if budgeting books are not applicable, other estimates (e.g. from recorded hours) may be appropriate to use*. However, I am aware that self-produced records of this type are a more arbitrary way of measuring labour requirements than standard man days calculations. As such, it is difficult to confirm the accuracy of the work schedule that has been provided or make direct comparisons with other enterprises.
9. That said, Mr Budden and Mr Tollhurst explained the amount of hours that are needed to manage a small but intensively farmed site of this scale and I found

¹ North Devon And Torridge Local Plan 2011-2031 Adopted October 2018

² North Devon And Torridge Local Plan 2011-2031 Rural Workers' Dwellings SPD Adopted January 2020

³ Jon Nix Pocketbook for Farm Management.

⁴ Appeal Ref: APP/X1118/W/22/3309656.

their evidence to be convincing. Indeed, I saw for myself that there are a variety of crops being grown on the site at different stages of growth and it is quite clear that the work involved is substantial. Taken as a whole, the written and verbal evidence presented during the appeal corresponds with the work schedule provided, which show long days being worked from early spring to well into the autumn, with operations continuing during the winter months. Overall, I am in no doubt that the business generates the need for a full-time worker when hours are averaged out throughout the year.

Financial viability

10. The ability of the business to continue to support a full-time worker in the future is dependent on its financial viability. A business plan has been supplied which covers a 5-year period commencing in October 2020, when appellant started working full-time on the site. This forecasts a year-on year increase in production which begins in 2020/21 with 30 vegetable boxes a week being sold. Output is shown to increase in 2024/25 to 50 vegetable boxes with a flock of 60 hens providing eggs as well as meat.
11. Not everything has gone according to this forecast. For instance, it emerged at the Hearing that there are only 20 hens on the site at present, whereas the business plan shows 40 laying hens for 2022/3 (I was informed that this is due to issues surrounding the bird flu pandemic). Similarly, the business plan for the year shows a fourth polytunnel whereas there are only three. Although it was stated that this had only been delayed until the outcome of the current appeal is known, it is an indication that operations on the site are lagging behind what was originally forecast.
12. Despite these setbacks, the parties are in general agreement that the business is financially viable and is likely to remain that way in the future. While the business is running on relatively fine margins, I heard that it is becoming increasingly profitable each year and income is expected to approach the business plan projections by the end of 2024/25. For the reasons given above, it therefore seems to me that the business is viable and would be able to sustain a full-time worker for the foreseeable future.

Functional need to live on the site

13. Although I have found that the business can support a full-time worker, it does not necessarily mean that there needs to be a continual presence on the site at most times. The business is dominated by horticulture which, in my view, has a lower propensity to need around the clock attention than caring for livestock does. Indeed, most of the activities recorded in the appellant's work schedule are carried out in the daytime. Furthermore, it seems to me that with additional investment, there is an opportunity to automate some processes, including watering and temperature regulation. This has potential to reduce the amount of time that needs to be spent on site.
14. The amount of poultry on the site is very modest at present and I am not convinced that this element requires a round the clock presence all year round. There are clearly ways of securely fencing the birds to reduce the chances of a fox attack, or to prevent them from escaping and damaging crops. Further measures could potentially be taken to monitor the birds remotely with temperature gauges or a CCTV system.

15. On the other hand, I recognise that there are occasions when it may be necessary to spend extended hours on the site or respond quickly to nighttime incidents. This may include emergencies caused by ripped polytunnels, damaged netting, fox attacks or other unforeseen circumstances which may endanger produce. There are other times of year when caring for chicks or attending to delicate seedlings may involve staying on the site for long periods. Individually, none of these things justify an essential need to reside on the site but they become more significant when considered as a whole.
16. The Council has referred me to an Appeal Decision⁵ where it was stated that *the arable side of the business does not generate an essential need for a an essential worker to live at the site*. It is difficult to make comparisons as I do not know the full circumstances of this case. However, from the information provided, it would appear that the arable side of that business was mainly focused on barley and wheat production. This is different from the business in the current appeal, where intensive horticulture is used to grow a wide range of organic vegetables. It seems to me that this would require far more individual attention than commercial wheat or barley production would. Indeed, the appellant refers to a number of Appeal Decisions⁶ where rural workers dwellings have been justified due to the mix of activities that need to be carried out on smaller, more diversified horticultural holdings.
17. Whether the combination of different tasks carried out by Mr Budden are sufficient to justify an essential need to reside permanently on the site is a moot point and I am unable to reach a firm view on this matter. In practice, it is difficult to distinguish between the business operations which require round the clock attention from Mr Budden from those where it is merely more convenient for him to live on the site. However, something that is very clear from the evidence is that the business is still establishing itself. Although it is making a profit, it is running on fine margins and is lagging somewhat behind the projected growth forecast in the business plan.
18. If Mr Budden were to live away from the site, it would lead to additional time and expense being incurred which would only make running the business more onerous. This would not be helpful in the establishment and expansion of the enterprise and could potentially put finances under strain. I am also conscious that small scale damage to crops or polytunnels, as a result of unanticipated events when Mr Budden is absent, could have a disproportionately large impact on a smallholding of this size. In my view, the business is at a stage where it is relatively vulnerable. At this phase in its development, it seems to me that the business could be put at risk if Mr Budden were to live away from the site. In reaching this decision, I am mindful of Mr Tollhurst's comments which advocated support for young farmers. This corresponds with the wider objective of supporting the rural economy which is an overarching objective of the Local Plan and National Planning Framework.

Alternative accommodation

19. The Council has suggested that Mr Budden could live in his parent's house at Higher Hacknell Farm which is in very close proximity to the site. However, the letter from Mr Budden's parents dated March 2023 gives compelling reasons

⁵ Appeal Ref: APP/L3245/W/18/3203558

⁶ Appeal Ref: APP/K0805/C/07/2058055, APP/F1230/C/07/2055628, APP/D0840/W/15/3132813, APP/J9497/W/21/3272334

why this would not be a suitable option. At the Hearing, it was also suggested that Mr Budden could put his static caravan next to the farmhouse rather than on the appeal site. However, I do not consider this a viable alternative as the land and property is not under Mr Budden's control.

20. As the site is situated in the open countryside, there is not a great deal of housing nearby for sale or rent. Some available properties are identified in the appeal documentation, but this material was produced some time ago and is no longer up to date. Updates were provided at the Hearing but it was not evident that there were currently any affordable options to buy or rent in the immediate vicinity. Widening the search radius further away from the site increases the chances of finding suitable accommodation but would also require Mr Budden to drive some distance in order to manage the business.

Overall findings

21. The essential need for Mr Budden to live on the site arises from the need to fully establish the business. Policy DM28 of the Local Plan says that *where the enterprise does not meet the criteria set out to support the provision of a new permanent dwelling, the provision of temporary accommodation will be considered for an initial period of three years*. A temporary permission in this case would allow the business to become better established. It does not automatically follow that a permanent dwelling should be granted on the site after three years. If Mr Budden sought a permanent dwelling at that point, evidence of essential need would be tested against the relevant planning policies to determine if a permanent residence was warranted.
22. I therefore conclude on this issue that there is an essential need for a rural worker to live at the appeal site. For the reasons given above, there would be no conflict with Policy DM28 of the Local Plan or the provisions of the SPD. Nor would there be any conflict with Policy ST07 of the Local Plan which says that development in the open countryside will be limited to that which meets local economic and social needs.

Effect on character and appearance

23. The compost toilet and caravan are situated in a separate field away from the polytunnels and other structures on the site. Although this has the effect of spreading development over a wider area, both the toilet and caravan are relatively small and unobtrusive features. When viewed from the south, both structures are well screened behind a hedge which mainly hides them from view. While some parts of the caravan protrude above the hedge, it is not easily discernible from the road or any public vantage point.
24. The toilet and caravan are more conspicuous when seen from the other side of the hedge because they face an open field and are exposed within the wider landscape to the north. However, they are not prominent structures and are well separated from the nearest properties. From more distant vantage points, the toilet and caravan would be read as small features in an expansive landscape where they would not be easily distinguishable. While there was a small amount of domestic paraphernalia outside the caravan at the time of my visit, it was not very noticeable. The potential for this to spread further out into the field is limited by the surrounding vegetation and the modest size of the accommodation.

25. I therefore conclude on this issue that the proposal would have an acceptable effect on the character and appearance of the area. There would be no conflict with Policies DM04 and DM08A of the Local Plan which seek standards of design which are compatible with landscape character. There would also be no conflict with Policy ST01 which concerns sustainable development.

Effect on living conditions

26. The caravan is well distanced from Kingsland Farmhouse and the associated Kingsland Barn which, I understand, is used as a holiday let. When standing outside the caravan and looking towards these properties, it is not easy to see any facing windows or private amenity space. As such, the caravan maintains the privacy of these neighbouring dwellings. Due to the separation distance between the caravan and the nearest properties, the potential for harmful levels of noise or disturbance is minimal.
27. I therefore conclude on this issue that the proposal would have an acceptable effect on the living conditions of neighbouring occupiers. There would be no conflict with Policy DM01 of the Local Plan which seeks to maintain appropriate standards of amenity.

Conditions

28. In the interests of clarity, a standard condition requiring the development to be carried out in accordance with the plans has been imposed. To ensure compliance with Policy DM28 of the Local Plan, conditions have also been imposed to restrict the occupancy of the caravan to a rural worker and to require its removal after three years. Although the Council has suggested a condition to remove permitted development rights, I am not convinced this is necessary as the proposal is for the temporary siting of a static caravan and not a permanent building.
29. There is also a condition concerning landscaping, which is imposed to help promote nature conservation interests as well as protecting the appearance of the site. This condition is worded to ensure that details are submitted, approved and implemented. There is a timetable for compliance because permission is being granted retrospectively and it is not possible to use a negatively worded condition to secure the implementation of the landscaping before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.

Conclusion

30. For the reasons give above, the appeal is allowed.

C Cresswell

INSPECTOR

(Schedule of conditions attached)

APPEARANCES

FOR THE APPELLANT:

Mr Jim Budden

Dr Simon Ruston

Mr Bill Knight

Mr Iain Tollhurst

FOR THE LOCAL PLANNING AUTHORITY:

Mr Rodger Bagley

Mr Peter Rowan

DOCUMENTS SUBMITTED AT THE HEARING:

State of Nature Report 2023, State of Nature Partnership.

DOCUMENTS SUBMITTED AFTER THE HEARING:

Council's suggested conditions (by email).

Site plan.

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan JBL-SLP, Block Plan JB21-BLOCK Rev A, Tool Shed Elevations JB21-SHED Rev A, Compost Toilet Elevations JB21-TOILET Rev A, Polytunnel Elevations JB21-TUNNEL Rev A.
- 2) The occupation of the dwelling hereby approved shall be limited to a person solely or mainly working or last working in the locality in agriculture, or forestry or a widow or widower or such persons or to any resident dependents.
- 3) The dwelling shall remain on site for a limited period of three years from the date of this decision. When the premises cease to be occupied or at the end of three years, whichever shall first occur, the use hereby permitted shall cease and all materials and equipment brought onto the premises in connection with the use shall be removed.
- 4) Unless within 6 months of the date of this decision a scheme for the details of the species mix, type, location and construction details of the proposed hedgerow landscaping have been submitted to the Local Planning Authority for approval and unless the approved scheme is implemented within 6 months of the Local Planning Authority's approval, the occupation of the caravan shall cease until such time as a scheme is implemented.