



Appeal Decisions

Site visit made on 30 October 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th December 2023

Appeal References:

Appeal A - APP/U1105/C/23/3322437

Appeal B - APP/U1105/C/23/3322438

Appeal C - APP/U1105/C/23/3322439

**Land at North East of Clyst William Cross, Plymtree, Cullompton, EX15 2LG
(Land Registry Title No. DN136329)**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Tom Horridge against an enforcement notice issued by East Devon District Council ('the Notice').
 - Appeal B is made by Mrs Amy Horridge against an enforcement notice issued by East Devon District Council.
 - Appeal C is made by Mrs Helen Cutler against an enforcement notice issued by East Devon District Council.
 - The enforcement notice, numbered 21/F0248, was issued on 20 April 2023.
 - The breaches of planning control as alleged in the notice are Without planning permission and within the last 4 years, unauthorised operational development consisting of the siting of a shipping container for use as an agricultural machinery store together with a storage shed in the approximate positions shown edged blue on the attached Block Plan and the creation of an entrance onto the highway and hard standing in the approximate position shown hatched green on the attached Block Plan; and Without planning permission and within the last 10 years, the unauthorised material change of use of part of the Land to residential use by the stationing of a touring caravan for residential occupation together with a solar array and other domestic paraphernalia associated with the residential use from the Land in the approximate positions shown edged purple on the attached Block Plan.
 - The requirements of the notice are: (i) Permanently cease the residential use of the Land; (ii) Permanently remove the shipping container, storage shed, caravan, solar array, and other domestic paraphernalia associated with the residential use from the Land; (iii) Permanently block up the entrance and reinstate the Devon bank and hedgerow in the North West corner of the area shown hatched green on the attached Block Plan; and (iv) Permanently remove all materials and debris associated with compliance with steps (ii) and (iii) from the Land.
 - The period for compliance with the requirements is 6 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a) and (e) of the Town and Country Planning Act 1990 as amended ('the Act').
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Decision

1. It is directed that the enforcement notice is corrected by:

the substitution of the plan annexed to this decision for the Location Plan attached to the enforcement notice

Subject to the correction, the appeal is allowed insofar as it relates to the creation of an entrance onto the highway and planning permission for this is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended at Land at North East of Clyst William Cross, Plymtree, Cullompton, EX15 2LG.

The appeal is dismissed, and the enforcement notice is upheld as corrected insofar as it relates to operational development consisting of the siting of a shipping container for use as an agricultural machinery store together with a storage shed in the approximate positions shown edged blue on the attached Block Plan and hard standing in the approximate position shown hatched green on the attached Block Plan; and the material change of use of part of the Land to residential use by the stationing of a touring caravan for residential occupation together with a solar array and other domestic paraphernalia associated with the residential use in the approximate positions shown edged purple on the attached Block Plan on at Land at North East of Clyst William Cross, Plymtree, Cullompton, EX15 2LG, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

2. Both parties agreed that I could see the development from the public highway and that there was no need to enter the site. On this basis, I made an unaccompanied site visit and was able to make an appropriate assessment of the development from the road. My decision is made on this basis.

Ground (e) and the Notice

3. This ground of appeal is that copies of the Notice were not served correctly. This is a legal ground of appeal where the onus lies with the Appellant to make his case on the balance of probability.
4. Section 172(2) of the Act states that "A copy of an enforcement notice shall be served—(a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice". Section 329 of the Act sets out how any notice or other document required or authorised to be served under the Act may be served.
5. There were two plans attached to the Notice. The red line on the Location Plan originally attached to the Notice encloses the whole of a field on the east side of the minor road that runs north from the crossroads at Clyst William. The Block Plan that was also attached shows the approximate location of the caravan and various pieces of operational development referred to in the Notice.
6. The Appellants' case is that they only own the northernmost part of the field, as has been demonstrated in previous planning applications. As such, they say the Notice does not comply with s172 and the Notice is not valid.
7. Those whom the Council name as having been served with a copy of the Notice have all made appeals. I further note that copies of the Notice were served on 'The Owner/Occupier' of both the caravan and the Land. The evidence shows that the Notice was served in a manner that was consistent with the statutory provisions in sections 172 and 329 of the Act. The Appellants, who have not

- given details of anyone else who might have been served, have not demonstrated incorrect service and have not been prejudiced by the Council's actions.
8. However, as, amongst other things, the Notice alleges a material change of use of land, it is important that the correct planning unit is identified. Although not a Ground (e) matter, I shall deal with it here. The planning unit is a concept that has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change. Established case law has held that this is usually going to be the unit of occupation, unless a smaller area can be established. Physical and functional separation is key in assessing the extent of a planning unit.
 9. Case law suggests three broad categories: firstly, a single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary; secondly, a single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and, thirdly, the unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
 10. The evidence before me shows that the land which is in the Appellants' ownership is used for a mixed use of agriculture and residential. It is separated from the remainder of the field, which evidence shows is in agricultural use, by a fence. That land is in separate ownership. Therefore, I find the two to be separate planning units.
 11. I wrote to the parties suggesting that the Location Plan attached to the Notice should be corrected by reducing the red line area to the northernmost part of the field, which is in the ownership of the Appellants. This would address the concerns that they expressed and would identify the correct planning unit.
 12. In response the Appellants said that the change would not prejudice them. I agree and I have attached a corrected Location Plan to this decision. A result of this is that whether those persons with an interest in the southern part of the field were served with a copy of the Notice is immaterial.
 13. For the above reasons, I find that there is no substantive evidence to show that copies of the Notice were not served correctly. I will correct the Location Plan attached to the Notice to reflect the correct planning unit, and this can be done without prejudicing either party.
 14. Thus, the Ground (e) appeal fails.

Ground (a)

15. An appeal made under Ground (a) is that planning permission should be granted for the breach of planning control alleged in the Notice.

Main Issues

16. The main issues are: (i) whether there is an essential need for a dwelling to accommodate a rural worker; and (ii) The effect of the development on the character and appearance of the area.

Essential need

17. There is agreement between the parties that the site lies in the open countryside where development will only be permitted in particular circumstances.
18. The appeal site, as shown on the corrected plan that I have attached to this decision, runs to about 2 acres. It consists of roughly the northern half of a field that lies to the northeast of a crossroads formed by narrow roads. The land has a gentle upward slope, from south to north. It is bounded on three sides by hedgerows punctuated by mature trees, and a fence between it and the remainder of the field.
19. The operational development and caravan on the land that are being enforced against take up roughly the top quarter of the corrected site. The access that has been formed leaves the public road at the top corner of the field. From there, a loosely surfaced track runs across part of the top of the field to a caravan, beyond which are the other items referred to in the Notice. The remainder of the land is open and appeared to be in agricultural use.
20. Strategy 7 of the East Devon Local Plan 2013-2031, adopted 28 January 2016, ('EDLP') provides the framework for development in the open countryside. It sets out that development here will only be permitted where it is in accordance with a specific Local or Neighbourhood Plan policy that explicitly permits such development and where it would not harm the distinctive landscape, amenity and environmental qualities within which it is located.
21. The Appellant seeks a temporary permission for the residential use of the land for three years, and the retention of the other items for agricultural purposes. EDLP Policy H4 relates to dwellings for persons employed in rural businesses. Its start point is that it has to be demonstrated that there is a proven and essential rural business need for the occupier to be housed on the land.
22. Where, as here, a new business is being established, a temporary dwelling such as a mobile home may be permitted to allow time to establish that there is a genuine need for a permanent dwelling. This support is subject to a list of criteria. As there is no other building on the land suitable for conversion to a dwelling, criteria 3, 4, and 6 apply. Briefly, these are that: a financial assessment should be submitted setting out future operations must demonstrate future viability; it should be demonstrated that at least one occupant would be employed full-time in the rural business; and, if planning permission is granted, this would be subject to an occupancy condition tying it to the relevant business. The policy ends by stating that any permission will be tied through a legal agreement to the agricultural holding.
23. In support of their case, the Appellants have submitted a 'To whom it may concern' report from Newton Magnus Chartered Accountants, dated 26 November 2021.
24. The report sets out that the Appellants would have a 'three-pronged' approach to food production at the site: seasonal vegetable bags and boxes ('veg box'),

strawberries and chickens. The forecast turnover for each of the activities over a three-year period is given. The appeal was lodged in May 2023, which is to say around 18 months after the date of the report. No update to the report was provided with the appeal. Furthermore, the appeal submissions do not set out where in the 3-year cycle the business is, and no actual financial figures for the enterprise were given. As such, I shall approach the appeal on the basis that the three years in the report have yet to commence.

25. The report sets out that each veg box would be as varied as possible to increase their draw and they would vary in size for different sized households. I take the phrase that "they [the Appellants] will be helping others to have easy access to organically grown, fresh and local food" to mean that the land has been certified for the production of organic vegetables. However, I have not been given details of this. The report sets out that any additional produce will be sold as additional items in boxes, or to local shops.
26. That the Appellants would produce their vegetables, rather than buying it in as I am told "many" of their competitors do, would add to the attractiveness of the product. They point to a potential of nearly 29000 customers in a 7-mile radius.
27. The turnover figures for veg boxes are based on a May to November harvest period and a price of £15 per box. It suggests sales of 20 boxes per week in Year 1, 40 in Year 2 and 80 in Year 3. This, it says would give a total turnover for this part of the business of £10000, £20000 and £40000, respectively. Comparisons with competitors that are sited between 10 and 53 miles distant are given. Prices of those businesses' boxes and the number of items within them are provided. However, whilst I have been given the price of a box produced by the Appellants, as I do not know the number of items each would contain it is not possible to make a like-for-like comparison of the market that the business seeks to enter.
28. In terms of strawberries, there would be 1000 plants in Year 1, rising to 10000 in Years 2 and 3. The total turnover for this part of the enterprise would be £2337.50 in Year 1 rising to £23375 in the subsequent two years. This is based on a mean yield of 275 grammes per plant and a mean selling price per kilo of £8.50.
29. The numbers of chickens on the holding would rise from 15 in Year 1 to 30 and 40 in the following two years. Their value would not just be manifest in produce terms, but also in terms of providing compost and keeping pest numbers down. Prospective turnover from egg production is given as £600 in Year 1, £1200 in Year 2 and £1800 in Year 3.
30. Therefore, the total turnover forecast for Year 1 is £12937.50, for Year 2 is £44575 and Year 3 £66175.
31. The problem that I have with these figures is that turnover indicates the money expected to be earned. There is nothing in the figures to show the level of outgoings. I would expect to see such matters as the costs of such things as: the purchase of stock and plants; staff; vehicles and fuel; as well as the effects of taxation to be listed and taken into account. These would fundamentally impact on the turnover, and without them I cannot deduce the true level of viability of the unit.

32. I also share the Council's concerns regarding the size of the holding. I understand that market gardening enterprises of the type proposed are generally intensive. However, given the operational development and caravan at its upper end, there would be less than 2 acres of productive land. I would need additional information on where the various elements of the business would be located and what area they would take up to be sure that the land could produce the output that is forecast.
33. Scant information has been provided in respect of manpower requirements and whether there is sufficient work for the full-time employment of one person, or the equivalent, on the holding. The main income stream would be from the veg boxes. I understand that the 6-month harvesting season is only part of the picture, and the need for workers on the land would be extended after taking into account such things as land preparation and planting. However, I have been given insufficient details of how many people might be needed, when they would be needed and for how long.
34. Similarly, no details of the season for strawberries is given, nor are details of its manpower requirements. I conclude, given, the small numbers of chickens that are forecast, that egg production will have a minimal manpower requirement.
35. It has not, therefore, been demonstrated that there is an essential need for a year-round presence on the land, as required in EDLP Policy H4.
36. My attention has been drawn to similarly scaled rural enterprises that have "warranted on-site accommodation in relation to the business". These are described as "being within the LPAs administrative boundary" though this is clearly wrong as they are located in Cornwall, Devon, Somerset, Dorset and Yorkshire¹. Notwithstanding this, I have been given very few details of those holdings, including whether "warranted" meant that planning permission was granted for a residential presence on them. In any event, it is clear that the case for a dwelling on a holding will be site specific and whether a dwelling was allowed elsewhere has little bearing here. In this case, while I say that the appeal site is small, I do not say that a dwelling could not be allowed on this size of unit as a matter of principle. It is just that the case has not been proven.
37. For the above reasons, I find that an essential need for the dwelling has not been demonstrated and that the proposal is contrary to EDLP Strategy 7 and Policy H4, both of which accord with the terms of the Government's National Planning Policy Framework ('the Framework') and Planning Practice Guidance ('PPG').

Character and appearance

38. Notwithstanding that it is not subject to any designation, the landscape in the vicinity of the appeal site is attractive. It is very rural, with isolated small settlements and farms linked by a network of narrow lanes. There is built development at the crossroads to the south of the site, where there are a small number of dwellings and a farm with a number of quite large, low buildings. This is characteristic of development in the area.

¹ Figure 3.1 Appellant's Statement of Case

39. In terms of its topography, the landscape is gently rolling with low hills separated by shallow valleys with streams in them. Fields are generally quite large and the hedgerows separating them, as well as those along the network of roads, are often well-treed.
40. The terms of Policy S7 require that development in the countryside is supported by policies in the EDLP. As the caravan does not garner the support of Policy H4, so it is unjustified development in the countryside. It, and its associated development are clearly seen in public views from the access to the site and a field gate at the crossroads in Clyst William. They have a significantly adverse effect on the character and appearance of the area.
41. The creation of the access to the site has involved the removal of several metres of hedgebank and the laying of hardcore between the carriageway of the public road a set-back gate. Given the deep red colour of the local earth that has been used to create the hedgebanks, I have no doubt that the removal of the section to create the access left a 'raw' appearance initially. However, when I visited the effects of weathering and vegetation growth had mitigated this.
42. There are, as one would expect, several gates and accesses onto the road north of the crossroads at Clyst William. Indeed, the gateway to the field immediately to the north is just a few metres away. I am told that an existing access has been blocked off and that this has "off-set" the effect of the new access.
43. For the above reasons, my finding on this main issue is that the caravan that has been brought onto the land causes harm to the character and appearance of the area. It is sporadic development that does not respect the key characteristics and special qualities of the area, and is therefore contrary to EDLP Policy D1 and Strategy S7. This finding also relates to its associated residential paraphernalia.
44. It is claimed that the other equipment, which I take to mean the shed, container, solar array and the hardstanding, are reasonably required for the agricultural use of the site. However, scant evidence of this is provided to show that its retention would accord with EDLP Policy D1 and Strategy S7 and the Framework, with which they accord.
45. On the other hand, for the reasons that I have given, the access does not cause harm to the character and appearance of the area and I shall grant permission for this part of the development.

Conclusion

46. For the reasons given above, I will grant planning permission for the creation of the access to the land, but otherwise I will uphold the notice with variation and refuse to grant planning permission in respect of the stationing of a caravan, the unauthorised material change of use of part of the land and associated domestic paraphernalia, the siting of a shipping container and storage shed.

Roy Curnow

Inspector



Plan

This is the plan referred to in my decision dated: 14th December 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

Land at: North East of Clyst William Cross, Plymtree, Cullompton, EX15 2LG (Land Registry Title No. DN136329)

References:

Appeal A - APP/U1105/C/23/3322437;

Appeal B - APP/U1105/C/23/3322438 and

Appeal C - APP/U1105/C/23/3322439

Scale: Not to scale

