



Appeal Decision

Hearing held on 25 June 2024

Site visit made on 25 June 2024

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd July 2024

Appeal Ref: APP/L1765/W/24/3340652

Myndful Mushrooms, Jolly Moon, Land North of Bridge Bungalow, Lower Road, Drove Links Road, South Wonston, Hampshire SO21 3HR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs J Wright against the decision of Winchester City Council.
 - The application Ref is 23/01172/FUL.
 - The development proposed is Temporary rural workers dwelling, agricultural building, forest school and ancillary works.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been received from Mr and Mrs J Wright against Winchester City Council. The applicants added to their costs application at the hearing. That is the subject of a separate decision.

Preliminary Matters

3. The proposal is retrospective and has a number of elements, including a forest school (which has operated at the site for three years), agricultural building (mushroom facility) for mushroom growing, temporary rural worker's dwelling (installed in April 2023), parking area, polytunnel, greenhouse and ground-mounted solar panels. For the avoidance of any doubt, I confirmed at the hearing which plans my decision would be based on.
4. The appellant confirmed at the hearing that a temporary permission was only sought for the dwelling with permanent permission sought for the rest of the development.

Main Issues

5. The main issues are:
 - whether the appeal site is in an appropriate location for the development having regard to the requirements of local and national policy, including:
 - a) the effect of the development on the character and appearance of the area;

- b) whether there is a functional need for a temporary dwelling to house a rural worker which cannot be satisfied by existing nearby accommodation; and
- c) whether there is confidence that the enterprise has been planned on a sound financial basis;
- the effect of the development on protected species; and
- the effect of the development on highway safety.

Reasons

Location

Policy Context

6. Policy DS1 of the Winchester District Local Plan Part 1: Joint Core Strategy (2013) (the LPP1) and Policy DM1 of the Winchester District Local Plan Part 2: Development Management and Site Allocations (2017) (the LPP2) are general strategic policies that direct development toward sustainable locations within settlements, that promotes the vitality and viability of communities, and maintains their rural character and individual settlement identity. Outside of settlements, countryside policies apply and only development appropriate to a countryside location will be permitted, as specified in Policy MTRA4, amongst others.
7. All parties are in agreement that the appeal site lies outside of any development limits and within the countryside for the purpose of planning policy. Policy MTRA4 relates specifically to development in the countryside. In these locations development is limited to a number of exceptions, including that which has an 'operational need' for a countryside location such as agriculture, horticulture or forestry. The justification to the policy also refers to certain types of open recreational uses which also require a countryside location as being permitted by the Policy.
8. Policy DM11 of the LPP2 relates to housing in the countryside for essential rural workers. Before permitting new permanent rural workers' dwellings, the policy requires that a temporary building should first be established for at least three years to allow an applicant to demonstrate that their business is financially viable. In order to be acceptable, a temporary proposal would need to demonstrate a) clear evidence of a firm intention and ability to develop the enterprise concerned; b) clear evidence that the proposed enterprise has been planned on a sound financial basis; and c) a functional need for the accommodation, which cannot be satisfied by existing nearby accommodation.
9. The dispute between the parties relates to whether the development has an operational need for a countryside location in line with Policy MTRA4, and whether it has been demonstrated that the mushroom enterprise meets criteria b) and c) of the Policy DM11. It was established at the hearing that there was no dispute that the enterprise meets criterion a). However, there is also a dispute with regard to the effect of the development on the rural character and tranquillity of the area, in line with the requirements of Policies CP20 of the LPP1 and DM15 and DM23 of the LPP2, described below.

Character and Appearance

10. The appeal site comprises of around 2ha of land situated within open countryside to the east of the settlement boundary of South Wonston. Whilst a short distance walk from the suburban cul-de-sacs that lie on the edge of South Wonston, the land around the appeal site has a rural character and is characterised, in part, by the prevalence of equestrian activities. A number of the fields adjacent to the appeal site are used for grazing of horses, with several stable and field shelter buildings also present and easily visible from the routes nearby. Further to the north and east, there are agricultural fields interspersed with occasional woodland and set within a gently rolling landscape.
11. The appeal site itself is more wooded than the surrounding fields. It comprises of patches of reasonably thick scrub with some mature trees, and more open clearings within the centre and around the access. The edges of the appeal site are delineated by loose hedgerows and trees. As a wooded area that is visible in longer distance views from the east, the appeal site contributes to the landscape character of the wider area.
12. The appeal site is bounded by Drove Links Road to the west and Ox Drove (a public right of way) to the south. Both Ox Drove and Drove Links Road are rough surfaced single track lanes with low levels of traffic. Occasional accesses to fields, equestrian facilities and residential properties are located along the length of the roads.
13. The temporary dwelling is a dome shaped tent structure. Whilst it is of a significant height, I saw that the dome was well screened within its wooded setting and was not prominent in any view from close by, outside the site, including along the public right of way. However, owing to its height, it is conspicuous in more distant landscape views such as those from Stoke Charity Road. In these views, the bright white structure appears as an incongruous addition to the landscape, seen against the backdrop of its natural wooded setting which exacerbates its prominence. On this basis, it is likely that the structure could be seen in other landscape views in the vicinity. Furthermore, having regard to its scale, its visibility would likely increase further still when trees are not in leaf, resulting in further landscape harm.
14. I acknowledge that the harm from a development which would last three years would inevitably be less than from one which was permanent. Nonetheless, the proposal would still amount to moderate harm to the landscape character of the area for at least the duration of that period. Whilst I acknowledge that the dome is an innovative means of providing accommodation, and that it has benefits in terms of being able to be removed quickly, there is nothing before me to indicate that the siting of the dome has been informed by a consideration of landscape views. Furthermore, I have not been provided with any convincing reason why the temporary accommodation needs to take precisely this form.
15. Due to the screening provided by the surrounding trees and hedges, the parking area is only visible in fleeting views from Drove Links Road, immediately opposite the access. Taking into account its rough surface, and that regular accesses are a feature of Drove Links Road, I am satisfied that the parking area has not resulted in harm to the rural character of the area. Mindful of the likely traffic levels generated by the neighbouring equestrian and

residential uses that are also located along Drove Links Road, I am satisfied that the levels of traffic generated by the appeal scheme would not be of such a level as to result in significant harm to the tranquillity of the area.

16. On the site visit I saw that the uppermost section of the end of the mushroom production facility was partly visible adjacent to the access. Both parties are in agreement that a condition requiring additional landscape planting could help to reduce the visual impact of the scheme, were I to allow the appeal. This would allow for planting to be provided to the edge of the parking area. There are solar panels, storage buildings and a polytunnel within the site but these are small scale structures that benefit from the high levels of screening along the Ox Drove and Drove Links Road. As such, I was unable to gain clear views of these structures from outside the site and conclude that they pose no harm to the character and appearance of the area.
17. Having regard to the above, the development, namely the temporary dwelling, is harmful to the character and appearance of the area. The development therefore conflicts with Policy CP20 of the LPP1 and Policies DM15 and DM23 of the LPP2 which together seek to ensure new developments preserve landscape character and local distinctiveness, including tranquillity, sense of place and setting and avoid detracting from the enjoyment of the countryside from the public realm or public rights of way.

Operational Need

18. The forest school use operates throughout the whole of the site, although on the site visit, I saw that the majority of the facilities and equipment associated with it were located in the most wooded part, to the site edge, which was accessed via a small pedestrian gate. Individual forest school sessions are relatively short with small numbers of children at a time. Nature clubs operate on select days during the summer holidays with occasional one-off events. Based on the evidence provided by the appellant, a forest school is a specific educational approach that prioritises hands-on, outdoor learning in natural, typically woodland, environments.
19. The Council has requested a sequential analysis of suitable and available sites. However, this is not a requirement of Policy MTRA4. Moreover, it is clear from the evidence before me that the forest school is intrinsically linked to the location within the woodland and open spaces in which it operates. Given the high likelihood that such spaces are located outside of the built form of settlements and within the countryside, I am satisfied that the forest school constitutes a recreational use that requires a countryside location, in line with Policy MTRA4.
20. The kitchen garden, polytunnel and greenhouse are primarily used in connection with the forest school and the occupation of the temporary dwelling. There is no dispute between the parties that the market garden, polytunnel and other aspects of the development in themselves require a countryside location.
21. Turning to the mushroom enterprise that operates from the site, there is agreement between the parties generally that the growing of mushrooms falls within the definition of agriculture as set out at section 336 of the Town and Country Planning Act 1990. Nonetheless, the Council considers that as the facility is for the growth of lion's mane mushrooms for production into a tincture for complementary medicinal purposes, the enterprise is considered to

constitute more of an industrial process. In support of its argument, it notes that the mushrooms are not grown in the ground at the appeal site and instead are grown in the mushroom facility, a converted lorry body. However, whilst I accept that this is an unusual crop and product; that a crop is not grown directly in the ground does not, to my mind, mean that this is not agriculture. Indeed, there are many instances of crops grown within buildings where the climate is carefully controlled.

22. Whilst the appellants note that some of the lion's mane mushrooms grown are eaten or sold to local restaurants, the majority are processed into tinctures. The tincture is sold for human consumption and there is no evidence before me that there are any differences in the harvesting and growing processes between the mushrooms consumed directly and those processed into the tincture. It is clear from the evidence that significantly greater time (up to six months) is spent cultivating and harvesting the mushrooms than producing the tincture. There is no sale of the tincture from the premises, with the bulk of sales achieved at specialist markets attended by the appellants, although there are some online sales.
23. Whilst I agree with the Council that the production of the tincture is an industrial process, it is a very small part of the overall production process. As such, having regard to the above and in line with the case law¹ provided by the appellants, I am satisfied that the production of the tincture from the mushrooms would be ordinary and reasonable practice, and that this could be regarded as incidental to the agricultural operations of producing the crop.
24. The appellants set out that the mushroom farm requires a countryside location due to the amount of waste produced, the amount of space required including to allow for storage of toxic chemicals and the requirement to be on hand for 24 hours a day. This would appear to preclude the use being carried out in an industrial unit as suggested by the Council. Furthermore, for the same reasons and the likely effect on the living conditions of the occupiers of neighbouring properties, it does not appear to be a use that could easily be operated from a typical dwelling in a more urban area such as those within the nearby cul-de-sac developments in South Wonston. I accept that the use could potentially be operated from the nearby large, detached dwellings along Drove Links Road, however these are within the countryside. Noting that I have found the enterprise to fall within the definition of agriculture, I am satisfied that the development requires a countryside location in line with Policy MTRA4.

Functional Need

25. The appellants have provided a Rural Workers Dwelling Appraisal carried out by an agricultural consultant. This sets out the elements of the process of cultivating and harvesting the mushrooms that require close supervision at all times. These elements include maintaining the optimum light, temperature, humidity and carbon dioxide levels for the various parts of the process, from the production of the initial 'mother culture' until the harvest. Given the heavy reliance on electricity to maintain these levels, there is an additional need to respond to matters such as power failures.
26. From the evidence before me, it appears that ensuring constant supervision is of particular importance during the harvest period; firstly, to ensure that no

¹ Millington v SSETR & Shrewsbury and Atcham BC (2000) JPL 297 (the Millington case).

contamination occurs whilst the mushrooms are growing; and secondly, to ensure that the fruiting bodies are harvested prior to the release of the spores. I understand from the evidence that this is a narrow window that amounts to a matter of hours and can occur at any time, day or night. Were the spores to be released, the entire fruiting chamber would be compromised and require deep cleaning and disposal of all remaining stock, to the detriment of the functioning of the enterprise. The Appraisal sets out that the enterprise does not operate on a linear process with each stage ceasing as the next begins, rather, batches are started each week to ensure a constant supply of mushrooms to harvest.

27. It is clear from the evidence that the operation of the enterprise is labour intensive. All of the labour is provided by one of the appellants who works full time managing the enterprise. A business partner is also involved in the enterprise but does not live on site. On the site visit I saw that the enterprise was operating at a reasonably large scale with multiple batches of mushrooms present at different stages of their development. The appellant has provided a short log covering the period from 25 April to 15 May 2024 identifying five separate issues that occurred outside of normal working hours where intervention was required. This would not have been possible unless the worker was available at short notice.
28. Taking into account the need to be present to harvest the mushrooms at short notice, day and night, as well as the general supervision required to maintain optimum conditions throughout the process, in my view it is essential for the proper functioning of the enterprise for a full-time worker to be readily available.
29. The Council argues that a comment in the appellants' covering letter/planning statement, referring to the operation of the use as footloose and 'could reasonably be located anywhere', indicates that there is no need for a 24 hour presence at the site. However, for the above reasons, the weight of the evidence leads me to conclude that there is a functional need for a temporary dwelling to house a rural worker at the site.
30. There are no existing buildings at or near the site that could fulfil the essential need through conversion to a dwelling. Neither party has directed me to any alternative properties nearby, that could provide the accommodation required. The Appraisal states those that are for sale in the locality are either too distant to properly enable the needs of the holding to be monitored, or are too expensive.
31. In the absence of any evidence to the contrary I am therefore satisfied that the functional need could not be met by existing nearby accommodation and on that basis the development complies with Policy DM11 c).

Financial Test

32. Whilst Policy DM11 sets out that a temporary building should first be established for at least three years to allow an applicant to demonstrate that their business is financially viable, the Policy at b) requires clear evidence to be supplied that the proposed enterprise has been planned on a sound financial basis. In that regard, the Appraisal provides detailed projection and costings for the first three years of the enterprise. This indicates a healthy profit by the third year, including once the labour requirement (based on the national living wage) is deducted. The Appraisal also includes the initial development costs

(already carried out) and the cost of financing a new dwelling through a loan, a requirement which it indicates the enterprise will meet by the third year.

33. Whilst the Council sets out there is no wider market data available, the appellants advised at the hearing that they were already exceeding the financial projections anticipated for the first year through sales at a specialist market. As set out above, the majority of sales are anticipated to occur through this means. It is clear to me that the appellants have carried out a great deal of research and the enterprise is already in operation and functioning.
34. Based on the evidence before me, therefore, I am satisfied that the enterprise has been planned on a sound financial basis. As such, I am of the view that there is a reasonable prospect that the enterprise would become viable and sustainable within three years, were I to allow the appeal. This would allow for the actual performance of the enterprise to be tested at any future application for a permanent dwelling, in line with Policy DM11.
35. I therefore conclude that the enterprise has been planned on a sound financial basis and in that regard, the development complies with Policy DM11 b).

Conclusion to First Main Issue

36. Having regard to my above assessment, whilst I have found that there is a functional need for a temporary dwelling to house a rural worker which cannot be satisfied by existing nearby accommodation, and that the enterprise has been planned on a sound financial basis; I nonetheless conclude that the appeal site is not an appropriate location for the development having regard to the requirements of local and national policy, due to the adverse effect on the character and appearance of the area.

Protected Species

37. British reptile species and nesting birds are protected by law² and their presence is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. There is a statutory duty on me to have regard to the conservation of biodiversity³.
38. The appellant has provided a Preliminary Ecological Appraisal⁴. This concluded that the site was covered with good bird nesting and reptile habitat. However, the survey was undertaken after the carrying out of the development for which planning permission is sought. As such, whilst it provides recommendations in the event of any future removal of vegetation, the report does not consider the extent of any harm that has occurred from the carrying out of development or any clearance works that have already taken place.
39. It is therefore unclear to me whether the works that have already taken place have had an adverse effect on protected species. Furthermore, if protected species have been affected, I cannot be certain as to what mitigation, if appropriate, may be required. In this regard, paragraph 186 of the National Planning Policy Framework (the Framework) states that if significant harm to

² Conservation of Habitats and Species Regulations (2017) & Wildlife and Countryside Act (1981).

³ Section 40 of the Natural Environment and Rural Communities Act (2006), as amended.

⁴ Preliminary Ecological Appraisal by Wessex Ecology, dated 1 August 2023.

biodiversity resulting from development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

40. The appellant has suggested a planning condition in order to provide additional information with regard to protected species including biodiversity enhancement and mitigation. However, I am mindful of Government Circular 06/2005 which establishes that it is essential that the extent that protected species may be affected by a proposal, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
41. For the above reasons, therefore, I cannot conclude that the development has not adversely affected protected species. The development therefore conflicts with Policy CP16 of the LPP1 which seeks to ensure new development protects protected species from inappropriate development and ensures that biodiversity can be retained, protected and enhanced through its design and implementation and also be required to avoid adverse impacts, or if unavoidable, ensure that impacts are appropriately mitigated.
42. There would also be conflict with paragraph 180 (d) of the Framework which amongst other things, seeks to minimise impacts on, and provide net gains for, biodiversity.

Highway Safety

43. The Council's sixth reason for refusal related to insufficient information submitted in order to assess the impact on the highway network. The appellants provided additional information in their statement with regard to the number of vehicle movements to and from the site. Given the low level of traffic movements, the Council confirmed at the hearing that its concerns in relation to this main issue are now limited to the parking provision. I see no reason to disagree with the assessment in relation to traffic movements.
44. The plans show nine car parking spaces within the enclosed gravelled parking area. On the site visit I saw that the car parking layout at the site did not wholly reflect that shown on the plans. Nevertheless, as set out above, I am required to base my decision on the plans before me.
45. The appeal statement refers to any additional parking needs being met by the Pavilion Car Park which is a short walk away along the public right of way. The Pavilion Car Park has 28 spaces including some disabled bays. It is understood that the Parish Council has requested that visitors to the forest school do not park within the Pavilion Car Park. On my site visit on a Tuesday afternoon there were only 2 parking bays in use.
46. Given that adults are only required to stay at the playgroup sessions, it would appear to me that in most instances, nine spaces would be sufficient allowing for those picking up and dropping off. The Pavilion Car Park is owned by the Parish Council and it was confirmed at the hearing that some of those attending the forest school choose to park in the Pavilion Car Park and walk to the site. The appellants also confirmed that they encourage visitors to use more sustainable means of travel, including car sharing.
47. I saw occasional cars parked on the relatively wide road along West Hill Road South adjacent to the Pavilion Car Park. I am therefore satisfied that there is

capacity on nearby streets for visitors to the forest school who are unable to park at the appeal site or within the Pavilion Car Park. Taking into account the limited hours over which the forest school operates, outside of peak times, I am satisfied that, were such low levels of parking on nearby streets to occur, it would not lead to any detrimental effect on highway safety.

48. For the above reasons I conclude that the proposal would not have an adverse impact on highway safety. The proposal would therefore comply with Policy CP10 of the LPP1 and Policy DM18 of the LPP2. Together, these seek to avoid adverse effects on the highway network and ensure adequate parking provision is provided.

Other Matters

49. The Council's fourth reason for refusal relates to the issue of wastewater arising from the temporary dwelling and the effect on the Itchen and Solent catchments and the River Itchen Special Area of Conservation (the SAC) a European protected site. The development has resulted in a net increase in population served by a wastewater system. The nutrient budget calculated by the appellants, based on Natural England's methodology, demonstrates a positive phosphorus and nitrogen load into the catchment. Therefore, the amount of nutrient loading that requires counterbalancing has been determined. However, no mitigation has been supplied.
50. Nonetheless, I am dismissing the appeal for other reasons, therefore there is no requirement for me to undertake further assessment.

Conclusion

51. I have found that there is a functional need for a rural worker and that the enterprise has been planned on a sound financial basis in accordance with development plan policy. I have also found that there would be no adverse impact on highway safety. However, these are neutral findings that weigh neither for nor against the proposal.
52. There would be social benefits arising from the forest school, in addition to economic benefits that would also arise from the establishment of a new enterprise. There would also be benefits to the enterprise arising from the provision of a temporary dwelling.
53. However, I have found that the temporary dwelling results in harm to the character and appearance of the area. I am required to consider the scheme as a whole and there is nothing before me to indicate that the scheme, with particular regard to the temporary dwelling, needs to take the form that it does. Furthermore, I have also been unable to conclude that the development does not adversely affect protected species. Collectively the limited benefits considered above would not outweigh the harm identified in relation to character and appearance and protected species.
54. For the reasons given above, having considered the development plan as a whole, the approach in the Framework and all other relevant material considerations, I conclude that the appeal should be dismissed.

Paul Martinson

INSPECTOR

APPEARANCES

Appellant:

Jon Wright	
Holly Wright	
Marc Willis	Planning Consultant
Peter Williams	Agricultural and Rural Planning Consultant
Graham Cole	Horticulturalist and Ecologist
Tom Baker	Mushroom Specialist

Council:

Catherine Watson	Senior Planning Officer
Simon Avery	Principal Planning Officer