Appeal Decision

Hearing held on 25 June 2024

Site visit made on 25 June 2024

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2024

Appeal Ref: APP/D1265/W/24/3340212
Withysmythe Meadow, Stour Lane, Stour Row, Shaftesbury SP7 0QJ

- 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 Mrs Catherine Abbott against the decision of Dorset Council.
- The application Ref is P/FUL/2022/06657.
- The development proposed is the siting of a temporary rural worker's dwelling.

Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issue

2. The planning application form indicates that at the time of submission the proposed temporary dwelling, a yurt, had been erected on the site for display purposes. As a result, the Council determined the application as proposed. During the Hearing, the appellant confirmed that the yurt was currently being used as a dwelling by herself and her partner. I observed this to be the case during my site visit and have determined the appeal retrospectively.

3. Since the Council determined the planning application, an updated version of the National Planning Policy Framework (the Framework) came into effect. However, the Framework's policy content insofar as it relates to the main issues has not significantly changed. In the agreed Statement of Common Ground, the main parties have confirmed the sections and paragraphs relevant in this case. I am therefore satisfied no party would be prejudiced by determining the appeal in accordance with the updated version of the Framework.

4. Consequently, the main issue is whether there is an essential need for a temporary dwelling in the countryside to accommodate a rural worker, having regard to national planning policies and the local development strategy.

Reasons

5. Policy 1 of the North Dorset Local Plan Part 1 (the Local Plan) sets out that proposals that accord with the policies therein will be approved without delay unless they are deemed to be out of date. This follows the Framework's approach to the presumption in favour of sustainable development and is, insofar as it relates to this appeal, consistent with the Framework.

6. As the appeal site is located outside the boundaries of the district's main settlements, for the purposes of the Local Plan it lies within the countryside.

Through controlling the types of development that may be appropriate in the countryside, Policy 20 of the Local Plan is consistent with the Framework's objective of responding to local circumstances and needs, including, amongst other forms of development, occupational dwellings.

7. Policy 33 of the Local Plan sets out the Council's approach to assessing the circumstances where different types of occupational dwellings would be permitted. Rural worker's dwellings are listed in the Framework as a circumstance where the development of isolated homes in the countryside may be acceptable, provided an essential need can be demonstrated. Although the site is not isolated from other dwellings, this does not preclude the Council from applying a similar assessment of need to proposals relating to occupational dwellings in the countryside.

8. Consequently, policies 1, 20 and 33 of the Local Plan are broadly consistent with the Framework and therefore attract full weight in my determination of this appeal.

9. The evidence presented by the appellant during the Hearing indicated that the appeal site is used for a variety of activities comprising:
   - Willow growing for making into various items with surplus sold in bundles;
   - The weaving of various items including coffins, baskets, cribs and garden structures from the willow grown on site, made to order or sold at markets, shows or from the site;
   - Running weaving workshops for the public in the existing barn or outside depending upon the weather, and in the local village hall;
   - Breeding and rearing chickens to provide eggs and meat for the appellant, as well as sales of eggs and meat, or the sale of chickens as breeding trios;
   - Growing flowers for arrangements to go on coffins, selling at local markets, supplying local businesses or from the site;
   - Growing a variety of fruit and vegetables for the appellant's use, making cordials and jams, with surplus sold to local businesses or from the site; and
   - Making yurt covers.

10. The appellant outlined that the activities in the list above require varying intensities of time during a typical day and across the seasons and require her to work full-time on the business. This is not disputed by the Council and I see no reason to disagree. However, the number of working hours required to operate the business does not imply, in itself, that a worker living on-site is essential to support an enterprise for which there is a clearly established functional need. This is one of the criteria Policy 33 of the Local Plan requires to be met if support for a temporary dwelling is forthcoming.

11. Given the presence of tools, machinery and chickens on the site, the appellant expressed concerns regarding theft as well as damage to the polytunnels and plants from vandalism. CCTV has been installed on the site, primarily to deter potential thieves and vandals, and electric fencing has been erected around the chicken coup. Depending upon the degree of theft or damage caused, the ability of the business to continue would be compromised, particularly given the seasonality of the activities. However, the likely consequences of these types of events have not been evidenced. Nevertheless, no instances of theft or damage to the appeal site have been presented to me, even before the

appellant started living on the site despite the anecdotal evidence of such events in the surrounding area provided by several interested parties.

12. Whilst the CCTV and electric fencing may not be reliable due to the use of solar energy and an inconsistent internet connection, the frequency of failures in these systems is not before me. Nevertheless, potential thieves and vandals would be unlikely to be aware of when these systems had failed. As such, they would remain as deterrents. No other security measures have been considered by the appellant, instead relying on the on-site presence of herself, her partner and their dog to deter potential thieves and vandals. Consequently, based on the evidence before me, the level of risk of theft or vandalism is not sufficient to justify an essential need to live on-site.

13. Weather events such as heavy rain leading to localised flooding, high winds, snowfall and temperature changes could cause significant damage to the structures and produce on the site. Despite this, these events could occur at any time of the day and can largely be planned for through monitoring weather forecasts and implementing appropriate precautionary measures. Such measures include placing fleece around plants to prevent frost damage, using sandbags to minimise flooding, securing structures and relocating plants and chickens away from areas of risk. However, these measures do not rely on someone living on site.

14. The appellant drew my attention to a time when heavy rainfall resulted in part of the site being flooded from runoff from the road, despite the site's location in flood zone 1. Although the appellant was able to respond rapidly to this event, it was indicated that measures have now been implemented to limit the effect of a similar event, regardless of its probability. Moreover, there was no indication that this flood event resulted in damage to the willow beds or flower growth. Therefore, the probability and severity of the weather events discussed do not lead me to conclude it is essential for the appellant to live on-site.

15. Deer, foxes and badgers can all pose a threat to the chickens and produce grown on the site, and can cause damage to fencing, occurring, although not exclusively, between dusk and dawn. Two instances involving wildlife causing damage on the site during the last few years, after the appellant started living on the site, were referred to during the Hearing, although no substantive evidence is before me demonstrating the impact these had on the business. I also heard that electric fencing and specialised deer fencing can be costly. However, I have limited evidence to demonstrate that these features have been fully investigated nor have the likely costs of their installation been considered as part of the business' forecast accounts.

16. The range of products and services offered by the business has grown, such as running workshops, attending markets and, more recently, flower growing. This reflects the prevalence of horticulture within the rural economy as agricultural businesses diversify. Some of the activities required to support the growing of these products and services need to be undertaken at times outside normal working hours. This includes the removal of slugs and snails, and watering and cutting flowers, either at dawn and dusk or during the night before a market or a wedding so the flowers remain fresh. Other work, such as willow harvesting, can take a significant amount of time and lead to long working days.

17. Irrespective of this, as determined in the Champernhayes Corner appeal[1], unsociable hours or the need to work extended hours is not, of itself, evidence of an essential need to be on-site on a 24-hour basis. Moreover, as some of the business's activities are date and time-specific, such as the workshops and markets, this is placing more pressure on the timing of other work which could otherwise be undertaken in the day. The result is long working days for the appellant and her partner. Despite this, no additional workers have been employed as the business has grown and I have not been presented with substantive reasons to conclude that this, or an alternative workload management, is not possible. This could be on an ad hoc or seasonal basis, in the same way that volunteers have previously assisted with grass cutting, moving compost, willow cutting and erecting the polytunnels.

18. The aim of the appellant and her partner's lifestyle is to achieve a high degree of self-sufficiency. This includes the desire to combine work and domestic life to avoid many trips and journeys back and forth to other living accommodation and the detrimental impact undertaking shift work could have on their relationship. However notable, these are lifestyle choices rather than driven by the needs of the business and, consequently, do not justify the need to live on the site.

19. Given the occupancy restriction of a temporary dwelling to an agricultural worker, as set out in Policy 33 of the Local Plan, discussion during the Hearing included whether or not all the activities of the business fall within the definition of agriculture[2]. Whilst it is agreed that the use of land as osier land is included within this definition, the production and manufacture of items from the willows grown in an osier bed are not. This activity does not have to be completed on the site, even if it is more convenient to do so or minimises the need to travel/transport goods. Similarly, the making of jams and cordials, and the running of the workshops can be carried out elsewhere. Indeed, some workshops have already been delivered off-site.

20. Regardless, even if I were to conclude that all the business's activities are defined as agriculture, or ancillary to agriculture, it has not been demonstrated that there is an essential need for a temporary dwelling to accommodate an agricultural worker in this location.

21. Turning to the economic viability of the business, Policy 33 of the Local Plan refers to a financial test. This requires, as set out in the policy's supporting text, evidence that demonstrates the enterprise has been planned on a sound financial basis with a reasonable prospect of delivering a sustainable profit before a temporary occupancy period expires. However, no specific benchmark, target or assessment method is explicitly referenced in the policy or its supporting text.

22. An update to the Business Plan[3], including financial forecasts, originally submitted with the planning application was provided as part of the appeal. Further updated accounts[4] including figures up to June 2024 were also presented during the Hearing. These were considered in the Council's

[1] Appeal ref: APP/F1230/W/18/3203500 dated 11 June 2019
[2] Section 336 of the Town and Country Planning Act 1990 (as amended)
[3] Withysmythe Meadow Business Plan – Revised and Updated, 2023-2026
[4] Profit and Loss Accounts Updated to include figures to June 2024

Agricultural Needs Statement[5] and the further updated accounts were reviewed by the Council's Land Agent during the Hearing.

23. In applying the financial test, I heard that the Council consistently use the National Living Wage (NLW) plus a small allowance for an additional return on capital, to determine the base net profit figure required to demonstrate a business's viability. This calculation does not mean the appellant has to live off the NLW. Indeed, as highlighted by an interested party at the Hearing, rural and/or self-employed workers often accept a lower wage. However, the test relates to the financial situation of the enterprise, not the personal circumstances of the appellant. The NLW does provide a benchmark which can be applied consistently to demonstrate the sustainability of a business in the event the appellant is away or unable to work, nevertheless. On this basis, and in the absence of a suitable alternative, I see no reason to undertake a different financial test.

24. The further updated accounts show a 2025-2026 forecast net profit figure for the business as a whole which is below the current NLW, based on nominal full-time hours (275 days working an 8-hour day) for the appellant. When subsistence-in-kind benefits are added to the net profit, the NLW is exceeded. However, the Council raised concerns regarding what these benefits comprise.

25. During the Hearing, it was confirmed that the subsistence-in-kind benefits relate to the cost of the produce consumed by the appellant had it been paid for. Figures for fuel, water, electricity and food were provided verbally by the appellant. Nonetheless, it is unclear how the amounts have been calculated, if they include produce capable of being sold and if they also cover the running costs of the business. Similarly, limited evidence has been provided setting out how the forecast income for the workshops has been derived, in terms of the number of events per year and the anticipated attendees.

26. Notwithstanding the cautious approach to the financial projections adopted by the appellant, not all the elements in the forecast profit and loss accounts have been sufficiently substantiated. On this basis, I am unable to conclude with certainty that the enterprise has a reasonable prospect of delivering a sustainable profit before a temporary occupancy period expires when applying the financial test. This is the case when the activities of the business as a whole are taken into account, regardless of whether or not these activities should be defined as agriculture.

27. The appellant has some plans for the future including hop growing, keeping bees for honey and selling potted plants. The updated accounts do not make specific reference to these activities. Therefore, the potential profits from the sale of hops, honey or potted plants have not been demonstrated. As such, these plans do not alter my view on the enterprise delivering a sustainable profit.

28. My attention has been drawn to the Petter decision[6] which concluded that the profitability of a subsistence farming business was a poor guide to determining its probability of continuing. Further, a rigid application of criteria designed for commercial agriculture is not always sufficient to make such an assessment, particularly in the case of a small-scale business. As such a practical adaptation

[5] Prepared by Reading Agricultural Consultants, dated April 2024
[6] *Petter and Harris v SSETR and Another* (2000) 79 P&CR 214 (the Petter decision)

of a financial test may be appropriate to demonstrate that there is a reasonable prospect of the business delivering a sustainable profit. No such alternative approach has been presented to me.

29. Furthermore, the Petter decision related to the renewal of a temporary dwelling before the introduction of the Framework and against the now-superseded Annex 1 of PPG7. It was also concluded that there was a functional need for a worker to live on-site. As I have not considered this to be the case here, any comparisons between the two schemes are limited. The Petter decision, therefore, is not directly relevant to the case before me.

30. I conclude that it has not been demonstrated that there is an essential need for a temporary dwelling in the countryside to accommodate a rural worker, having regard to national planning policies and the local development strategy. The appeal scheme conflicts with policies 1, 20 and 33 of the Local Plan which set out the stepped approach to the delivery of development in the district, including dwellings with occupancy restrictions. I also find conflict with the Framework's presumption in favour of sustainable development and the objective of development responding to local needs.

Other Matters

31. The Framework sets out the three tranches of sustainability which should be taken into account as part of the decision-making process: environmental, economic and social objectives. These amplify some of the United Nations' global sustainable development goals. As the development plan is the statutory starting point for any decision-maker, it is necessary for me to balance the scheme's benefits relating to the three tranches against the harm I have identified above.

32. The business supplies produce to local shops, cafes and other organisations, thereby providing economic benefits to the rural area. Through the sale of produce and goods at the gate to the site, the delivery of workshops and skills sharing, amongst other things, the business is seen as providing a local service. While these benefits are not reliant on the appellant living on the site, nonetheless the onsite presence does compound the economic benefits derived, to which I attribute modest weight.

33. From an environmental perspective, living off-grid enables the appellant and her partner to adopt a lifestyle which lowers their environmental footprint. It is part of the unique selling point of the business given, as highlighted by several interested parties, that there is an increasing desire for the provenance of products, including their environmental impact, to be known by the consumer. Despite this, due to the scale of the development I give this benefit limited weight in my decision.

34. The range of plants and produce grown on the appeal site demonstrates that, when compared to the adjacent horse grazing paddock, I do not doubt that the appellant has increased the biodiversity present on the site. Despite the benefits derived from this element of the development, improvements in the biodiversity of the site could have been achieved without the appellant living on the site. Nonetheless, benefits have arisen and based on the scale of the site, I attribute limited weight to them in my decision.

35. It is clear from the written and oral representations made by local residents and business owners from Stour Row and other settlements in the surrounding area at the Hearing, that the appellant and the business have a significant amount of support. Additionally, the appellant has a demonstrable passion and commitment to providing a sympathetic and comforting service to recently bereaved customers alongside the growing of produce by hand. This provides a social benefit to the local area as well as to customers further afield. Nevertheless, this benefit is not dependent upon the appellant living on the site and therefore also attracts limited weight in my decision.

36. There are some similarities between the appeal business and the enterprises considered in the Slight Hill[7], Sydling Brook[8] and Cuddlingford Meadow[9] appeals, including where the assessment of an essential need can relate to a combination of tasks and activities. However, I have limited details of these cases before me and no financial information has been provided. Additionally, they relate to businesses predominantly comprising agricultural activities and/or at a larger scale than the scheme before me. As such, due to the differing working practices and likely resultant benefits, these cases are not directly comparable to the appeal scheme.

37. An interested party drew my attention to what they considered to be an inconsistent approach to approving new dwellings in the local area by referring to a nearby barn conversion into five dwellings. I have limited detail before me regarding this decision and, during the Hearing, the Council confirmed that this development was undertaken via the prior approval process. On this basis, it is not determinative in my decision.

Conclusion

38. The development conflicts with the development plan as a whole and there are no material considerations, either individually or in combination, which indicate that a decision should be made otherwise in accordance with it. Accordingly, the appeal is dismissed.

Juliet Rogers

INSPECTOR

[7] Appeal ref: APP/D0840/W/15/3132813 dated 31 May 2016
[8] Appeal ref: APP/F1230/C/07/2055628 and 9 dated 9 May 2008
[9] Appeal ref: APP/J9497/W/21/3272334 dated 13 October 2021

APPEARANCES

FOR THE APPELLANT:

Mrs Cath Abbott	Appellant
Mr Bill Knight	TerraPermaGeo
Ms Rebecca Laughton	Agricultural Appraiser

FOR THE LOCAL PLANNING AUTHORITY:

Mr Andrew Collins	Dorset Council
Mr Roger Sewill	Reading Agricultural Consultants

INTERESTED PARTIES:

Dr Martin Robinson	Local resident
Mr Tim Ledger	Local resident
Mrs Juli Moran	Local resident
Ms Maura Kiely	Local business owner and resident
Mrs Tracey Mulcahy	Local resident
Mr Tony Mulcahy	Local resident
Mrs Jenny Morisetti	Local resident
Miss Pauline Batstone	Former councillor and local resident
Ms Margot Dimmer	Local business owner and resident

DOCUMENTS:

Profit and Loss Accounts Updated to include figures to June 2024