

Appeal Decisions

Site visit made on 10 September 2024

by Jessica Graham BA (Hons) PgDipl

an Inspector appointed by the Secretary of State

Decision date: 21 October 2024

Little Greyhills, Diptford, Totnes, Devon TQ9 7NQ

Appeal A Ref: APP/K1128/C/24/3339127

- 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 Frederick Weaver against the decision of South Hams District Council.
 - The application Ref is 4060/23/FUL.
 - The development proposed is: Change of use from agricultural to mixed therapy/education/tourism/agriculture use including seasonal camping (retrospective) 5600 m²; erection of the Wildflower Cabin (retrospective); siting of the shepherd's hut known as 'The Apple Wagon' (retrospective); siting of two shepherd's huts (retrospective); conversion of the stable building to field kitchen and shower and toilet facilities; and works to install a package treatment plant and drainage mound.
-

Appeal B Ref: APP/K1128/W/24/3339130

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Frederick Weaver against an enforcement notice issued by South Hams District Council.
 - The notice was issued on 22 January 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land from use for agriculture to a mixed use for agriculture and for the siting of a log cabin (outlined in green) and a shepherd's hut (outlined in blue) used for residential purposes (the Development).
 - The requirements of the notice are to: (i) stop all residential use of the log cabin and the shepherd's hut on the Land, including short and long term rental of the log cabin and shepherd's hut; and (ii) remove all domestic paraphernalia from the Land.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the ground set out in s.174(2)(f) of the Town and Country Planning Act 1990 (as amended).
-

SUMMARY OF DECISIONS: BOTH APPEALS ARE DISMISSED AND THE ENFORCEMENT NOTICE IS UPHOLD.

Procedural matters

1. The Council's Enforcement Officers visited the site in response to a complaint, received in November 2022, that a log cabin was being used for residential letting. Following discussions at that visit the Appellant submitted a planning application, which is now the subject of **Appeal A**, on 7 December 2023. The Council issued a refusal notice for the application on 9 February 2024, but before doing so had issued, on 22 January 2024, the enforcement notice that is now the subject of **Appeal B**.
2. These timings have had various implications for the conduct of the two appeals. Firstly, the enforcement notice having been issued after the application was made, no appeal could be made against the notice on ground (a) (that is, that planning permission should be granted for the matters it addressed).¹ Secondly, the serving of the enforcement notice reduced the time available to appeal against the planning application from six months to 28 days.² The agent acting for the Appellant understood that the deadline for an appeal against the enforcement notice was 21 February 2024, and was concerned (understandably, given the complexity of the legislation involved) that if an appeal against the planning application were to be lodged after that date, the Planning Inspectorate may refuse to accept it. Having waited to know the outcome of the planning application before appealing against the enforcement notice (again, entirely understandably; had permission been granted, no such appeal would have been necessary) the Appellant was left with less than two weeks to prepare and submit both appeals.
3. In view of this, and in order to ensure that the Appellant was not unfairly disadvantaged, the Planning Inspectorate agreed to link both appeals so that they could be determined together. The appeal against the enforcement notice on ground (g), which was made on a precautionary basis in case the enforcement notice appeal was determined separately (and prior) to the appeal against refusal of planning permission, was consequently withdrawn. The Planning Inspectorate also agreed to accept additional evidence from the Appellant (in the form of reports from Highways and Landscape professionals) after the appeals were lodged. The Council has had the opportunity to comment on this additional material, and I have taken it into account in my determination of the appeals.
4. The Appellant requested that determination of the appeals proceed by way of a Hearing, whereas the Council requested the written representations procedure. I appreciate that the Appellant, and a large number of supporters of the proposed development, were keen to discuss and endorse the activities taking place on the Appeal Site in person. But it is important to be clear that a Hearing is not intended to be an arena to expand and develop the grounds of appeal; rather, it provides an opportunity - if needed - for the appointed Inspector to test the submitted evidence through questioning. In this case, both the main parties have provided comprehensive written evidence, including substantial comments on each other's submissions, and other interested parties have had full and fair opportunity to submit their views in writing. I am satisfied that the written representations procedure is the most appropriate.

¹ S. 174(2A) of the 1990 Act

² Article 37 of the Town and Country Planning (Development Management Procedure) (England) Order 2015

Appeal A

Background

5. Little Greyhills is a smallholding of some 6.5ha, which lies in open countryside around 2km to the west of Harbertonford and 3km south-east of Diptford. The Appeal Site consists of parts of two field compartments known as West Field and The Paddock, which lie to the west of the main dwelling, on the south-facing slopes of a valley that drops down to Ashwell Brook. A log cabin known as "Wildflower Cabin" was constructed in the West Field in April 2017, and a shepherd's hut known as "The Apple Wagon" was sited in the Paddock in 2019. Two further shepherd's huts were placed in the north-east corner of the West Field in 2022.
6. The Appellant, who lives at Little Greyhills with his family, has a psychotherapy practice in Totnes but has also been developing an outdoor ecotherapy business on the land at Little Greyhills. The Planning Statement submitted with the application explains that the Appeal Site is used for individual therapy, for which some clients stay in the Apple Wagon or Wildflower Cabin and others travel on a weekly basis; and Retreat events, which cater for up to 20 people, with clients camping in the West Field and guest therapists staying in the Apple Wagon and Wildflower Cabin. The Appeal Site is also used on days throughout the year for non-residential workshops, where attendees learn skills such as hedge-laying, and for other cultural events, attended by 40-50 people during the day. The Appellant's intention is to grow the business through increasing the amount of ecotherapy sessions and training, and expanding the range of regenerative land management courses and community wellbeing events.
7. When not in use for retreat or therapy purposes, the Wildflower Cabin and Apple Wagon have been made available to tourists. While tourism use formed part of the development proposed in the planning application, the Appellant has subsequently requested that this be removed from the application, explaining that letting to tourists was intended to be phased out as the therapeutic use built up. The Appellant has suggested a condition restricting the use of the accommodation to occupation connected with the therapy and education activities taking place on the land, and I shall take this into account in my consideration of the appeal.

The main issue

8. The Appellant's business is centred around the practise of therapy and regenerative agriculture within a peaceful outdoor environment; provision for participants to immerse themselves in nature, at a remove from their everyday lives, is therefore a key component of its operation. There is a wealth of evidence as to the benefits that nature-based therapeutic practices can have for mental health and wellbeing. There is also considerable support, in the form of written representations from mental health and therapy professionals, for the services provided by this particular ecotherapy practice. However, while the importance to the business of a location in the countryside is clear, the question is whether *this particular location* – the Appeal Site – is or can be made acceptable, in terms of land use planning.

9. The main issue in this appeal, then, is the suitability of the location for the proposed development, with particular regard to the spatial strategy set out in the Development Plan; accessibility by sustainable modes of transport; the safety of highway users; any impacts upon the living conditions of neighbouring residents; and the effect of the development upon the character of the landscape.

The policy framework

10. Applications for planning permission must be determined in accordance with the Development Plan for the area, unless there are material considerations which indicate otherwise. The Development Plan for this area is the Plymouth and South West Devon Joint Local Plan 2014-2034 ("The Local Plan"), which was adopted by South Hams District Council in March 2019. The Local Plan sets the Strategic Objective of prioritising Plymouth as the most sustainable location for major development, focusing growth on the six main towns (which include Totnes), and minimising development in sensitive locations where high quality natural environments could be harmed.
11. Local Plan Policy TTV26 specifies that isolated development in the countryside will be avoided, and only permitted in exceptional circumstances, of which five examples are provided. The development here proposed does not accord with any of those examples. However, Policy DEV15 recognises that support should be given to proposals - in suitable locations - which support and diversify the rural economy, and provides some flexibility to enable development in the countryside, provided it can be achieved sustainably. The policy states that "...the development and expansion of small business in residential and rural areas will generally be supported, subject to an assessment that demonstrates no residual adverse impacts on neighbouring uses and the environment" and sets out matters that development proposals should address. I consider these further below.

Accessibility

12. Little Greyhills is reached by a narrow, unlit country lane, with no pedestrian walkway and few passing places. There is no bus stop nearby, and the closest train station is in Totnes, some 8km away. This means that the vast majority of travel to and from the Appeal Site involves the use of a private motor vehicle.
13. While reliance upon the use of private vehicles is not unusual in remote countryside locations, it is something that both national and local planning policy seeks to address and discourage. Local Plan Policy DEV15 states that development proposals should avoid a "significant increase" in the number of trips requiring a private car, and facilitate the use of sustainable transport where appropriate.
14. In my judgment, the movements of clients attending individual ecotherapy sessions at the Appeal Site would be unlikely to result in any significant increase in vehicle movements, when compared to the existing authorised use of the land. However, the events held at the Appeal Site are a different matter. Retreat events (attended by up to 20 people) and Cultural events (attended by up to 50 people) would involve a significant increase in the number of vehicles driving to and from the Appeal Site.

15. The Appellant has provided a Sustainable Travel Plan, as required by Policy DEV15, which sets out proposals aimed at promoting sustainable travel and reducing the use of private vehicles. While a number of the proposed measures - such as laying on extra transport for events when a large number of people are expected to arrive in a single day - would be beneficial, many are listed under the heading "New Measures to come". The Travel Plan contains little detail as to how these ideas would work in practice, and the extent to which they would be able to mitigate the traffic impact of the development.
16. It is possible, in order to address concerns about sustainable travel, to grant planning permission subject to a condition requiring compliance with a Sustainable Travel Plan. But in order to be effective, such a condition needs a Travel Plan which provides full details of the measures proposed, including the dates by which they will be implemented, to ensure that the stated outcomes are measurable and enforceable. The Travel Plan submitted by the Appellant would not, in its current form, achieve this.
17. The concern therefore remains that, since the Appeal Site is in a location where there is very limited opportunity for the use of more sustainable modes of transport, the proposed development would generate a significant increase in the number of trips by private car.

Highway safety

18. Access to Little Greyhills is from a driveway which joins the highway at the north-east corner of the Appeal Site, via a 10m wide bellmouth junction that also serves the driveway of the neighbouring property, Greyhills Farm. Having visited the Appeal Site, the Highway Authority raised no objection to the grant of planning permission on the basis that conditions could be attached. The suggested conditions were to ensure the requisite visibility was achieved at the access, either by relocating it or via legal agreement with the adjoining land owner, and to restrict the number of events held at the Appeal Site.
19. I note that the land which accommodates the visibility splay to the east belongs to the neighbouring property owner, who has objected to the proposed development. The Appellant's Transport Consultant has produced a plan to show that an alternative access, some 17.5m west of the existing access, could be provided and would achieve the appropriate visibility splays within land owned by the Appellant. It would be possible to grant planning permission subject to a condition requiring the provision of this new access. However, its construction would involve either the translocation, or removal and re-planting, of some 47m of the existing roadside hedgebank. So while the new access would have benefits in terms of reducing the potential for conflict between road users, it would have adverse impacts on the character and appearance of the rural lane. I return to those below.
20. The fact that the Highway Authority considers it necessary to restrict the number of events taking place at the Appeal Site indicates that there is a limit to the number of vehicle movements it would regard as acceptable, in terms of highway safety. Unfortunately, it has not given any indication as to what that limit is.

21. In my judgment, the impact that the development would have on the safety of the highway network is largely dependent upon the number, and pattern, of the additional vehicle movements it would generate. The Transport Technical Note produced on behalf of the Appellant calculates that the Appeal Site would generate an additional 0.2 vehicle movements per hour on average (up to 2.3 on a daily basis) in and out of the site, and concludes that this would have a negligible impact, in terms of capacity and safety, on the local highway network.
22. However, I share the Council's concern that the use of averages masks the risks involved. For example, when considering the "worst case scenario" for Cultural events held at the Appeal Site, the report proceeds on the basis that there are two such events each year, with 40 people attending and "20 vehicles being used on average", thus generating "a maximum of 20 vehicle arrivals on the starting day and 20 vehicle departures on the day these events are held". This is calculated as resulting in an average of 1.5 vehicle trips per week per year. But the Planning Statement (and Appeal Statement) submitted by the Appellant state that this type of event takes place four times a year, and caters for 40-50 people.
23. The "worst case scenario" is therefore 50 vehicles arriving at around the same time for the start of the event, and departing again when it ends. A weekly average derived on this basis would be very much larger than that calculated in the report. More importantly, the arrival and departure of up to 50 vehicles within a short space of time would be a huge increase upon the existing pattern of vehicle movements, measured by the Technical Report as currently "an average of just 8 vehicles per hour on both directions during the peak hours of the highway network." There are similar problems with the "worst case scenario" calculations for the other proposed activities at the Appeal Site.
24. Even if adequate visibility for vehicles emerging from the Appeal Site were secured by provision of a new access, a significant increase in vehicle movements along these narrow rural lanes would clearly increase the risk of conflict between highway users. No means of specifying the pattern, and maximum number, of such vehicle movements (for example, an appropriately detailed Travel Plan or Management Plan, compliance with which could be required by condition) has been put forward. Without clarity on these matters, it would be unreasonable for me to impose a condition restricting events at the Appeal Site to what could only be an arbitrary number.
25. In summary, on the basis of the evidence currently before me, I am not satisfied that the development proposal meets the Policy DEV15 requirement to demonstrate safe access to the existing highway network.

Living conditions

26. The nearest residential properties to the Appeal Site are Greyhills Farm to the east, and Greyhills to the west. As noted above, the application for planning permission originally included the use of parts of the Appeal Site for tourism, and I understand that when not in use for therapy purposes, the Wildflower Cabin and The Apple Wagon have previously been let out as holiday accommodation. However, the Appellant no longer seeks permission for this type of use, and has proposed that a condition be attached to any

grant of planning permission to limit the occupation of these structures, and the two shepherds huts in the north-east corner of the West Field, to purposes connected with the therapy and educational activities taking place on the Appeal Site.

27. The topography and layout of the Appeal Site is such that both the Wildflower Cabin and the Apple Wagon occupy secluded and self-contained sites within their respective fields, at some distance from any of the existing nearby dwellings. However the camping area, and the two additional shepherds huts, occupy a more prominent position at the top of the West Field, parallel to the road and in line with the house at Greyhills. A new hedge line has been planted along the western boundary of the field. While there would be no significant harm to the outlook or privacy of the occupiers of Greyhills, the proximity of the camping area to this existing dwelling would have the potential to increase the level of noise disturbance. I appreciate that the current occupiers are supportive of the proposed development, but there can be no guarantee that future occupiers would feel the same way, so it is important to assess the impacts on an objective basis.
28. The extent of the noise disturbance generated by the presence of the camping area, and the two adjoining shepherds huts (one to be used for accommodation, the other for washing facilities) would be largely dependent on the nature of their occupation and the numbers involved. The description in the planning application describes this part of the use as "seasonal camping", but my understanding of the supporting material submitted by the Appellant is that the camping pitches are intended for use by people enrolled on courses or engaged in therapy at the Appeal Site, rather than being more generally available to holidaymakers. If that is so, there is the potential to restrict their occupancy in the same way as has been proposed for the Wildflower Cabin and the shepherds huts.
29. However, there is also the question of numbers. The Planning Statement submitted with the application states that at Retreat events run on the Appeal Site, clients camp in 10-12 tents; it also indicates that students attending traditional craft courses may wish to stay on site, as may volunteers working on land management projects. There is no proposal (either directly by condition, or through the provision of a Management Plan which could be conditioned) to limit the maximum number of pitches; identify the extent of the "seasonal" use; or ensure that camping would be restricted to the designated "camping area". Nor, as discussed above, is there any proposed mechanism to limit the number of events held; the area(s) of the Appeal Site in which they would take place; or the number of attendees.
30. In the absence of such controls, the presence of a large number of campers, or the staging of Cultural Events for 40-50 people in the West Field, creating significant levels of noise disturbance in close proximity to Greyhills cannot be ruled out. I cannot therefore be satisfied that the development proposals would, as required by Local Plan Policy DEV 1, provide adequate protection from noise disturbance for neighbouring residents.

The impact on the landscape

31. The Landscape and Visual Appraisal (LVA), submitted by the Appellant in the course of the appeal, concludes that "the landscape and visual effects of the

proposals are small, affecting predominantly localised receptors and there is scope for these to reduce in the long term with appropriate mitigation measures." I note that the Council accepts these findings, but in my view the LVA somewhat understates the visual impacts of the proposal. This is because no regard has been had to the impacts, when in use, of the camping area at the top of the West Field and the parking area in the north-east corner of the Appeal Site.

32. Both of these would be visible in views from lanes near Great Horner and Ashwell (Figures 14 and 15 of the LVA), and the camping area would be visible at much closer range to users of Diptford Footpath 5, which runs along the western boundary of the West Field. The LVA acknowledges that walkers on this path would experience "full views across the site". The planting that has been undertaken in and around the proposed camping area provides some screening, which would increase over time as the planting matures, but nevertheless the presence of tents and caravans would be clearly apparent in the foreground of views across the site.
33. One of the Council's reasons for refusing to grant planning permission was that increased activity associated with the proposed development would erode the relative tranquility of the Appeal Site and increase light spill. The concern about light spill could be addressed by condition requiring the Council's prior approval of exterior lighting, including any to be used in the camping area, and communal spaces such as the kitchen and washing areas. However, as discussed above in the context of noise disturbance, the impact on tranquility would be largely dependent on the nature of the activities taking place on the Appeal Site and the numbers involved. Without appropriate restrictions governing the use of the camping area, and the location and content of the Cultural events for 40-50 people, I share the Council's concern about adverse impacts on the tranquility of this part of the countryside.
34. There is also the matter of the proposed new access. For the reasons set out above, I have found that in the absence of an appropriately detailed Travel Plan it would not be possible to impose a condition restricting vehicle movements to and from the Appeal Site, and that the calculations of the Transport Technical Note are not sufficiently robust to support its conclusion that the proposed development would have a negligible impact, in terms of capacity and safety, on the local highway network. In the light of those findings it would be necessary, were I minded to grant planning permission, to impose a condition requiring the prior provision of the proposed new access.
35. Details of the new access are limited to the layout plan produced by the Appellant's Transport Consultant. The lack of detail as to any landscaping and re-planting measures involved is understandable, given the timetable of the Appeal, but makes it difficult to assess the full impact of the proposal. It is clear that some 47m of the existing roadside hedgebank would need to be moved. It is not clear whether it could be successfully translocated, to a position behind the new visibility splay, but even if it could, the presence of an engineered opening of this size would be at odds with the rural character of the narrow country lane. As the LVA notes, it would have a major/moderate adverse effect on the landscape in the immediate context of the site during construction; the extent to which this would reduce over the years following completion would depend on the success of the re-established planting.

36. Drawing all of this together, I conclude that the proposed development would conflict with the aims of Policy 23 of the Local Plan, which seeks to conserve and enhance the character of the landscape.

Conclusions

37. It is fair to note that the Appellant has provided persuasive evidence that his proposed ecotherapy and educational activities are dependent on a tranquil countryside location. But planning permissions run with the land, rather than the occupier, and the problem here is that an unfettered grant of planning permission, in the terms sought, would be wide enough to allow a future occupier to undertake activities of a very different character.

38. For example, the provision of "ecotherapy" by the Appellant, involving a small number of people quietly communing with nature, would preserve the tranquillity and dark skies of the Appeal Site; but another type of therapy involving a large number of people chanting, playing instruments, and lighting bonfires at night, would not. Similarly, while "education" in traditional land management practices would be well suited to the agricultural setting of the Appeal Site, "education" in how to perform stunts on motorbikes would not.

39. Those examples are somewhat specious. But the serious point is that since it is the precise nature of the activities taking place on the land - and the numbers involved - that define whether or not they are an acceptable use, it is important to ensure that they are clearly defined and controlled. If appropriate restrictions on the use cannot be achieved, either by condition or legal agreement, a grant of planning permission cannot be justified.

40. I accept that the landscape and visual effects of the proposal are relatively small and localised, and I note that the development would have some economic benefits in terms of job creation and local spending. Local Plan Policy DEV15 provides support for this type of small-scale business in rural areas, subject to various provisions. If those provisions were met, that might be sufficient to overcome the limited harm to the landscape in this case, and justify a grant of planning permission.

41. However, for the reasons set out above, I have found that the proposal would generate a significant increase in the number of trips by private car; and that safe access to the existing highway network, and adequate protection from noise disturbance for neighbouring residents, have not been demonstrated. These considerations indicate that the Appeal Site is not, in the terms of Policy DEV15, a "suitable location" for the proposed development. It follows that development proposal is not supported by this Policy.

42. The Appellant has suggested that use of the Wildflower Cabin and the Apple Wagon could be permitted solely to provide accommodation in association with the use of the Appeal Site for a mixed use of therapy and education.³ It is possible, under s.79(1)(b) of the 1990 Act, to make a "split decision" allowing one part of a scheme and dismissing the rest. However, this can only

³ This is the Appellant's case on ground (f) of Appeal B. Ordinarily, where there is no ground (a) appeal, the planning merits of alternative proposals made under ground (f) cannot be taken into account. But in light of the reasons for ground (a) having been precluded (discussed at paragraph 2 above), and in the interests of fairness, I consider it is appropriate in this case to consider whether permission for the alternative proposal could be granted in the context of Appeal A.

be done where the parts are clearly severable, both physically and functionally. In this case, providing accommodation for attendees is not separate from, but rather an integral component of, the proposed provision of therapy and educational activities on the land. The proposed activities, and the provision of accommodation for people engaged in them, are functionally indivisible: having concluded that planning permission should not be granted for the former, there is no justification for permitting the latter.

43. In conclusion, I find that the development here proposed would conflict with the objectives of Policies TTV26, DEV 1, DEV 15 and DEV 23 of the adopted Local Plan, and there are no other material considerations of sufficient combined force to outweigh that conflict. I therefore determine that planning permission should be refused.

Appeal B

44. The appeal against the enforcement notice was originally lodged on grounds (a), (f) and (g) but as noted above, an appeal on ground (a) is precluded by s.174(2A) of the 1990 Act, and the appeal on ground (g) was withdrawn (as unnecessary) once the two appeals were linked.

45. The appeal is therefore proceeding solely on ground (f): that is, that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the purpose of the notice is to remedy the breach of planning control, rather than injury to amenity. The breach of planning control attacked by the notice is the use of the Wildflower Cabin and Apple Wagon for residential purposes.

46. The notice requires that all residential use of the Wildflower Cabin and Apple Wagon should cease. The Appellant contends that a lesser step, of restricting the residential use of these two units to accommodation only in association with the use of the Appeal Site for ecotherapy and education, would suffice.

47. Put simply, this suggested alternative would not serve to remedy the breach, because the Wildflower Cabin and Apple Wagon would still be in use for residential purposes. While a solution which falls short of a complete remedy of the breach can sometimes be reached, if it is acceptable in planning terms, that would not be the case here, for the reasons set out at paragraph 42 above. Varying the notice to permit the use of accommodation in connection with proposed activities, when those activities have been refused planning permission, would not be appropriate.

48. I conclude that the appeal on ground (f), and consequently Appeal B in its entirety, should fail.

Formal Decisions

49. **Appeal A** is dismissed. **Appeal B** is dismissed and the Enforcement Notice is upheld.

Jessica Graham

INSPECTOR