



Appeal Decision

Hearing held on 16 April 2025

Site visit made on 16 April 2025

by R Curnow MA(TCP), BSC(Hons), CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 May 2025

Appeal Ref: APP/X1118/C/25/3358896

Little Silver Quarry, Muddiford, Barnstaple EX31 4HQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Stuart Baillie against an enforcement notice issued by North Devon District Council ('the Notice').
 - The notice was issued on 5 December 2024.
 - The breach of planning control as alleged in the notice is Without planning permission within the last 10 years unauthorised change of use of land to residential use including the storage and residential use of mobile homes on the land.
 - The requirements of the notice are to: 1. Remove mobile homes and attached structures in the approximate locations outlined in blue and labelled A, B, C and D on the attached plan from the land outlined in red; 2. Cease the residential use of the land edged red; 3. Cease domestic storage use of building in the approximate location outlined in green labelled E; 4. Remove all residential items and domestic paraphernalia from the land edged in red, including but not only those domestic items stored in building in the approximate location outlined in green labelled E; and 5. Remove from the land edged red any rubbish or debris resulting from compliance with steps 1-4 and dispose of these in a responsible manner.
 - The period for compliance with the requirements is: 9 months.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a), (b), (f), (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected as follows:

The deletion of the wording in section 3 of the Notice, and its substitution with the words "Without planning permission within the last 10 years, the unauthorised material change of use of land to a mixed use of sawmill, woodland and residential use through the erection of 2 residential structures and the siting of 2 mobile homes for residential purposes (together referred to as 'residential units')."

and varied as follows:

the deletion of 9 months and the substitution of 12 months as the period for compliance

2. Subject to the corrections and variation:

- The appeal on Ground (a) is allowed in part and planning permission is granted for part of the application deemed to have been made under section 177(5) of the 1990 Act as amended for the material change of use of land to a mixed use of sawmill, woodland and residential use through the provision of 1 residential

unit at Little Silver Quarry, Muddiford, Barnstaple EX31 4HQ, subject to the conditions set out below.

- . The appeal on Ground (a) is dismissed insofar as it relates to the provision of 3 residential units, and planning permission is refused on the application deemed to have been made under section 177(5) of the Act, as amended.
- (1) No more than one residential unit shall be provided on the Land. Within 3 months of the date of this decision a Site Layout Plan showing the position of the residential unit shall be submitted to the local planning authority for its approval in writing. The approved layout shall be implemented and maintained for the duration of the permission.
- (2) The occupation of the unit of accommodation hereby approved shall be limited to a person solely or mainly employed or last employed in the sawmill business being undertaken on the land edged red on the Plan attached to the Notice, or a widower of such person or surviving civil partner, or any dependents.
- (3) The residential use hereby permitted shall be for a limited period being the period of 3 years from the date of this decision. At the end of that period, the residential unit hereby permitted shall be removed, the residential use hereby permitted shall be discontinued, and the land shall be restored to its former condition in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.

Procedural Matters

- 3. The Hearing remained open, in part, at the site visit to allow the debate on the planning unit and whether the residential units were caravans or buildings to be continued, as necessary.

The Notice

- 4. The land outlined in red on the plan attached to the Notice is used for more than simply the residential use alleged in the Notice. The red line denotes the boundary of a former stone quarry that was dug into the hillside. On the former quarry floor stands a collection of large buildings and an extensive yard, which are used as a sawmill. Save for the residential units, the remainder of the site is woodland. This woodland is not used as a source of timber for the sawmill.
- 5. The sawmill use does not benefit from planning permission. It was unclear what the lawful use of the site was. Reference was made to two planning permissions for the use of the land, following the closure of the quarry: the first was for a waste transfer/green waste recycling use granted in 2001; the other for a facility for the production and storage of green fuels, granted in 2015. The Appellant said that he took over the site in 2014, and that the green fuel use had started for a brief period and that he thought that the use was “technically commenced”. Irrespective of this, in its Statement of Case (‘SoC’) the Council stated that the use would accord with the terms of the development plan, a position it confirmed in the Hearing. Its Notice did not attack that use and, in its SoC, it stated that “it is not expedient to pursue an application or an Enforcement Notice for the change of use”.

6. The parties agreed that the red line accurately defined the planning unit. After visiting the site and applying the principles in *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207, I, too, find this to be the case. Within this unit, I find that there is a mixed use of the land, and that the allegation should be corrected to include the woodland and sawmill as primary uses. Charcoal making also occurs on the land, using timber from the sawmill as its raw material. It is ancillary to the sawmill use. In the Hearing, the parties agreed that the above was the case.
7. Both parties' positions were that what was on the land were caravans. On the basis of what could be seen of Units A-D in Figures 3-6 of the Appellant's SoC and the comments made on them in paragraphs 2.2.5 – 2.2.7, I questioned whether what was on site were caravans or buildings. This was based on the terms of s1(4) of the Caravan Sites and Control of Development Act 1960.
8. I saw that Unit A was a caravan that had been closely surrounded by a timber frame. This frame was not set into the ground but was freestanding on concrete blocks. It supported timber cladding, behind which was insulation, and a lean-to timber roof. That roof ran past the caravan to abut the wall of the sawmill building creating a covered walkway. The roof was not fixed to the building, however. Other alterations that had been undertaken included installing a new door to the caravan, from the covered walkway, the original door having been covered by cladding, and the replacement of one end wall. Underneath, wheels were still attached to the frame.
9. Notwithstanding the alterations that have been undertaken, Unit A is capable of being moved with relatively minor works to detach the timber frame and cladding. Therefore, as a matter of fact and degree I find Unit A to accord with the definition of a caravan.
10. Unit B consisted of a caravan that had been altered. Timber cladding, supported by a freestanding frame, had been added on one side. This frame, in part, also supported a timber roof that was also rested on the roof of the caravan as the frame was unfinished. A small freestanding area of decking had been formed in front of the side that had been clad. Underneath, wheels were still attached to the frame.
11. Again, although having been subject to alterations, as a matter of fact and degree Unit B is a caravan.
12. Unit C has the appearance of a building. Whilst one can see a small touring caravan within it, this has been subsumed by timber extensions. To its front has been added a lean-to porch and store and an incomplete area of decking. To its rear, an extension that is larger than the original caravan has been added. This is supported on timber supports that allows it to project out over the edge of the old quarry face. Due to the undergrowth and that they were on the cliff face, I could not see whether these were fixed into the ground. A sizeable portion of one of the tourer's walls had been removed to allow easy movement between it and the extension to which it was attached.
13. This unit did not have any bathroom or kitchen facilities, and the evidence shows that it has been used for sleeping purposes only by the Appellant's youngest son.

14. As a matter of fact and degree, what was originally a small caravan has, by way of extensions that have more than doubled its floor area and rendered it immobile, become a building.
15. Unit D is by far the largest of the four units. Again, it has the appearance of a building. A static caravan was sited on the land, which was thereafter subject to significant alteration and extension. I saw that the caravan, which still had its wheels in place, had been clad on its eastern and northern sides in a similar manner to that applied to Units A, B and C. From this, a steeply pitched roof covered the caravan, rising to a ridge running approximately along the line of the southern elevation of the caravan. From the ridge, the same pitched roof falls to the south of the caravan. This was walled-in and forms a large extension to its living accommodation, housing a large lounge and a bedroom. The two are linked internally by way of the removal of a fairly large section of the caravan's south wall.
16. A large area of decking has been constructed along the western and southern sides of the unit. Part of that on the western end is covered by an extension of the roof. A large porch feature runs out from the roof over part of the southern area of decking. The supports for the roof were, as far as I could see, not set into the ground, but sitting on concrete pads that, in turn, sat on the surface of the former quarry.
17. Unit D, as a result of the additions and extensions, has more than double the floor area and volume of the original caravan. From the evidence of my site visit, as a matter of fact and degree, Unit D is no longer a caravan. The mobility required by s1(4) of the 1960 Act has been lost and the static van has been subsumed by the additions I describe. It is a building.
18. In the Hearing, the parties agreed that, were I to find that any of the units to be buildings, I could correct the Notice without causing injustice. I find this to be the case, and I will correct the alleged breach of planning control.

Ground (b)

19. An appeal made under Ground (b) is that the matters alleged in the Notice have not occurred.
20. In essence, the uncorrected Notice alleges the use of the land by mobile homes used for residential purposes, and their storage. It is the alleged storage that the Appellant challenges. The Council's position is that when unoccupied the mobile homes were being stored on the land.
21. The Appellant states that there has been no such storage on the land. The units were all used for accommodation by members of his family. Although there were short breaks in their occupation, for example Unit C is largely used at weekends only, this did not amount to a storage use.
22. The Council provided no evidence to contradict this, and I find that the evidence points, on the balance of probability, to the units all being used for residential purposes by family members. There was nothing in the evidence before me to lead me to find that there were significant breaks in occupation that might result in the cessation of the residential use and the commencement of a storage use.
23. I find that, on the balance of probability, the storage use has not occurred, and I shall correct the Notice. To this extent, the Ground (b) appeal is successful.

Ground (a) and the Deemed Planning Application

Reasons

24. The appeal under this ground is that planning permission ought to be granted for the development alleged in the corrected Notice.
25. Before assessing the planning merits of the cases, it is necessary to address the Appellant's assertion that Units A, B, C and D are not separate units of accommodation but form "a single family unit of accommodation". His position is that the first three of them are used for purposes ancillary to the use of Unit D, forming a single dwelling not unlike a large multi-bedroom farmhouse. The Council's position is that each is a separate unit.
26. Unit A is located close to the entrance to the land, adjacent to the sawmill building. It is linked to Unit D, which lies on higher land, by a former quarry track formed from compacted gravel and mud. In parts, this is quite steep, and it is unlit. There is quite some distance between the two units, and the two are not intervisible.
27. Unit B is set at a higher level again than Unit D. A similarly constructed, unlit track runs from Unit B down to join that linking between Units D and A. Although Unit B is considerably closer to Unit D than Unit A is, due to the topography of the former quarry and vegetation they are not intervisible.
28. Both Units A and B are occupied on a full-time basis by sons of the Appellant, who lives in Unit D. Both have a kitchen, bathroom, bedrooms and living rooms, and are self-contained units capable of independent living. Unit C does not have a kitchen or bathroom, but has a space used as a combination of living room and bedroom.
29. The Appellant told me that his sons eat with him 3-5 days a week, though this included his youngest son who lives at the weekends in Unit C, which does not have any facilities. I was not provided with evidence from the occupants of any of the other units to support what was claimed. This means that, by the Appellant's own estimate, on 2 to 4 days in any week the occupants of Units A, B and C do not eat at Unit D.
30. Given that they fall outside the curtilage of Unit D, which I find to be limited to the land directly around it, the distance between it and the other units, and the range of facilities in Units A and B I find that there are four residential units, rather than a single family unit of accommodation.
31. It is for the Appellant to make his case on the balance of probability; he has not done so.

Main Issues

32. The Main Issues are:

- Is there an essential need for a full-time residential presence on the land? and
- Whether the site is in a sustainable location in terms of access to services and facilities?

Need for full-time residential presence

33. The site lies in the open countryside away from any urban centre. The approach to the provision of residential development in such areas set out in Policies ST07 and DM28 of the North Devon and Torridge Local Plan 2011-2031 ('NDTLP'). They are the principal policies in this respect in the NDTLP and they reflect the approach in the Government's National Planning Policy Framework ('the Framework').
34. The former policy sets out a hierarchical approach to development across the plan area. Development in the countryside is at the bottom of the hierarchy and development here is limited to that which is enabled to meet local economic and social needs, rural building reuse and development which is necessarily restricted to a countryside location. Policy DM28 refers specifically to the provision of accommodation for rural workers and sets out a number of criteria that proposed developments should accord with. The Council has produced a Rural Workers' Dwellings Supplementary Planning Document ('SPD'), adopted January 2020, which sets out the approach to considering proposals for such dwellings.
35. Broadly speaking, the approach in Policy DM28 is that there has to be a functional need for a residential presence on a site and that the business involved must demonstrate that it can support this financially. This is the approach that both parties took in their submissions.

Functional Requirements

36. Although not benefitting from planning permission, the sawmill business was first established in 2014 and, thus, has some longevity. In addition to the Appellant, the business provides full-time employment for two of his sons and three other people. His youngest son works on an 'as and when' basis. The Appellant says that he plans to take on more staff in the future. The business is run from a complex of quite large rural-style timber buildings that are set in a large yard area at the bottom of the former quarry.
37. Briefly, raw material, in the form of very large logs, is brought to the site by lorry. These are sorted, stored, graded, dried, split, sawn, finished and packed before being sold and distributed. Amongst the end products that I saw were planks and sheets of wood of various sizes, and timber roofing shingles. In addition, the business produced a range of bespoke items, such as kitchens and furniture, in a dedicated workshop area.
38. I was told that the latter work is solely undertaken by a master craftsman, whilst everyone employed at the sawmill undertakes work in all other aspects of the business. In addition to carrying out the operations I have identified, above, all of the staff undertake routine maintenance tasks, repairs and safety checks.
39. The ancillary charcoal operation uses wood arising from the sawmill business as its raw material. A large charcoal burner is located in the yard area, near the sawmill building. This runs for 12 hours a day, every other day, from May to September. I was told that this had to be continuously monitored to ensure that it runs at the correct temperature.
40. In addition, I was told of the need for security at the site. The equipment used for the sawmill operations is of significant value, as are the various forms of timber that is on the site. I saw that the business was in a remote position, away from dwellings that might allow for some independent overseeing of the site.

41. The risk of fire from both the kiln and charcoal burner at the sawmill, are a great concern to the Appellant. This is understandable, given the potential for fire arising from those two parts of the business and the large amount of flammable material on the site. He is also concerned about fire caused as the result of criminal acts. In this regard, he referred to a nearby golf driving range that had been “set alight”. The Council seemed to be aware of this but said that it was not relevant to the case. I find it to be relevant, as it provides good reason for the concerns that the Appellant raises.
42. A full-time presence on the site would be of great benefit to the security of the business. I understand the Council’s position that the letter from the Appellant’s insurance company did not say that it would not insure him without a presence on the site. However, it did reflect the points that were made by the Appellants in the Hearing and referred to the “vulnerabilities of the site” and that the current insurance policy was “based on you [the Appellant] living on site”.
43. The Appellant told me that there had been a break-in on the site prior to people living there, but not since. In response to the point that there are other security measures that might be taken, he said their performance was hampered by the intermittent nature of internet in this rural area, and it would be impossible to secure the whole of the perimeter of the land.
44. In the light of the above, I give the reasons put forward for a full-time residential presence on the land significant weight.
45. The Appellant made the case that there are no buildings on the site that might be converted to form a dwelling, and I saw that to be the case. His submission that there were no alternatives available in the locality was not challenged by the Council.
46. This is a business where I find that, taken as a whole, the case put forward justifies the functional need set out in Policy DM28 and the SPD.

Financial considerations

47. Whilst the business has been established at the site since 2014, this cannot necessarily be taken as an indication that it has been financially successful during that time. Financial statements have been submitted for two years, those ending 30 November 2022 and 30 November 2023. I was told that the accounts for the period ending 30 November 2024 were not available, but not why this was the case.
48. The statements I have show a generally healthy business with, at year’s end in 2022, a net profit of £67,370, whilst in 2023 it was £73,790.
49. I agree with the Council that little evidence was provided to support the Appellant’s contention that full-time residential occupation of the site would improve the viability of the business. However, this is not the financial test. This is that an applicant can demonstrate that there is a realistic prospect of the business thriving and being able to support a permanent dwelling.
50. The approach in the SPD is that where a functional need is demonstrated, permission would be granted for a temporary dwelling and time allowed for the business to demonstrate its financial viability. Given the length of time that the business has been running and the financial statements that I have been given,

much of this has already been demonstrated. The SPD's approach is that this would normally require three years of accounts. I only have two before me and, notwithstanding the seemingly strong performance in the statements I have, I see no reason to divert from the line set out in the SPD.

51. On the basis of the evidence before me, I find that the financial case is only partially made for a permanent dwelling.

Conclusion on the need for a full-time presence

52. For the reasons set out, above, I find that the functional case for a full-time presence on the land is proven. However, this is only in respect of a single dwelling, as set out in Policy DM28 and the SPD.

Accessibility

53. It was agreed by the parties that the site is located in a position divorced from service and shopping provision. Whilst there are villages that are closer, the site is some 6 miles from the full range of services available in Barnstaple.
54. The road outside the site is a bus route. Although there is no bus stop, I was told that buses would stop there. There is no evidence that this would be the case, however, and, in the absence of a bus stop, I give this argument little weight. The road is subject to the national speed limit, and traffic speeds are fairly high. Furthermore, it has a number of bends along it. As there are no footways nor lighting, persons living at the site would be very unlikely to walk along it and it would be fairly unattractive to cycle along. This is a site where residents would be reliant on car travel. It is not, in the words of the Framework, a location that provides a safe and suitable access to all users.
55. Amongst its terms, the explanatory text to NDTLP Policy ST07 sets out that the policy seeks to guard against development in "unsustainable locations". It does, however, acknowledge that there will be "exceptions" to this rule. One of these, in Policy ST07(4), is where a development "necessarily restricted to a Countryside location". Therefore, notwithstanding the accessibility issues I refer to, the proposal accords with Policy ST07.

Other Matters

56. Following the publication of the revised Framework in December 2024, the Council reappraised whether it had a 5-year housing land supply ('5YHLS'). It published a 'Five Year Housing Land Supply Statement Addendum' in January 2025. Its finding was that the Council could only demonstrate a 4.86YHLS. I was told that this was still the case on the date of the Hearing.
57. This triggers the terms of paragraph 11(d) of the Framework, the so-called 'tilted balance'. In this, where the policies that are most important for determining an application are out of date planning permission should be granted. This is the case unless, amongst other things, other policies in the Framework provide a strong reason for refusing permission.
58. Given the lack of a 5YHLS, and that the application is for the provision of housing, the tilted balance is triggered. However, in the absence of any substantive justification for the retention of three of the units on the site and the poor sustainability of the location, and having regard to the poor sustainability of the

location and the expectation that rural housing be located where it will enhance or maintain the vitality of rural communities, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework.

Overall Planning Balance

59. Section 38(6) of the Planning and Compensation Act 2004, applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The terms of the Framework are such a material consideration. Whilst I have found that the retention of one residential unit on the land is merited, I did not with regards to the other three.

Conclusion on Ground (a) and the Deemed Planning Application

60. As the Council did not find against any of the units of accommodation for environmental reasons, the matter of which one should be retained for a temporary period can be left to the Appellant. This can be controlled using a suitably worded condition. As agreed by the Parties in the Hearing, the occupancy of the unit should also be controlled through condition. In accordance with the terms of the SPD, given that the financial case has not yet been made, the permission for the one unit should be temporary for three years. This would allow the Appellant the opportunity to demonstrate the required financial viability.
61. This proposal is an exception to the general rule restricting development where there will not be a variety of transport options available. Therefore, allowing one of the residential units would accord with the drive towards sustainable development in the Framework and NTDLP. As no necessity has been demonstrated for the other three residential units, this exceptionality does not apply to them.
62. I shall, therefore, grant planning permission for the retention of one of the units of residential accommodation, which I find to be acceptable, subject to appropriate conditions controlling its use, and the appeal succeeds to this extent. This would accord with the development plan as a whole. However, the other residential units fail to meet the terms of the development plan and allowing them would lead to unjustified dwellings in the open countryside that would significantly undermine the Council's policies for development in these areas. My decision grants planning permission for the residential use of one of the units to continue on a temporary basis, but not for the other three units. In these circumstances, it is appropriate to uphold the Notice. The effect of Section 180(1) of the 1990 Act provides that the Notice shall cease to have effect so far as it is inconsistent with that permission.

Ground (f)

63. The case put forward by the Appellant under this ground is that if I were to find, as I have, that the residential development on the site is not a single dwelling and there is no justification for all of the dwellings on the site, the number of units could be reduced. This is what I have done in the Ground (a) appeal, above, so I need not take the matter further.

Ground (g)

64. The Appellant claims that the 9 months allowed for compliance with the Notice is insufficient. He points to the need to find alternative accommodation, which would

be challenging in this area, and that the removal of the units would be a substantial operation which would “require a more reasonable time for compliance”. He does not, however, say what this would be.

65. On the basis of the evidence, and what I saw at my site visit, I find that the 9-month period to comply with the requirements to cease the residential use and physically remove the units not allowed under Ground (a) would be reasonable. However, I understand that it would be difficult to find alternative housing provision in the area for the Appellant’s sons living in the units to be removed. In the circumstances, I will vary the requirements of the Notice and extend the period for compliance to 12 months. To this extent, the Ground (g) case succeeds.

R Curnow

INSPECTOR

APPEARANCES

For the Appellant

Stuart Baillie Appellant

Samantha Thomas Agent – of CarneySweeney Planning

For the Council

Steve Emery

Stacey Salter

Matthew Brown