



## Appeal Decision

Site Visit made on 13 July 2021

**by Nick Davies BSc(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 August 2021**

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**Appeal Ref: APP/X1118/W/20/3265728**

**Middle Yarnacott Farm, Log Cabin, Track Past Middle Yarnacott, Swimbridge EX32 0QY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Ms Zena Burland against the decision of North Devon District Council.
  - The application Ref 71720, dated 30 June 2020, was refused by notice dated 28 August 2020.
  - The development proposed is change of use of land in order to put 4 shepherds huts as holiday accommodation.
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### Decision

1. The appeal is allowed and planning permission is granted for change of use of land in order to put 4 shepherds huts as holiday accommodation at Middle Yarnacott Farm, Log Cabin, Track Past Middle Yarnacott, Swimbridge EX32 0QY in accordance with the terms of the application, Ref 71720, dated 30 June 2020, and the plans submitted with it, subject to the conditions in the attached schedule.

### Applications for costs

2. An application for costs was made by Ms Zena Burland against North Devon District Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. Two of the shepherds huts were already in position at the time of my site visit. I am therefore dealing with these elements of the proposal retrospectively.
4. During the appeal, on 20 July 2021, the Government published its revised National Planning Policy Framework (the Framework). The Framework represents the Government's up-to-date planning policies for England and how they should be applied. The revisions do not have a significant bearing on the main issues, so neither party would be prejudiced by my consideration of the updated Framework in my determination of the appeal.

### Main Issues

- a) Whether the site is a suitable location for the development having regard to the tourism policies of the development plan and the accessibility of services and facilities; and,
- b) The effect of the development on biodiversity.

## Reasons

### *Location, development plan policies and accessibility*

5. The appeal site lies in a rural location to the north of Swimbridge. In such countryside locations, Policy ST07 of the North Devon and Torrridge Local Plan 2011-2031 (adopted 2018) (the Local Plan) limits development to that which meets local economic and social needs, rural building reuse and development which is necessarily restricted to a countryside location. Paragraph 4.16 of the supporting text clarifies that support is provided for rural employment and farm and rural business diversification schemes. Policy ST13 of the Local Plan recognises that tourism is an integral part of the economy of northern Devon, and it supports high quality sustainable tourism development, provided it does not damage natural or historic assets. Supporting paragraph 5.31 identifies that improved standards in the quality and range of accommodation and attractions, is an important element in achieving sustainable development.
6. Against the background of these strategic policies, Policy DM18 of the Local Plan specifically addresses tourism accommodation. Outside settlements, the development of new, and the expansion or rationalisation of existing tourism accommodation, will be supported where it meets one of three specific criteria. Criterion (c) is met if the proposal improves facilities for, or diversifies the range, or improves the quality, of existing tourism accommodation.
7. The shepherds huts would be located on land to the south of, and in the same ownership as, a listed farmhouse. Closely associated with the farmhouse is a cluster of buildings. Some of these are in agricultural use, but three of them (Sunset Cottage, Burcott, and Burlodge) are used as residential accommodation for holiday purposes. Furthermore, the evidence indicates that an extension to the farmhouse has also been regularly let as holiday accommodation, ancillary to the main dwelling. It is a matter of dispute whether all of these buildings have a lawful use as holiday accommodation, and whether they amount to existing tourism accommodation as required by part (2) of Policy DM18.
8. At the time of the application, Burlodge, was under conversion to holiday accommodation following the grant of planning permission for that purpose in 2018. I saw that it is now complete and, at the time of my visit, was occupied as holiday accommodation. The appellant has submitted evidence to show Airbnb bookings for most of 2019 for another of the units. Whilst there is an absence of evidence of more recent bookings, this is unsurprising in the light of the COVID-19 lockdown. Now that restrictions have been lifted, I saw that all three of the outbuildings were in occupation at my visit. Consequently, there is a lawful holiday use in one of the buildings, and a well-documented use of another. Although the Council has questioned the lawfulness of the holiday occupation of two of the buildings, no evidence has been produced to cast doubt on the appellant's evidence, or to demonstrate that the Council is pursuing enforcement action. I therefore conclude that there is existing tourism accommodation on the site.
9. The shepherds huts would be well-related to this accommodation, sharing an access drive and car-parking area. A level grassland recreation area would lie between the existing holiday buildings and the huts, and would likely be a shared resource. The huts would provide a different type of holiday accommodation to the buildings, being well-spaced and occupying a grass field

surrounded by trees. It would be a “greener”, closer to nature experience that would appeal to a different customer. Consequently, it would diversify the range of the existing accommodation within the site, so would accord with part (2) (c) of Policy DM18. Therefore, subject to compliance with criteria (d) to (h), the proposal would accord with the Policy.

10. The scale of the proposal is limited to four shepherds huts, each measuring approximately 5.9 metres X 2.6 metres and 3.4 metres high. They would, therefore, be considerably smaller than the existing units of tourism accommodation on the site. Whilst they would at least double the number of holiday units on the site, the overall level of accommodation would remain small. The scale and character of the proposal would, therefore, be appropriate to the size of the existing tourism business, in accordance with criterion (d).
11. It is not disputed that the local road network could safely accommodate the low level of traffic associated with the development; that the huts would not harm the character and appearance of the area; and that there would be no impact on the setting of the listed building. Furthermore, the site does not lie in the Area of Outstanding Natural Beauty. Consequently, there would be no conflict with criteria (e) to (h). As a result, the proposal would comply with Policy DM18.
12. In coming to this conclusion, I am mindful that the site is not easily accessible to public services and facilities. Although Swimbridge is relatively close, it is accessed via a narrow winding lane, with no footways or lighting, and has steep gradients. Occupants of the huts would, therefore, be reliant on private vehicles to access shops, tourist attractions, cafes, etc. The accessibility of the site is not, however, one of the criteria to be assessed under Policy DM18. My attention has been drawn to a recent appeal decision where a proposal for a new holiday unit was dismissed in a countryside location with poor accessibility to services. I have not been provided with full details of the case, but I note that in that instance the appeal site was not already in use for tourism accommodation, so the proposal was not supported by Policy DM18.
13. In conclusion, the proposal would diversify the range of existing tourism accommodation on the site, and would be appropriate to the scale and character of the existing holiday units. Consequently, the development would accord with Policies ST01, ST07, ST13 and DM18 of the Local Plan, which seek to support sustainable tourism in rural areas, by limiting new accommodation to that which is related to existing tourism sites or the conversion of existing buildings.

#### *Biodiversity*

14. The application was accompanied by an Ecological Assessment (the EA) by a suitably qualified expert. The EA found that the habitat on site was dominated by species-poor amenity grassland, which was intensively mown and provided low value habitat for wildlife. The loss of grassland to accommodate the huts would be minimal and no other habitats would be affected by the proposals. The EA also assessed the indirect impact of lighting on the linear boundary features, which hold moderate to high value for foraging bats. It concluded that the low-level external lighting to the front inward facing elevations, small windows to the rear, and the buffer between the huts and the boundary features would not result in significant disturbance to foraging and commuting bats. The development would not, therefore, be harmful to biodiversity.

15. The EA also made recommendations to deliver a net biodiversity gain on the site. This would involve, firstly, reducing the extent of grass that is closely mown and introducing a wildflower seed mix; and, secondly, the provision on the site of a bird nest box and a bat box. Whilst these features and enhancements were not fully detailed on the submitted plans, their provision could be secured through a suitably worded condition. The development would, therefore, provide an overall net-gain in biodiversity. Consequently, it would accord with Policies DM08 and DM18 of the Local Plan, which seek to conserve, protect and, where possible, enhance biodiversity interests.

### **Conditions**

16. As the development has already been partially undertaken, a condition limiting the period within which the development must commence is not necessary. I have imposed a condition specifying the relevant plans, as this provides certainty for all parties. The Council has submitted a schedule of suggested conditions to cover other matters. I have considered all the suggested conditions against the advice in the Planning Practice Guidance. Whilst I have agreed that they are necessary, I have altered them, in the interests of clarity and precision, to better reflect the guidance.

17. The external materials to be used on the two remaining shepherds huts are not specified on the submitted drawings. To protect the appearance and character of the area, I have therefore imposed a condition requiring their submission for approval. Conditions to prevent the installation of additional external lighting, and to secure the enhancements recommended by the Ecological Assessment are necessary to avoid harm to, and to secure net gains for biodiversity. A condition is also necessary to ensure that adequate car-parking facilities are provided, in a location that protects the character and appearance of the area.

18. As the shepherds huts would have a residential use, they would attract the relevant permitted development rights conferred by the legislation. To avoid harm to the character and appearance of the area, by uncontrolled domestic extensions, outbuildings, fences and other paraphernalia, a condition removing these rights is reasonable and necessary.

19. The development is only acceptable in this countryside location because it complies with the development plan policy related to tourism accommodation. It is not a suitable location for a new permanent residential use. It is, therefore, necessary to impose a condition limiting the occupation of the shepherds huts to holiday use only.

### **Conclusion**

20. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed.

*Nick Davies*

INSPECTOR

## Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1306 SH01.P2 - Location Plan, Site Plan, Site Sections & Drainage Strategy; 002 Sheet 1 - Shepherd Hut Elevations; 002 Sheet 2A - Shepherd Hut Plan - with bed up; 002 Sheet 2B - Shepherd Hut Plan - with bed down.
- 2) No further shepherds huts shall be placed on the site until details / samples of the materials to be used in the construction of their external surfaces have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 3) The development shall be carried out in accordance with the recommendations set out in Sections 9.1, 9.2 and 9.3 of the Ecological Assessment by ethos Environmental Planning dated January 2020. Prior to occupation of the shepherds huts, the following details shall be submitted to, and approved in writing by, the local planning authority:
  - a) the areas of grassland to be subject to the reduced cutting regime and wildflower seeding, together with details of the mowing regime and seed mix; and,
  - b) the type of bird nest box and bat box to be installed on the site, and their location.

The bird and bat boxes shall be installed in accordance with the approved details prior to occupation of the shepherds huts, and shall be permanently retained thereafter. The seeding/mowing regime shall commence in the first planting season after occupation, and shall continue in accordance with the approved regime thereafter.

- 4) No external lighting, other than that shown on the approved drawings, shall be installed on the site without the prior written approval of the local planning authority. The bulbs to be used in the approved external lighting shall only be low level LED and the lamps shall include a hood, so the light is directed downwards.
- 5) The car-parking area shall be provided in accordance with the details shown on drawing no. 1306.SH01.P2 prior to the occupation of the shepherds huts, and shall be permanently retained thereafter. No other parking facilities shall be provided within the site without the prior written approval of the local planning authority.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development of the types described in Part 1, Part 2, and Part 14 (Classes A-I) of Schedule 2 of the Order shall be carried out on the site.
- 7) The shepherds huts hereby permitted shall be used as holiday accommodation only, and shall not be occupied as a person's sole or main place of residence. The owners/operators shall maintain an up-to-date register of the names of all owners/occupiers, and of their main home addresses, and shall make this information available at all reasonable times to the local planning authority.



## Costs Decision

Site visit made on 13 July 2021

**by Nick Davies BSc(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 August 2021**

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### **Costs application in relation to Appeal Ref: APP/X1118/W/20/3265728 Middle Yarnacott Farm, Log Cabin, Track Past Middle Yarnacott, Swimbridge EX32 0QY**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Ms Zena Burland for a partial award of costs against North Devon District Council.
  - The appeal was against the refusal of planning permission for change of use of land in order to put 4 shepherds huts as holiday accommodation.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. The Planning Practice Guidance (the PPG) advises that costs may be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The application is premised largely on the grounds that the Council failed to co-operate in the determination of the application; failed to respond to invitations to discuss concerns and failed to inspect the site. The applicant contends that, if the Council had communicated with the appellant, and visited the site before determination of the application, it would have been clear that Reasons 1 and 3 were without merit. Consequently, it would have been unnecessary for the applicant to expend time and money in challenging them at appeal.
4. The PPG clarifies that costs cannot be claimed for the period during the determination of the planning application. However, all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in my consideration of whether or not costs should be awarded.
5. The National Planning Policy Framework says local planning authorities should work pro-actively with applicants to secure developments that will improve the economic, social, and environmental conditions of the area. It goes on to say that pre-application engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. In this instance the evidence indicates that the applicant did not seek pre-application advice. In view of the pressure on local planning authorities to make decisions on planning applications within the statutory period for

- determination, it was not unreasonable for the Council to make its decision based on the submitted documentation.
6. Whilst it would be normal practice for Council Officers to visit planning application sites, I am mindful that this application was submitted during the COVID-19 pandemic, at a time when many Councils were seeking to minimise social contact and non-essential travel. A visit had taken place in July 2019 to consider the previous application, so there was already an awareness of the nature of the site and its surroundings. Consequently, in the abnormal circumstances of a pandemic, the Council's decision to determine the application without a site visit was justifiable.
  7. Regarding Reason 1, the Council's conclusion that there was not currently any tourism accommodation on the site was based on the photographs submitted with the application, which showed that the approved holiday unit was not yet complete. Furthermore, it relied on planning records that demonstrated there was no planning permission for the other holiday accommodation on the site. A visit may have demonstrated that the other buildings were occupied, but it would not have altered the planning history that led the Council to its conclusion.
  8. Regarding Reason 3, the appellant comments that a visit would have allowed observation of the biodiversity enhancements that had previously been undertaken on the site. However, it is clear from the Council's decision, and subsequent appeal statement, that the only point of difference on this issue was the lack of detail on the plans to identify the proposed enhancements that were recommended in the submitted Ecological Assessment. A site visit would not have altered the Council's position on this matter. Furthermore, it would have been unreasonable for the Council to require the applicant to expend time and money on preparing additional drawings showing these details, when it had already concluded that the proposal was contrary to Policy DM18, so would be refused anyway.
  9. The rationale behind the Council's decision was clearly set out in the delegated report. My decision was based on a balanced judgement of whether the recently completed holiday unit, and the other units that do not have express planning permission, amounted to existing tourism accommodation for the purposes of Policy DM18. Further judgement was involved in concluding whether the additional units proposed were in scale and character with the existing development. Therefore, it was not unreasonable for the Council to have come to a different conclusion. A fully reasoned defence for all three of its reasons for refusal was provided in its appeal statement, with evidence and reference to development plan policies. The PPG says that where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs.
  10. I therefore find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*Nick Davies*

INSPECTOR