



Appeal Decision

Hearing held on 13 December 2022

Site visit made on 14 December 2022

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 26 January 2023

Appeal Ref: APP/X1118/W/22/3306037

Caravan, Barcombe Edge, North Molton, South Molton, Devon EX36 3LW

- 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 Miss Julia Stanway against the decision of North Devon District Council.
 - The application Ref: 74903, dated 25 February 2022, was refused by notice dated 22 June 2022.
 - The development proposed is described as a personal permission with a time constraint sought retrospectively for existing temporary structure for use as a live/work dwelling in order to develop and maintain smallholding.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Miss Julia Stanway against North Devon District Council (the Council). That costs application is the subject of a separate Decision.

Preliminary Matters

3. In the banner heading above, I used the address given for the appeal site from that included on the planning application and on the Council's Decision Notice, in the interests of consistency. Further to discussion at the hearing, I have also included in the banner heading, the description of development as provided by the Appellant.
4. The hearing was attended in person by the Appellant, representatives of the Council, and interested parties. Further interested parties joined the hearing via online video feed. I am satisfied that all relevant parties with an interest in the case were able to fully participate in the hearing.

Main Issues

5. The main issues in this appeal are:
 - Whether there is sufficient justification for a temporary dwelling at the site, having regard to national and local planning policies which seek to restrict development within the countryside,
 - Whether there is sufficient justification for the siting of storage buildings; and,

- The effect of the proposed development on the character and appearance of the surrounding area.

Reasons

Temporary Dwelling

6. The appeal site comprises approximately 1.14 hectares of agricultural land, located outside of the nearest settlement at North Molton. The site predominately slopes downhill from northeast to southwest, is roughly triangular in shape and is bounded by hedgerow and banks. Access to the site is from the adjacent highway which is unlit and narrow in places. At the date of my site visit, I saw a number of structures, including a timber cabin, positioned within the appeal site.
7. By reason of the high hedges, narrow lanes and scatter of agricultural holdings, the surrounding area has an intrinsically rural feel, and given its position outside of any settlement, the appeal site is located within the open countryside for planning purposes.
8. Policy ST07 of the North Devon and Torridge Local Plan 2011-2031 (the Local Plan) guides new development in rural areas based upon a hierarchy of local centres, villages and other rural settlements. In the countryside outside of such population centres, Policy ST07 of the Local Plan provides that development will be limited to that which is enabled to meet local economic and social needs, reuse of existing rural buildings and development that is necessarily restricted to a countryside location. The supporting text for Policy ST07 provides the reasons behind the Council's approach to development in the countryside, indicating that the character of the countryside should be conserved and enhanced.
9. Policy DM28 of the Local Plan specifically concerns rural worker accommodation. Amongst other matters, Policy DM28 of the Local Plan provides that rural worker accommodation would be supported where it was demonstrated that there is an essential need for the worker to be resident at the site, and that such accommodation needs could not be met through the conversion of existing buildings or by accommodation located in a nearby settlement.
10. Policy DM28 of the Local Plan also confirms that where the rural enterprise is well established and has a clear prospect of remaining financially viable, support would be given to the provision of a permanent dwelling and that, where the enterprise is not well established, consideration of providing temporary accommodation, initially for three years, would be given. This reflects the guidance contained within the Council's Rural Workers' Dwellings Supplementary Planning Document (the SPD) regarding temporary rural dwellings, and which stipulates that the operational need for a temporary dwelling will need to be demonstrated on the same basis as a permanent dwelling.
11. Paragraph 80 of the National Planning Policy Framework (the Framework) stipulates, amongst other things, that decisions should avoid the development of isolated homes in the countryside unless there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.

12. This is reinforced within the Planning Practice Guidance (the PPG) which confirms the considerations which may be relevant to take into account when assessing the need for rural workers' dwellings in the countryside. These include; evidence of the necessity for a rural worker to live at, or in close proximity to, their place of work to ensure the effective operation of an agricultural enterprise (for instance, where farm animals or agricultural processes require on-site attention 24-hours a day and where otherwise there would be a risk to human or animal health or from crime, or to deal quickly with emergencies that could cause serious loss of crops or products), as well as the degree to which there is confidence that the enterprise will remain viable for the foreseeable future. The PPG further advises that, in the case of new enterprises, consideration can be given to granting permission for a temporary dwelling for a trial period.
13. The appeal scheme does not propose the reuse of a pre-existing building. In terms of potential alternative accommodation, the Appellant has outlined that they have explored the availability of alternative accommodation, to buy or rent, within the locality, but have not been able to find anything affordable within close proximity that is available. Whilst there is only very limited substantive evidence before me to support those submissions, it seems to me that before considering the position of potential alternative accommodation, it would be necessary to first establish whether there is an essential need to be at the site.
14. The planning application is for a temporary dwelling. As noted above, the SPD provides that the operational need for a temporary dwelling will need to be demonstrated on the same basis as a permanent dwelling. Nonetheless, the SPD also confirms that, in terms of temporary dwellings for rural workers, it is likely that the eventual viability of a new business will only become clear after a trial period, but that such a temporary dwelling would only be approved where there is a realistic prospect of the business thriving and being able to support a permanent dwelling.
15. At the hearing, the Appellant confirmed that, in addition to a small number of operational beehives, there were twenty one ducks, used for meat and eggs, currently at the site, but no other livestock. At my site visit, I saw that the land had been separated into different areas, to include areas given over to vegetable and fruit growing, for the positioning of beehives and I was able to observe the ducks which were housed within an enclosure.
16. Notwithstanding the current position at the appeal site with regards to livestock and horticultural elements, the Appellant has provided her own agricultural workers dwelling appraisal, as well as a business plan. The Appellant explained during the hearing that it is her intention to grow the enterprise in terms of numbers of livestock, including the introduction of rare breed pigs, chickens, geese, goats and some sheep, as well as increasing the number of beehives. Furthermore, the Appellant explained that the enterprise would include elements of craft sales as well as using by products from the agricultural elements, such as dyeing and sale of fleeces, and that the land would be managed in an environmentally friendly manner that would provide ecological and biodiversity improvement and enhancement.
17. In terms of whether there is a need to be resident at the site, the Appellant has provided various reasons why an on-site presence would be required

throughout the day. In essence, the Appellant has put it to me that the enterprise would be based on a permaculture model and, as such, is likely to be more labour intensive when compared to mechanised agricultural systems, and that it is her wish to provide a high level of care for livestock, responding quickly to emergencies.

18. The Appellant further maintains that an onsite presence would be required to quickly attend to issues regarding the vegetable and fruit crops as well as close observation of beehive activity so as to respond quickly to issues that could affect honey production. Security was also raised as a concern. The Appellant has put it to me that it is the combination of these tasks, the ongoing management of the land and the permaculture approach, that would amount to an essential need to be on site. I also acknowledge the Appellant's submissions with regards to Standard Man Days calculations and the reference to the John Nix Pocketbook for Farm Management.
19. The evidence and submissions in this appeal indicate that the Appellant has occupied the site for more than three years, and the Council have put it to me that the enterprise could have moved forward in terms of the operational nature of the business and in respect of financial improvement but has not done so. Whilst I note that position, in my view and given the personal circumstances of the Appellant, the restrictions regarding the COVID-19 pandemic and the ongoing issues in respect of avian flu, it is understandable that there has been a delay in moving the enterprise forward.
20. I am conscious of the regulations for the welfare of livestock, and I accept that those factors are not related to a specific number of farmed animals. Nonetheless, whilst I have acknowledged the submissions concerning references to Standard Man Days calculation contained within the John Nix Pocketbook for Farm Management and that that guidance may not always apply to all circumstances in terms of labour requirements, the current level of livestock at the site is very small and, in my view, would not require an onsite presence in order to adequately ensure the welfare of such numbers of livestock. Whilst security is a concern, there would be alternative measures that could be taken to help ensure that such risks were minimised.
21. I note the Appellant's intention to increase stock numbers and include additional forms of livestock to the enterprise in the coming years. However, with the exception of details of a small number of pigs that would be purchased in the first year of operating, the business plan provided by the Appellant does not appear to include any indication of numbers of new animals, such as numbers of geese, that would be introduced to the site or when such additional livestock would be added. The business plan provides that it is intended to build on previous years, but other than details of how marketing of products and build up of additional contacts would be achieved, there is little information in terms of the intended increase in livestock at the site.
22. Whilst I acknowledge the Appellant's submissions in this appeal, in my view the horticultural, marketing, craft production and reuse and sale of agricultural by products, would not require the Appellant to be present at the site at most times. Whilst I note that the land would be managed in an environmentally friendly manner, the proposal is not specifically for ecological enhancement and such activities would not require an onsite presence. Therefore, in combination with the above findings concerning levels of livestock, based on all the

information and submissions before me, I cannot conclude that the operational nature of the agricultural elements of the enterprise would require an onsite presence for most of the time. The lack of detailed information regarding how the business would grow in terms of numbers of livestock, or when such increases would be introduced to the site, does not support the provision of a temporary permission for a trial period.

23. Further to the above, some consideration as to whether there is a realistic prospect of the business thriving or that the enterprise would remain viable for the foreseeable future, is required. In support of the planning application and appeal, the Appellant has provided costings projections for the first three years that the enterprise would be in operation if planning permission were to be approved.
24. Whilst the financial projections provided are acknowledged, the details provided do not appear to accord with the information provided in the business plan as to the growth of the enterprise. For example, as noted above the provided business plan indicates that an unquantified number of geese would be introduced to the site in year one, with the costing projections providing no details as to numbers of geese or why anticipated sales would increase in subsequent years. There was also discussion at the hearing regarding individual elements included in the projections and I agree with the Council that certain expenses, such as vehicle running costs, have not been clearly identified or supported by evidence.
25. By reason of the above findings regarding the details provided in the business plan and the lack of consistency with the details provided on the financial projections, and given that any loss of livestock would likely have a significant effect on the subsistence level income that the projections forecast, based on the existing information and submissions before me, I cannot be sure that the enterprise would remain viable, even on a subsistence level, for the foreseeable future.
26. In summary of the above, based on current livestock and on the information provided regarding timing of introduction and intended levels of new livestock, it has not been demonstrated that there would be a requirement that there be a presence at the site for most of the times, and I share the Council's concerns regarding the viability of the enterprise, even at a subsistence level, moving forward. As such, the appeal scheme would conflict with Policies ST07 and DM28 of the Local Plan, as described above, and would also fail to accord with paragraph 80 of the Framework.

Storage Buildings

27. Policy DM14 of the Local Plan concerns the rural economy. In terms of the proposed storage building, irrespective of whether or not there would be an essential need to be onsite, the current agricultural activities at the site would likely necessitate an area for where equipment could be stored. Indeed, if the livestock levels at the site increases then such a structure would allow sufficient space to store equipment and feed. The storage building would be located adjacent to a substantial hedge and bank, close to the field gate giving access to the site, and would appear as an agricultural building in terms of appearance and scale. In that regard, I find no harm.

28. The details provided in respect of the proposed honey shed indicate that it would replace an existing caravan at the site, and that the structure would be modest in scale. Nonetheless, only part of that structure would be for the storage of beekeeping clothes, equipment and tools, with the remainder given over to hygienic honey harvesting and making honey products for sale.
29. Given the above findings in respect of essential need to be at the site, and given that the honey shed would involve a form of commercial activity, it has not been demonstrated that the scale of that structure would be commensurate with the needs of the enterprise. It is noted that within the costing projections described above, that it is intended to increase the number of beehives at the site to twelve in the fourth year of operation and, as such it could be that the entire structure would be required to store additional equipment and tools in that regard.
30. However, based on the existing information before me and in light of the above conclusions regarding the operational needs of the enterprise, I cannot be sure that the structure would be a scale that would be commensurate with the needs of the enterprise, or would be of scale that minimises potential adverse effect in terms of character and appearance to an acceptable level. As such, and based on the information currently before me, the proposed honey shed would conflict with Policy DM14 of the Local Plan.

Character and Appearance

31. In terms of the effect of the appeal proposal on the character and appearance of the surrounding area, the position with regards to the storage and honey sheds is described above. In respect of the proposed temporary dwelling, although it reflects the mass and scale of typical agricultural buildings, its design is more typical of a residential cabin on account of the window arrangements. The residential appearance of the proposed dwelling would be further emphasised by the likely presence of domestic paraphernalia.
32. The effect of the siting and appearance of the dwelling would contrast with the predominant agricultural character of the surrounding land and traditional forms of local development such that it would fail to conserve the established rural character of the locality.
33. It is acknowledged that the dwelling would not be highly visible from the immediate area and adjacent narrow rural lane. However, the site is sloping and there are extensive views into and out of the site to the south and southeast. Whilst the dwelling may not be highly prominent in views, it would still be visible from within the wider landscape and, given the above conclusions regarding its appearance and the potential for domestic paraphernalia, it would draw the eye from the intrinsic character and beauty of the surrounding countryside. While additional planting may help screen the proposed dwelling, such planting will take time to establish itself and consequently would not provide sufficient mitigation to the existing harm to the character and appearance of the surrounding area.
34. Given that the dwelling would be a temporary form of development and that the site is not highly prominent in views from within the surrounding area, the degree of harm to the character and appearance of the surrounding area would be limited. Nevertheless, there would be some harm to the established rural character of the area. In that respect the proposal would conflict with

Policies DM4 and DM08A of the Local Plan which, amongst other matters, requires that development be of a good design that is appropriate and sympathetic to its setting.

Other Matters

35. It is acknowledged that the Appellant is seeking a personal permission for life for the appeal scheme. I have considered the position above in terms of that proposal, as well as considering whether it could be justified that a permanent dwelling or a dwelling for a trial period would be justified. In all of those respects, and for the reasons given above, I find that the appeal proposal would conflict with the policies of the development plan which, together, seek to restrict unsustainable sporadic development within the countryside. The harm and identified conflict with the policies of the development plan weigh significantly against the proposal.
36. I note that the Appellant intends to provide surplus vegetables to local community initiatives. However, given the details provided I cannot be sure that there would be a surplus by reason of the very small margins with which the enterprise would operate and as such I only give that matter very limited weight. The proposed development would also provide some benefits in terms of potential biodiversity enhancement by careful and environmentally friendly management of the land and the planting of native trees, and it is acknowledged that the Appellant would seek to restore drainage ditches around the site which potentially would help alleviate issues regarding flooding downhill from the site. However, as noted above, such activities would not require an onsite presence and, in any event, the scale of these potential benefits would be moderate.
37. Social and economic benefits in terms of the provision of a dwelling albeit for a temporary period are noted, and I acknowledge the main parties' submissions regarding the declared housing crisis in North Devon, the availability of affordable housing in the locality, and the contribution that a single plot can make to housing supply.
38. Nonetheless, based on the evidence submitted, and having considered all of the benefits of the scheme put to me by the Appellant, in my view the cumulative benefits of the scheme would be moderate and would be outweighed by the identified harm and resulting development plan conflict to which I attach significant weight in the determination of this appeal.
39. I acknowledge the personal circumstances of the Appellant, and while this decision does not pre-judge or prejudice any future actions by the Council, I recognise that the dismissal of this appeal could lead to the loss of the Appellant's home. This would represent an interference with the Appellant's rights under Article 8 of the Human Rights Act 1998, and as such I have given this matter weight in this decision.
40. The qualified right under Article 8 must be weighed against other factors, including the wider public interest and legitimate interests of other individuals. Interference in these qualified rights may be justified in the public interest, in this case planning policies which seek to promote sustainable patterns of development which, as is set out in the Framework, is a key element of national planning policy.

41. Given that the planning system operates in the wider public interest which has legitimate aims of upholding the purposes of planning policies, the harm I have identified above in respect of the main issues outweighs the personal matters. In balancing all these factors, I consider that the interference with the Article 8 rights held by the Appellant would be both necessary and proportionate.
42. The Appellant has referred to a number of appeal decisions which concern provision of temporary agricultural dwellings. Whilst I have carefully considered the details provided in that regard, I do not have full details of the circumstances of those other developments and therefore cannot be sure that they are comparable to the appeal scheme with regard to the essential need requirement to be present onsite. I have therefore determined this appeal on its own basis and merits.
43. Interested parties also have raised concerns in respect of highway safety and with regards to setting precedent. Whilst highway safety concerns are important matters, they have not been critical to my overall decision. As such I have not considered the position further, nor find it necessary to consider precedent given my findings above and that I have determined this appeal on its own merits.

Conclusion

44. I have considerable sympathy with the Appellant and her current position. It is noted that whilst the Parish Council has raised objections, the Appellant has the support of a number of local interested residents, including those who appeared and spoke at the hearing, and it is also acknowledged that the Appellant has built up a network of contacts and mentors who could provide support and guidance moving forward. I have no doubt as to the Appellant's intentions, her dedication to learning new agricultural and land management skills, her desire to adopt methods that are sympathetic to the environment and I acknowledge the hard work put into those land management activities that have already been conducted at the site.
45. However, I am conscious that, for the reasons given above, presently there is insufficient information before me to conclude that there would be an essential need to be present at the site or that, based on the current costing projections, the proposal would remain viable for the foreseeable future. The proposal would also have an, albeit limited, adverse effect on the undeveloped intrinsic beauty and character of the countryside.
46. As the matter stands, based on the planning application made and the evidence provided to support it and in support of this appeal, doubts as to the need to be at this particular site most times, and doubts about the viability of the enterprise moving forward, remain sufficient to justify dismissal of this appeal.
47. For the reasons given above I conclude that the appeal should be dismissed.

Mr A Spencer-Peet

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Miss J Stanway

Appellant

FOR THE LOCAL AUTHORITY

Mr P Rowan

Rowan Edwards Town Planning
& Architecture

Mr P Gregory

North Devon District Council

S Thomas

North Devon District Council

K Johnson

North Devon District Council

INTERESTED PERSONS

1. Mrs K Jury
2. Mr J Palmer
3. Councillor L Bulled
4. Sir Richard Peek



Costs Decision

Hearing Held on 13 December 2022

Site visit made on 14 December 2022

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26 January 2023

Costs application in relation to Appeal Ref: APP/X1118/W/22/3306037 Caravan, Barcombe Edge, North Molton, South Molton, Devon EX36 3LW

- 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 Miss Julia Stanway for a full award of costs against North Devon District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for development described as personal permission with a time constraint sought retrospectively for existing temporary structure for use as a live/work dwelling in order to develop and maintain smallholding.
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Decision

1. The application for a full award of costs is refused.

The submissions for Miss Julia Stanway (the Applicant)

2. In essence, that North Devon District Council failed to make a proper inspection of the appeal site and failed to provide adequate pre-application engagement and advice. As such, the Applicant wishes to claim the costs of the planning application and the costs of the pre-application advice. Furthermore, the Applicant maintains that the Council made spurious requests with regards to submission of plans and with regards to drawings being to certain scales.

The response by North Devon District Council (the Council)

3. The Council maintains that it acted reasonably with regards to pre-application advice and site visits, and that there is a requirement that planning applications are accompanied by accurate plans.

Reasons

4. Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
5. Amongst other matters, the PPG makes it clear that a local planning authority is at risk of an award of costs if it behaves unreasonably with respect to the procedure of the matter under appeal, by a lack of co-operation with the other party, or delay in providing information or other failure to adhere to deadlines.
6. On the matter of pre-application discussion, early engagement, as set out in paragraph 39 of the National Planning Policy Framework, has the potential to

- improve the effectiveness of the planning system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community. However, judging the relevance and applicability of pre-application advice, and whether to act on it, remains the responsibility of the applicant in planning applications.
7. The Council has submitted a copy of correspondence, issued in June 2019, with regards to a planning enquiry response following the Applicant's pre-application enquiry submitted in May 2019. That response from the Council was issued within a reasonable period of time following receipt of the enquiry, with the conclusion that if a planning application for the erection of a temporary dwelling and outbuildings was made, then that would be unlikely to be supported by the Council's Officer approval.
 8. The details provided in the pre-application advice are clear in that the Council advised the Applicant that any such proposal at the site would need to be "supported by compelling evidence to justify the essential operation need for the on-site accommodation". The pre-application advice goes on to explain the matters that require consideration with regards to the need to be at the site for most times day and night, as well as details required in terms of evidence to support the contention that the project would remain viable for the foreseeable future. The advice contains relevant information regarding the provision of temporary permissions where the evidence supports such an essential need.
 9. The Council's correspondence further includes details regarding concerns about the impact of the proposed development on the character and appearance of the area, as well as additional information in respect of concerns about access to the site and impact on highway safety. The Council's pre-application advice also contains relevant information regarding local and national planning policies that would apply.
 10. In respect of the site visit by the Council's Officer, the evidence before me indicates that the Officer made a visit in March 2022 following receipt of the planning application. Whilst it appears that the Officer was unable to meet with the Applicant on that occasion, photographs were taken which showed the position at the appeal site. The Planning Officer's report is clear with regards to observations made, with the conclusion that little had changed since the previous site visit in respect of an earlier, refused, planning application.
 11. The Council's supporting evidence shows that the Local Planning Authority engaged with the appellant during the pre-application process, conducted a site visit as part of their assessment and determination of the planning application and, as such and in light of the above and the conclusions of my Appeal Decision, I do not find that the Council acted unreasonably in that regard.
 12. In terms of requests made by the Council for plans and drawings to be of certain scale, the PPG advises that "As a minimum, applicants will need to submit a 'location plan' that shows the application site in relation to the surrounding area" and that "Additional plans and drawings will in most cases be necessary to describe the proposed development", as provided in the Town and Country Planning (Development Management Procedure) (England) Order 2015. The PPG also confirms that any plans must be drawn to an identified scale.

13. Whilst I do not have any detailed specific evidence of why submitted plans were not to the correct scale, it is apparent that discussion between the main parties took place, and it appears from the limited evidence before me that the Council have not acted unreasonably in requesting accurate plans of the proposed development, so as to ensure that proper consideration could be given to the planning application. I therefore do not find that the Council acted unreasonably in that regard or that the Applicant incurred unnecessary or wasted expense in that respect.
14. The PPG advises 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. For the reasons given, I find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that, therefore, an award of costs is not justified in this instance.

A Spencer-Peet

INSPECTOR