



## Appeal Decision

Hearing Held on 8 March 2023

Site visit made on 8 March 2023

**by Mrs H Nicholls FdA MSc MRTPI**

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

**Decision date: 14 March 2023**

---

**Appeal Ref: APP/X1118/W/22/3309656**

**land at NGR 276525, 112009, Rusdon Orchard, East Worlington EX17 4TQ**

- 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 Mr & Mrs Sexon against the decision of North Devon District Council.
  - The application Ref 73629, dated 16 June 2021, was refused by notice dated 28 July 2022.
  - The development proposed is erection of a temporary workers dwelling in connection with a horticultural business for 3 years.
- 

### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. It was clarified during the hearing that the dwelling proposed would take the form of a mobile home and that a three year temporary period was sought. I have determined the appeal on this basis.

### Main Issues

3. The main issue is whether a temporary residential use of land in the countryside would be justified in connection with a rural business having regard to local and national policies in relation to such.

### Reasons

4. The appeal site is a broadly 2.2 hectare smallholding in the countryside around 2.5 km south-west of the small settlement of East Worlington. It slopes gently from its access point with the adjacent rural road in the south-western corner towards the north and folds into a small river valley to the east. The site has a number of established trees within it and around its boundaries and is planted with a number of crops, including blackcurrant bushes, grapes and sea blackthorn. There are a number of structures on site, including 3 beehives, 2 polytunnels and numerous storage sheds. There also appeared to be some buildings adjacent to the southern boundary in the approximate position of the proposed caravan, the planning status and use of which was unclear from the evidence or my site visit.
5. The proposal seeks permission for a residential use of land to allow the appellants to live on site in connection with an organic horticultural business. It was clarified that the appellants have owned the site since around 2003 and

have established an orchard, the fruit crops and sea buckthorn since then, also producing honey, juices and jams. The business, 'Rusdon Orchard', was reportedly only registered in around 2017.

6. In terms of the planning policy context, the parties agree that the site is within the open countryside in the context of Policy ST07 of the *North Devon and Torridge Local Plan* (adopted 2018) (NDTLP). This Policy indicates that development in such a location shall be 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. This broadly follows the advice of the National Planning Policy Framework (the Framework) which indicates that the development of isolated dwellings in the countryside should be avoided unless there is an essential need for a rural worker to live permanently at or near their place of work.
7. Policy DM28 of the NDTLP on rural worker accommodation seeks to support proposals where: (a) there is an essential operational need for a full time worker to be resident at the place of work; (b) the size and nature of the development can be sustained by the scale of the operation; and, (c) the accommodation needs cannot be met by another dwelling, such as one in a nearby settlement. The Policy seeks to enable permanent rural workers dwellings where the enterprise is well established, of a sufficient size to support a full-time worker, economically viable and has clear prospects of remaining so, whereas temporary dwellings may be considered where the enterprise does not meet the criteria set out to support a permanent dwelling. Additional guidance on the implementation of Policy DM28 is provided in the *Rural Workers' Dwellings Supplementary Planning Document* (2020) (SPD).
8. The SPD sets out that the operational need for a temporary dwelling should be demonstrated on the basis of a permanent dwelling, which involves demonstration of an essential functional need, clear evidence of a firm intention to develop the enterprise, based on sound financial planning in the form of a business plan. Evidence is also required to verify that the need could not be fulfilled by another existing dwelling on the business unit or within a nearby village centre. I deal with each of these areas below.

### *Business Plan*

9. The evidence submitted with the appeal proposes a new business, or at least a new phase of the existing business, but also rather contradictorily, also talks of the business being long-established. In relation to the latter, the appellants clarified that they had not sought to submit audited accounts and that those available would not provide a true reflection of income owing to the effects of the COVID-19 Pandemic. Though I appreciate the visible efforts expended by the appellants in seeking to prepare the site and produce crops for their own interests over a number of years, in a commercial sense, there is little before me to verify the existence of the business, prior to the Pandemic or otherwise. There is a recognition of the difficulty to demonstrate such, hence the request for a temporary permission to enable the appellants to, as was put to me, "have a go", and to enable them to channel their full energies towards making a success of the future business.
10. The evidence of the appellants' intentions for the future business do not take the form of a coherent business plan document; rather, it is woven in amongst the submitted 'Design and Access Statement', 'Financial Statement', 'Planning

Statement' (updated) and the 'Appeal Statement'. From this evidence, I understand that the appellants hope to continue and intensify the blackcurrant, sea buckthorn and grape crops. Honey production also features as a part of the business going forward. Another large part of the business is the production of mushrooms. However, there is no real evidence of mushroom production on site and a lack of real detail as to what species would be produced and how. At the hearing, the appellants also introduced their intention to produce mycelium, and diversify or supplement the blackcurrant crops with raspberries. The purposes to which mycelium can be used, the demand for it and methods of production was briefly explained at the hearing but I have limited detail on which to clarify its importance to the overall business plan.

11. There is limited evidence, other than that provided anecdotally, that the business is based on an understanding of the demand for the produce, with an absence of future purchase contracts/agreements. This absence, and the introduction of new elements to the business plan verbally was explained by the appellants has resulting from the time it has taken from submission of the application in 2021 to its determination in 2022, and its consideration at appeal in 2023. Though plans may have evolved over this period, opportunities have not been taken at an earlier stage to refresh the evidence, resulting in me having lacking detail from which to gain a real understanding of the plan for the business.
12. In view of the above, I can only deduce that the plans for the business are relatively organic, not just in the manner in which the produce is grown without pesticides, but in terms of the appellants' desires to introduce relatively novel species which take their interest and respond to new demands as they arise. Whilst a business plan is not intended to stifle such innovation, it still needs to be sufficiently clear and credible to demonstrate that the business will have a real prospect of success. The evidence of this nature before me is not sufficiently clear or robust as is expected to meet the requirements of NDTLP Policy DM28.

*Essential functional need*

13. The activities currently undertaken on site include the potting on of bare root plants, planting, harvesting, monitoring and adapting the conditions (heat, moisture and ventilation etc.), pest management and general site maintenance. Though the appellants agreed that the majority of crops in existence are relatively hardy, the explanation as to why an essential need to have someone on site is given in the form of the need to manually adjust conditions (heat, temperature, moisture etc.), pest and disease control, preventing damage from adverse weather conditions and other related site management. It is claimed that immediate action can be needed to avoid crop losses from pests, diseases or other incidents from adverse weather conditions. Another reason given is to enable greater surveillance of the site and increase security.
14. The evidence does not specifically indicate that any technologies could be introduced to make the more business more efficient or secure without a constant personnel presence, i.e. irrigation, ventilation and CCTV systems etc. This may be explained by the appellants desires to undertake their activities on a largely 'off-grid', relatively 'low-tech' basis to keep business overheads down.

However, the effect of this is a greater manual workload to allow regular checking and adjusting of conditions to optimise crop growth.

15. In terms of the number of hours that such activities are predicted to take, the evidence details predicted hours based on the different crop types, averaged to produce a daily requirement throughout the year. Whilst the predicted figures have been based on the *Nix Pocketbook for Farm Management*, there was an acknowledgement at the hearing that neither this nor the *Agricultural Budgeting and Costing Book* contain specific figures that can be attributed to the crops that are grown/will be grown on site due to the relatively specialist combination of species. Nonetheless, the figure provided in the Statement is for 292 standard man days, which at the hearing was corrected to 292 standard man hours, i.e. an average daily requirement of less than one hours labour, inclusive of a 15% general maintenance figure.
16. The averaging method used in this instance was questioned by the Council's specialist advisor, who indicated that a more robust approach may have been to draw from the experience of having managed the specific crops where they exist on site already, with detail of how long the relevant activities take throughout each of the relevant seasons, in acknowledgement of there being a long period of relative dormancy throughout the winter and with the focus of activity being within the spring and summer. Such evidence would have been a useful basis for forecasting the workload associated with an increase in the size of the crops.
17. Taking into account all of the evidence presented to me, whilst I can understand the desire to minimise travel and time wasted through repetitive preparation and packing down on arrival and departure, there seemed little other evidence of an essential need for anyone to be continually present on site. The desire for enhanced security is understandable, but the installation of some form of CCTV would achieve a similar purpose and the SPD explains that the need for a security presence will not normally form an acceptable basis to justify a new dwelling. Furthermore, the evidence submitted does not reflect the variability of the business activities over the respective seasons and the averaged time demands of less than an hour per day are not sufficiently compelling in terms of the need for a continual presence on site either.

#### *Financial projections*

18. The site is owned outright by the appellants and the finance is available to enable the temporary caravan to be acquired without the need to borrow against the business. Despite the absence of any future contracts or projections drawn from relevant aspects of previously audited accounts, the financial projections for the business for year 2021, 2022 and 2023 are provided in the Financial Statement. Given the lapse in time between the preparation of such and the appeal hearing, it was suggested that these could be rolled forward to future years. For the first year, the gross profit is predicted to be £26,800, for the second year £30,600 and £50,100 for the third year.
19. My reliance on these and related figures has been tempered by a lack of detail as to how the growth would realistically be achieved, i.e. through intensification of quantifiable plant numbers etc., the absence of deductions of costs of sales for logically necessary items (containers etc.) and some errors in the arithmetic. Additionally, the mushroom component of the business appears to be relatively small as an income generator, but the newly introduced mycelium

aspect linked to the same was suggested to offer great potential and would be an area to which investment and energies would be directed, but does not appear to be reflected within the financial projections.

20. Overall, my view is that the financial projections put to me from which to draw conclusions about the business's profitability are insufficiently robust. The SPD also explains that demonstrating overall profitability is unlikely to be sufficient to meet the test of Policy DM28 and that it will be necessary to demonstrate that the activities giving rise to the functional need to live on site meets the financial test requirements. In the absence of sufficient justification of a functional need for the dwelling, the financial projections do not, in themselves, justify the need for the residence.

#### *Other dwelling*

21. The appellants agreed with the Council's summarisation of their current living arrangement which was that they live in a small settlement from which the drive time to the site is around 10 minutes one-way assuming normal road and traffic conditions. In my view, this is not a prohibitive amount of travel time to undertake one or two journeys a day.
22. I understand that there is some concern that the appellants may be forced to live in a dwelling more remote from the site with resultant increases in travel time. However, the risk of this was not clear or imminent. Whilst the business may not have properly commenced as yet, it is evident that the arrangement where the appellants live in relatively close proximity has worked sufficiently well to enable them to establish the site. This suggests that they could continue this arrangement even with some intensification of the business activities.
23. To satisfy Policy DM28 there should be a genuine need to live on the site and to be available at short notice at all times rather than living in a nearby centre or village. The travel time of 10 minutes would still allow sufficient notice to enable a quick response if in the event of any problems. As evidenced by the current living arrangements, there is a dwelling in a nearby settlement that, in the absence of evidence to the contrary, could allow for the business needs to be met without the need for a dwelling on site.

#### *Overall findings*

24. Drawing all of the above together, though the appellants' intentions appear genuine and the efforts they have expended to date should not be diminished, I do not consider that there is sufficient evidence of an essential operational need for a full time worker to reside on site, even temporarily; that the scale of the business would sustain the worker/s, or that the accommodation needs can only be met by a dwelling on site, rather than another dwelling nearby. Therefore, a temporary residential use of land would not be justified in connection with the business having particular regard to NDTLP Policies ST07 and DM28. For similar reasons, the proposal would also fail to adhere to paragraph 80 of the Framework and guidance in the SPD.

#### **Other Matters**

25. I note from the appellants that the application took the Council an unexpectedly long time to determine and that only limited requests were made for additional evidence or clarification of the same. Whilst regrettable if this is

the case, I have determined the appeal on its merits on the basis of the evidence presented to me, both in writing and as explained at the hearing.

**Planning Balance and Conclusion**

26. In terms of its location and nature, the proposal conflicts with the development plan when taken as a whole.
27. The benefits of the scheme would result from the small economic boost from the acquisition and works to place the caravan on site, along with any necessary minor works. However, these would be relatively modest given the scale of the proposal and therefore attract only limited weight. There would also be an economic benefit from the increased output of the business and social benefits specifically to the appellants from increasing their ability to work and reside on the same site, minimising their outgoings and time spent commuting. I attribute these benefit modest weight.
28. However, the totality of the benefits do not outweigh the identified harms in this case and there are no other considerations to indicate that a decision should be taken other than in accordance with the development plan.
29. For the foregoing reasons, the appeal is dismissed.

*Hollie Nicholls*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Mr Glen Crocker  
Mr Martin Sexon  
Mrs Jan Sexon

XL Planning Ltd  
Appellant  
Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Peter Rowan  
Mr Gareth Rowe

on behalf of the Council  
Senior Planning Officer

## **DOCUMENTS SUBMITTED AFTER THE HEARING**

Document 1

Correspondence clarifying suggested  
condition Nos 2 and 3