



# Appeal Decision

Hearing held on 6 March 2024

Site visit made on 6 March 2024

**by Paul Martinson BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09 April 2024

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**Appeal Ref: APP/X1118/W/23/3333782**

**Fullaford Farm, Road from Leworthy Cross to Fullaford Farm, Bratton Fleming, Devon EX31 4TP**

- 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 and Miss Kingsley and Sophie Nicolas and Mugleston against the decision of North Devon District Council.
  - The application Ref 77333, dated 27 June 2023, was refused by notice dated 27 September 2023.
  - The development proposed is described as: 'erection of a permanent rural workers dwelling and change of use to provide residential curtilage'.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The Council had not included two plans showing the land ownership within the list of refused documents because they were not to an identified scale. These show the land holdings at Fullaford Farm (Plan A) and the distance from The Stables, Patchole (The Stables) (Plan B). It was agreed at the hearing that the figures relating to land holdings in the Rural Workers Dwelling Appraisal by XL Planning were incorrect and that the correct figures were those shown on Plan B.
3. At the hearing it was agreed that the horse breeding business is entirely separate to that of the agricultural business, although this does use a central part of one of the buildings at Fullaford Farm. I have not considered this matter any further.

## Main Issues

4. The main issues are:
  - whether the appeal site is in an appropriate location for housing having regard to the requirements of local and national policy, including: whether there is an essential need for a dwelling to accommodate a rural worker, and the long term financial viability of the enterprise; and
  - the effect of the proposed development on the character and appearance of the area.

## **Reasons**

### *Location*

### Background

5. In 2017 the appellants set up an agricultural enterprise at The Stables. This was described in the hearing as a smallholding with 30 acres of land owned. This included three buildings. Whilst the enterprise operated for a further four years, the appellants stated that the land here had its limitations and there was no opportunity to expand.
6. In 2021 the opportunity arose to purchase the land at Fullaford Farm. This was due to the severance of the land and buildings from the original farmhouse (Fullaford Farmhouse). The appellants used the sale of land and buildings at The Stables to fund the purchase which was completed in July 2021. The appellants relocated the enterprise at The Stables to Fullaford Farm and purchased additional livestock following the move. In December 2021 the appellants moved permanently into a static caravan that had been sited on the appeal site and remains unauthorised.
7. Therefore, since July 2021 the enterprise is understood to have comprised of the 122 acres owned at Fullaford Farm (shown on Plan A), 130 rented off site and a further 25 acres that are owned off site. The enterprise includes three buildings at Fullaford Farm shown on Plan B in addition to a newly constructed building to the north of the site.

### Essential Need

8. The appellants operate a livestock rearing enterprise from Fullaford Farm which, based on the Rural Workers Dwelling Appraisal, currently comprises of cattle, sheep and pigs. Calving occurs throughout the year and the cattle are housed in the buildings between November and March. This is consistent with my impressions on the site visit.
9. Despite the labour requirement of the enterprise amounting to 3.5 full-time workers, all of the labour is provided by one of the appellants who works full-time on the farm. Having regard to the above, it is reasonable to expect a cattle enterprise such as this to have a worker readily available, especially during the calving periods and whilst housed over winter.
10. Therefore, it has been demonstrated that there is an essential operational need for a full time worker to be resident at or near Fullaford Farm in accordance with Policy DM28 (1) (a) of the North Devon and Torridge Local Plan (2018) (the LP).

### Financial Viability

11. Part (2) of Policy DM28 states that 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, support will be given to the provision of a permanent new dwelling. In order to meet this part of Policy DM28, the Rural Workers' Dwellings Supplementary Planning Document (2021) (the SPD) requires that the rural enterprise has been established for at least three years and has been profitable in at least one of those three years, is currently financially sound and has a clear prospect of remaining so.

12. The SPD sets out that a judgement should be made on the viability of the enterprise and highlights the need to be satisfied that the on-going profitability of the enterprise is sufficient to sustain the worker living on the site (on the basis of wage levels at least equivalent to the National Minimum Wage (NMW)) and fund the proposed dwelling. Detailed and up to date accounts, verified by an appropriately qualified person, will be required to be submitted for scrutiny.
13. I have been provided with sets of accounts for the years ending 31 March 2020, 31 March 2021 and 31 March 2022. However, due to the move, there are effectively only 8 months' worth of accounts in relation to the operations at Fullaford Farm. I accept that, given the proximity between Fullaford Farm and the Stables, the farming landscape is likely to be similar. Nonetheless, there are likely to be differences between how the enterprise operated previously compared to how it operates now. The land holding is significantly greater, it utilises different buildings with different numbers of livestock. There is also the need to fund loan repayments in connection with the purchase of the land. Whilst I accept that the situation is likely to be complex, these significant changes have potential to place different demands on the profitability and financial viability of the business. As such, the accounts provided for 2020 and 2021 relating to The Stables, whilst showing modest profits, have more limited relevance to my assessment.
14. The accounts provided also lack clarity with regard to a number of matters. Labour costs are not clearly shown, including a salary for the appellant. The appellants explained at the hearing that the 'drawings' section of the accounts amounted to the 'wage' taken by the appellant. I acknowledge that in 2022 the drawings are virtually that of the NMW. However, for 2020 and 2021, these figures are low and well below the NMW. Whilst the appellants state that, based on the profits achieved in 2021, a salary equivalent to the NMW could have been drawn, it was not. As such, this leads me to conclude that the profits shown for those years are artificially inflated due to the exclusion of labour costs.
15. Furthermore, the purchase of the land at Fullaford Farm was not shown in the accounts but was bought by a separate company for which accounts were not available. Whilst I accept that payments for the loan that partly funded the purchase are shown, the sale of The Stables is also not included which makes it difficult to ascertain the effect of the relocation on the enterprise. There is also a lack of clarity with regard to the fixed assets section of the accounts which is shown as unchanged between 2021 and 2022 despite the sale of The Stables and the purchase of Fullaford Farm.
16. No details were provided of any tax or national insurance payments and the reason for their absence could not be explained at the hearing. The extent of tax and national insurance paid would clearly have an effect on the profitability and viability of the enterprise.
17. The limited nature of the accounts relating directly to the operation at Fullaford Farm, in addition to the lack of clarity in relation to the matters set out above, presents a somewhat confusing picture with regard to the financial viability of the enterprise. This limits my ability to make a judgement in accordance with the SPD. Therefore, on the basis of the evidence before me, it has not been adequately demonstrated that the enterprise will remain viable for the foreseeable future, to justify the construction of a permanent dwelling. On this

basis, the proposed development is contrary to Policy DM28 (2) of the LP and the SPD.

### Scale of Dwelling

18. Part (1) (b) of Policy DM28 states that: *'The size and nature of the development is such that it can be sustained by the scale of the operation, reflective of the location and setting and proportionate to the needs of the intended occupants'*. The proposal comprises a 4 bedroom detached dwelling.
19. The SPD permits new rural workers' dwellings of a scale up to 142 square metres inclusive of an uplift to accommodate additional space requirements for an agricultural worker such as a boot room, ground floor shower room or office. This is in order to ensure that the dwelling is capable of being financially sustained by the enterprise and would, in the long term, continue to be financially accessible on a rural worker's wage. In that regard, I am mindful that accommodation is only required due to the severance of the existing dwelling from the land, which was not financially accessible to the appellants.
20. At the hearing the appellants stated that the cost of building the dwelling would be privately funded, separately from the business. The evidence I have in that regard is limited. However, as set out above, the long term financial viability of the enterprise including the extent of the salary that is taken or could be taken by its only worker is unclear. The dwelling is large and in terms of its floor area is either equal to or slightly in excess of the largest that could be supported through the SPD, including uplift.
21. I acknowledge that the scale of the proposed dwelling has been partly dictated by the appellants' future aspirations and the need for space for their young family. However, it has not been adequately demonstrated that the enterprise could sustain an agricultural worker on at least a NMW salary and the long term financial viability of the enterprise is unclear. As such, it is not possible for me to link the scale of the dwelling with the scale of the operation. On the basis of the information before me, I therefore cannot conclude with any certainty that the proposed dwelling could be sustained by the scale of the operation or, importantly, that it would continue to be financially accessible on a rural worker's salary in the future. The proposal is therefore contrary to Policy DM28 (1) (b) of the LP and the SPD.

### Other Buildings

22. It was agreed at the hearing that the accommodation needs could not be met by an available dwelling in a nearby settlement or an existing dwelling near the site. Part 1 (c) (iii) of Policy DM28 requires it to be demonstrated that the required accommodation could not be met through conversion of a suitable redundant or disused building at the site.
23. The existing group of buildings at Fullaford Farm include a stone barn sited towards the front of the group. This is currently used as a kennels. The appellants stated at the hearing that this had an internal floor area of 39 square metres, which would be well below the minimum space standards for a single storey dwelling for three persons. This was not disputed by the Council. I acknowledge that the Council would support a modest extension to the barn. However, given the small scale of the building, as well as the potential need for additional ground floor space such as a bootroom and

downstairs shower, I am not convinced that the barn could be successfully converted to a rural workers' dwelling that would, in general terms, meet the appellants' requirements. This is notwithstanding my conclusions in relation to the financial viability of the business. I therefore do not find conflict with part (1) (c) (iii) of Policy DM28 of the LP. There would also be no conflict with the SPD insofar as it requires the accommodation to be provided through conversion of suitable disused or redundant buildings.

### Conclusion to Main Issue

24. Overall, whilst I do not doubt that the appellants are working hard at establishing an agricultural enterprise at Fullaford Farm, I must also be mindful of the general presumption against new development in the open countryside and the high level of scrutiny required for proposals for exceptional development such as rural workers' dwellings. Having regard to the above, whilst it has been demonstrated that there is an essential operational need for a full time worker to be resident at or near the appeal site, I am not confident that the enterprise will remain viable for the foreseeable future. Additionally, I am not convinced that the size and nature of the proposed dwelling could be sustained by the enterprise.
25. Mindful of its location within the open countryside, away from any settlement, I therefore conclude that the appeal site is not an appropriate location for housing having regard to the requirements of local and national policy. In that regard the proposal would conflict with Policy ST07 and parts (1) (b) and (2) of Policy DM28 of the LP and paragraph 84 of the National Planning Policy Framework (the Framework) insofar as they seek to avoid the development of isolated homes within the open countryside. There would also be conflict with the guidance contained within the SPD.

### *Character and Appearance*

26. At the hearing, the appellants agreed to a condition being imposed on any grant of approval, that required the dwelling to be externally faced with natural stone, rather than reconstituted stone as originally proposed. The Council confirmed that this would address its concerns in relation to proposed materials.
27. The appeal site lies within attractive rolling countryside. The surrounding landscape falls within Landscape Character Type 3D: Upland River Valleys as set out in the North Devon and Torridge Landscape Character Assessment (2011) which are partly characterised by their strong sense of tranquillity. The immediate area comprises of small to medium sized fields, bounded by hedges and interspersed by woodland. The field forming the appeal site contains the static caravan and has been subdivided by post and wire fencing. Nonetheless, as predominantly green, open space of a natural appearance, it contributes to the character and tranquillity of the surrounding countryside.
28. The field comprising the appeal site, the existing static caravan, and the nearby agricultural buildings, are all visible in landscape views from the road approaching the site from the west. Views into the appeal site are also possible from the road adjacent to the site access.
29. The proposed dwelling would have a large garden comprising of the whole of the existing field and would utilise the existing boundary hedges. Part of this is

shown on the proposed plans as being a wildflower meadow. The creation of such a large garden area would inevitably result in the introduction of domestic and urban characteristics into the landscape arising from hardsurfacing, refuse storage, washing lines, outdoor seating, the maintenance of the grass, other planting, and other such domestic paraphernalia. This would be seen from a considerable distance within landscape views, to the detriment of the landscape character. These characteristics would be clearly viewed as incongruous within the landscape setting, would adversely affect tranquillity, and would be exacerbated by the extensive area of the appeal site. Furthermore, many of these characteristics are unlikely to be capable of being controlled through planning conditions.

30. For these reasons the proposal would be harmful to the character and appearance of the area. The proposal would therefore be contrary to Policies DM04, DM08A and ST04 of the LP which together, in summary and amongst other things, seek to ensure new development is of a good design and conserves and enhances landscape character. There would also be conflict with the SPD which requires new rural workers' dwellings to be appropriate to their location and integrated with the landscape.

### **Other Matters**

31. The Council included an informative on its decision notice noting the need to provide evidence that the proposal delivers biodiversity net gain in accordance with Policies ST14 and DM08 of the LP. Nevertheless, the Council's suggested conditions includes a condition which requires submission of a detailed landscape and ecological management plan (referred to as a LEMP) to be provided prior to the commencement of the development. The condition sets out the detailed requirements of the LEMP including the provision of the Defra Biodiversity Net Gain Metric calculation. The condition refers to the above policies.
32. Both parties agreed that the proposed condition would address this issue. On the basis of what is before me, I conclude that, subject to a condition, the proposal would comply with Policies ST14 and DM08 of the LP.

### **Conclusion**

33. The proposed development would conflict with the development plan. There are no material considerations that indicate that the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

*Paul Martinson*

INSPECTOR

APPEARANCES

*Appellants:*

Kingsley Nicholas  
Sophie Muggleston

Glenn Crocker                      Director, XL Planning  
Naomi Jackson                      Planning Consultant, XL Planning

*Council:*

Tracey Blackmore                      Planning Manager, North Devon District Council  
Peter John Rowan                      Planning Consultant, Rowan & Edwards Ltd