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# Appeal Decision

Hearing held on 2 July 2024

Site visit made on 2 July 2024

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 July 2024

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**Appeal Ref: APP/X1118/W/21/3280232**

**Field near North Molton, Barcombe Down, High Bullen, North Molton, Devon EX363LW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant planning permission.
  - The appeal is made by Miss Julia Stanway of Barcombe Edge against the decision of North Devon District Council.
  - The application Ref is 70347.
  - The development proposed is part retrospective application for erection of one temporary mobile live/work unit and erection of 1 honey shed and 1 storage shed.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. I have used the description of the proposal as set out in the Council's Decision Notice. This is more accurate and concise than that used in the application form. The appellant has used this in the appeal form and so I am satisfied that no party would be prejudiced by my using this description.
3. The appeal application was made in August 2019 and was refused by the Council in March 2021. Unfortunately, the appellant's appeal against this refusal was incorrectly 'turned away' by the Planning Inspectorate. The appeal was subsequently reinstated and is the subject of this decision. However, in the interim, a second planning application<sup>1</sup> for a very similar proposal was submitted, refused by the Council and dismissed on appeal<sup>2</sup>.
4. I have had regard to the decision of the previous Inspector, but since then a new Agricultural Appraisal and Business Plan in support of the application has been provided to me. As such, I have based my findings on the evidence before me. The application is described as only partly retrospective, and so I shall treat it as being for a proposal, based on the plans on which the Council made its decision. I have treated the sketch plan within the Agricultural Appraisal as illustrative.
5. In May 2024, the Council issued an Enforcement Notice against development at the site, which the appellant has also appealed against. However, there was insufficient time for the Enforcement Notice appeal to be conjoined with the

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<sup>1</sup> LPA reference 74903

<sup>2</sup> PINS reference APP/X1118/W/22/3306037

case before me. Therefore, my decision relates only to the refusal of planning permission, under s78 of the Act.

## **Main Issues**

6. The main issues are:

- whether, having regard to planning policy which seeks to avoid isolated new homes in the countryside, there is sufficient functional and financial agricultural justification for the proposal, and
- the effect of the proposal on the character and appearance of the area.

## **Reasons**

### *Functional Justification*

7. The site lies in remote countryside. Relevant to this appeal, Policy ST07 of the North Devon and Torrington Local Plan (NDTLP), adopted October 2018, limits development in the countryside to that which is necessarily restricted to such a location. Accordingly, NDTLP Policy DM28 exceptionally permits rural worker accommodation in the countryside but only where an essential operational need for a full-time worker on-site is demonstrated.
8. The supporting text to Policy DM28 requires evidence of such a need to be compelling, for example where either livestock or agricultural processes require essential care and attention at short notice. Further guidance is provided by the Rural Workers' Dwellings Supplementary Planning Document (SPD), adopted January 2020, as well as the Government's Planning Practice Guidance<sup>3</sup>. These give examples of essential need as being where animals or agricultural processes require on-site attention 24-hours a day, or to deal quickly with emergencies that could cause serious loss of crops or products.
9. Paragraph 157 of the National Planning Policy Framework (the Framework) seeks to support a low-carbon future. In contrast to the SPD, planning policies from elsewhere in the country provide greater support for regenerative low impact development such as the proposal. Nevertheless, the SPD remains the Council's current adopted guidance and is consistent with Framework Paragraph 84. Consequently, I see little reason to give reduced weight to the SPD.
10. The Agricultural Appraisal and Business Plan sets out the proposal in some detail. This includes the production of seasonal soft fruit and vegetable boxes, as well as honey, condiments, and cut flowers, all harvested from the site. It is also proposed to keep Angoran goats, together with chickens and ducks. Goat hair and nettle fibres would be processed at the site to produce dye, inks, paper and dye kits. Courses would be offered utilising the appellant's educational experience.
11. The proposal is based on permaculture ethics and principles, requiring low mechanical input but more intensive labour. It is intended to allow tasks to flow around each other but they are estimated by the appellant to amount to a full-time commitment. Even so, the scale of the proposal would only amount to between six and ten goats, with fairly small and fluctuating numbers of poultry.

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<sup>3</sup> Paragraph: 010 Reference ID: 67-010-20190722

These and the other elements of the proposal would take place on a site acknowledged as small. As a result, it would be a modest enterprise.

12. I understand that the goats need to be checked at least twice a day, whilst hens and ducks require inspection at least three times daily. Crops need protection from the poultry, and the plants require regular supervision, irrigation, ventilation and temperature management. Harvesting of crops can take place during early mornings or late evenings. An on-site presence would allow for quick reactions to frost and weather emergencies, and provide activity to deter pests and foxes, and for security.
13. However, the SPD makes clear that small-scale enterprises are less likely to justify a dwelling, because of the low frequency and timing of incidents. The presence of the appellant on-site would no doubt be beneficial. Nevertheless, I have insufficient evidence that such a presence would be essential at most times, for example because of a regular need to undertake activities at night.
14. Policy DM28 and the SPD permits temporary residential use for an initial three-year period, to give the enterprise an opportunity to become established and to confirm operational needs. The appellant has made business proposals for the site since 2019. These have been similar to those proposed now, albeit that rare breed pigs would not now be kept. As such, the appellant has already had much longer than the normal period for temporary accommodation allowed by planning policy.
15. On site, the land has been divided to include areas for vegetable and fruit growing, beehives and ducks within an enclosure. An equivalent of the honey shed is provided by a caravan. Some delay in progressing the intended enterprise is understandable in light of factors such as Covid, avian flu, and the caring for and death of the appellant's sister, with which I sympathise. However, despite the length of time that the appellant has occupied the site, the enterprise has not materialised to a substantive degree.
16. The site has been occupied without planning permission. This may have been because of the appellant's personal circumstances at the time, but the threat of enforcement action would have been a foreseeable risk from the outset. Consequently, despite the uncertainty created by this threat, it does not provide a good reason to permit the live/work unit for a further temporary period. For the above reasons, I conclude that the requirements of Policy DM28 and the SPD for an essential operational need for the living accommodation have not been met. As such, the availability or otherwise of alternative housing locally does not affect my decision.

#### *Financial Matters*

17. The supporting text to Policy DM28 requires evidence that the enterprise has been planned on a sound financial basis, including a costed business plan. The SPD makes clear that the enterprise must be in profit within the final year of the temporary consent. The Business Plan provides comprehensive projections for the enterprise, including a range of scenarios. These show that it would make a small net profit in three years, said to be sufficient to meet the minimum financial needs of the appellant. At the Hearing, the Council confirmed that it does not dispute these figures and I see little reason to take a different view.

18. The former Planning Policy Statement 7, Annex A, stated that enterprises which aim to operate on a subsistence basis can be sustained on relatively low financial returns. However, the projections provide no evidence of the profitability or otherwise of the enterprise since 2019. Furthermore, three productive months of the first year of the projection (April to June 2024) have already passed with little further implementation of the enterprise. Given that the appellant has already had a lengthy trial period without demonstration of profitability, I am not convinced that a further period is justified, even temporarily.
19. An appeal decision at Cuddyford Meadows, Ashburton<sup>4</sup> has been drawn to my attention. It involved a horticultural-led enterprise of similar scale and fewer livestock to the proposal before me, where the combination of tasks and activities was found to justify retention of a dwelling. Full details of that case are not before me, but the enterprise is described as well-established, with demonstrable profitability. It was also subject to different planning policies. Accordingly, the circumstances of that decision are not comparable to the proposal, and it does not change my conclusions.
20. For the reasons given above, having regard to planning policy which seeks to avoid isolated new homes in the countryside, I conclude that there is insufficient functional and financial agricultural justification for the proposal. Consequently, it would conflict with NDTLP Policies DM28 and ST07, the SPD and Paragraph 84 of the Framework. I give this conflict significant weight.

#### *Character and Appearance*

21. The site consists of attractive gently rolling countryside, close to but outside of Exmoor National Park. The Joint Landscape Character Assessment for North Devon and Torridge Districts (November 2010) identifies the area as being within the Moorland Edge Slopes Landscape Character Type. This provides an important setting and transition to the nationally designated landscape, and the appeal site is reflective of this character.
22. The proposal would involve the erection of new buildings on the site, and the creation of hardstanding, as well as the live/work unit. The previous Inspector found that the storage building would not cause harm, being located adjacent to a substantial hedge and bank, and appearing as an agricultural building. I see little reason to disagree.
23. Nevertheless, the proposal as a whole would add additional built form to the site. It would have a residential appearance resulting from the live/work unit and its use, including the domestically proportioned design of its doors and windows. Paraphernalia associated with the living accommodation would add to this residential appearance. As such, the proposal would undermine the attractive rural nature of the site and its wider surroundings.
24. The site is not prominent from the road, although elements of the proposal such as parked vehicles and alterations to the access would be visible from the entranceway. Given the sloping nature of the site and extensive views to and from the south, the proposal may well also be visible in the wider landscape. Planning conditions could be imposed requiring landscaping around the buildings, to soften their visual effects. However, this cannot be relied upon in

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<sup>4</sup> Appeal Ref: APP/J9497/W/21/3272334

winter months when foliage is reduced and would take time to become effective. The provision of landscaping does not therefore overcome my concerns.

25. For these reasons, I conclude that the proposal would have a harmful effect on the character and appearance of the area. As a result, it would conflict with NDTLP policies DM04, DM08A and DM14 which require proposals and their design and appearance to respect the character and qualities of the landscape. It would similarly conflict with the aim of the Framework to recognise the intrinsic character and beauty of the countryside. Accordingly, I give this conflict significant weight.

### **Other Considerations**

26. The first reason for refusal related to the effect of the proposal in respect of highway safety. At the Hearing, it was confirmed that this no longer formed part of the Council's case, and that the proposal would not harm the safety of road users, subject to planning conditions. I do not disagree and so there is no need for me to consider this matter further.
27. The proposal would have benefits such as ecological and biodiversity enhancement. It would also have social and economic advantages, for example to other local businesses. However, given the small scale of the enterprise, these benefits would be modest. I therefore give them moderate positive weight.
28. My decision could lead to the loss of the appellant's home, thus interfering with her rights under Article 8 of the Human Rights Act 1998. Even so, this qualified right must be weighed against other factors. Interference may be justified by the public interest, in this case consisting of planning policies which seek to recognise the intrinsic character and beauty of the countryside. In balancing these factors, the harm identified above outweighs the personal matters. Consequently, I consider that the interference with the Article 8 rights held by the appellant would be necessary and proportionate.

### **Planning Balance and Conclusion**

29. For the reasons given, I have identified conflict with Development Plan policies. It follows that the proposal would also not be supported by NDTLP Policy ST01. As such, the proposal would conflict with the Development Plan as a whole. The material considerations in this case do not indicate a decision other than in accordance with the Development Plan. This leads me to conclude that the appeal should be dismissed.

*O Marigold*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Julia Stanway	Appellant
Bill Knight	TerraPermaGeo
James Shorten MRTPI	TerraPermaGeo

### FOR THE LOCAL PLANNING AUTHORITY:

Peter Rowan MRTPI	Rowan Edwards Town Planning and Architecture
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### INTERESTED PARTIES:

Councillor Bulled	On behalf of herself and North Molton Parish Council
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## **DOCUMENTS HANDED IN DURING THE HEARING**

1. List of revised agreed conditions