



## Appeal Decision

Site visit made on 5 April 2022

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

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

**Decision date: 26<sup>th</sup> April 2022**

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**Appeal Ref: APP/D0840/W/21/3283175**

**Land North Of Tregunwith Wood, Tregunwith, Mylor Bridge**

- 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 Phil Kerry against the decision of Cornwall Council.
  - The application Ref PA20/08566, dated 5 October 2020, was refused by notice dated 19 March 2021.
  - The development proposed is installation of a mobile home for a temporary worker's dwelling and erection of an agricultural building.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The Council's reasons for refusal refer to several numbered paragraphs from the National Planning Policy Framework 2019. After the decision, on 20 July 2021, the Government published its revised National Planning Policy Framework (the Framework). In the revised version the paragraphs are renumbered, and, in some cases, the wording has been altered. The appeal timetable has allowed both parties the opportunity to make comments relating to the updated Framework.
3. A Statement of Common Ground (the SOCG) has been produced during the course of the appeal, and has been signed by both parties.

### Main Issues

4. The main issues are:
  - a) Whether the site is suitable for a dwelling, bearing in mind the settlement policies of the development plan and the accessibility of services, and whether there is a need for an agricultural worker that would outweigh any harm in these regards;
  - b) The effect of the development on the landscape character of the Cornwall Area of Outstanding Natural Beauty (the AONB);
  - c) The effect of the development on highway safety; and,
  - d) The effect of the development on biodiversity, including the integrity of the Fal and Helford Special Area of Conservation (the SAC).

## Reasons

### *Settlement policy, accessibility, and agricultural need*

5. The main settlement policies of the development plan are Policies 2 and 3 of the Cornwall Local Plan Strategic Policies 2010 – 2030 (adopted 2016) (the Local Plan). The strategy set out in Policy 2 seeks to maintain the dispersed development pattern of Cornwall, and to provide housing based on the role and function of each place. Policy 3 defines how development will be accommodated, based on this hierarchy, with growth focussed on identified main towns. Outside the main towns, Policy 3 says housing growth is to be delivered through the identification of sites through Neighbourhood Plans; rounding off of settlements; development of previously developed land within or immediately adjoining settlements; infill schemes; or rural exception sites.
6. The site lies in open countryside, away from any settlements, and it is not identified for development by a Neighbourhood Development Plan. Occupants of the dwelling would be remote from day-to-day services. The nearest settlement, Mylor Bridge, is approximately 2km away by foot. The first half of this journey would be via a winding, unlit, private track, which is steep in places. In view of the nature of the route, and the limited services available in Mylor Bridge, occupants of the dwelling would be highly reliant on private vehicles to access higher order services in larger settlements further afield. Consequently, the proposal for a dwelling in this location would not accord with the sustainable approach to development set out in the settlement strategy of the Local Plan, whereby most development is to be located in, or adjacent to, settlements with a range of facilities.
7. Policy 7 of the Local Plan recognises that there may be a need for some housing in other locations, but that the development of new homes in the open countryside will only be permitted where there are special circumstances. Criterion 4 of the policy supports the provision of temporary accommodation for workers (including seasonal migrant workers), to support established and viable rural businesses, where there is an essential need for a presence on the holding. Criterion 5 supports new housing for full time agricultural workers where there is up to date evidence of an essential need of the business for the occupier to live in that specific location.
8. In this case, permission is sought for a temporary dwelling for a trial period, as the proposed business has not yet been established. This accords with the approach suggested in the Planning Practice Guidance relating to new rural enterprises<sup>1</sup>. However, there is a clear intention that the business should endure beyond this initial trial period, and that there will be a permanent need for a full-time worker to live on the site. This being the case, the proposal should be considered under Criterion 5 of Policy 7, which does not require that the business is already established and viable.
9. The appeal site is part of a roughly triangular field of about 1 Hectare, which slopes down to the banks of Restronguet Creek. It comprises rough grassland with bramble patches, and was not in any active agricultural use at the time of my visit. The appeal site itself is made up of an area of land at the eastern edge of the field, together with a strip of land along its northern edge, and the

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<sup>1</sup> Paragraph: 010 Reference ID: 67-010-20190722

- private access track that links the site to the public road approximately 1km away.
10. The proposal is for the development of a 250-doe, free-range rabbit production unit over three years, with 100 does in Year 1; 200 does in Year 2; and 250 does in Year 3. The breeding rabbits would be caged prior to giving birth, but would otherwise be able to access outdoor grazing pens, which would be utilised in rotation. The progeny would be reared outdoors, mainly for meat, and marketed to local butchers and restaurateurs, and also to national suppliers, either as fresh meat or frozen, with some stock sold live. Breeding stock would also be marketed to breeders and smallholders, and a small number sold as pets. The projected sales of meat rabbits after three years would be approximately, but no more than, 10,000 packs of meat per year.
  11. The application was accompanied by a Rural Worker's Temporary Dwelling Appraisal (the Appraisal), produced by a suitably qualified expert. The Appraisal concludes that the proper and effective management of the breeding and rearing activities, together with sickness and mortality management, is critical to the success of this type of enterprise. With each doe producing six litters of about nine kits per year, there would be an almost constant process of reproduction. Birthing would often occur at night, and there is evidence that a resident worker could significantly reduce kit mortality. The Appraisal also concludes that an on-site presence would be essential to ensure the general health and well-being of the stock; provide security against animal and human intruders; and to manage predators.
  12. The appellant has already developed this business model on four sites elsewhere. The Appraisal considers the accounts for one of the other businesses, and concludes that they demonstrate that a 250-doe, free-range rabbit production enterprise at the appeal site would be profitable. The Appraisal concludes that, after Year 3, the business should be capable of generating a profit of more than £25,000 after the deduction of all fixed and notional costs.
  13. The Council's agricultural consultant agreed that a fully established and functioning livestock enterprise of this type, with the numbers of breeding females and growing progeny, would justify an essential need for a worker to be on site full time. Furthermore, based on the appellant's evidence, he concluded that a rabbit breeding business of this size, run in a commercially competent manner, would generate the equivalent of a full-time salary for a skilled agricultural worker, having allowed for a return on invested capital, depreciation, and all costs to the business. It would, therefore, be viable.
  14. I have had regard to third party representations that question the reliance on inputs from other businesses in proving the potential viability of this particular proposal. I am also mindful that there may be set-up costs involving water supply, and repairs to the private access track, that have not been factored into the Appraisal. However, I have no cogent evidence to suggest that the profitability of the fundamentally similar enterprises run by the appellant, over a period of time, could not be repeated at the appeal site. Furthermore, the evidence indicates that some additional set-up costs could be financed through existing reserves, without impacting on the longer-term viability of the business.

15. Consequently, I conclude that, if the enterprise were to be developed in accordance with the submitted details, there would be a need for a full-time agricultural worker to live on the site. The proposal would, therefore, accord with Policy 7 of the Local Plan.

*Landscape character of the AONB*

16. The appeal site lies within the AONB in the Fal Ria, Truro and Falmouth Landscape Character Area (the LCA), as described in the Cornwall and Isles of Scilly Landscape Character Study, 2008 (the Character Study). The Character Study describes the LCA as being dominated by the Fal Ria, which comprises a series of interlocking tributary creeks. I observed that the area around the appeal site comprises farmland with a small field pattern, bounded by Cornish hedges and trees, sloping down to a tranquil, muddy creek with open water. It is, therefore, highly characteristic of the LCA. The appeal site itself is a small tree-lined field, which is a constituent part of a wider, undeveloped green coastal hillside that provides a natural backdrop to the creek in views from the opposite bank. It therefore makes a positive contribution to the appearance of the LCA and to the scenic beauty of the wider AONB.
17. Paragraph 176 of the Framework says great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in relation to these issues. Policy 23 of the Local Plan reinforces this requirement, and says proposals should be informed by the Cornwall AONB Management Plan 2016 – 2021 (the Management Plan). Policy MD9 of the Management Plan requires, amongst other things, that development is compatible with the distinctive character of the location described by the Character Study, with particular regard to the setting of settlements and the rural landscape.
18. The proposal would involve the provision of a building measuring approximately 24 metres X 12 metres, with a ridge height of almost 6 metres. The mobile home would be located alongside the building, and the submitted plans show a unit measuring about 12 metres X 6 metres and 3.5 metres in height. The plans also show the provision of a new stone-surfaced area to the front of the building and mobile home, two car-parking spaces, and an access track approximately 80 metres in length to connect them to the Public Right of Way (PRoW) to the west. Taken together, therefore, the overall development would be of a substantial scale in this undeveloped rural landscape.
19. The appellant has not submitted evidence in the form of a landscape and visual impact assessment, prepared by a suitably qualified and experienced landscape professional, to assist in judging the impact of the development on the AONB. My consideration of this issue is, therefore, based on the written evidence provided by all parties, and my own observations, which included viewing the site from the PRoW to the north and west of the site, and from various points on the opposite side of the creek, including Point Quay, Trevallion Park, and the foreshore at the south end of Trolver Croft.
20. The PRoW runs along the western boundary of the wider field, at a higher level than the appeal site. It then winds up the slope, affording views over the appeal site from a greater height further to the west. Consequently, although the building and mobile home would be located at the lowest part of the site, this would not prevent them from being readily visible from various points along the footpath. The stretch of the PRoW that approaches the site from the

northwest is open on its eastern side. As a result, the buildings on the appeal site would be seen over the low hedge bank on the northern boundary of the site, from the entire length of this part of the footpath, which extends to about 140 metres.

21. From significant stretches of this section of the footpath, the view of the creek experienced by walkers is uninterrupted by any development, with the nearest buildings at Halwyn and Tregunwith Wood hidden by the topography and vegetation. Consequently, the utilitarian building and mobile home would be incongruous features, intruding into the otherwise unspoilt landscape, which provides the foreground for expansive views of the open water beyond. They would, therefore, be harmful to the character and appearance of this sensitive landscape.
22. From the higher part of the PRow, further to the west, two gateways provide panoramic views of the AONB landscape over the creek to the opposite bank. The open green fields sloping down to the waterside are an important component in this spectacular scenery. Walkers approaching this point from the southwest currently have views down to the creek and beyond, framed by hedgerows and uninterrupted by any buildings. As the proposed access track would directly align with one of these gateway views, it would be a prominent feature, and would result in the building and its attendant activity becoming a focal point from this location. Consequently, it would significantly diminish the landscape quality from this viewpoint, and would be harmful to the tranquil character of this part of the AONB.
23. Seen from the various viewpoints on the opposite side of the creek, the quality of the landscape surrounding, and including, the appeal site is readily apparent. The patchwork of green fields, divided by hedges and groups of trees, slopes down to a continuous line of trees along the top of the bank. The remarkable absence of buildings on these slopes means that they provide a natural, unspoilt backdrop to the open water, which makes a valuable contribution to the notable scenic beauty of this part of the AONB.
24. The proposed development would be screened, to some extent, by the trees on the top of the bank, particularly in summer. However, the building would be higher than the rather sparse vegetation that is present in the gaps between the trunks of the trees. It would, therefore, be visible as an isolated building in a landscape that is otherwise devoid of buildings. From the foreshore at the southern end of Trolver Croft, the proposed track would also be visible running down the slope, and, as a result, drawing attention to the development that it would serve. The harm to the landscape would be particularly evident from Point Quay, as it is the closest viewpoint on the opposite bank. It is also a public open space, with benches arranged so that people can sit and enjoy the spectacular unspoilt scenery on the opposite side of the creek. The development would be an intrusive feature that would diminish the scenic quality of these views.
25. The visual impact of the development from the opposite side of the water would be moderated to some extent, by the distance of the viewer. However, the creek is well used by boats, which could pass close to the site when tidal conditions allow. From these closer vantage points on the water, the building and mobile home would be very clearly evident as incongruous features, close to the edge of the bank, that would harm the natural character of the creek.

26. The provision of additional landscaping could help to reduce the visual impact of the development from some viewpoints. However, there would be little space between the building and the creekside bank to achieve any substantial planting. Furthermore, landscaping would not be successful in significantly reducing the visual harm, resulting from the development, on views from the PRow on the higher land to the west.
27. The SOCG includes details of a previous appeal decision relating to the site<sup>2</sup>. In his decision letter, the Inspector concluded that the set of steps proposed at that time would not be prominent from the opposite shore. The appellant contends that this supports the view that the current proposal would be similarly unobtrusive. However, the development now proposed would be of a substantially greater scale, and would be above the top of the bank, rather than set against it. It would, therefore, have a much greater impact on the landscape. In any event, the Inspector concluded that the proposal would fail to conserve and enhance the natural and scenic beauty of the AONB. Consequently, the appeal decision does not weigh in favour of the proposal.
28. The appellant also contends that, as the application is for a temporary period of three years, the impact it would have would be limited to that period of time. However, if the trial period were to prove successful, it is likely that the building and residential accommodation would become a permanent fixture on the site, resulting in lasting harm to the landscape.
29. For the above reasons, I conclude that the development would be harmful to the landscape character of the AONB. As a result, it would be contrary to Policies 2 and 23 of the Local Plan and Policy MD9 of the Management Plan. It would also conflict with the Framework's aim to conserve and enhance the natural environment in this regard.

#### *Highway safety*

30. Access to the site from the public road is via a private track of approximately one kilometre in length. This track is also a Gold status PRow, which connects with the creekside walk to the Pandora Inn, the headland beyond, and back to Mylor Bridge. The beautiful scenery, and the comparative tranquillity of the area, make it an attractive path for walkers. The evidence, including that gained at my visit, indicates that it is a popular, well-used walking route.
31. The track varies in nature along its length. Some parts are quite wide, or have open fields on one side, which would allow vehicles and pedestrians to pass in comfort. However, there are significant stretches where the track is narrow in width, and confined on both sides by high hedge banks. In these locations there is potential for the meeting of vehicles and pedestrians to result in conditions of discomfort and danger, as drivers seek to squeeze past walkers. The route is not, therefore, suitable to accommodate an increase in vehicular use, as any such increase would result in a higher likelihood of such conflict between walkers and vehicles.
32. The SOCG states that the track provides vehicular access to a number of agricultural fields and to two residential properties, Halwyn and Tregunwith Wood. It does, therefore, accommodate some vehicular traffic. However, this is limited, and I saw no vehicle movements during my visit. The appellant

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<sup>2</sup> Appeal reference: APP/D0840/W/17/3187912

contends that the track can already be used by vehicles in connection with the agricultural use of the site. However, the site is not currently in active agricultural use, and its size and nature dictate that even if it were, the number of vehicular movements that it would generate would be likely to be very low.

33. By contrast, the intensive use of the site proposed would be expected to result in a significant number of vehicle movements associated with the delivery of goods and equipment, and with the distribution of the 10,000 packs of meat produced per year. The appellant contends that an on-site dwelling would reduce vehicle movements. However, whilst the worker would not need to commute to the site daily for their employment, they would have to access services and obtain goods from distant settlements. In view of the location, and the lack of sustainable alternatives, these trips would predominantly be carried out in a private vehicle. Furthermore, the worker may not live alone on the site. Other family members may need to travel to work or for education on a daily basis, and there are likely to be the normal domestic deliveries and visitors.
34. The agricultural business and dwelling combined are, therefore, likely to result in a significant increase in vehicle movements. This, in turn, would increase the likelihood of vehicles and walkers meeting in the narrower sections of the route. A pedestrian confronted by an oncoming vehicle may feel obliged to press themselves into the roadside hedge, and a driver may be tempted to squeeze past. This would be a hazardous manoeuvre, particularly where it involved a pedestrian with young children, or using a pushchair.
35. Consequently, notwithstanding that the Countryside Access Team, in its role as Highway Authority for PRowS, did not object to the proposal, I conclude that it would result in an unacceptable impact on highway safety, which in turn would discourage walkers from using the PRow. The proposal would, therefore, be contrary to Policies 16 and 27 of the Local Plan, which seek to ensure safe and suitable access for all people, and to provide or enhance active travel networks that support and encourage walking. The proposal would also conflict with the Framework's aim to promote sustainable transport.

### *Biodiversity*

36. A Preliminary Ecological Assessment, prepared by a suitably qualified expert, has been submitted with the appeal. It covers the wider field, rather than being limited to the appeal site. It reports that the main part of the site is dominated by semi-improved grassland with large areas of bramble. Whilst this habitat is suitable for reptiles, amphibians, small mammals, and ground nesting birds, no evidence of these species was found during the survey. The boundary trees and hedges are considered suitable for nesting birds, and the mature trees along the creekside boundary contain cracks and crevices that could provide suitable roost sites for bats. No evidence of otters or badgers was noted during the survey and, overall, it was assessed that the site provides low suitability to support protected species.
37. It is possible that reptiles are present on the site that would only be revealed by further, targeted, survey work. Further survey work would also be needed to demonstrate whether bats were present in the trees, so that any necessary mitigating measures could be incorporated into the development. However, the trees and boundary hedges would not be directly impacted by the development (apart from the creation of the access point), and only a relatively small

proportion of the wider field would be covered by the building and mobile home. There would, therefore, be scope on the remainder of the land to provide mitigating measures for any loss of habitat. Consequently, a suitably worded condition could ensure that a scheme of mitigation and management, based on the results of further targeted survey work, could be secured prior to commencement of the development, thereby avoiding any harm to biodiversity on the site.

38. It is agreed in the SOCG that the appeal site exceeds 1 Hectare in area, and is therefore above the threshold for the need to achieve a 10% Biodiversity Net Gain (BNG). The parties have not, however, agreed the wording for a condition to secure such provision, largely due to the appellant's understandable concerns about committing to a long-term maintenance plan, while permission is only being sought for a temporary period of three years. Nevertheless, the intention is that the rabbit farming enterprise would endure beyond the temporary period if it proved viable. It would, therefore, be reasonable to consider longer term biodiversity management objectives. A suitably worded condition could secure a phased programme to deliver short-term gains during the temporary period, together with longer term management if the development were to endure beyond this period.
39. I therefore conclude that, subject to suitably worded planning conditions, the development would not result in harm to on-site biodiversity, and could deliver BNG. The development would, therefore, accord with Policy 23 of the Local Plan, which seeks to avoid, mitigate, and compensate for biodiversity impacts. The proposal would also accord with the Framework's aims to conserve and enhance the natural environment in this regard.
40. Although not a reason for refusal, the Council refers, in its statement, to the impact of the proposal on the SAC. This European Site is liable to harm from increased recreation pressure resulting from new housebuilding within the zone of influence. The proposal would result in an additional dwelling close to the SAC, so when considered alone, or cumulatively with other schemes, I cannot rule out that it would have significant effects on the European Site.
41. The SOCG includes an agreed condition that would prevent the development from commencing until the local planning authority has approved a scheme of mitigation for the additional recreational pressures on the SAC, together with an appropriate mechanism for securing delivery of the mitigation. The evidence indicates that the discharge of this condition would likely be achieved by completion of an agreement under S111 of the Local Government Act 1972, which would secure the payment of a financial contribution towards a programme of measures set out in the Cornwall European Sites Mitigation Supplementary Planning Document (July 2021).
42. Had I been minded to allow the appeal, I would have had to consider, through an Appropriate Assessment, whether the proposed condition was a robust method of securing mitigation for the likely impact on the SAC. However, as I am dismissing the appeal, the impacts will not arise. Consequently, it is not necessary for me to consider the proposal any further in respect of the Conservation of Habitats and Species Regulations 2017.

## **Planning Balance**

43. Paragraph 84 of the Framework supports the development of agricultural and other land-based rural businesses. The evidence indicates that the proposed enterprise would be viable and would, therefore, provide economic benefit through the creation of rural employment. It would also result in the need for a worker to live on the site.
44. The proposal would, however, harm the landscape and scenic beauty of the AONB. This is a matter to which I attach great weight, in accordance with the Framework and development plan policy. The development would also result in conflict between vehicle and pedestrian movements on the PRoW, which would be harmful to highway safety.
45. Policy 7 of the Local Plan supports the provision of agricultural dwellings where an occupier needs to live in a specific location. In this instance, the need to live on the site does not currently exist, and is dependent on the erection of a building that would be harmful to the AONB. The appellant contends that the site is suitable for the development, because it would enable the business to access markets in Cornwall and Devon, and possibly the Isles of Scilly and the Channel Islands. It is also indicated that the isolated nature of the site offers benefits with respect to transmission of diseases and security. There is, however, little evidence to indicate that the appeal site is unique regarding these issues, or that the enterprise could not be established in a less visually sensitive and more accessible location.
46. Consequently, I conclude that the limited economic benefits of the proposal do not outweigh the harms that I have identified.

## **Conclusion**

47. There are no material considerations that indicate 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.

*Nick Davies*

INSPECTOR