

Town and Country Planning Act 1990 – Section 78

Appeal by Mr P. Kerry against the decision of Cornwall Council to refuse planning permission for the installation of a mobile home for a temporary worker's dwelling and erection of an agricultural building at Land North Of Tregunwith Wood, Tregunwith, Mylor Bridge, Cornwall TR11 5SU

Grounds of Appeal and Statement of Case on behalf of the Appellant

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PA20/08566
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1. Introduction and Background

- 1.1 The land in the applicant's control extends to just over 1 Hectare (2.5 Acres) and comprises an agricultural field laid to rough grassland which slopes down to the edge of Restronguet Creek. The part of this field nearest the access track has been divided into a series of 8 rectangular plots subdivided by hedges.
- 1.2 Access to the site from the public highway is down a long (nearly 1km) track. This track is designated as a public footpath and leads to the Pandora Inn and Mylor Bridge to the south.
- 1.3 The field is situated an average of 4.2m above the beach with a vertical cliff edge separating it from the foreshore. There are numerous trees and shrubs on the foreshore, growing from the cliff edge and at the cliff edge of the field.
- 1.4 The site lies within the Cornwall Area of Outstanding Natural Beauty (AONB), the Fal Ria Landscape Character Area and Restronguet Creek is designated as a County Wildlife Site.
- 1.5 The proposal is to develop the free-range rabbit farm enterprise described in the business plan/assessment prepared by Reading Agricultural Consultants which accompanied the application. The report concluded that there is an essential need for a worker to be available at the site at most times in connection with the proposed enterprise and that the enterprise has been planned on a sound financial basis.
- 1.6 The proposals will see the development of a 250-doe, free-range rabbit production unit over the next three years. The projected annual sales of meat rabbits after three years will be approximately, but less than 10,000 units per annum.
- 1.7 Fundamentally, the enterprise will require and sustain a full-time

worker (the applicant) but in order to be successful – and to operate properly – there is an essential need for staff to live on site to provide for the welfare and security of the livestock. The Council agricultural consultant agreed that there may be a need for a worker on site for this type of operation.

2. Relevant planning history

- 2.1 An application (reference PA17/01004) for the Installation of steel steps on cliff face to access and maintain land was submitted by the applicant on the 2nd February 2017. The application was refused by Cornwall Council on the 16th May 2017 for the following reasons:

1 The proposed steel staircase, by reason of it's location, design, urban appearance and likely removal of existing natural vegetation to accommodate its structure, fails to sustain the local distinctiveness and character of this Area of Outstanding Natural Beauty. The application is, therefore, contrary to the aims and intentions of Policies 12 and 23 of the Cornwall Local Plan Strategic Policies 2010-2030, Section 6 of the National Planning Policy Framework 2012 and Policy SCC9.01 of the Cornwall Area of Outstanding Natural Beauty Management Plan 2016-2021.

2 The application is likely to adversely impact the Restronguet Creek County Wildlife Site by reasons of habitat loss and disturbance and no evidence has been submitted to demonstrate otherwise. When adopting a precautionary approach to protecting valued biodiversity, this application is, therefore, contrary to Policy 23 of the Cornwall Local Plan Strategic Policies 2010-2030 and paragraphs 109 and 118 of the National Planning Policy Framework 2012.

- 2.2 The appellant appealed the decision (APP/D0840/W/17/3187912) which was dismissed by the Inspector.
- 2.3 Application PA20/08566, subject to this appeal, was refused by the Council on the 13th February 2019 for the following reasons:

1 The application involves the construction of a new temporary workers dwelling in the countryside, detached from any definable settlement containing the necessary facilities required to support day-to-day occupation, which would encourage the use of a private motor vehicle and is not considered to be sustainable development. New housing development in this location is not supported by Policies 3, 7 or 21 of the Cornwall Local Plan Strategic Policies 2010-2030 (CLP). The proposal would incur significant visual harm to the immediate

setting and surrounding natural environment from the construction of a dwelling and agricultural building in the open countryside resulting in landscape and visual harm to the Area of Outstanding Natural Beauty. Notwithstanding the modest associated economic benefits of this proposal, they do not outweigh the unsustainable location and harm to the natural qualities of the setting. The proposal is considered contrary to Policies 1, 2, 3, 7, 21 and 23 of the CLP, paragraphs 122, 127, 170 and 172 of the National Planning Policy Framework 2019 (NPPF) and policy MD9 of the Cornwall Area of Outstanding Natural Beauty Management Plan 2016-2021.

2 The location of this site relies on access along a public right of way which includes narrow sections with no passing places. The proposed location of this development would encourage conflict between pedestrians and motorised traffic giving rise to increased danger for all users and creating an unacceptable highway safety impact. As such the development is considered to conflict with Policies 1, 16 and 27 of the CLP and paragraph 108 of the NPPF.

3 The submitted information is insufficient to enable the Local Planning Authority to assess the impacts on protected species and does not provide any information in relation to Biodiversity Net Gain. The proposal thus conflicts with CLP policy 23 and paragraphs 172 and 175 of the NPPF.

3. Relevant Planning Policy Guidance

3.1 This proposal falls to be determined in accordance with Policies 1, 2, 3, 7, 16, 21, 23 and 27 of the Cornwall Local Plan Strategic Policies 2010-2030 (CLP), the relevant paragraphs of the National Planning Policy Framework and policy MD9 of the Cornwall Area of Outstanding Natural Beauty Management Plan 2016-2021.

3.2 It is considered that there is no dispute between the parties in relation to the other policies that are relevant to the development, meaning that this appeal statement will only focus upon these policies. These will be set out below.

National Planning Policy Framework

3.3 The NPPF encourage local planning authorities to support sustainable development. The following paragraphs from the NPPF are considered to be particularly relevant to the determination of this planning application.

3.4 Paragraph 8 of the NPPF sets out that, Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives).

3.5 Paragraph 11 goes on to state that "Plans and decisions should apply a presumption in favour of sustainable development". It suggests that planning permission should be granted unless any adverse impacts would be so significant as to outweigh the benefits of the development. This paragraph requires a presumption in favour of sustainable development. It is considered that the proposed development accords with this paragraph.

3.6 The NPPF encourages local planning authorities to support sustainable development in rural areas (particularly when the NPPF is read

together with Planning for Growth).

3.7 Paragraph 80 relates to rural housing and sets out that:

Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:

a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;

3.8 Paragraph 84 of the NPPF sets out national guidance in respect to supporting the rural economy, and states:

Planning policies and decisions should enable:

a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings;

b) the development and diversification of agricultural and other land-based rural businesses;

3.9 The NPPF saw the revocation of Planning Policy Statement 7: Sustainable Development in Rural Areas (August 2004) including Annex A, which set out the well-established and detailed guidance for the determination of applications for rural workers dwellings.

3.10 Paragraph 111 sets out with respect to highways that:

Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

3.11 Paragraph 130 sets out that planning policies and decisions should ensure that developments:

a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;

- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;***
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);***
- d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;***
- e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks;***
and
- f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.***

3.12 Paragraph 174 requires that planning policies and decisions should contribute to and enhance the natural and local environment by:

- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);***
- b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;***
- c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;***
- d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;***
- e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and***

f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

3.13 Paragraphs 176 goes on to set out that Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas. The scale and extent of development within all these designated areas should be limited.

Local Planning Policy Guidance

3.14 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise.

3.15 The site lies within Cornwall Council. The Development Plan comprises the Cornwall Local Plan which was formally adopted on 22nd November 2016.

3.16 The reason for refusal identifies Policies 1, 2, 3, 7, 16, 21, 23 and 27 of the Cornwall Local Plan Strategic Policies 2010-2030 (CLP) which are as follows:

Policy 1: Presumption in favour of sustainable development

When considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework and set out by the policies of this Local Plan. We will work with applicants, infrastructure providers and the local community to find solutions which mean that proposals will be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area. Planning applications that accord with the policies in this Local Plan and supporting Development Plan (including, where relevant, with policies in Neighbourhood Plans) will be regarded as sustainable development and be approved, unless material considerations indicate otherwise.

When considering whether a development proposal is sustainable or not, account will be taken of its location, layout, design and use against the three pillars of economic development, social development and environmental protection and improvement. Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision the Council will grant permission unless material considerations indicate otherwise – taking into account whether: a) Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or b) Specific policies in that Framework indicate that development should be restricted.

Policy 2 – Spatial Strategy:

New development should provide a sustainable approach to accommodating growth, providing a well balanced mix of economic, social and environmental benefits. This should maintain the dispersed development pattern of Cornwall and provide homes and jobs based on the role and function of each place. Strategic scale growth will be accommodated in our main towns and city where they can best support regeneration and sustainable development.

Overall, development should seek to meet the following objectives of the Plan for Cornwall:

1. Respecting and enhancing quality of place:

Proposals should maintain and respect the special character of Cornwall, recognising that all urban and rural landscapes, designated and undesignated, are important by:

a. Ensuring that the design of development is high quality and demonstrates a cultural, physical and aesthetic understanding of its location;

b. Considering the impact of development upon the biodiversity, beauty and diversity of landscape and seascape, character and setting of settlements, wealth of natural resources, agricultural, historic and recreational value of Cornwall;

c. Identifying the value and sensitivity, of the character and importance of landscapes, biodiversity and geodiversity and historic assets;

d. Protecting, conserving and enhancing the natural and historic landscape, heritage, cultural, biodiversity and geodiversity assets of Cornwall in recognition of their international, national and local status,

in accordance with national legislation and policy, as amplified by the other policies of this plan.

3. Generating and sustaining economic activity:

Proposals will be welcome that improve conditions for business and investment in Cornwall, in particular by:

...

c. Supporting the expansion of existing businesses and the indigenous businesses of agriculture, fishing and mining;

...

f. Supporting employment schemes in both towns and rural areas, giving particular emphasis to quality, permanent, work opportunities that break seasonal labour cycles;

Policy 3: Role and function of places

The scale and mix of uses of development and investment in services and facilities should be based on the role and function of places. New development up to 2030 will be accommodated in accordance with the following hierarchy:

...

4. Within the AONB or its setting, development will be supported where it is in accordance with the other policies of this Plan and can demonstrate that it conserves and enhances the landscape character and natural beauty of the AONB.

Policy 7: Housing in the countryside

The development of new homes in the open countryside will only be permitted where there are special circumstances. New dwellings will be restricted to:

...

4 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, but no other suitable accommodation is available and it would be of a construction suitable for its purpose and duration; or

5 Full time agricultural and forestry and other rural occupation workers where there is up to date evidence of an essential need of the business for the occupier to live in that specific location.

Policy 21: Best use of land and existing buildings

To ensure the best use of land, encouragement will be given to sustainably located proposals that: a. use previously developed land and buildings provided that they are not of high environmental or

historic value; b. use despoiled, degraded, derelict and contaminated land provided that it is not of high environmental or historic value; c. increase building density where appropriate, taking into account the character of the surrounding area and access to services and facilities to ensure an efficient use of land; d. take into account the economic and other benefits (including food production) of Grade 1, 2 and 3a agricultural land. Where significant development of agricultural land is demonstrated to be necessary, poor quality land should be used in preference to that of higher quality.

Policy 23: Natural environment

1. Development proposals will need to sustain local distinctiveness and character and protect and where possible enhance Cornwall's natural environment and assets according to their international, national and local significance.

...

Policy 27: Transport and accessibility

All developments should: Provide safe and suitable access to the site for all people and not cause a significantly adverse impact on the local or strategic road network that cannot be managed or mitigated.

4. Grounds of Appeal

- 4.1 This appeal has been submitted on the basis that it is considered that planning permission should be granted given the planning merits of the case and that the development would satisfy local and national planning policy.

Reasons for Refusal 1

- 4.2 The first reason for refusal, as set out in the Decision Notice (Appendix 1), is as follows:

1 The application involves the construction of a new temporary workers dwelling in the countryside, detached from any definable settlement containing the necessary facilities required to support day-to-day occupation, which would encourage the use of a private motor vehicle and is not considered to be sustainable development. New housing development in this location is not supported by Policies 3, 7 or 21 of the Cornwall Local Plan Strategic Policies 2010-2030 (CLP). The proposal would incur significant visual harm to the immediate setting and surrounding natural environment from the construction of a dwelling and agricultural building in the open countryside resulting in landscape and visual harm to the Area of Outstanding Natural Beauty. Notwithstanding the modest associated economic benefits of this proposal, they do not outweigh the unsustainable location and harm to the natural qualities of the setting. The proposal is considered contrary to Policies 1, 2, 3, 7, 21 and 23 of the CLP, paragraphs 122, 127, 170 and 172 of the National Planning Policy Framework 2019 (NPPF) and policy MD9 of the Cornwall Area of Outstanding Natural Beauty Management Plan 2016-2021.

- 4.3 The officer delegated report (Appendix 2), which accompanies the decision notice, sets out that the site is located in the open countryside and that the relevant local plan policies are thereby 3, 7 and 21.
- 4.4 Policy 3 directs housing development to the key towns and outside of this housing is to be delivered through identification of sites in neighbourhood plans; rounding off of settlements and development of previously developed land within or immediately adjoining that

settlement; infill schemes that fill; and rural exception sites under policy 9. It should be noted that part 4 of this policy sets out that within the AONB or its setting, development will be supported where it is in accordance with the other policies of this Plan and can demonstrate that it conserves and enhances the landscape character and natural beauty of the AONB.

- 4.5 The site is located in a rural area within the open countryside and the AONB and so Policy 7 of the Cornwall Local Plan is relevant and relates to housing in the countryside. The policy sets out that development of new homes in the open countryside will only be permitted where there are special circumstances. The policy makes specific reference to 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, and full time agricultural and forestry and other rural occupation workers where there is up to date evidence of an essential need of the business for the occupier to live in that specific location. This is supported by paragraph 80 of the NPPF which sets out that planning policies and decisions should avoid the development of isolated homes in the countryside unless there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside.
- 4.6 The application was accompanied by a detailed agricultural appraisal produced by RAC (Appendix 3) which established that based upon the proposed enterprise there would be an essential need for a rural worker to live on site. This was supported by the agricultural consultant instructed by the Council (Appendix 4) who concluded that the functional and financial tests, the proof of "essential need", can be met by the application based on the evidence presented by the applicant.
- 4.7 Despite this the Council concluded that whilst this might be the case

there is no established and viable rural business at this stage and no evidence has been provided to state why the business must be located on this land other than it is currently owned by the applicant and available.

4.8 Further guidance on the NPPF is provided in the National Planning Practice Guidance (NPPG). The updated text relevant to paragraph 79, published in July 2019, states:

Considerations that it may be relevant to take into account when applying paragraph 79a of the NPPF could 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, forestry or similar land-based rural 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);***
- ***the degree to which there is confidence that the enterprise will remain viable for the foreseeable future;***
- ***whether the provision of an additional dwelling on site is essential for the continued viability of a farming business through the farm succession process;***
- ***whether the need could be met through improvements to existing accommodation on the site, providing such improvements are appropriate taking into account their scale, appearance and the local context; and***
- ***in the case of new enterprises, whether it is appropriate to consider granting permission for a temporary dwelling for a trial period.***

Employment on an assembly or food packing line, or the need to accommodate seasonal workers, will generally not be sufficient to justify building isolated rural dwellings.

4.9 Given this policy framework it is considered appropriate to examine whether:

- there is evidence of an essential functional need for a worker to reside on the holding, as opposed to nearby;
- in the case of new enterprises, whether it is appropriate to consider granting permission for a temporary dwelling for a trial period; and,
- whether there is existing housing in the locality that could meet the essential functional need.

4.10 It has been established that there is an essential functional need for a worker to reside on the holding and that there is no existing housing in the locality that could meet the essential functional need. As supported in the NPPF, in the case of a new enterprise such as this it need to be considered whether it is appropriate to consider granting permission for a temporary dwelling for a trial period. Given that this is a new business we have sought a temporary permission in order to establish a trial period. That being said the proposed follows a business model successfully developed at Granby (in Nottinghamshire) – and replicated at Atlow (Derbyshire), Barnack (Cambridgeshire) and East Bridgford (Nottinghamshire).

4.11 The Council concerns is that the business is not currently established upon the site; however, given the identified essentially need for someone to be living on site it would not be possible for this to be the case without the securing of the temporary permission. Furthermore, this is not in line with National Planning Policy. The development plan needs to be reads as whole and the NPPF and NPPG set out that when considering rural dwellings in the open countryside in the case of new enterprises, whether it is appropriate to consider granting permission for a temporary dwelling for a trial period. All the other sites established by the appellant have been established in this manner on existing agricultural land, as have many other agricultural businesses which require an essential worker on site.

4.12 It is worth noting, as set out above, that the land in question is already in agricultural use. The application does not propose a change of use to

the land but merely seeks small scale operational development in support of a new enterprise which operates within the confines of the established use of the site. Given the agricultural nature of the site the rabbits could be brought on to site without permission, and various small-scale structures, which are not considered to be operation development, could be located within the site. However, given the need to live on site bring the rabbits onto the land beforehand would be premature and would result in animal welfare issues.

4.13 It is noted that the Council question why the development is required in this location and could not be situated elsewhere. Firstly, the land is in the ownership of the appellant and it would be speculative to seek permission on land in someone else ownership. More importantly however, one of the limitations of rearing free-range rabbits commercially is the risk of bio-security breakdowns as there are several diseases that can destroy a flock over a very short time period and there are also food hygiene rules that need to be complied with. One of the exemptions is that small establishments that produce rabbit meat are exempt from various EU/FSA regulations provided that less than 10,000 packs of meat are produced per annum, and that sales are localised i.e. supplying meat within the county of origin and neighbouring counties. The development of the site at Mylor will enable the company to supply rabbits into Cornwall and Devon, and possibly the Isles of Scilly and the Channel Islands. Also the isolated nature of the site offers benefits with respect to transmission of diseases and security etc.

4.14 The Council go on to reference policy 21 of the CLP, which encouragement will be given to sustainably located proposals that use previously developed land and buildings provide they are not of high environmental or historic value. They state that there are no building currently on this land and no evidence of a previous use. The land has and is in agricultural use, this is established in the application documentation, but also in the Council's delegated report which

describes the site as "*1 hectare of land which comprises agricultural field laid to rough grassland*". It should be noted that policy 21 relates to the best use of land and in this case we are seeking to retain the existing use. Furthermore, this policy seeks to prevent the loss of high quality agricultural land.

4.15 The Council go on to state that site is within the AONB so is considered to have a high environmental value. It is noted that the Cornwall AONB unit advises that the western shore of Restronguet Creek is part of the patchwork of open fields and hedges which characterise the agricultural landscape which borders the creek and provides its setting. The go on to state that they would generally seek to support agricultural enterprises and development to support these within their designated landscape.

4.16 Policy MD9 of the Cornwall AONB Management Plan sets out the requirement for development in the AONB and states that "*Farm diversification and infrastructure will be supported where they provide sustainable rural businesses, enhance local distinctiveness and cultural heritage and where it is of a scale and design that can be accommodated within the sensitive landscapes of the AONB*".

4.17 No of these policies suggest that the continued agricultural use of the land would be out-of-keeping with the character of the area or that it would not represent the best use of the land.

4.18 The Council go on to also set out that the site is not sustainably located due to its isolated location in the countryside. Paragraph 84 of the NPPF sets out that planning policies and decisions should enable: the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings; and, the development and diversification of agricultural and other land-based rural businesses. Paragraph 85 also sets out that planning policies and decisions should recognise that sites to meet local

business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport).

- 4.19 In general, local and national policy accepts that agricultural development is acceptable in rural and isolated locations, and given the nature of the enterprise it offers certain benefits as previous set out.
- 4.20 The proposal is therefore, contrary to the Council's conclusions, considered to comply with Policies 3, 7 or 21 of the CLP and paragraphs 80, 84 and 85 of the NPPF.
- 4.21 With reference to design and impact on the character of the area, including upon the Area of Outstanding Natural Beauty the Council set out that the location for the proposed development is a sloping meadow abutting the banks of Restronguet Creek and is bounded inland by an access track and public right of way, which is well-used and continues along the banks of the Creek to Restronguet and the Pandora Inn.
- 4.22 The Council go on to state that on the Northern bank of the Creek lie the settlements of Point, Penpol and Restronguet Point, all of which would have views across the creek to the application site which currently has a backdrop of undeveloped rolling farmland, lying as it does with the AONB. However, it should be noted that in the previous appeal relating to the steps (APP/D0840/W/17/3187912) the Inspector concluded that the site and any structure would not be prominent from the northern shore of the creek owing to the intervening distance and the screening effect of the trees.

- 4.23 Policy 2 of the Cornwall Local Plan seeks to ensure that the design of development is high quality and demonstrates a cultural, physical and aesthetic understanding of its location. Policy 12 of the Cornwall Local Plan seeks to ensure Cornwall's enduring distinctiveness and that its distinctive natural and historic character is maintained and enhanced. It goes on to state that proposals will be judged against fundamental design principles of (amongst other things) character – creating places with their own identity and promoting local distinctiveness while not preventing or discouraging appropriate innovation.
- 4.24 Policy 23 of the Cornwall Local Plan states great weight will be given to conserving the landscape and scenic beauty within or affecting the setting of the AONB. Proposals must conserve and enhance the landscape character and natural beauty of the AONB and provide only for an identified local need and be appropriately located to address the AONB's sensitivity and capacity. Proposals should be informed by and assist the delivery of the objectives of the Cornwall and Tamar Valley AONB Management Plans including the interests of those who live and/or work in them.
- 4.25 The design and materials of the proposed barn reflect the agricultural nature of the development. The agricultural building would be constructed from fibre cement sheets – coloured grey for the roof and either grey or green for the walls. Neither the size nor design of the building has been objected to by the Council. The building has been design to meet the specific needs of the enterprise and is justified in agricultural terms given its proposed use.
- 4.26 The Council identify that the development would result in other ancillary equipment such as pens, fencing etc which would result in an intensification of the appearance of the agricultural use which they consider to have an unacceptable adverse appearance on the landscape and setting of the AONB. As previously set out, the site is

already in agricultural use and therefore the erection of such small scale moveable structures would not require planning permission. Furthermore, the erection of any gate, fence, wall or means of enclosure would be permitted development as long as in line with the requirements of Part 2 Class A of the GPDO.

4.27 It is noted that reference has been made by objectors to an Article 4 Direction removing permitted development rights for this land. Although an Article 4 Direction is in force along the creek side, this application site is not within the area covered which at its closest point is approximately 450m to the south east. Therefore, any reference to an Article 4 Direction is incorrect and therefore not considered to be relevant to this appeal.

4.28 The Council set out that it is considered that the proposed barn would form a conspicuous new element within the open agricultural landscape bordering the creek. Likewise, the presence of a mobile home for use as a temporary workers dwelling would further highlight the presence of this uncharacteristic development in this location. The proposed building has been positioned at the lowest point of the site away from the public right of way. The existing trees along the bank of the creek would help to screen the development from the northern bank, although it has already been established that view would be limited owing to the intervening distance. The proposed does not seek the removal of any existing vegetation within the site and the appellant would be happy to accept a condition relating to tree protection. Furthermore, the existing landscaping on the site could be supplemented by additional planning.

4.29 The development proposes the erection of a temporary rural workers dwelling and agricultural building in an area characterised identified as an agricultural landscape where the AONB board would generally seek to support agricultural enterprises and development. It should also be noted that dwelling is temporary and therefore the impact it would

have would be limited to the time period that it is present on the site.

4.30 The Council re-iterate that the presence of the proposed development would be further highlighted by the need for associated rabbit farm paraphernalia, fencing, hutches etc. However, as set out above this could be done on site currently without the need for planning permission.

4.31 Given the above it is considered that the landscape character and natural beauty of the AONB would be conserved in accordance with the requirements of policies 2, 12 and 23 of the Cornwall Local Plan and the Cornwall AONB Management Plan 2016 – 2021. However, the appellant would be happy to accept a condition requiring the preparation, submission and approval of a Landscape Mitigation Plan and Landscape and Ecological Management Plan (LEMP) to reduce any potential impact that the development would have on the landscape character and AONB. It is considered that some beneficial effects could arise in the long term from the implementation of an appropriate landscape scheme and landscape and ecological management plan that responds to local landscape character in line with the guidance set out in the AONB Management Plan. This would focus especially on boundaries and tree management.

Reason for Refusal 2

4.32 The second reason for refusal is as follows:

2 The location of this site relies on access along a public right of way which includes narrow sections with no passing places. The proposed location of this development would encourage conflict between pedestrians and motorised traffic giving rise to increased danger for all users and creating an unacceptable highway safety impact. As such the development is considered to conflict with Policies 1, 16 and 27 of the CLP and paragraph 108 of the NPPF.

4.33 The officer delegated report sets out with respect to access that the

access to the site is along a private track approximately 1km in length and shared for its full length with a Public Right of Way. The track provides vehicular access to a number of agricultural fields and to residential properties at Halwyn and Tregunwith Wood.

4.34 The Council state that the public right of way is well used. The public right of way connects the public highway with the creek-side walk to the Pandora Inn and further along to the River Fal and back to the village of Mylor. On this basis the Council state that it is considered that any significant intensification of vehicular use of this public right of way would not be considered acceptable and would be contrary to Policy 27 of the CLP.

4.35 Whilst the Council's has come to this conclusion it is important to note that the Countryside Access Team stated in their response dated the 5th February 2021:

Thank you for consulting Countryside Access Team in respect of this Planning Application. I can confirm that Countryside Access Team in its role as Highway Authority for Public Rights of Way has NO OBJECTION to the proposals.

4.36 Furthermore, the track can already be used to access the site for agricultural purposes, as well as for accessing other agricultural fields and properties. Accordingly, it is not considered that the proposed would necessarily result in an increase in traffic on this road. Given that the proposed development includes the erection of temporary dwelling on the site the opposite could in fact be argued, that the proposed would in a reduction in vehicle trips on the PRoW.

4.37 It should also be noted that paragraph 111 of the NPPF sets out that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Given that the proposed access is existing and utilised by a number of

different people and that Countryside Access Team has raised “no objection” to the scheme it is not considered that the development would result in an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe, and therefore should not have been refused on these grounds.

- 4.38 It is noted that the Council state that no details have been provided for the number of vehicles that would be associated with the construction period for the proposed development. The applicant would accept a condition requiring the preparation of Construction Management Plan, if considered to be appropriate.

Reason for Refusal 3

- 4.39 Reason for refusal 3 states:

3 The submitted information is insufficient to enable the Local Planning Authority to assess the impacts on protected species and does not provide any information in relation to Biodiversity Net Gain. The proposal thus conflicts with CLP policy 23 and paragraphs 172 and 175 of the NPPF.

- 4.40 The officer’s delegated report sets out that the application site adjoins and slightly overlaps with the Restronguet Creek County Wildlife Site.
- 4.41 The Councils ecologist has confirmed that the site is adjacent to a County Wildlife Site, on Restronguet Creek which feeds into a Special Area of Conservation (SAC) and Special Protection Area (SPA). To fully review this application, the ecologist would require a Preliminary Ecological Appraisal and evidence to support a Habitat Regulation Assessment for the SAC and SPA.
- 4.42 A desk based ecological assessment can be found at Appendix 5 which makes reference to mitigation and enhancement measures could be implemented to increase biodiversity and provide a net gain at the site. In addition to this, a Preliminary Ecological Appraisal has been

instructed and is being carried out. Once completed a copy will be submitted to the Inspectorate and Cornwall Council for consideration. The PEA will include an Extended Phase 1 Habitat survey; a preliminary protected species walkover; and a technical report, including GIS mapping.

4.43 The Council's Ecologist has also stated that as the development area is 1 hectare or larger than the application would need to be supported by appropriate Biodiversity Net Gain (BNG). Although the ownership area is in excess of 1 hectare, the application area only accounts for approximately 0.69 hectares and this includes the access track that leads to the public highway. As this is below the threshold for the need to achieve 10% BNG, there is still the need to ensure that the application can identify where the proposal would conserve, protect and where possible enhance biodiversity. This information will be provided as part of the additional ecological submission. Furthermore, the applicant would be happy to agree to a condition that requires the agreement of Landscape and Ecological Management Plan (LEMP), as previously set out.

4.44 The Council also note that the development site is adjacent to a line of tree protected by a Tree Preservation Order (The Carclew and District Tree Preservation Order confirmed April 1950). The proposed agricultural building and the mobile home would not be located in a position whereby any of the protected trees would need to be felled. However, foundations and preparation work would have the potential for damage to the root systems as they are so close to the trees. If approved, the appellant would be happy to accept an appropriate tree protection condition.

5. Summary and Conclusion

- 5.1 Policy 7 of the Cornwall Local Plan sets out that development of new homes in the open countryside will only be permitted where there are special circumstances. The policy makes specific reference to temporary accommodation for workers (including seasonal migrant workers). This is supported by paragraph 80 of the NPPF.
- 5.2 It has been established that there is an essential functional need for a worker to reside on the holding and that there is no existing housing in the locality that could meet the essential functional need. As supported in the NPPF, in the case of a new enterprise such as this it need to be considered whether it is appropriate to consider granting permission for a temporary dwelling for a trial period.
- 5.3 The site is already in agricultural use and therefore the rabbits could be brought on to site without permission, and various small-scale structures could be located within the site. However, given the identified essentially need for someone to be living on site it would not be possible for the business to already have been established without the securing of the temporary permission.
- 5.4 The reasoning for the location of the business on this site is that it will enable the company to supply rabbits into Cornwall and Devon, and possibly the Isles of Scilly and the Channel Islands. Also the isolated nature of the site offers benefits with respect to transmission of diseases and security etc.
- 5.5 In general, local and national policy accepts that agricultural development is acceptable in rural and isolated locations, and given the nature of the enterprise it offers certain benefits as previous set out.
- 5.6 The proposal is therefore, contrary to the Council's conclusions, considered to comply with Policies 3, 7 or 21 of the CLP and paragraphs 80, 84 and 85 of the NPPF.

- 5.7 With reference to design and impact on the character of the area, including upon the Area of Outstanding Natural Beauty the design and materials of the proposed barn reflect the agricultural nature of the development.
- 5.8 The proposed building has been position at the lowest point of the site away from the public right of way. The existing trees along the bank of the creek would help to screen the development from the northern bank, although it is has already been established that view would be limited owing to the intervening distance.
- 5.9 The development proposes the erection of a temporary rural workers dwelling and agricultural building in an area characterised identified as an agricultural landscape where the AONB board would generally seek to support agricultural enterprises and development.
- 5.10 Given the above it is considered that the landscape character and natural beauty of the AONB would be conserved in accordance with the requirements of policies 2, 12 and 23 of the Cornwall Local Plan and the Cornwall AONB Management Plan 2016 – 2021.
- 5.11 Regarding the access, paragraph 111 of the NPPF sets out that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Given that the proposed access is existing and utilised by a number of different people and that Countryside Access Team has raised “no objection” to the scheme it is not considered that the development would result in an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe, and therefore should not have been refused on these grounds.
- 5.12 The appeal is accompanied by a desk based ecological assessment and

a Preliminary Ecological Appraisal (PEA) has been instructed and is being carried out. Once completed a copy will be submitted to the Inspectorate and Cornwall Council for consideration.

5.13 If permission were to be granted the appellant would be happy to accept a condition requiring the preparation, submission and approval of a Landscape Mitigation Plan and Landscape and Ecological Management Plan (LEMP), Construction Management Plan and Tree Protection Plan.

5.14 For the reasons set out above, we respectfully request that the Inspector allows the appeal and grants planning permission for the proposed development.