



## Appeal Decision

Virtual Hearing Held on 28 June 2022

Site visit made on 29 June 2022

**by Mrs H Nicholls FdA MSc MRTPI**

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

**Decision date: 14<sup>th</sup> July 2022**

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### **Appeal Ref: APP/Z0835/W/21/3287898**

### **Land at Lawrence's Brow, St Martins TR25 0QL**

- 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 Tobin-Dougan against the decision of the Council of The Isles of Scilly.
  - The application Ref P/21/045/COU, dated 13 June 2021, was refused by notice dated 21 September 2021.
  - The development proposed is retrospective application for the change of use of barn to seasonal agricultural worker's accommodation including the erection of a WC/solar shower block and connected decking for use by occupants.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the change of use of barn to seasonal agricultural worker's accommodation including the erection of a WC/solar shower block and connected decking for use by occupants on Land at Lawrence's Brow, St Martins, TR25 0QL, in accordance with the terms of application Ref P/21/045/COU, dated 13 June 2021, and subject to the conditions in the schedule below.

### **Procedural Matters**

2. The description of the development has been taken from the Council's decision notice with the agreement of the appellant.
3. From my observations on the site visit, the barn has been fitted out as habitable accommodation and the WC/shower block and decking have already been constructed. As such, the appeal seeks permission for the development retrospectively. However, the appellant advised that the use of the building for accommodation purposes had not yet commenced. I have dealt with the appeal on this basis.
4. The Council advised that newspaper publicity was undertaken in connection with the appeal in order to meet statutory consultation requirements concerning development that may affect a conservation area. I am therefore satisfied that potentially interested parties have had the opportunity to make representations on the appeal.

### **Application for costs**

5. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

## **Main Issues**

6. The main issues are (a) whether the agricultural worker's accommodation is required in connection with the functional and operational needs of the business and whether the reuse of the building is suited to this purpose, and (b) the effects of the proposal on the character and appearance of the area, including the Area of Outstanding Natural Beauty, and whether the Isles of Scilly Conservation Area would be preserved or enhanced.

## **Reasons**

### *Background*

7. The appeal site defined by the 'red line' encompasses the converted building, the adjoining area of decking and the WC/shower block. The wider holding included within the blue line includes three fields (labelled on the plans as A, B, C), which collectively extend to around 1 hectare and are leased under a long agricultural tenancy. Within field A, there is also a chicken enclosure and a polytunnel. The holding is accessed via an unmade lane (School Lane), which leads from the Island's single road. An unmade track also passes through field B which I was told was a permissive footway and also used by some farm and refuse vehicles.
8. The fields are gently sloping from north down to the south-west, though the lowest point is defended from the shoreline by a high, dense sand dune. There are treed hedges around the sides of the holding's perimeter and, at the time of my visit, an excessive amount of bracken extending over parts of fields B and C and elsewhere in the surrounding area.
9. The submitted evidence indicates that the business undertaken on the holding for the past 27 years has been solely concerned with the growing and harvesting of organic fruit and vegetable crops in order to supply local businesses, a number in which the appellant has previously worked concurrently with managing the holding. The appellant has operated this organic agricultural business as a sole trader although he has documented that he has regularly relied on the employment of 2 seasonal workers during past peak seasons.
10. From my observations, field A was the only one which was fully planted out for the purposes of cultivating organic crops, though a small area of field B was given over to a potato crop. Within field A, there was a large variety of fruits, vegetables and herbs largely being grown outdoors but also within the polytunnel, and there was also an enclosure for chickens and ducks. The remaining majority of fields B and C were dormant at the time of my visit, save for an invasion of bracken, which, in my view, appears to hamper the productivity of the land. Rainwater is harvested for use on the holding for irrigation purposes.

### *The Proposals*

11. The proposal is to retain the converted agricultural building to enable its use for accommodation purposes. It is anticipated that the accommodation be used during the growing season by either a single person or a couple. The appellant indicates that it is problematic to attract staff to work at the holding without accommodation as all previously available sources of accommodation have been converted into holiday accommodation.

12. The building measures approximately 5.9 m x 2.7 m by 2.4 m high and has a shallow monopitch roof covered with corrugated sheets. It is constructed from exposed shuttered concrete and has a single door and window opening in the front elevation. Internally, the 'off-grid' building has been fitted out to provide solar electricity, and a gas cooker. Bottled drinking water is to be provided for use by occupants given the absence of a water supply. In terms of space and furniture, whilst the building was bijou, it capably accommodated a double bed and associated furniture, small dining table and a kitchenette facility.
13. The area of decking outside the building is only minimally raised off the ground and provides a sitting out space. There is also a small, decked walkway to the compost WC and solar shower shed which measures broadly 2.4 m by 1.8 m.

#### *Policy Context*

14. Under the Isles of Scilly Local Plan 2021 (Local Plan), the site is not in a location where new unrestricted residential accommodation is supportable in principle due to its location and remoteness. I too view that whilst there are scattered commercial buildings and a few houses within a short distance, the site is not within the built-up area of the Island.
15. In recognition of the issues with attracting and retaining workers on the Islands, the Local Plan contains Policy LC4 which relates to the provision of seasonal staff accommodation. In short, the policy requires that an appraisal is submitted demonstrating that there is a functional and operational need for the proposed accommodation that cannot be met by existing suitable accommodation in the area, that the size and type is appropriate to the functional and operational needs of the business, and, where on an 'off-Island', the proposed accommodation is accommodated within an existing building. The Policy also goes on to state that all accommodation will be subject of occupancy restrictions and only permitted where it does not cause harm to residential amenity through unsociable working hours.
16. As the proposal involves the reuse of a building which, as agreed between the parties, is a long-standing feature of the holding and was previously used for agricultural purposes, it complies with the requirements of Policy LC4 for the accommodation to be well-related to the business and within an existing building. The size and type of accommodation is not incompatible with the intended number of employees, although it is likely to appeal to a co-habiting couple or a single employee given its limited floor area of around 16 sqm. Whilst the Council raised concerns about the size in terms of Building Regulations requirements and accordance with the minimum sizes of the Nationally Described Space Standards, the former is a matter addressed by way of separate legislation and the latter is not, in my view, decisive, given that the accommodation is only intended for short-term let purposes and not as any person's main residence.
17. The key issues for the Council in terms of Policy LC4 was the lack of an appraisal detailing the functional and operational needs of the business or evidence of the lack of alternative accommodation; to which I return below.
18. As the proposal also involves the conversion of a building, Local Plan Policy SS3 is also relevant. Insofar as the building was a rudimentary agricultural store, part (3) of the Policy is particularly relevant. This sets out that the "*re-use of 'non-traditional' buildings for residential use will only be permitted provided*

*that all of (1) criteria a)-e) are met and where the proposal is to address a local housing or staff accommodation need and is subject to appropriate occupancy restrictions...".* Part (1) a) refers to the structural stability of the building and (1) b) refers to no other buildings being required to fulfil the function of the building being converted. The proposal does not include any other buildings to fulfil the requirement for an agricultural store and there is no dispute that the building is structurally capable of being used as intended. However, the Council highlight issues with (1) c) where the proposal shall be "*restricted primarily to the building*" and d) which seeks to avoid "*harm to its immediate setting...*". Criterion (1) e) requires that suitable nesting and roosting sites for birds and bats are incorporated, which is clear has been undertaken. The issue of harm to the building's immediate setting under (1) d) is addressed in the second main issue below.

19. My focus is therefore directed to whether the submitted evidence details the functional and operational needs of the business for the accommodation and whether it sufficiently demonstrates a lack of alternatives, and whether the proposed use would be restricted primarily to the building.

#### *Assessment*

20. By the appellant's own admission, the evidence he has submitted extends to very many emails and thousands of words which will have no doubt been time-consuming to produce. However, I agree with the Council that it has been difficult to extricate the key information about the business from it. A concise and coherent appraisal of the operational and functional needs of the business is not what has been submitted and thus, it has been difficult to discern the total number of hours of work or full-time equivalent roles the business demands, the other activities involved in the operation of the business and how financially viable the business has been to date. Whilst a list was provided of the variety of plants planted on the holding in the year 2021 which hints at a great variety and very many plants, there is limited detail about the specific yields or accounts to show what was sold or for how much. Similarly, the submitted information does not indicate, other than in broad terms, how the business intends to expand or diversify and how much income it would be expected to achieve.
21. A business plan, so titled, submitted to the Council by the appellant around early September 2021 was not, at that time, subjected to publicity allegedly due to the suggestion that some of its content was commercially confidential in nature. This information has since been repeatedly discussed in the appeal evidence and it is now patently clear that the appellant not only wishes to expand into fields B and C with additional organic produce, but also seeks to grow crops of linseed and harvest the bracken from the land and surroundings in order to make a renewable fuel source. Whilst this business venture is its early stages, the general activity that would be involved, i.e. growing a crop or crop/s and harvesting it, would be agricultural in nature. This particular point was not disputed by the Council.
22. From my reading of the evidence, albeit pieced together from various strands of it, and from what I heard and my own observations, the appellant has an agricultural enterprise based at the holding which is labour intensive at certain points of the year between February and October. It is clear that the holding has capacity to yield more crops than can currently be planted and harvested

- by the appellant alone, particularly given the geography and limited use of vehicles or machinery in both these activities and those associated therewith. In short, it is plain enough to see that more employees would prove helpful if engaged in activities on site. Therefore, despite the lack of a well-structured appraisal, the lack of a customer-facing or direct service role for employees, and given the nature of such businesses based on an off-Island, in my view, there appears to be a functional and operational need for the business to have an additional seasonal worker/s.
23. In terms of whether there is sufficient evidence to verify there is a lack of accommodation for seasonal workers, the appellant has highlighted a small number of permissions granted for new seasonal worker accommodation locally. This, combined with the evidence that the Island currently has a housing crisis, appears to corroborate that suitable bricks-and-mortar accommodation is in short supply and where available, would be better used as permanent family housing. It was also apparent on my site visit to the Island that owing to its small size and constraints, that there is a limited supply of all forms of accommodation, whether that be housing, hotels or campsites. Utilising the available accommodation for seasonal workers, where financially viable to do so, would also detract from this already limited supply.
24. Therefore, whilst the information of this nature could have been presented more simply and clearly, such as by highlighting insufficient capacity in local tourist facilities and/or available at a price that would be financially viable, I consider that there is sufficient evidence to demonstrate a lack of available accommodation for seasonal workers that could be employed on the holding. The offer of on-site accommodation would resolve this problem and maximise the sustainability of the business.
25. In respect of Policy SS3 (1) c) which seeks to restrict the accommodation *primarily* to the building that is to be changed, the Council indicate that the separate WC/solar shower block is a necessary extra component, without which the building could not be used for habitable purposes. The appellant indicated that the lack of a WC facility for any workers on the site was also a relevant consideration but that should it be necessary, these elements could be incorporated within the building instead, albeit at a compromise to its already-constrained floorspace.
26. The main building will be used for sleeping, food preparation, dining and relaxation. It could not be used for such purposes without the separate WC/shower, but I accept that there are employee welfare reasons to have a WC on site, irrespective of whether there is sleeping accommodation or not. I am also mindful of the word 'primarily' within the Policy, meaning that a planning judgement is needed when the use cannot be wholly restricted to the one building. Whilst there is a slight tension with Policy SS3 (1) e), given the unavoidable need for the second smaller building, in taking a balanced view, and given the size differentiation and close proximity of the buildings, I do not consider that this issue brings the scheme into conflict with Policy SS3.
27. Drawing the above points together, I conclude that there is a need for seasonal agricultural worker's accommodation in connection with the business undertaken on the holding and that the reuse of the building in the manner undertaken is suited to this purpose. The scheme therefore complies with Local

Plan Policies SS3 and LC4 which seek to only allow conversions to residential use where specifically required to meet a need for staff accommodation.

### *Character and Appearance*

28. The whole archipelago of the Scillies is designated as an Area of Outstanding Natural Beauty (AONB) and as a conservation area (CA). The holding has a small-scale, green, agricultural character which is typical of the more sparsely settled parts of the Scillies and has a pattern of field boundaries and tracks that depict how the land has been claimed for habitation and a reliance on an agricultural way of life and connections by sea to the other islands. Whilst the CA encompasses all of the Islands, their respective character and appearance varies to an extent. In St Martins, the special qualities and, thus, significance of the CA relate to the historical and architectural interest of the individual vernacular farmhouses and cottages, along with the rural hinterland, layouts of farming plots and connecting tracks and authentic features that derive from the early agricultural origins of the settlement.
29. The appeal building and WC/shower block are tucked against a large sand dune at the south-western end of the holding and are situated amongst other trees and vegetation. They cannot be seen from the beach to the south-west, or in most views from the north-eastern extent of the holding. The proximity of a permissive footway means that viewers will pass the buildings at close quarters, but in these views, they are discreet and have a very limited presence in the rural scene, particularly at the time of year of my visit when the trees and shrubs were in full leaf.
30. The works to change the use of the building have modestly changed its appearance, but it still retains its rustic, agricultural character, particularly since the paint colour used on the timber features has been changed to a natural, dark green colour. The WC/shower block is basically a small shed, and combined with the small connecting section of decking, has domesticised the character of the area to a minor extent. However, these features are seen in the context of the existing building, the managed character of the holding in field A and its associated polytunnel and chicken coop.
31. Whilst the scheme introduces additional features of a more domestic character, I am of the view that their limited number and respective scales are such that they are not incongruous in their siting or appearance and do not amount to a proliferation. Their existence, along with the changes to the main building, do not result in interventions to the key landscape features of the site such as its hedgerows, trees or the sand dune which hides it from views from the beach. Whilst I note that there would be a reliance on a planning condition to ensure these features are retained in order to continue to minimise visibility, I do not regard that the building or domestic paraphernalia are of a cumulative scale, mass or siting or incongruous design or finish such that they diminish the quality of the area's character or appearance.
32. In view of the above, the proposal is not harmful to the character and appearance of the area and therefore conserves the landscape and scenic beauty of the AONB. It therefore complies with, in particular, Policies OE01 and OE07 of the Local Plan which, amongst other things, require developments to conserve the islands' landscape, seascape and scenic beauty, and in respect of conservation areas, preserve or enhance the character or appearance of the



area and its setting. For similar reasons, the proposal also complies with Policy SS3 (1) d).

33. The proposal also at least preserves the character and appearance of the CA, thus meeting the expectations of S72(1) of the Town and Country Planning (Listed Building and Conservation Areas) Act 1990 and the heritage aims of the National Planning Policy Framework.

### **Conditions**

34. Whilst the operational development has been undertaken already, the use of the building for the intended purposes has not commenced. Thus, a condition is required to ensure that commencement occurs within 3 years. Additionally, a condition seeking to ensure the retention of the development in accordance with the approved plans is necessary in the interests of certainty.
35. In order to accord with Local Plan Policy LC4, a condition is required restricting the occupation of the building to workers employed on the holding during the specified season. Additionally, should the business activities on the holding cease permanently with the end of the tenancy of the land, a condition should ensure that the building revert to its original function and associated items should be removed.
36. In the interests of the character and appearance of the area, a condition removing permitted development rights is necessary to prevent further alterations to the building. Similarly, a condition is necessary seeking a landscaping scheme to ensure natural features are retained and well managed to continue to provide screening for the building amongst the established vegetated qualities of the site.
37. Whilst the Council originally specified a condition requiring the approval of a paint colour for the timber elements of the building, they were a dark, muted green colour at the time of the site visit. Whilst a condition seeking the retention of this, or another neutral colour has been considered, given the small areas affected, I do not consider this level of prescription is necessary, particularly given the level of vegetation that obscures the building, particularly in the spring, summer and autumn months.
38. In the interests of the biodiversity value of the area, a condition is necessary preventing the installation of external lighting unless agreed by the Council.

### **Conclusion**

39. Taking into account all of the relevant evidence and other matters raised, I conclude, on balance, that the proposal complies with the development plan when considered as a whole. In the absence of other considerations to indicate that the appeal should be determined other than in full accordance therewith, the appeal is allowed.

*Hollie Nicholls*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr Tobin-Dougan

Appellant

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mrs Lisa Walton

Chief Planning Officer

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - Location Plan, Ref 10/0601 dated 12.04.2017
  - Block Plan, Ref TQRQM21215113536940, dated 3.08.21
  - Existing (as converted) elevations and floor plan, received 29.07.21
  - Shed details: elevation and floor plan, received 11.08.21
- 3) The occupation of the accommodation hereby permitted shall be limited to a person or persons solely or mainly working on the tenanted/leased land for agricultural purposes on a seasonal basis, between 1 April and 31 October in any year.
- 4) On cessation or expiry of the tenancy of the land by Mr Tobin-Dougan, the seasonal use of the building as agricultural workers accommodation shall cease and the building reverted back to use as an agricultural store in accordance with a scheme and timetable to be submitted to and approved in writing by the Local Planning Authority. The scheme shall include for the removal of all ancillary structures and equipment placed on the land and building to facilitate its use as habitable accommodation.
- 5) Notwithstanding the provisions of Article 3(1) of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order revoking and re-enacting that Order) no extensions (Part 1, Class A), dormer windows (Part 1, Class B), alterations to the roof (Part 1, Class C), curtilage buildings (Part 1, Class E), flues or chimneys (Part 1, Class G), means of enclosure (Part 2, Class A) shall be erected or constructed without first obtaining planning permission.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, (or any order revoking or re-enacting that Order) prior to installation, details of any external lighting shall be submitted to and approved in writing by the Local Planning Authority. The lighting shall thereafter be installed in accordance with the agreed details.
- 7) Within three months of the date of this decision, a landscaping scheme shall have been submitted to and approved in writing by the Local Planning Authority. This shall include for the retention and maintenance of the field boundaries to a height of around no less than 2 metres and the retention of the dunes along the south-west boundary. The approved landscaping scheme shall thereafter be implemented for the agreed duration.