

SCHEDULE A: Applications with Recommendation

14/0657

Item No: 05

Date of Committee: 03/10/2014

Appn Ref No:
14/0657

Applicant:
Fell View Nursery

Parish:
Irthington

Agent:
Taylor & Hardy

Ward:
Stanwix Rural

Location: Fell View Nursery, Hethersgill, Carlisle, CA6 6EY

Proposal: Erection Of Live/Work Unit (Outline)

Date of Receipt:
30/07/2014

Statutory Expiry Date
24/09/2014

26 Week Determination

REPORT

Case Officer: Richard Maunsell

1. Recommendation

- 1.1 It is recommended that this application is refused.

2. Main Issues

- 2.1 The Principle Of Development
- 2.2 The Effect On The Character And Appearance The Area
- 2.3 The Impact Of The Proposal On The Living Conditions Of Neighbouring Properties
- 2.4 Highway Issues
- 2.5 Impact Of The Proposal On Biodiversity

3. Application Details

The Site

- 3.1 This application seeks outline planning permission for the erection of a live/work unit at Fell View Nursery, Hethersgill, Carlisle. The site lies in the open countryside outside any settlement with the villages of Laversdale and Hethersgill being approximately 2 and 3 kilometres away respectively.
- 3.2 The site is bounded by a mature hedge along the frontage with the land rising

up towards the western (rear) boundary of the site. Adjacent to the northern boundary is a detached single storey bungalow and the access to the site is in the south-east corner.

Background

3.3 The applicant acquired the plant nursery in 2006 when it was in a run down condition and has brought it back into productive use. In 2008 planning permission was granted for a residential caravan. This was a temporary permission for three years to allow time to establish the nursery and to provide justification for a permanent dwelling.

3.4 In 2012, the applicant applied for the erection of a dwelling which was submitted by an assessment of the business to demonstrate the continued need to live on the site. The Council employed an independent consultant who considered the application and associated assessment and concluded that the business was not financially viable and there was no need for a permanent dwelling. As such, the application was refused for the following reason:

“The proposed site lies within the open countryside some distance from the nearest settlement in a location where there is a general presumption against further residential development. An essential need has been claimed for a dwelling and in this instance, the Council identifies that whilst there is a need for a worker to reside on site, the business is not financially viable; therefore, an essential need has not been substantiated. This application does not provide any evidence to support a special need for a dwelling in this location and the proposed development is also not put forward as the basis of meeting a local need. In the light of these circumstances it is not considered appropriate to permit the dwelling since to do so would be contrary to the guidance provided in paragraph 55 of the National Planning Policy Framework; Policy H1 (Location of Housing Development) and Policy H7 (Agricultural and Forestry Need and Other Occupational Dwellings) of the Carlisle District Local Plan 2001-2016.”

3.5 A subsequent appeal to the Planning Inspectorate was dismissed and in issuing the decision, the Inspector concluded that “*currently, notwithstanding the above considerations, I am not persuaded that the financial case put forward for the business sufficiently robust to justify the proposed dwelling.*” A copy of the decision is reproduced following this report.

3.6 To assist the applicant and allow her to further develop the business and improve the financial viability, the Council granted planning permission in 2013 for the retention of the static caravan until 31st January 2017.

The Proposal

3.7 Unlike the previous application for a dwelling which sought consent for a worker's dwelling, the current application seeks outline planning permission for the erection of a live work unit. All matters have been reserved for subsequent approval.

- 3.8 The accompanying Planning Statement justifies the proposal by stating that *“this application therefore represents the amalgamation of these three planning proposals in order to seek a satisfactory solution which allows my client the permanent on site home necessary for her to operate this sustainable rural business.”*
- 3.9 The 3 proposals which are referred to are the formation of the vehicular access and new poly tunnel, the new workshop and the currently proposed live/ work unit.

4. Summary of Representations

- 4.1 This application has been advertised by means of a site notice and direct notification to the occupier of the neighbouring property. No representations have been received.

5. Summary of Consultation Responses

Cumbria County Council - (Econ. Dir. Highways & Transportation): - no objection subject to the imposition of a highway condition;

Irthington Parish Council: - no response received;

Carlisle Airport: - no objection.

6. Officer's Report

Assessment

- 6.1 The relevant planning policies against which the application is required to be assessed are the National Planning Policy Framework (NPPF) and Policies DP1, CP1, CP2, CP5, CP6, CP12, H1, EC12 and T1 of the Carlisle District Local Plan (CDLP) 2001-2016. The proposal raises the following issues.

1. The Principle Of Development

- 6.2 Policy H1 of the CDLP organises settlements in a hierarchy with the primary focus for new housing development being the urban area of the district; followed by the Key Service Centres of Brampton and Longtown which have a broad range of amenities and services; and finally, selected villages which perform a service role within the rural area.
- 6.3 The site is not in a settlement identified within the CDLP under the provisions of Policy H1 and, thus, any development proposals within these settlements must be considered against Policy EC12. This policy encourages the provision of live/ work units in either Longtown, Brampton or within or adjacent to a Local Service Centre. In the rural area, the policy facilitates the provision of live/ work units through the conversion of existing buildings that are of traditional construction. There is no policy support for the provision of

new build dwellings for live/ work businesses.

6.4 Paragraphs 5.4 and 5.5 of Policy H1 of the CDLP reinforce this approach by stating that even when considering development proposals for the identified villages to which the policy relates, in most cases it will be more acceptable to locate new housing within the settlement rather than outside its boundary.

6.5 The NPPF has similar objectives but loosens the requirement for applicants for new housing in the countryside to demonstrate an “essential need” rather than be solely limited to agriculture or forestry. Whilst the NPPF opens up the restriction from just agricultural and forestry it nevertheless requires that development proposals are adequately justified. Paragraph 55 states:

“To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:

- the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
- where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or
- where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
- the exceptional quality or innovative nature of the design of the dwelling.

Such a design should:

- be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;
- reflect the highest standards in architecture;
- significantly enhance its immediate setting; and
- be sensitive to the defining characteristics of the local area.”

6.6 During the consideration of the previous application for a worker's dwelling, the Council employed an independent consultant to advise on the existing business. Although reference was made throughout to PPS7, the report highlighted various aspects of the business and in particular, confirmed that there is a need for a worker involved in the management of the business to reside on the site. It is recognised that PPS7 has been superseded by the NPPF, however, it is established through numerous appeal decisions and the Inspector in the recent appeal on the site acknowledged that the advice within Annex A of PPS7 can still be given due weight in the determination of such applications.

6.7 An important element of whether an “essential need” can be met is the viability of the business. Financial viability can be defined as offering a competent person the prospect of a sufficient livelihood. In the consultant's report, he identified that the business made a small profit in 2009, which then fell in 2010 and rose again in 2011; however, it fell significantly short of a net

income that would be sufficient to provide an income for a worker's wage. He acknowledged that whilst the business may be heading in the right direction, it was not financially viable, and in this instance, by some distance. The proposal did not demonstrate an essential need for a dwelling on the site and therefore fails the assessment against paragraph 55 of the NPPF.

- 6.8 It is acknowledged that the nature of the current application is materially different from that considered in 2012 for a worker's dwelling and there is no policy requirement to assess financial viability for a live/ work unit.
- 6.9 Members will note the varied planning history for redevelopment, expansion and improvement to the business infrastructure on the site since the applicant took occupancy 8 years ago. Planning consent was granted in 2007 for a new entrance and a polytunnel with a further permission granted in 2008 for the replacement of a polytunnel with a workshop together with the siting of a static caravan. Of these permissions, the only element that has been implemented is the siting of the caravan.
- 6.10 In respect of the structures on the site, the Inspector commented that “apart from maintenance there has been little investment in the buildings on the site. Some have been demolished. They have not been replaced and a 2008 permission for a workshop/ store has not been implemented. Two greenhouses are in poor condition and are currently unused” and as far as I am aware, there has been no investment in this aspect of the business.
- 6.11 Whilst there is no policy requirement for an assessment of the financial viability of the business, as there is for an agricultural workers dwelling, this matter cannot be wholly discounted as it forms a fundamental and inherent aspect of informing an assessment as to whether there is an essential need for the dwelling.
- 6.12 As part of a positive approach to sustainable new development, the NPPF encourages local planning authorities to facilitate flexible working practices. It is also accepted that paragraph 28 of the NPPF encourages economic development through the expansion of businesses and enterprises in rural areas and refers to businesses rather than any dwelling associated within them. Notwithstanding this, the framework needs to be read as a whole and not in isolation. Paragraphs 47 to 55 refer to the provision of new housing with paragraph 55 being specific to the provision in rural areas. This states that new isolated homes in the countryside should be avoided unless there are special circumstances. In this instance, the only identified circumstances in the NPPF relates to the provision of a dwelling for a rural worker to live permanently at or near their place of work in the countryside where there is an essential need.
- 6.13 Further information has been received from the applicant's agent, which highlights concerns that the application is being considered under the incorrect policy provision. The agent clarified that live/ work units are not residential dwellings and should be treated as exceptions and a planning appeal decision is submitted demonstrating this. It is further argued that the local plan is out-of-date and consequently, the proposal should be considered

against the NPPF, in particular, the policy support for the rural economy. Whilst it accepted for the purposes of categorisation within the Town and Country Planning (Use Classes) Order 1987 (as amended), a live/ work unit falls within Class B1(Business) and not C3 (Dwelling Houses), the proposal involves accommodation on the site for permanent occupation which is not insignificant and should form part of the assessment of the planning issues.

- 6.14 It is cited that the live/ work unit policy in the local plan is superseded by the NPPF and is therefore out of date. Great emphasis is made with the application documents to paragraph 21 of the Framework which in the opinion of the author supports live/ work units and states:

“Investment in business should not be over-burdened by the combined requirements of planning policy expectations. Planning policies should recognise and seek to address potential barriers to investment, including a poor environment or any lack of infrastructure, services or housing. In drawing up Local Plans, local planning authorities should:

- set out a clear economic vision and strategy for their area which positively and proactively encourages sustainable economic growth;
- set criteria, or identify strategic sites, for local and inward investment to match the strategy and to meet anticipated needs over the plan period;
- support existing business sectors, taking account of whether they are expanding or contracting and, where possible, identify and plan for new or emerging sectors likely to locate in their area. Policies should be flexible enough to accommodate needs not anticipated in the plan and to allow a rapid response to changes in economic circumstances;
- plan positively for the location, promotion and expansion of clusters or networks of knowledge driven, creative or high technology industries;
- identify priority areas for economic regeneration, infrastructure provision and environmental enhancement; and
- facilitate flexible working practices such as the integration of residential and commercial uses within the same unit.”

- 6.15 Paragraph 28 is also relevant and states:

“Planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should:

- support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings;
- promote the development and diversification of agricultural and other land-based rural businesses;
- support sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside. This should include supporting the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural

- service centres; and
 - promote the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship.”
- 6.16 Notwithstanding this, the framework needs to be read as a whole and not in isolation. In this instance, the only identified circumstances in the NPPF relates to the provision of a dwelling for a rural worker to live permanently at or near their place of work in the countryside where there is an essential need.
- 6.17 The consideration of the need was considered by the Planning Inspector in his decision for the erection of a dwelling where it was dismissed based on the lack of viability of the business. In paragraphs 12 and 13 of his decision letter, the Inspector states:
- “The business has been in existence for six years and has been profitable for the last three. Some weight should also be attached to the willingness of the appellant to live on limited means. However I am not satisfied that at present the level of profit being generated is sufficient on its own to provide an adequate income to the appellant, to support a new dwelling, and to allow for ongoing investment in buildings and equipment.*
- In coming to this conclusion I have had regard to the support the NPPF gives to fostering economic growth in rural areas, including promoting the development and diversification of agricultural and other land based businesses. However at the moment the nursery business is not economically sustainable in its own right and an essential need for a dwelling on the holding has not been established. In consequence the proposal would conflict with LP Policy H7 and NPPF paragraph 55.”*
- 6.18 It is an intrinsic part of part of the assessment of the issue of “need” to look at the business itself. If the business is not financially viable, then it is clear that there is no need for a residential property. Members will note from the planning history that the Council granted further planning consent for the retention of the caravan to allow the applicant to develop her business and improve the financial situation. Less than 12 months later, the current application is submitted for a live/ work unit where it is argued that no financial assessment is required which appears to be a route to circumvent this issue.
- 6.19 The Planning Statement highlights that it is “envisaged” that the live/ work unit will incorporate around 200 m² of workshop, 20 m² of office space and 100 m² of residential accommodation. The site is used as a horticultural business. No reference is made as to why so much workshop accommodation is required, over and above that granted consent in 2008 which is extant by virtue of the static caravan being sited which is sufficient to consitite implementation of the permission.
- 6.20 In an attempt to show that the business is being developed, steel work has been erected on site which is alleged to form the structure for the workshop

granted consent in 2008; however, the footprint and siting differ from that granted consent and the structure does not, therefore, have the benefit of planning permission. The applicant has been made aware of the Council's view on this matter.

- 6.21 The applicant has a website associated with the nursery which in effect is the equivalent to the applicant's shop window on the internet. The "shop" tab leads to the Fell View Nursery Store; however, all the products listed are not sold from the site and are merely links to other websites selling the items which are not exclusively related to horticulture. No information is provided as to the available plants and produce available from the nursery or guidance as to the location of the nursery or what is available to purchase. Whilst it is recognised that there are many demands on an individual's time when establishing a business, it is considered that some further development should have been made regarding the website. It is not clear how the website contributes to the income or development of the nursery business.
- 6.21 It is this summary which is key to forming Members' consideration of the merits of the application outlined by the agent. Whilst policies are supportive of economic growth, which is evidenced by the number and type of planning consents which have been granted to the applicant by the Council, it does not automatically follow that policies relating to housing development should be overruled.
- 6.23 It is not considered that there has been a material change since the Inspector's decision and none is suggested in the application documents. Based on the foregoing, the proposal is contrary to paragraph 55 of the NPPF and for this reason, the application is recommend for refusal.

2. The Effect On The Character And Appearance The Area

- 6.24 The application site is not located with an Area of Outstanding Natural Beauty (AONB) or Conservation Area and there are no other landscape designations; however, planning policies require that appropriate consideration is given to the impact on the character of the open countryside.
- 6.25 Development proposals are expected to incorporate high standards of design including regard to siting, scale, use of materials and landscaping which respect and, where possible, should enhance the distinctive character of townscape and landscape. This is reflected in Policy CP1 of the Local Plan which requires that proposals for development in the rural area seek to conserve and enhance the special features and diversity of the different landscape character areas.
- 6.26 Although the building would be sited on elevated land within the site, the principle of development has been established through the grant of the previous consents for the static caravan. The impact could be mitigated through the imposition of conditions requiring the submission of site levels and through additional landscaping. The scale, design and use of materials of the building would be considered at any reserved matters stage to ensure that the development would be appropriate and would be sympathetic to the

overall character of the area; however, given the elevated nature of the land, a single storey dwelling would be appropriate.

3. The Impact Of The Proposal On The Living Conditions Of Neighbouring Properties

- 6.27 Planning policies require that development proposals should not adversely affect the living conditions of occupiers of residential properties by virtue of inappropriate development, scale or visual intrusiveness.
- 6.28 The building is located within the open countryside but there is a residential property immediately adjacent to the application site; however, given the distance from the proposed dwelling and the intervening buildings, the living conditions of the occupiers of these properties would not be adversely affected by the development.

4. Highway Issues

- 6.29 The development would utilise an existing access into the site. The Highway Authority has raised no objection subject to the imposition of a condition relating to visibility splays.

5. Impact Of The Proposal On Biodiversity

- 6.30 Planning Authorities in exercising their planning and other functions must have regard to the requirements of the EC Habitats Directive (92/43/EEC) when determining a planning application as prescribed by regulation 3 (4) of the Conservation (Natural Habitats, cc.) Regulations 1994 (as amended). Such due regard means that Planning Authorities must determine whether the proposed development meets the requirements of Article 16 of the Habitats Directive before planning permission is granted. Article 16 of the Directive indicates that if there is reasonable likelihood of a European protected species being present then derogation may be sought when there is no satisfactory alternative and that the proposal will not harm the favourable conservation of the protected species and their habitat.
- 6.31 The City Council's GIS layer did identify the potential for breeding birds within the immediate vicinity. Given that the proposal involves a previously developed portion of land, it is unlikely that the proposal would affect any species identified; however, based upon details contained in Natural England's Draft Standing Advice in respect of Protected Species and their Habitats a Breeding Bird Survey would be required to identify the impact on the conservation of any Protected Species or their Habitat.

6. The Impact On Human Rights

- 6.32 The human rights of the occupiers of the neighbouring properties have been properly considered and taken into account as part of the determination of the application. Several provisions of the Human Rights Act 1998 can have implications in relation to the consideration of planning proposals, the most notable being:

Article 6 bestowing the "Right to a Fair Trial" is applicable to both applicants seeking to develop or use land or property and those whose interests may be affected by such proposals;

Article 7 provides that there shall be "No Punishment Without Law" and may be applicable in respect of enforcement proceedings taken by the Authority to regularise any breach of planning control;

Article 8 recognises the "Right To Respect for Private and Family Life";

6.33 Article 1 of Protocol 1 relates to the "Protection of Property" and bestows the right for the peaceful enjoyment of possessions. This right, however, does not impair the right to enforce the law if this is necessary, proportionate and there is social need;

6.34 The proposal has been considered against the above. Refusal of this application does not prejudice the applicant's right to continue to live in the caravan for a temporary period to allow her to develop the business. The applicant's Human Rights are respected but based on the foregoing it is not considered that any personal considerations out-weigh the harm created by the development.

Conclusion

6.35 In overall terms, the proposed development is out with any identified settlement within Policy H1 of the Local Plan and would result in built development in the undeveloped open countryside. The applicant has been developing the business since acquiring the site in 2006. A reasonable argument has been submitted by the applicant's agent expressing an opinion that approval of the proposal will facilitate economic development and *"offers a positive solution which allows my client the security to invest further in her business to allow it to grow and prosper financially, and which avoids the potential for an unsustainable isolated dwelling."*

6.36 Officers main concerns, however, are that the only investment that has been undertaken by the applicant in the previous 8 years is the siting of a temporary caravan. The financial viability and need for a permanent dwelling were considered by the Council's independent consultant in 2012 and again by a Planning Inspector in 2013 who dismissed the appeal. In doing so, the Inspector recognised the Council's willingness to look favourably on a further temporary permission for the retention of the caravan during which time the business could be developed. This consent was granted in 2013 allowing the retention of the caravan until 31st January 2017 and thus allow a re-evaluation of the proposal.

6.37 Although there is no requirement to financially assess applications for live/work units, this is intrinsically linked to the need for the provision of the unit as informed by the NPPF. The author of the Planning Statement opines that approval of this application would allow the amalgamation of the previous planning consents for the new access and workshop. It is difficult to see how

this would be an amalgamation given the current planning status of these applications.

- 6.38 The application has been properly assessed against the appropriate planning policies. Whilst it is stated by the agent that Officers have considered the wrong policies or interpreted planning policies incorrectly to the planning consultant's assessment, this is disputed. The aforementioned paragraphs show a clear and methodical appraisal of the planning issues of the proposal.
- 6.39 There has been no meaningful investment in the business on the site and it is unlikely that the viability of the business has improved to such a degree, that previous concerns have been adequately addressed. Although supporting information has been submitted with this application in the Planning Statement, this fails to adequately address the concerns of Officers or the conflict with current planning policies and the application is therefore recommended for refusal.

7. Planning History

- 7.1 In 2007, planning permission was granted for a new entrance and a polytunnel.
- 7.2 Planning permission was granted in 2008 for the erection of a replacement polytunnel with new workshop and siting of a static caravan.
- 7.3 Planning permission was refused in 2012 for the erection of a dwelling. A subsequent appeal to the Planning Inspectorate was dismissed in 2013.
- 7.4 In 2013, temporary planning consent was granted for the retention of the existing static caravan.

8. Recommendation: Refuse Permission

1. **Reason:** The proposed site lies within the open countryside some distance from the nearest settlement in a location where there is a general presumption against further residential development. Although it is claimed that the live/ work unit would support the applicant's business, previous recently determined planning applications found the business was unviable. Whilst there is no requirement to financially assess applications for live/ work units, this is intrinsically linked to the need for the provision of the unit as informed by the National Planning Policy Framework. In addition, the live/ work unit would not contribute to sustainable economic development. This application does not provide any evidence to support a special need for a dwelling in this location and the proposed development is also not put forward as the basis of meeting a local need. In the light of these circumstances it is not considered appropriate to permit the dwelling since to do so

would be contrary to the guidance provided in paragraphs 28 and 55 of the National Planning Policy Framework; Policy H1 (Location of Housing Development) and Policy EC12 (Live/ Work Units) of the Carlisle District Local Plan 2001-2016.



← Hethersgill

Loray

Fell View
Nursery

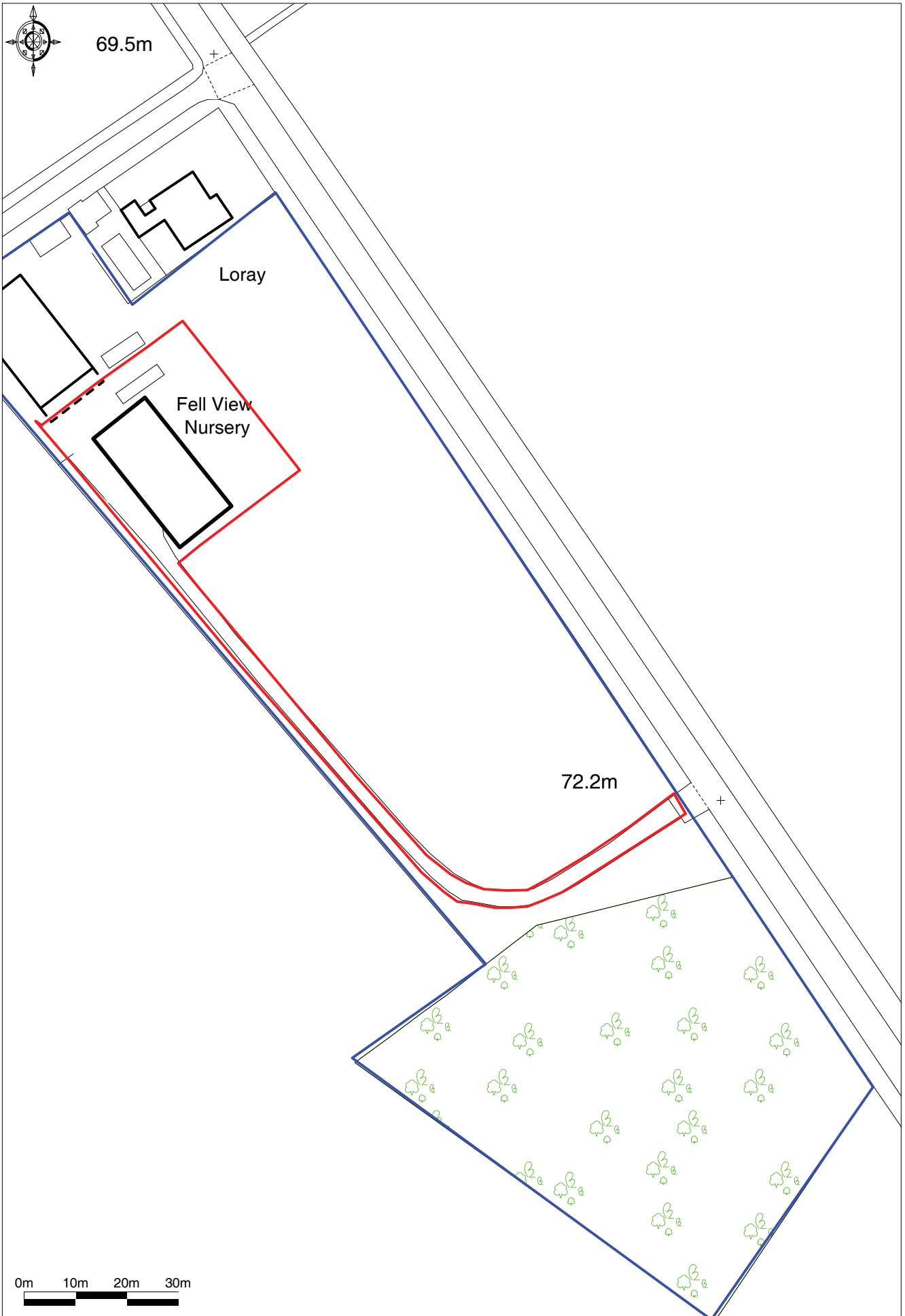
72.2m



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Geocode: N: 564701.59 E:348271



Appeal Decision

Hearing held on 18 September 2013

Site visit made on 18 September 2013

by B Hellier BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26 September 2013

Appeal Ref: APP/E0915/A/13/2191262

Fell View Nursery, Hethersgill, Carlisle, CA6 6EY

- 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 Miss A Scott-Parker against the decision of Carlisle City Council.
 - The application Ref 12/0396, dated 9 May 2012, was refused by notice dated 5 December 2012.
 - The development proposed is a new dwelling.
-

Decision

1. The appeal is dismissed.

Application for costs

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

Background to the proposal

3. The appellant acquired the plant nursery in 2006 when it was in a run down condition and has brought it back into productive use. In 2008 planning permission was granted for a residential caravan. This was a temporary permission for three years to allow time to establish the nursery and to provide justification for a permanent dwelling. The present proposal is to replace the caravan with a dwelling to be occupied in association with the business.

Main issue

4. I consider the main issue is whether an essential need for a dwelling on the nursery holding has been established.

Planning policy

5. The site lies in the open countryside outside any settlement, with the small villages of Laversdale and Hethersgill being about 2.0 and 2.3 kilometres away respectively. In such a location Policy H7 of the Carlisle District Local Plan (LP) sets out a presumption against new dwellings other than those essential to agriculture, forestry or other rural enterprise and supported by a proven need. Similarly the National Planning Policy Framework (NPPF) states that local planning authorities should avoid new isolated homes in the countryside unless

there is an essential need for a rural worker to live permanently at or near their place of work¹.

Reasons

6. Established practice² is to consider two key tests in assessing the need for an agricultural or other rural occupational dwelling. The first is a functional test to establish whether it is essential for the proper functioning of the enterprise for a worker to be readily available at most times. The second is a financial test which considers the length of time the business has been established, its profitability, whether it is financially sound and whether it is likely to remain so.
7. An important part of the business is the growing on of substantial numbers of bedding plants from both seed and plug plants in spring and summer. During this time they require regular watering and ventilation over a 24 hour period. For the remainder of the year the need for someone to be on the site is much reduced. Nonetheless on the basis of these operational requirements the land agent acting for the Council advises that there is a clearly established existing functional need for one full time worker actively involved in the management of the holding to be resident on or immediately adjacent to it. I see no reason to differ from this conclusion and agree that the functional test is met.
8. The appellant submitted accounts for the financial years 2008/9 to 2011/12. Turnover increased from £4,096 to £12,278 and, after operating at a loss in the first two years, the business showed a net profit of £2,840 in 2010/11 increasing to £8,424 in the following year. Figures relating to 2012/13 were presented at the hearing. These indicate a further increase in turnover and profit but, because they are unaudited, I consider they should be treated with some caution.
9. A viable business should not only be profitable but should generate sufficient income to provide a living wage. The average wage for an agricultural worker is about £16,500³. The appellant is the sole proprietor and may be able to achieve a sufficient livelihood on less than this but up to March 2012 the net profits from the business were well below even the national minimum wage.
10. The proposed dwelling would be a three bedroom bungalow. The appellant, by undertaking site preparation and providing much of the labour, would anticipate keeping the costs down to about £100,000. This injection of capital would attract an annual charge of 5% or £5,000 which, since the dwelling would be essential to the business, would need to be set against profits. The appellant would be able to source the money from elsewhere but I consider it a reasonable expectation that the business should support both her living costs and the annualised costs of the new dwelling.
11. There are a number of other factors which will affect the longer term financial viability of the business.
 - Apart from maintenance there has been little investment in the buildings on the site. Some have been demolished. They have not been replaced and a

¹ NPPF Paragraph 55

² Annex A to Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7) gives advice on assessing essential need. PPS7 was cancelled with the publication of the NPPF but the parties agreed that the application of the functional and financial tests set out in Annex A continues to be good practice.

³ Represents the minimum wage for a "craft grade" agricultural worker set by *The Agriculture Wages (England and Wales) Order 2012*

2008 permission for a workshop/store has not been implemented. Two glasshouses are in poor condition and are currently unused.

- There is no plan for sustaining and growing the business. The appellant seeks to live in an environmentally sustainable way and to increase the ecological diversity of the land. Amongst a range of initiatives she has a flock of geese, beehives, grows species that are attractive to bees, and proposes to introduce hens. No chemicals are used and there is a long term intention to produce organic crops for which there would be some demand from the Brampton Food Network. Most recently there is a proposal for an animal sanctuary focusing on cat rescue. However, whilst these activities support the lifestyle of the appellant, there is no evidence in the main that they will increase sales.
 - There is a company web site which sets out the philosophy of the business which is to *create a traditional, sustainable way of life*. To date however the internet shop acts only as a gateway to other internet retailing sites although it is intended to introduce mail order in the future.
 - Currently income is derived from sales of plants, hanging baskets and vegetable crops to local businesses and individuals at car boot sales, farmers markets and by word of mouth. There is little retailing from the site. Whilst there are benefits in serving this particular local market it limits the customer base and potential demand.
12. The business has been in existence for six years and has been profitable for the last three. Some weight should also be attached to the willingness of the appellant to live on limited means. However I am not satisfied that at present the level of profit being generated is sufficient on its own to provide an adequate income to the appellant, to support a new dwelling, and to allow for ongoing investment in buildings and equipment.
13. In coming to this conclusion I have had regard to the support the NPPF gives to fostering economic growth in rural areas¹, including promoting the development and diversification of agricultural and other land based businesses. However at the moment the nursery business is not economically sustainable in its own right and an essential need for a dwelling on the holding has not been established. In consequence the proposal would conflict with LP Policy H7 and NPPF paragraph 55.
14. The appellant argues that dismissing the appeal would interfere with her right to a home² but this would not be the case. Her caravan is her home and the Council has indicated that it would look favourably on a further temporary permission during which time the business could be developed. Even if this permission was not forthcoming the Council would have to take enforcement action and in doing so take account of human rights.
15. On taking over the land the appellant has cleared away rubbish and scrap which was a particular problem as a result of fly tipping in the copse at the south end of the site. This and her environmentally responsible approach to land management are to be welcomed. I also acknowledge the continuing commitment of the appellant and her partner to the business and the

¹ NPPF Paragraph 28

² Under Article 8 of the European Convention on Human Rights: The Right to Respect for Private and Family Life and the Home

environmental and economic benefits of reducing food miles and retaining spend within the local area.

16. However set against these considerations is the need to be sure that the underlying financial health of the business is sound. If it is not and the business subsequently founders then the Council would find it difficult to enforce against an occupancy condition tying the dwelling to the business because the reason for the condition would have disappeared. Currently, notwithstanding the above considerations, I am not persuaded that the financial case put forward for the business is sufficiently robust to justify the proposed dwelling.

Conclusion

17. For the reasons given above and having regard to all matters before me, including the support offered to the proposal by the Member of Parliament and by the local City Ward Councillors, I conclude that the appeal should be dismissed.

Bern Hellier

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr T Woof	Planning Consultant
Ms A Scott-Parker	Appellant
Mr W Allison	Partner of Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Maunsell	Planning Officer (Development Management)
Mr A Jackson	Land Agent/Surveyor

DOCUMENTS

- 1 Unaudited summary of income and expenditure for year ending 31 March 2013 with itemised payments/income for July 2012
- 2 Lake District National Park Practice Guide for essential dwellings in the open countryside
- 3 Note on the Agriculture Wages (England and Wales) Order 2012
- 4 Decision Notice 07/0655 for new entrance and polytunnel at Fell View Nursery
- 5 Letter from Cats Protection (Carlisle and District Branch)