Reference 20/2518/FUL

Applicant Donna Gant

- Location Hill View Nursery Dunkeswell Honiton EX14 4SZ
- **Proposal** Conversion, alteration and enlargement of storage building to form dwelling to replace mobile home granted certificate of lawfulness under ref. 18/1204/CPE



RECOMMENDATION: Approval with conditions subject to a legal agreement/unilateral undertaking



		Committee Date: 14 th June 2021		
Dunkeswell A Otterhead (Dunkeswell)	nd	20/2518/FUL		Target Date: 14.01.2021
Applicant:		Donna Gant		
Location:		Hill View Nursery Dunkeswell		
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EXECUTIVE SUMMARY

This application is brought before the Committee in view of the difference of opinion between officers and the ward members.

The proposed development involves the conversion, and modest enlargement, of an existing single storey office/storage building at Hill View Nursery - a horticultural nursery enterprise and smallholding located to the east of Dunkeswell within the Blackdown Hills Area of Outstanding Natural Beauty (AONB) - to form a two bedroom dwelling with attached work office space.

Directly adjacent to the site is a relatively modern bungalow, subject of an agricultural occupancy restriction, which was originally proposed and built by the applicant for occupation in conjunction with the operation of the business. However, it has relatively recently been transferred to another party.

A mobile home owned by the applicant, with the benefit of a certificate of lawfulness granted in 2019, is positioned adjacent to the northern boundary of the nursery while an unauthorised mobile home positioned elsewhere within the site, and currently occupied by the applicant, is the subject of a live enforcement notice requiring its removal. The compliance period runs until October this year.

The current application scheme is identical to a previous proposal, subject of application ref. 19/1299/FUL (albeit that this involved the creation of a live-work unit), and is designed to provide a permanent means by which the applicant is able to lawfully remain living at the site.

The previous application was refused in February 2020 on the basis of two main issues; first, that the scheme involved an excessive proportion of living accommodation over work/employment floor space, contrary to one of the key criteria set out in Policy LE1 of the Dunkeswell Neighbourhood Plan and, secondly, that the development, in amounting to the provision of a rural worker's dwelling to be considered against the provisions of Policy H4 of the East Devon Local Plan, failed this assessment owing to the lack of any proven essential functional need for a second rural worker's dwelling at the nursery.

The comparatively recent sale of the tied dwelling and the availability of the lawfully sited mobile home to provide an alternative means of meeting such a need were also considered to represent factors weighing against what would have otherwise resulted in the provision of a third residential unit at the site.

These findings were largely supported by the Inspector in dismissing a subsequent appeal against the decision in October 2020. However, in so doing, he also highlighted conflict with Local Plan Policy D8 in relation to the criterion that development should be located close to a range of accessible services and facilities to meet residents' everyday needs, citing the distance of the site from Dunkeswell and the lack of adequate non-car means by which to access the limited services and facilities that it provides.

The key difference between the current application proposal and that previously considered and dismissed at appeal is the offer by the applicant to agree to remove the mobile home the subject of the certificate of lawfulness relating to the lawfully sited mobile home so as to maintain the number of residential units on the site, without adding to it, in perpetuity.

To this end, the submission is accompanied by a draft of a unilateral undertaking that sets out provisions and obligations to this effect that, at the time of writing, is undergoing the scrutiny of the Council's Legal team.

The undertaking also seeks to ensure that the applicant does not use permitted development rights in relation to the use of the site for the stationing of any further mobile homes beyond the expiry of the time period for compliance with the enforcement notice relating to the unauthorised mobile home occupied by the applicant. This would be intended to prevent the potential siting of such units - using temporary permitted use rights - in conjunction with the carrying out of the proposed development, if approved, with the prospect of the unauthorised mobile home remaining in place indefinitely. Such a scenario would be contrary to the long-held objective of finally securing its removal.

Provided that appropriate obligations that meet these objectives can be secured, in the circumstances it is considered that the substitution of a mobile home for a permanent dwelling of acceptable size, scale, design and appearance, on a more favourable siting from a landscape impact perspective, would be acceptable.

Approval is therefore recommended subject to an appropriate legal mechanism being agreed and completed that secures the necessary obligations set out above. While there is a clear understanding of the parish council and ward members' position in this matter, on the basis that this can be achieved, and having regard to the visual benefits of replacing the mobile home with a permanent building in a less visually apparent position on the site, it is considered on balance that the proposal would be acceptable.

CONSULTATIONS

Local Consultations

Parish/Town Council

The Parish Council cannot support this application and standby their comments made previously on applications 18/1204/CPE, 19/1299/FUL and Appeal A) Ref: APP/U1105/W/20/3249070. The Councillors see very little difference between this application and the previous applications & subsequent Appeal, all of which were refused. Council believe this is asking for the same thing in a different way.

Comments from application 19/1299/FUL -

19/1299/FUL - Comment Date: Fri 19 Jul 2019

Comments: The Parish Council wish to object to this application, permission was granted for workers accommodation as in application 11/0233/RES This has since been constructed and has until recently been put up for sale. The Council understand that this property has now been removed from sale. Councillors also understand that part of the original building is being rented out & presume this has created the need for more accommodation. It is the Council's view that is over development on this site.

The accommodation in relation to the Workspace shown on the plans appears not to be equal to or greater than the residential space, this is contrary to the Neighbourhood Plan LE1 (ii)

Dunkeswell and Otterhead - Cllr Colin Brown

I can see very little difference between this application and the appeal on this site 20/00019/REF which was refused, therefore I cannot support.

Further comments:

This application has been refused twice before on appeal and I cannot see how it can now be changed to approval therefore still object.

Dunkeswell and Otterhead - Cllr David Key

There seems to be some misleading in previous applications and so I totally object to the present application.

Further comments:

I strongly object to this application as it has a history of failed appeals.

The bungalow was built for the applicant/owner with an agricultural tie to be used and Tied to the business, we now see the bungalow is no longer attached to the business and owned by a previous partner as share settlement, hopefully he is employed in Agriculture if he is living illegally. As to regards the mobile home being changed this is after the applicant has been living in it and therefore the applicant can remain in it as it has a certificate of lawfulness. There should be no further building on this site as mentioned by the inspectors previous decisions of refusal. I strongly object to the application.

Technical Consultations

None.

Other Representations

No representations regarding the application proposal have been received from any interested third parties.

Planning History

19/1299/FUL - Change of use and extension of storage building to form a live-work unit (Full). Refused 24/2/20. Joint appeal (with enforcement notice) dismissed 20/10/20.

18/1204/CPE - Certificate of lawfulness for use of land for the siting of a caravan and its residential use ('caravan 1'). (Certificate of Lawfulness of Existing Use). Approved 29/5/19.

17/2165/FUL - Retention of temporary workers accommodation (Full). Refused 29/1/18.

17/0381/FUL - Replacement polytunnel (Full). Approved 27/4/17.

17/0382/FUL - Replacement polytunnel (Full). Approved 27/4/17.

16/0076/FUL - Retention of agricultural store used as part of nursery activities, incorporating poultry shelter (Full). Approved 26/10/16.

11/0233/RES - Erection of single storey agricultural workers dwelling (Reserved Matters). Approved 18/4/11.

07/3172/OUT - Erection of single storey agricultural workers dwelling (Outline). Approved 10/6/08.

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies Strategy 5B (Sustainable Transport)

Strategy 7 (Development in the Countryside)

Strategy 43 (Open Space Standards)

Strategy 46 (Landscape Conservation and Enhancement and AONBs)

Strategy 50 (Infrastructure Delivery)

D1 (Design and Local Distinctiveness)

D8 (Re-use of Rural Buildings Outside of Settlements)

EN5 (Wildlife Habitats and Features)

EN19 (Adequacy of Foul Sewers and Adequacy of Sewage Treatment System)

EN22 (Surface Run-Off Implications of New Development)

H6 (Replacement of Existing Dwellings in the Countryside)

TC2 (Accessibility of New Development)

TC7 (Adequacy of Road Network and Site Access)

TC9 (Parking Provision in New Development)

<u>Made Dunkeswell Neighbourhood Plan 2014-2031 Policies</u> NE1 (Retaining, Conserving and Enhancing the Natural Beauty of our Parish)

BE1 (Maintaining the Built Character through High Quality Design)

<u>Government Planning Documents</u> NPPF (National Planning Policy Framework 2019)

ANALYSIS

Site Location and Description

Hill View Nursery is a mixed use site located on the Blackdown Hills plateau within the designated Blackdown Hills Area of Outstanding Natural Beauty (AONB) approximately 1 km. to the south east of the Highfield estate at Dunkeswell. It sits immediately alongside the Class 3 road that connects Honiton and Smeatharpe just to the north of Highwood Plantation.

Predominantly focused around a horticultural nursery enterprise, the business operated from the site has been established for a number of years, growing and selling plants and carrying out landscaping projects for clients, in relation to which the site also operates as a base. However, it also includes an agricultural side in the form of the keeping of a number of free range chicken.

The complex houses a number of structures of differing Planning status reflective of a relatively complicated history. Principal among these are the following:

1. A relatively recently constructed bungalow, subject of an agricultural occupancy condition (applications 07/3172/OUT and 11/0233/RES refer), positioned

alongside the road frontage and immediately to the north of the entrance to the site off the adjacent highway. Originally within the ownership of the applicant and constructed in the light of the Council's acceptance of the case for an essential functional need for a dwelling from which to operate the nursery and smallholding, it has within the past couple of years been transferred to the applicant's former partner as part of a separation settlement.

- 2. A residential mobile home (with no occupancy restriction), positioned alongside the bungalow, that is the subject of a certificate of lawfulness granted in May 2019 (application 18/1204/CPE refers). It is understood that this accommodation is currently being let to a tenant with no connection to the applicant or the nursery.
- 3. A single storey office/storage building, formerly a dairy, positioned just inside, and to the south of, the site entrance. This building has recently been the subject of a proposal (application 19/1299/FUL refers) for conversion and enlargement to form a live-work unit for occupation by the applicant. However, the application was refused by the Council, under delegated powers, and subsequently dismissed at appeal. (This is discussed in greater detail in the next section of the report.)
- 4. A group of now dilapidated polytunnels adjacent to the road frontage of the site to the south of the entrance.
- 5. A dilapidated mobile home between the polytunnels and the site boundary used for storage purposes. Although its siting is now lawful, its use for residential purposes has previously been enforced against.
- 6. A recently-constructed replacement polytunnel alongside the southern boundary with a neighbouring residential property, Hill View Farm (application 17/0382/FUL refers).
- 7. A barn, positioned centrally within the site, used for the storage and maintenance of equipment used partly in conjunction with the operation of the nursery and landscaping businesses as well as for agricultural purposes in part.
- 8. An <u>unauthorised</u> residential mobile home, positioned alongside the barn, which is currently occupied by the applicant. An enforcement notice, issued in February 2020, requires its removal from the land, along with all associated domestic paraphernalia, materials and debris, and the reversion of the land back to agricultural use.

The boundaries of the complex with the surrounding open countryside to the north and west, and the road to the east, are defined by established hedges and trees.

Planning Background

At this point in the report, it is thought that a summary of the relevant background history of the site - including, in particular, the Inspector's main findings in the recent

appeal decision in relation to application 19/1299/FUL - as a means of setting the context for the current application proposal, would be appropriate.

The site has a lengthy and relatively complex history, principally involving the unauthorised stationing and residential use of mobile homes that have over the past years been occupied by both the applicant and, at various times, workers at Hill View Nursery.

However, in the interests of both brevity and clarity, the most relevant facts - including the current situation regarding lawful and unlawful development at the site - are as follows.

The enforcement notice relating to the unauthorised mobile home (no. 8 in the list in the preceding section of the report) at the site requires:

a. The permanent cessation of the use of land for residential purposes and the return of the land to agricultural use.

b. The permanent removal of the mobile home used for residential purposes from the land.

c. The permanent removal from the land of all domestic paraphernalia.

d. The permanent removal from the land of all materials and debris associated with compliance with 1-3 above.

The time period for compliance, set out within the notice, was 9 months.

In September 2020, an appeal lodged against the serving of the notice - solely on the ground that the period for compliance was unacceptable - was heard alongside a separate appeal against the Council's refusal of application 19/1299/FUL for the scheme already described; namely, the conversion and extension of the office/storage building on the site (i.e. no. 3 in the list in the preceding section of the report) to form a live-work unit for the applicant to live in instead of the unauthorised mobile home to which the enforcement notice relates.

Although both appeals were dismissed, the Inspector varied the time period for compliance with the enforcement notice to the effect that this period is extended until 20th October 2021.

The unauthorised mobile home remains in place at the present time.

The Council's reasons for refusal of application 19/1299/FUL were as follows:

1. In the opinion of the Local Planning Authority, the proposal is tantamount to the provision of a second dwelling for occupation in conjunction with the operation of Hill View Nursery. However, no proven essential functional need for a further person to be housed permanently at this unit has been demonstrated. In addition, the Local Planning Authority is not satisfied that there are no alternative options available for meeting any residential need that may exist. The proposal is therefore contrary to the provisions of Policy H4 (Dwellings for Persons Employed in Rural Businesses) of the adopted East Devon Local Plan 2013 - 2031.

2. The proposed employment floor space shown on the submitted drawing would not be equal to or greater than that of the proposed residential living space. As such, the proposed development would be contrary to the provisions of Policy LE1 (Live-work Workspace) of the made Dunkeswell Neighbourhood Plan 2014 - 2031.

Although essentially finding largely in favour of the appellant in regard to the second of these grounds for refusal on account of the limited degree of conflict with Neighbourhood Plan Policy LE1, among the Inspector' principal findings in regard to the first reason were the following:

1. Although not cited within the ground for refusal, the Inspector gave weight to the provisions of Local Plan Policy D8 (Re-Use of Rural Buildings Outside of Settlements) that had been referenced within the officer delegated report owing to the proposal involving the conversion and enlargement of a rural building.

Whilst accepting that the proposal met with the majority of the criteria within the policy, he found that it failed when considered against the requirement that development be located 'close to a range of accessible services and facilities to meet the everyday needs of residents'. In his view, 'the site is accessed from a long, straight section of a busy main road which has no footpaths alongside it. There are no everyday services within what I consider would be a safe walking distance and reaching the nearest facilities within the village of Dunkeswell without the use of a vehicle would require a challenging cycle ride or an even more challenging walk even to get to the nearest bus stop. This in my view is a remote, isolated location which is not easily accessible to the services needed to live here as required by LP Policy D8. In such locations, the (National Planning Policy) Framework (NPPF) at paragraph 79 states that planning policies and decisions should avoid isolated homes unless a number of circumstances apply.'

2. In relation to Local Plan Policy H4, the Inspector principally took into account the matter of the availability of existing alternative accommodation at the site, having particular regard to both the tied bungalow and the lawfully sited mobile home.

In so doing, and giving little weight to the appellant's personal circumstances surrounding the disposal of the bungalow, he found that 'some of this accommodation is either currently in the appellant's control or was until recently and that must be of significant weight in my decision. The overall aim of the relevant policies within the development plan is not to enable the gradual growth of a cluster of residential properties in a location that is isolated from main settlements.'

The Inspector, in therefore essentially acknowledging that the proposal amounted to the provision of a second rural worker's dwelling on the site, also referenced the lack of evidence provided to demonstrate the nature of the ongoing business activity or that its functional needs were the same as at the time of the application made for the tied dwelling some years ago.

In concluding therefore, he found that the site was not an appropriate location for the proposed residential accommodation and that it failed to comply with Local Plan Policies D8 and H4 or the advice set out within the NPPF to avoid the development of isolated homes in the countryside. He also factored in the limited conflict with the

provisions of Dunkeswell Neighbourhood Plan Policy LE1 (Live-Work Workspace) on account of the inadequate proportion of work to live space within the development itself.

However, among the observations made by the Inspector in allowing for the extended time period for compliance with the enforcement notice requiring the removal of the unauthorised mobile home from the site was that one option for the provision of alternative accommodation for the applicant - and her son - would be the existing lawful mobile home within her ownership.

Although not explicitly set out as a factor in allowing the extended compliance period, it is now being used by the applicant and her agent as the basis upon which to argue a case in favour of the current application proposal.

The present situation therefore is that there is both an unauthorised mobile home, required to be removed from the site by 20th October 2021, and a separate, lawfully sited mobile home (with no occupancy restriction) on the site.

Although the occupation of the adjacent tied bungalow is understood to be in compliance with the occupancy restriction, it is not known if there is any connection to Hill View Nurseries.

Proposed Development

The application proposal now before the Council is essentially very similar to that to which application 19/1299/FUL related. However, it relates to the creation of a dwelling instead of a live-work unit.

However, unlike that proposal, instead of the development being intended as an additional residential unit on the site, it is now proposed as a 'one for one' replacement for the lawfully sited mobile home.

It therefore recognises the fundamental policy objection, upheld by the appeal Inspector, to the creation of any further additional residential units at the site without appropriate justification and, to this end, it is proposed that a S.106 Agreement/unilateral undertaking be agreed as an appropriate legal mechanism to secure the removal of the mobile home the subject of the certificate of lawfulness (ref. 18/1204/CPE), in effect in exchange for a grant of planning permission. The implications arising from this would be to forego all rights, in perpetuity, for the stationing of a mobile home on the land to which the certificate relates and the removal of the (currently) lawfully sited mobile home.

At the time of preparing the report, a submitted draft of this document, and the wording of the obligations set out therein, was undergoing the scrutiny of the Council's Legal team.

As per the proposal subject of application 19/1299/FUL, the scheme involves the conversion of the building (referred to in point 3 above) to form a two bedroom unit of residential accommodation together with the addition, at its southern end, of a subservient timber framed single storey extension to provide a 'work office'.

The submitted details show, in addition to the two bedrooms, an open plan combined kitchen, living and dining area and a bathroom.

It is intended that the walls of the existing building would be over clad with vertical timber boarding while the present asbestos roof sheeting would be replaced with stainless steel metal cladding. Various windows and doors would also be replaced with new equivalents in the front (North West) elevation while new windows and a door would be introduced to the rear elevation.

The present building measures 12.7 metres in width by a depth of 5.9 metres with a roof ridge height of 4.25 metres. The proposed extension, which would exhibit the same external wall and roof finishes, would measure 3.8 metres in width by a depth of 5.7 metres with a roof ridge height of 4 metres.

Considerations/Assessment

The main issues for consideration are the principle of development and visual impact.

Principle

The main issue that is material to consideration of the proposal in this case relates to the acceptability (or otherwise) of the principle of the development having regard to the site history and, in particular, the findings of the appeal Inspector in his dismissal of the appeal against the refusal of application 19/1299/FUL, together with the extent to which any other material considerations may weigh in favour of a different stance now being taken.

In this regard, the willingness of the applicant to forego, in perpetuity, the rights conferred by the certificate of lawfulness for the use of the land within her ownership for the siting of a mobile home with unrestricted occupancy - as a means of avoiding a situation where a grant of planning permission could otherwise result in two residential units on the site, and would therefore again in all likelihood be deemed unacceptable - is thought to be wholly integral to any prospect of acceptance of the application scheme.

Subject to the necessary obligations being incorporated within a unilateral undertaking, or whatever legal mechanism may be necessary to achieve the same ends, it is considered that a sympathetic conversion of an existing building at the site would be preferable to the ongoing presence of a mobile home in visual terms, all the more so given the respective impacts of both upon the immediate area.

Visual Impact

Whilst the building proposed for conversion is set immediately behind an established hedged roadside boundary, which would continue to screen it from view from the highway, the lawfully positioned mobile home is rather more visually prominent in such views, being set further in to the site from the road and positioned adjacent to a hedge along its northern boundary that, although including taller trees, is generally less thick

and opens the unit up to views during the winter months, in particular, when the level of screening by vegetation is reduced.

It is also acknowledged that a mobile home is a more transient form of residential accommodation, the permanent retention of which, under ordinary circumstances, would usually be resisted, such as in cases where temporary rural workers' dwellings are permitted or where there is specific justification for such development on a temporary basis pending the formulation of alternative proposals for more permanent buildings or structures to fulfil the same purpose. In the majority of cases, the provision of mobile accommodation on a permanent basis is rarely encouraged.

Balance and Conclusion

In the circumstances therefore, and subject to an appropriate legal mechanism being agreed and completed to secure the removal and to cease occupation of the mobile home as a dwelling, it is considered that the principle of the proposed development - on the basis of it being a 'one for one' replacement for the siting of the mobile home - would be acceptable.

In this regard, while the objections raised by the parish council and the ward members are duly acknowledged, they were received prior to discussions with the agent and the subsequent submission of the draft unilateral undertaking. As such, the differences between this proposal and that subject of application 19/1299/FUL described in the foregoing narrative will not necessarily have been evident at that stage.

However, it is considered that a set of appropriately-worded obligations can be provided and agreed that will achieve the objective of ensuring that the presence of only one residential unit on the site (excluding the now separate tied dwelling) is maintained in perpetuity.

The parish council's further observations relating to the proportion of work floor space to residential floor space within the development, while duly acknowledged, are not material to consideration of this revised proposal since, unlike the scheme submitted under application 19/1299/FUL, it does not expressly involve the provision of live-work development.

In terms of other material considerations, there are not thought to be any particular matters of concern. The single storey form and overall scale of the development would be relatively modest such that it would not detract from the rural landscape character or landscape or scenic beauty of the surrounding AONB, a point acknowledged by the Inspector in his assessment of the previous appeal scheme.

Furthermore, there are no other issues in relation to matters such as drainage, neighbour amenity impact, effect upon wildlife interests, access or parking when considered against the presence of the lawful mobile home and the starting point for assessment of the proposal that it presents.

It is also of significance that the submitted draft unilateral undertaking also contains obligations that would surrender the use of relevant permitted development rights set out in the Town and Country Planning (General Permitted Development) Order relating

to the temporary use of any land, within the entire nursery site, for the provision or siting of any other mobile home/unit. The purpose of this would be to prevent a potential scenario from arising whereby temporary use rights could be claimed for the ongoing retention of the present unauthorised mobile home - currently being occupied by the applicant - for occupation beyond the expiry of the compliance period of the enforcement notice in conjunction with the carrying out of the proposed development, if approved.

In the event of such a situation occurring, the possible scenario could be that the unauthorised mobile home remains in place indefinitely in addition to the lawfully sited mobile home; a situation that the Authority would expressly wish to prevent in order to achieve the longstanding objective of securing the removal of the former.

Subject therefore to the legal mechanism being appropriately worded to achieve these objectives, it is considered that the proposal is acceptable.

RECOMMENDATION

APPROVE, subject to an appropriate legal agreement to ensure that the existing lawful mobile home on the site (granted under certificate of lawfulness granted under ref. 18/1204/CPE) be removed with the residential occupation ceased, together with the removal of permitted development rights relating to the temporary use of the site for the stationing of mobile homes, and subject to the following conditions:

- The development hereby permitted shall be begun before the expiration of three years from the date of this permission and shall be carried out as approved. (Reason - To comply with section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
- 2. The development hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice. (Reason For the avoidance of doubt.)
- 3. No development above foundation level shall take place until a schedule of materials and finishes to be used for the external walls and roof of the proposed development (including, where so required by the Local Planning Authority, the submission of samples of such materials and finishes) have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

(Reason - To ensure that the materials are sympathetic to the character and appearance of the area, which forms part of the designated Blackdown Hills Area of Outstanding Natural Beauty, in accordance with Strategy 46 (Landscape Conservation and Enhancement and AONBs) and Policy D1 (Design and Local Distinctiveness) of the East Devon Local Plan 2013 - 2031.)

NOTE FOR APPLICANT

Informative:

In accordance with the requirements of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 in determining this

application, East Devon District Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved.

Plans relating to this application:

190033.DELAMA	Proposed	Combined	19.11.20
IN.04PP	Plans		

<u>List of Background Papers</u> Application file, consultations and policy documents referred to in the report.