

Eden District Council

**Planning Committee
21 May 2020**

Appeal Decision Letters

**Report of the Assistant Director Planning
and Economic Development**

Attached for Members' information is a list of Decision Letters received since the last meeting:

Application Number(s)	Applicant	Appeal Decision
19/0101	<p>Mr and Ms Maurice & Young (Wanderlusts) Nutwood, Melmerby, Cumbria CA101HF</p> <p>The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.</p> <p>The development proposed is change of use from agriculture to mixed use of agriculture and sustainable tourism, comprising grazing and the use for up to 3 No. horse-drawn caravans solely for the purpose of tourism.</p>	<p>The appeal is allowed and planning permission granted, subject to conditions.</p>
	<p>Mr and Ms Maurice & Young (Wanderlusts) Nutwood, Melmerby, Cumbria CA101HF</p> <p>The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).</p> <p>The appeal was against the refusal of planning permission for the change of use from agriculture to mixed use of agriculture and sustainable tourism, comprising grazing and the use for up to 3 No. horse-drawn caravans solely for the purpose of tourism.</p>	<p>The award of costs is refused.</p>

Oliver Shimell
Assistant Director Planning and Economic Development



Appeal Decision

Site visit made on 5 February 2020

by Beverley Wilders BA (Hons) PgDurp MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2020

Appeal Ref: APP/H0928/W/19/3239535

Nutwood, Melmerby, Cumbria CA10 1HF

- 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 & Ms Maurice & Young (Wanderlusts) against the decision of Eden District Council.
 - The undated application, Ref 19/0101, was refused by notice dated 18 April 2019.
 - The development proposed is change of use from agriculture to mixed use of agriculture and sustainable tourism, comprising grazing and the use for up to 3 No. horse-drawn caravans solely for the purpose of tourism.
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use from agriculture to mixed use of agriculture and sustainable tourism, comprising grazing and the use for up to 3 No. horse-drawn caravans solely for the purpose of tourism at Nutwood, Melmerby, Cumbria CA10 1HF in accordance with the terms of the application, Ref 19/0101, subject to the conditions set out in the attached schedule.

Preliminary Matter

2. The appellants currently reside on land adjacent to the appeal site. Planning permission was granted by the Council for the retention of two horse drawn caravans, ancillary cabin, solar panels, landscape planting, animal feed store, compost toilet, washroom as "off grid" residential unit for one gypsy/traveller family on a temporary and personal basis in 2018 (Ref 18/0421). In granting permission, the Council appear to have accepted that the appellants have traveller status. In reaching my decision I have had regard to this and to the planning history of the site and adjacent land only insofar as it is relevant to the determination of the proposal.

Application for costs

3. An application for costs was made by Mr & Ms Maurice & Young (Wanderlusts) against Eden District Council. This application is the subject of a separate Decision.

Main Issues

4. The main issues are:

- the effect of the proposal on the North Pennines Area of Outstanding Natural Beauty (NPAONB);
- whether the access and parking arrangements proposed are acceptable.

Reasons

Effect on NPAONB

5. The appeal site comprises a parcel of land positioned in a countryside location between the small settlements of Melmerby and Gamblesby. The land comprises reasonably flat grassy areas together with more undulating land and areas of woodland. Access to the site is via an unmade track known locally as **a "lonning" that runs** between Melmerby and Gamblesby and which is positioned at a lower ground level relative to the site. In the main, the site is separated from the lonning by an agricultural field and at the time of my visit I noted that the boundary between the lonning and the field was marked by a wall and that some planting had taken place within the field adjacent to the wall. The land surrounding the site and nearby is generally open and agricultural in character offering far reaching views towards the surrounding landscape.
6. The site is within the NPAONB, much of which is remote, wild countryside. The Cumbria Landscape Character Guidance and Toolkit states that it falls within landscape sub-type 11a (Foothills) one of the key characteristics of which is rolling, hilly or plateau farmland and moorland. Settlements are generally dispersed and sparse. At the time of my visit I noted that the site and surrounding area has a peaceful and tranquil character.
7. Local and national planning policy seeks to protect and enhance valued landscapes and paragraph 172 of the National Planning Policy Framework (the Framework) states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs which have the highest status of protection in relation to these issues. Policy ENV3 of the Eden Local Plan 2014-2032 (LP) relates specifically to the NPAONB and states that development will not be permitted unless it complies with the listed criteria.
8. In determining the application, the Council acknowledged that the site is well screened by existing topography and vegetation and that this has been augmented by further planting that has taken place following the residential permission granted in 2018. However, it is nevertheless concerned about the effect of a permanent business use on the site on the NPAONB, noting that AONBs are not designated for recreational use and that rather the intent is to conserve the quietness, isolation and natural beauty of the area. In reaching my decision I also note and have had regard to the objection received from the North Pennines AONB Partnership.
9. The proposal is for the change of use of the land from agriculture to a mixed use comprising agriculture and the use for up to 3 No. horse-drawn caravans solely for the purpose of tourism. The appellants operate '**Wanderlusts**', described by them as a low impact, low tech, sustainable tourism business. It offers horse-drawn and stationary Gypsy caravan holidays in and around the Eden Valley and Cumbria. It appears from the evidence that the proposal was altered after submission from one for a permanent camp to effectively comprise a '**temporary stopping place**' for horse drawn caravans travelling in

the course of holiday tours in connection with the appellants existing tourism business and would, it is stated, provide for up to a maximum of two groups comprising a maximum of 12 guests accommodated in up to 3 horse drawn wagons. Guests would not bring cars to the site and would be encouraged to travel to the area by public transport. If they do travel by car then their cars would be parked off site and they would be transported to site by horse and wagon.

10. As the Council acknowledge, the nature of the site and the scale of the proposal is such that the positioning of 3 horse drawn caravans and associated development would not be visually prominent and, subject to the imposition of suitably worded conditions controlling the scale and management of the use, I consider that the proposal would protect and conserve the landscape and scenic beauty of the NPAONB. Although the proposal would increase the level of activity at the site and has the potential to reduce the tranquillity of the area, having regard to the nature of the holiday offer, its limited scale and restrictions on guest numbers and vehicular access, I consider that any reduction in tranquillity is unlikely to be significant or harmful to the NPAONB.
11. Taking the above matters into consideration, I conclude that the proposal would not have a harmful effect on the North Pennines Area of Outstanding Natural Beauty. It therefore accords with policies DEV1, DEV5, ENV2 and ENV3 of the LP and paragraphs 170 and 172 of the Framework. These policies seek, amongst other things, to ensure that development reflects local distinctiveness and protects and conserves landscape character including not having a significant or adverse impact upon the special qualities or statutory purpose of the NPAONB.

Access and Parking

12. As stated above, guests would arrive by horse drawn caravan or on foot and therefore no vehicular access or parking arrangements are proposed. The proposal appears to have been amended since a previous application was refused which related to a residential and tourism use (Ref 17/0883). As set **out in the appellants' statement of case, the proposal now** seeks permission for the site to be used effectively as a temporary stopping place for wagons travelling in the course of holiday tours, rather than for the siting of permanent tourism accommodation.
13. Access to the site would either be by horse or on foot via the lonning located to the west and which links the site to Melmerby and Gamblesby. At my visit I noted that the lonning is a narrow, unsurfaced and undulating track which appears to be used by vehicles as well as by pedestrians and horses. Gill Beck, a watercourse to the north of the site crosses the lonning near to the site and at the time of my visit, water levels were low at the crossing point. It appears from the evidence that the Council has previously accepted the lonning to be an unadopted right of way, the use of which by the public is unrestricted and I have seen no substantive evidence to suggest otherwise.
14. Whilst I acknowledge that the proposal would increase the use of the lonning by horses and pedestrians, having regard to the modest scale of the proposal and the likely number of guests at the site, I do not consider that any increase in its use would be harmful to the NPAONB or would be likely to give rise to frequent conflict with other users of the lonning including agricultural vehicles. Though access along the lonning may be more difficult in inclement weather,

there is no substantive evidence that such difficulties would be frequent, particularly given that visits to the site are most likely to occur at times of the year when the weather is less likely to be inclement.

15. With regard to parking, it seems to me that none is required given that the appellants propose that the site be used as a stopping place for guests as part of a holiday tour operated by them as part of their existing business. It appears that the appellants have existing agreements in place to accommodate parking for their guests should they choose not to travel by public transport. Whilst I note the concerns raised about the apparent lack of control over these existing parking arrangements, there is no substantive evidence before me to suggest that they will not remain in place. In any event, in the apparent unlikely event that guests were to require parking near to the site, given the likely small number of vehicles involved, it seems that any such parking could take place nearby including in the settlements of Gamblesby and Melmerby without detriment to either highway safety or to the amenity of those settlements and the living conditions of their residents. I note that no objections were raised to the proposal by the Highway Authority.
16. Taking the above matters into consideration, I conclude that the access and parking arrangements proposed are acceptable. The proposal therefore accords with Policy EC4 of the LP which requires, amongst other things, that suitable access and car parking arrangements are defined.

Other Matters

17. In reaching my decision I have had regard to a number of other matters raised in relation to the proposal. Firstly, in determining this appeal there is no requirement for me to consider whether there are any other, more suitable locations available, particularly given my findings that the proposal is acceptable. I note the concerns raised about the ability of guests with mobility problems or the young to access to the site as well as emergency services. As stated, the intention is that guests would be transported to site by horse drawn wagons and vehicular access along the lonning, though restricted due to its nature and width, is nevertheless available and the site is also reasonably close to the road that runs between Melmerby and Gamblesby. I am therefore satisfied that the site location and access arrangements are adequate and enable sufficient access to the site.
18. There is no evidence that use of the site by a relatively small number of guests would lead to harm to wildlife or to the natural environment and I note that no objections were raised to the proposal by Natural England. Only a small section of the appeal site adjoins the lonning and consequently I consider it unlikely that the proposed use of the site and any associated noise and disturbance would be likely to materially affect the enjoyment of recreational users of it. There is no evidence that the proposal would significantly increase the number of horses at the site or consequently increase the amount of development and movement to/from the site in connection with the keeping of horses.
19. Though I note the site history and the conditions attached to the previous planning permission (Ref 18/0421), there is no substantive evidence to suggest that allowing the proposal would result in a breach of any conditions attached to the appellants' residential consent. Additionally some concerns have been raised about the lack of clarity and detail from the appellants about where their

other sites and parking areas are and about the ability to formalise and control such arrangements. However, it appears from the evidence that the appellants have successfully operated their business using their existing model for a number of years and whilst I accept that there is limited information regarding the arrangements that are in place and the security of such arrangements, I do not consider that this means that the proposal is unacceptable. I am satisfied that any permission granted could be the subject of appropriately worded conditions meaning that if circumstances on other sites were to change in the future, this would not mean that the impact of the proposal on the site and the surrounding area would significantly change.

Conditions

20. I have had regard to the conditions suggested by the Council and to the **appellants' comments on conditions**. I have imposed a condition specifying the approved plans as this provides certainty. I have also imposed conditions restricting the type, use and maximum number of caravans on site to 3; restricting the amount and type of shelters/tents on site; restricting the number of guests to 12 and restricting lighting. This is having regard to the location of the site in the countryside and the NPAONB and in order to control the scale of development. Though I note the appellants' comments in respect of the enforceability of restricting the number of guests, I consider that such a condition does meet the tests for conditions as set out in paragraph 55 of the Framework and that it would be enforceable.
21. I have not imposed the suggested conditions regarding buildings or structures (condition 4), restricting the types of caravan and wagon (condition 5) and regarding landscaping (condition 8) as I do not consider these conditions to be necessary having regard to what is proposed as part of the application.
22. However, I do consider that some amendments are required to a number of suggested conditions in the interests of clarity and to ensure sufficient control over the proposed development. I also consider that conditions are necessary restricting vehicular access onto the site and restricting the number of compost toilets to be provided. The main parties have been consulted regarding the additional conditions and regarding any significant amendments to the suggested conditions and in reaching my decision I have had regard to the comments made.
23. Though I note that only 2 compost toilets are shown on the submitted site plan, one to serve each camp is referred to elsewhere in the submission and I therefore consider a condition restricting the number to no more than 3 to be reasonable. It also seems clear to me from the submission that temporary canvas shelters serving the caravans are also proposed and that the erection of such structures ought to be addressed by a suitably worded condition. With regard to access, **I note the Council's comments with regard to enforceability** and have therefore slightly amended the wording of the suggested condition to refer to guest access onto the site. Although a visitor book is not required by the conditions, I consider that should vehicular access and parking by guests occur in breach of the condition, it would be possible for the Council to ascertain whether this was in fact the case.
24. In responding to the suggested conditions, the appellants raised a number of queries regarding restrictions on the use of the site including for agricultural and educational purposes. As stated, the proposal is for the mixed use of the

site for agriculture and sustainable tourism and permission is granted subject to the stated conditions. The proposed description of development makes no reference to the use of the site for educational purposes and I have determined the appeal as such.

Conclusion

25. For the above reasons and having regard to all matters raised, I conclude that the appeal should be allowed.

Beverley Wilders

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun not later than the expiration of three years beginning with the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following submitted plans: Nutwood Site Plan and Site Block Plan.
- 3) No more than 3 horse drawn caravans shall be stationed on the site at any one time.
- 4) No more than 12 guests shall occupy the site at any one time.
- 5) The caravans hereby approved shall be used for holiday purposes only and shall not at any time be occupied as a permanent or sole residence.
- 6) No floodlighting, security lighting or other external lighting shall be installed or operated at the site.
- 7) No tents or other shelters shall be erected on site other than for purposes ancillary to the tourism use of the 3 horse drawn caravans. Such tents and shelters shall be removed from site when not in use.
- 8) No more than 3 compost toilets shall be provided on site.
- 9) There shall be no vehicular access onto the site by guests.



Costs Decision

Site visit made on 5 February 2020

by Beverley Wilders BA (Hons) PgDurp MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2020

Costs application in relation to Appeal Ref: APP/H0928/W/19/3239535
Nutwood, Melmerby, Cumbria CA10 1HF

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr & Ms Maurice & Young (Wanderlusts) for a full award of costs against Eden District Council.
 - The appeal was against the refusal of planning permission for change of use from agriculture to mixed use of agriculture and sustainable tourism, comprising grazing and the use for up to 3 No. horse-drawn caravans solely for the purpose of tourism.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. Paragraph 030 of the National Planning Practice Guidance (NPPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Paragraphs 046 to 049 set out the circumstances when the behaviour of a local planning authority might lead to an award of costs. These can either be procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. Examples of unreasonable behaviour by a local planning authority includes preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; lack of co-operation with the other party; delay in providing information or other failure to adhere to deadlines and providing information that is shown to be manifestly inaccurate or untrue.
4. The case for the appellants is essentially that in determining the application, Councillors appeared to be unaware of all of the supporting information and that one Committee member who read out a statement appeared to be hard of hearing and to have pre-determined the case. The appellants also claim that the Council has behaved unreasonably in misrepresenting the proposal; being unwilling to negotiate; presenting evidence in a misleading manner; failing to carry out its administrative duties promptly and in opening an unsubstantiated enforcement case.
5. I have been provided with a copy of the minutes of the Planning Committee meeting at which the application was determined. However, these are very

- brief and do not provide any substantive details regarding the committee proceedings. The appellants have made reference to an audio recording of the meeting and to comments made during the meeting by Officers and Councillors. Allegations about one particular Councillor have been disputed by the Council and Officers advise that a legal advisor was present at the meeting and would have intervened had Councillors behaved inappropriately. Reference is also made to the fact that the appellants did not subsequently make any complaints to the Council about the conduct of committee members.
6. Though I note the concerns raised by the appellants, having considered the evidence before me, I am satisfied that members of the Planning Committee made a sound decision based on their judgement, something that they were entitled to do. Although the committee reached a different decision to me, this does not in itself mean that they behaved unreasonably and even if the allegations against a particular Councillor were founded, there is no evidence that the committee would have made a different decision.
 7. With regard to the conduct of the Council, although I note that the proposal appears to be different to that previously submitted and that the appellants appear to have sought to negotiate with the Council and to provide additional information where necessary, I do not consider that the evidence suggests that the Council materially misrepresented the proposal, were unwilling to negotiate where appropriate or has presented evidence in an intentionally misleading manner.
 8. Although I acknowledge that the Council failed to emphasise the changes that have been made to the proposal in response to previous concerns and were reluctant to enter into ongoing dialogue with the appellants, I do not consider that this amounted to unreasonable behaviour under the circumstances. It is clear from the evidence that Council Officers have an in principle objection to the proposal and consequently did not consider that further amendment or negotiation would result in resolution and approval of the proposal. Although I disagree with the Council, I consider that it has produced sufficient evidence to substantiate the reasons for refusal and to demonstrate that further discussions are unlikely to have resulted in an Officer recommendation of approval to committee or that there is evidence to suggest that the committee would have made a different decision even if further discussions had taken place.
 9. Whilst there was a delay in the Council providing the appeal questionnaire and copies, this was not significant and does not appear to have resulted in the appellants incurring unnecessary or wasted expense. The allegations made in respect of enforcement action undertaken by the Council though noted, are not directly relevant to the appeal before me.
 10. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. For this reason, and having regard to all matters raised, an award of costs is not justified.

Beverley Wilders

INSPECTOR