

Appeal Decision

Hearing held on 6 September 2016

Site visit made on 6 September 2016

by Anne Jordan BA (Hons) MRTPI

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

Decision date: 27 September 2016

Appeal Ref: APP/E2001/W/16/3142974

Eastfield, Feoffee Common Lane, Barmby Moor, East Riding of Yorkshire, YO42 1PG

- 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 MacMagnus Ltd against the decision of East Riding of Yorkshire Council.
 - The application Ref DC/15/02239/PLF/WESTWW, dated 16 July 2015, was refused by notice ref PP-04355233 dated 12 January 2016.
 - The development proposed is described as "retention of log cabin for use as dwelling, a domestic outbuilding, storage sheds and the erection of 3 polytunnels with associated infrastructure and building to house biomass boiler/fuel store".
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The log cabin and domestic outbuilding are already in place on the site and therefore the application is made retrospectively. The description of development refers to retention of the log cabin and domestic outbuilding, however, retention is not an act of development. I have therefore dealt with the appeal as "erection of a log cabin for use as dwelling, a domestic outbuilding, storage sheds and the erection of 3 polytunnels with associated infrastructure and building to house biomass boiler/fuel store".
 3. At the hearing the Council provided information that the Public Right of Way referred to in the second reason for refusal was not in fact a right of way, and was referred to in error. I have taken this into account in my reasoning below.
 4. The issue of site ownership, and its effect on the validity of the appeal site was discussed at the hearing. A planning application must be accompanied by a relevant certificate of ownership. The requirement for such a certificate is to ensure that owners of land are aware of development proposals which affect their property, allowing them to become engaged in the application process. It transpired at the hearing that the Certificate of Ownership accompanying the planning application was incorrect as the appellant was not the owner of the appeal site. The owner at the time of the application and the hearing was Mr John Hamlett. Accordingly, a notice should have been served on Mr Hamlett to make him aware of the proposal. However, as Mr Hamlett spoke on behalf of MacMagnus Ltd he was clearly aware of the proposal and engaged in the
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process. Accordingly, in this instance, I am satisfied that the interests of Mr Hamlett would not be prejudiced by my determination of the appeal.

5. Mr Hamlett Spoke throughout the hearing on behalf of Mr Grohn, the appellant. I was advised at the hearing that the transfer of the site from Mr Hamlett to Macmagnus Ltd, which commenced a number of years ago was due to be completed with days of the hearing. I therefore allowed a further 2 weeks after the date of the hearing for evidence of the purchase to be submitted. That date has now passed without any documentary evidence of completion of the purchase other than a letter from Mr Arne Grohn of Macmagnus Ltd which was supplied at the hearing.

Main Issue

6. The main issue for the appeal is whether there is an essential need for a dwelling to accommodate a rural worker, having particular regard to national planning policy which seeks to avoid isolated new homes in the countryside.

Reasons

Background

7. Eastfield is a log cabin set in a large garden which faces directly onto Feoffe Common Lane. To the rear lies an area of open field which is edged with mature hedging on 2 sides. The site is around 2 hectares in size. Mr Hamlett and his wife currently live in the cabin. I am advised that the land to the rear is occasionally used to accommodate pedigree sheep which Mrs Hamlett breeds as a hobby.
8. Permission is sought for the retention of the cabin, outbuilding and 2 sheds within the garden and the erection of 3 polytunnels in the field behind for use to cultivate trees for short rotation forestry. Permanent permission is sought, although Mr Hamlett has advised that he is also willing to accept a permission for a temporary period. The appellant intends to run a nursery business from the site, where Eucalyptus and Nothofagus trees would be grown in the polytunnels.

Policy Framework

9. At the hearing the Council confirmed that the relevant development plan is the *East Riding Local Plan*, which has recently been adopted. The policies the Council consider relevant to the proposal are S4 and ENV1. Together these seek to protect the amenity and appearance of the countryside by restricting development in open countryside to a number of specific development categories. These include development essential to meet the operational requirements of agriculture, which is specifically dealt with by policy S4. This reflects guidance in the *National Planning Policy Framework* (the Framework) which states that new isolated homes in the countryside should be avoided, unless there are special circumstances to justify them. These include the essential need for a rural worker to live permanently at their place of work.
10. The site lies around a mile from the village of Barmby Moor and nearly 2 miles from the village of Wilberfoss. The area is relatively flat with sporadic development stretching along Feoffe Common Lane. The appeal site lies alongside a dwelling to the north east and adjacent to this sits a caravan sales business. In this regard the cabin does not appear particularly intrusive, and its

impact on the wider landscape would be relatively limited. However, due to the absence of any notable local services in the immediate area, occupiers would be largely reliant on the private car. Therefore, despite the absence of harm in relation to landscape, and the ability of the occupier to work from home, the proposal would nevertheless comprise an isolated dwelling in the countryside. This would only be justified if an essential and permanent need for an employee to live at the farm could be demonstrated.

The Need for the Dwelling

11. The Framework is clear that isolated new homes in the countryside should be avoided unless there are special circumstances including the *essential* need for a worker to live permanently at or near their place of work. The extent of labour alone is therefore not indicative of such a need as workers would not always be required to live permanently on site. At the hearing I was provided with detailed information as to the proposed operation of the business. I was advised that the particular species proposed to be grown on the site are particularly susceptible to cold when plants are young and on this basis it was argued that a worker needs to be on hand, within 5 minutes of the site, to deal with emergencies.
12. Based on the information put to me at the hearing I accept that a sudden drop in temperature could be fatal to the Eucalyptus and Nothofagus plants in some cases. However, even if I were to accept that the time period put forward by the appellant was critical, I was provided with no convincing evidence that such incidents were particularly likely to happen if the business was well run. Furthermore, whilst I accept that unforeseen events can occur, even in such instances, as the plants are raised in stages, I do not accept that such a failure would lead to the loss of the entire year's crop. It is more likely that in the rare instance that an emergency was to occur, only a proportion of the stock would be affected.
13. I note the appellant's concerns in relation to the matter of onsite security. I also note a recent incident of a burglary within 400m of the site. However, there is often an inherent risk of theft or attempted theft from horticultural premises and this would not amount on its own to sufficient justification for a dwelling on site. Furthermore, I do not consider that a determined burglar would be much deterred by the proximity of the existing cabin in any case. I am therefore not persuaded that this adds much to a demonstration of need.
14. Lastly, I take into account the size of the dwelling, which has 3 bedrooms and sits within a generous garden. In this regard the nature of the accommodation provided goes beyond that which would be reasonably necessary to accommodate a rural worker in this case. I note that the appellant carried out a search of available 3 bedroom properties within 5 minutes of the site and found none to be available. As I consider this to be unduly restrictive, in terms of both the area of search and the size of dwelling sought, I give this little weight.

Financial Viability

15. The figures submitted appear to show a business that would quickly provide a viable business. I accept that some of the information within the financial appraisal will be based on assumptions, given the business is not yet in operation. I was provided at the hearing of evidence of demand for the product

and I have no reason to doubt that in the context of potential growth in short rotation forestry in the UK, there could be a growing market for both of the proposed species. However, I am nonetheless unconvinced that the proposal would be advanced on a sound financial basis.

16. Mr Hamlett would be the main employee and he and Mrs Hamlett would live on site. The business predominantly involves cultivating large numbers of plants from cuttings. Mr Hamlett advised at the hearing that although he has many years of experience in forestry he has limited experience of cultivating Eucalyptus and Nothofagus from cuttings. The work is seasonal and is also relatively skilled. It is also likely to be labour intensive for certain periods of the year. The figures provided allow around £31,000 for labour within the first year, rising to around £34,500 in year 3. The figures assume around 85,000 plants would be sold in the first year. Allowing for a failure rate of 15%, as was put to me at the hearing, this would require the business to produce almost 100,000 plants within the growing season. At the hearing Mr Hamlett advised that the business would employ both himself and his wife, and would also require 2 part time seasonal workers. Even if Mr Hamlett was allowed to live at the property rent free, this figure appears to me to be unduly low for the extent of labour required.
17. In addition, the figures provided make no provision for the cost of the capital investment in the business, which would include the cost of purchase of the site by MacMagnus Limited. It appears to be reliant on the purchase of the site by Mr Grohn with no requirement to finance the cost of purchase from the operation of the business. This leads me to the view that the figures given to me fail to demonstrate that the business has a reasonable prospect of becoming financially viable.

Other Matters

18. The appellant advises that the cabin is classed as a caravan under the Caravan Act 1960 and that as it is a movable structure a condition restricting occupation for a temporary period would not be inappropriate. He also indicated that he was willing to accept such a restriction. As I have found that there is no demonstrable need for accommodation at the site, I have not found it expedient to assess whether the cabin is a movable structure and capable of being approved for a temporary period.

Conclusion

19. Having regard to all the matters above I must conclude that it has not been demonstrated that there is a functional need for a dwelling to accommodate an agricultural worker on site. This matter is decisive in itself. Neither have I been assured that the enterprise would be advanced on a sound financial basis or have a reasonable prospect of succeeding for a significant period. As such an essential need has not been demonstrated and the proposed development would be contrary to both the Framework and Local Plan Policies ENV1 and SP4.
20. Therefore, for the reasons set out above, and having regard to all other matters raised, the appeal must be dismissed.

Anne Jordan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Killian Gallagher BA MRUP MRTPI	Gallagher Planning
John Hamlett	Appellant
John Purse PhD	Prima Bio

FOR THE LOCAL PLANNING AUTHORITY:

Chris Hodgson MRTPI	Planning Team Leader, East Riding of Yorkshire Council
Catherine Dixon	Case Officer, East Riding of Yorkshire Council
Neil Archbutt MRICS	Valuation & Estates, East Riding of Yorkshire Council
Joanna Green	Parish Council

DOCUMENTS SUBMITTED AT THE HEARING:

1. Written Comments from the Council relating to the status of the public right of way.
2. Letter from MacMagnus Ltd dated August 30th regarding site ownership.
3. Letter from Rollits Solicitors dated 5th September 2016 confirming exchange of contracts and drafting of the Transfer documents.
4. Lad Registry Search for the site dated 1st September showing the site in the ownership of Mr John Hamlett and detailing a Search of the site in respect of an intended purchase by Macmagnus Ltd dated 15th August 2016.
5. Closing Statement by Mr Gallager on behalf of the Appellant.