

Appeal Decision

Hearing held on 11 October 2016

Site visit made on 11 October 2016

by Zoe Raygen Dip URP MRTPI

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

Decision date: 21 November 2016

Appeal Ref: APP/R2520/W/16/3152396

Woodland Glade, Old Wood, Skellingthorpe, Lincoln LN6 5UA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr R Morley against the decision of North Kesteven District Council.
 - The application Ref 15/1477/OUT, dated 27 November 2015, was refused by notice dated 17 February 2016
 - The development proposed is a detached dwelling.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application is in outline; with all matters except for access reserved for future consideration. It was confirmed at the hearing that the submitted layout plan should be treated as for illustrative purposes only.
 3. The Council's reason for refusal number 4 relates to the lack of up to date survey work with respect to the ecological appraisal. The Council confirmed that an administrative error led to saved Policy LW7 of the North Kesteven Local Plan 2007 (the Local Plan) being quoted within the decision notice rather than saved Policy LW8. All parties were supplied with a copy of the correct Policy.
 4. Following discussion at the hearing it was clear that each party has put a different interpretation on the wording of an email dated 5 October 2015 resulting in the reason for refusal. Subsequent to the hearing the appellant submitted further clarification from the environmental consultant regarding the extent of the survey work he had carried out in August/September 2015. The Council were given the opportunity to comment on the later submission and I return to this matter below.
 5. An agreed Statement of Common Ground was submitted at the hearing. It was limited to an agreement on the site description, planning policies, arboricultural constraints and the location of the appeal site beyond the settlement limit of Skellingthorpe.
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Main Issues

6. The main issues are:

- i) whether the proposal would provide a suitable site for housing with particular regard to its location;
- ii) the effect of the proposal on highway safety;
- iii) the effect of the proposal on the character and appearance of the area, and
- iv) the effect of the proposal on protected species

Reasons

Policy

7. The Local Plan is the adopted development plan. The emerging Central Lincolnshire Local Plan 2016 (the CLLP) is due to be examined in November 2016. As such, in accordance with paragraph 216 of the National Planning Policy Framework (the Framework), there was agreement between the parties at the hearing that limited weight should be given to relevant Policies of the CLLP.

Suitable site for housing

8. The appeal site is located within the Old Wood which is outside of the curtilage line of the village of Skellingthorpe as defined within the Local Plan. As such the appeal site is classed as being in the open countryside. Saved Policy C2 of the Local Plan makes provision for development in the open countryside which, amongst other things, maintains or enhances the environmental, social and economic value of the countryside and is located to provide opportunities for access by public transport, walking or cycling. Saved Policies DC2 and DC4 of the Local Plan deal specifically with new housing in the open countryside and seek to strictly control such provision such that it relates to an essential need for a house or it is of exceptional quality or of an innovative nature. Accordingly, the three policies are broadly in accordance with the requirements of Paragraph 55 of the Framework.
9. The proposal is to locate a house on the appeal site in association with the appellant's bee keeping business which has been in operation for approximately 45 years. The house would be occupied, if not in the first instance, eventually by the appellant and his family. The case is put that the family's continuous presence on site will reduce a substantial number of car journeys, provide security, allow training of the appellants son-in-law providing him with a job and income and maintain the vitality of the rural community of Skellingthorpe.
10. The appellant has placed considerable weight on the significant reduction in car journeys that would take place as a result of him living near to the hives. Currently, due to the lack of hot water at the appeal site, in the busiest months of honey production he has to take the supers to his house to take the honey out and then return them to the hive 3 or 4 times in the day. Activity on site is also required throughout the winter months with 1 or 2 journeys per day. As a result the appellant makes about 760 journeys per year. Although the Council

had spoken to another bee keeper who had verbally advised that the number of journeys seemed high, I have seen no compelling evidence that would dispute the number of alleged journeys.

11. In contrast the appellant considers he would generate only about 130 journeys if living at the site when accessing local services and facilities. However, it was stated at the hearing that the intention is for the appellant's daughter and son-in-law to also live at the site. His daughter works 5 days a week which would generate more journeys as well as those to access services and facilities. Increased vehicle movements due to visitors and deliveries also need to be taken into account.
12. The case was also made by the appellant that due to the proximity of the appeal site to the village of Skellingthorpe and the Sustrans cycle route, most of his journeys could be made by bicycle and foot, further enhancing sustainability.
13. I saw both routes and I could envisage that they would allow pleasant journeys to the village in the summer months. However, the narrowness of the routes, together with lack of footway and lighting to part of the main route would mean that in winter months or dark, rainy days, there would not be a safe or convenient pedestrian or cycle route to local services or bus stops. As a result it is likely that future occupiers would be likely to have a high dependence on the use of motor vehicles to access the local services. This would be contrary to one of the core planning principles of paragraph 17 of the Framework to make the fullest use of public transport, walking and cycling. Consequently the proposed house would be functionally isolated from local facilities and services.
14. The appellant only makes short journeys to the site given that he lives nearby. This together with the overall limited reduction in car journeys would not be significant against a dependence on the car for all other services, particularly taking into account the appellant's daughter and son-in-law living at the site. This therefore limits the weight I can give to the benefit of reduced car journeys.
15. Saved Policy DC2 states that for a dwelling to be approved in the countryside it must be proven to be necessary for the proper functioning of the rural based enterprise for a full time worker to live close to his place of work. This is broadly in accordance with the requirement within paragraph 55 of the Framework for the essential need for a rural worker to live permanently at or near their place of work.
16. Such a requirement might arise when workers are needed to be on hand day and night. This can be when animals require essential care at short notice or to deal quickly with emergencies that would otherwise cause serious loss of crops or products. The appellant has submitted a detailed list of activities associated with bee keeping month by month and stated at the hearing that if he were not to live on site then all the bees would die.
17. Based on the evidence in front of me, including that the bee hives have been on site for 45 years, I see no reason why the lack of a house near to the bee hives would logically lead to the loss of the bees. Instead the risk to the bees appears to be down to the increasing difficulty the appellant suffers in making the regular journeys to and from the site together with transporting the heavy supers. I am aware from the evidence that the appellant has suffered ill health

- when he had to give up his driving licence. During this time friends and family members had to help with the bee keeping. As I understand it the concern relates to the potential loss of driving licence in the future due to ill health.
18. From the evidence in front of me the only significant reason for the high number of journeys in the summer months is the lack of hot water on the site. As there has been no investigation as to whether hot water could be supplied on the site then I am not persuaded that the potential difficulties of the appellant means that there is an essential need to live on the site. Even if hot water could not be achieved on site, I have been given no substantive evidence regarding the current or future health concerns of the appellant in this respect.
 19. The appellant has pointed to problems when dealing with pests or animals that can be a threat to the hives and the need to prevent swarms. However given the current proximity of the appellant to the site and the fact that the hives have been in operation for 45 years there was nothing to suggest that presence on site would be required at all times, including throughout the night.
 20. Furthermore the harvesting of honey is not an all year round activity. Nevertheless there is a need for inspection of the hives and to feed the bees in the colder months. However, in my view these requirements do not amount for a worker to be present on the site throughout the year.
 21. From my observations it is apparent that unauthorised access to the site could be achieved relatively easily because of the nature of the boundary treatment. Furthermore the site is located at the end of a narrow track where there is no surveillance by neighbouring residents. The appellant reported an instance of a storage building on the site being burnt down in 2008 and in the last year one instance of hives being knocked over resulting in the loss of the bees. I appreciate therefore that a house on the site would help with security.
 22. High security fencing would have a harmful effect on the character of the open countryside but other security systems such as CCTV or alarms are available. The appellant has not investigated such measures for the site and does not consider that they would prevent harmful activity.
 23. Although I recognise that the effectiveness of security measures to deter and prevent crime cannot be guaranteed, I consider that the security of the site could be improved by use of the latest technology and monitoring equipment. Moreover, even without any potential improvements to security, I do not consider that the risk of crime is by itself, given the relatively low level of criminal activity at the site, sufficient justification for residential occupation of the site.
 24. The proposal would provide the opportunity for training the appellant's son-in-law in the art of bee keeping such that he would receive his full income from the business. Currently Mr Baker is working, but due to health difficulties is restricted in the work he can carry out.

25. I have had regard to comments from the British Bee Keepers Association that although they have a large number of members their average age is above retirement age. Furthermore, the UK only produces around 14% of honey consumed by the domestic market, compared with a European average of 60%. I am aware therefore that there is a challenge for the bee farming industry to increase UK honey production and availability¹. One way to do this would be to ensure that existing bee farming opportunities are continued into the future which would be made possible through this proposal. Nonetheless, while I do have sympathy with Mr Baker's situation, this in itself would not be sufficient to demonstrate an essential need for a worker to live at the site as I have identified above.
26. I heard from the appellant how the Old Wood is considered to be an essential and included part of the community of Skellingthorpe. I saw however that there was a clear and distinct distance between Skellingthorpe and the houses and businesses within the Old Wood, occupied by open land. Therefore, while the site may not be physically isolated from nearby houses, it would as I have already found, be functionally isolated from services.
27. Paragraph 55 of the Framework states that housing should be located where it will enhance or maintain the vitality of rural communities. I appreciate from the numbers of letters of support received to the planning application that the appellant's honey forms an important part of the local community. However, I have seen no substantive evidence to suggest that the production of the honey would stop if the appellant and his family did not live at the site, particularly given the lack of investigation as to whether the ability to get hot water at the appeal site would be feasible. Overall therefore I am not persuaded that a functional need for a dwelling to be located on the site has been demonstrated.
28. Saved Policy DC 2 requires that the unit and enterprise have been established for at least three years, have been profitable for at least one of them, are currently financially sound, and have a clear prospect of remaining so. No accounts were submitted as part of the planning application or subsequently with the appeal. This is perhaps indicative of the part time nature of the enterprise which has existed for the last 45 years while the appellant also held down a full time job.
29. I am aware though that part time concerns providing an additional income stream can constitute a valid bee keeping business according to the Bee Farmers Association¹. It was suggested by the Council at the hearing that in order to be considered as a bee farmer then 50 hives would need to be in production. The appellant stated that it was his intention to reach this figure with the number already having increased to 20 which had not been envisaged until 2019 in the appellants submitted business plan.
30. The business plan is basic but indicates that the operation of the site at 15 hives would give a profit of £12,600 which would supplement the appellant's pension. The proposal to increase to 50 hives would therefore generate a significantly greater level of income.

¹ Extract from Bee Farmers Association – What is Bee Farming? 2015

31. However the business plan does not include details of other sales such as wax. Furthermore, there are no costs identified within the plan such as the cost of new hives. At the hearing it was stated that a barter system would be in operation. Nonetheless I am not convinced by the submitted evidence that the substantial increase of the enterprise to 50 hives together with associated equipment would not result in some level of expenditure over and above a bartering system.
32. The business plan states that minimal marketing would need to be carried out as the appellant is well known. However, in order to sell honey from 50 hives would, in my opinion be a much greater concern than from 20 hives. It is likely therefore that an element of marketing would be required which would need to be costed in the business plan. Therefore I do not consider that the business plan paints a realistic picture of the likely income and expenditure. Accordingly I have not been persuaded that the business has been profitable, or that it would be financially sound in the future in order to provide a living wage for the appellant's son-in-law.
33. Some discussion was held at the hearing regarding the design of the proposed dwelling and whether it would be considered to be of an exceptional quality or innovative nature. The appellant stated that the dwelling would be designed to be zero carbon and suggested that an Inspector on another appeal had considered that to constitute an innovative design. However, the appeal decision was not submitted to me for consideration. Therefore I have to consider the proposal on the basis of the information before me. The appeal is in outline form with only access to be considered. There are therefore no definitive drawings showing the appearance and design of the proposed dwelling or any specific proposal to make the dwelling zero carbon. An assessment cannot therefore be made as to whether the proposal would meet the relevant criteria of saved Policy DC4 of the Local Plan or paragraph 55 of the Framework.
34. For the reasons above I conclude therefore that the proposal would not provide a suitable site for housing with particular regard to its location. It would therefore be contrary to saved Policies C2, DC2 and DC4 of the Local Plan, emerging Policy LP55 of the CLLP and paragraph 55 of the Framework in this respect. These require, amongst other things that isolated dwellings in the countryside should be avoided unless there is an essential need for a rural worker to live permanently at or near their place of work, they are located to provide access to public transport, walking and cycling or they are of exceptional quality or innovative nature of design.

Highway safety

35. The track serving the appeal site is narrow, unmade, has no footway and is unlit. It is also a bridleway, although the route of the path is in dispute adjacent to the appeal site. Nevertheless, there is agreement that the track is used by walkers and horse riders. I saw that there were limited passing places available along the track.
36. I have already found that there would only be a limited reduction in journeys to and from the site as a result of the proposals. Furthermore, there would be an increase in vehicle movements during the late autumn and winter months when the route would be particularly dark. Given my findings above, it is unlikely that residents of the existing houses would be walking along the track.

However as part of the route is a designated bridleway I cannot discount the possibility of it being used by walkers and horse riders. As a result I consider that there would be an increased risk of conflict between motorised vehicles and other users of the track, posing a threat of danger to those users.

37. The appellant refers to a decision on a planning application regarding the Royal Oak in Washingborough where an existing access was considered to be unsafe. However, as the likely car movements were deemed to be less for the proposed development than the existing public house the application was granted. I do not have any further details of the proposal and cannot be sure therefore that it forms a direct parallel to the appeal case particularly with regards to the state of the roads and the likely pedestrian and motor vehicle conflict.
38. For the reasons above, I conclude therefore that the proposal would be harmful to highway safety. It would therefore be contrary to saved Policy T4 of the Local Plan and emerging Policy LP13 of the CLLP. These require, amongst other things, that development does not adversely affect the safety of the people using roads, footpaths or bridleways and are located where travel can be minimised and the use of sustainable transport modes maximised.

Character and appearance

39. The appeal site is located within a woodland. There are large houses of various designs and styles, set in spacious plots together with a number of small businesses scattered throughout the woodland. The appeal site forms a substantial plot which is bounded by many mature trees located at the end of an unmade track. It has a clearing in the centre where there are storage containers for bee keeping equipment. It therefore contributes positively to the verdant, spacious character and appearance of the area.
40. I saw that there was clearly space to accommodate a dwelling in the open area of the site without having any significant impact on the surrounding trees which are covered by a Tree Preservation Order. It would be located some distance from the adjacent property maintaining the scattered nature of the dwellings throughout the woodland. Furthermore, I saw that because of its location and the number of trees around the site, there were very limited long distance views towards it. The proposed house would be visible for a short distance along the bridleway but no more than other houses along the track. In this respect therefore it would not be unique or unacceptable. Moreover the proposal would enable the removal of the container building which currently detracts from the character and appearance of the area.
41. I have had regard to appeal decision reference APP/R2520/W/15/3029982 which was drawn to my attention by the Council. I saw the site to which it refers at the time of my site visit. The Inspector considered that the provision of the three dwellings (net two dwellings) would be harmful to the character and appearance of the area. However, I saw that the site was a substantial open pasture within the wood and long views were available from the bridleway. Furthermore, those proposals involved the removal of hedgerow to facilitate an access.
42. Therefore I consider that there are significant distances between the two sites in terms of the number of houses proposed and the character and appearance of the existing site. Future applications would also need to be determined with

respect to the particular circumstances regarding the individual sites character and appearance.

43. For the reasons above therefore I conclude that the proposal would not be harmful to the character and appearance of the area. It would therefore be in accordance with saved policies C2 and C18 of the Local Plan and emerging Policy LP26 of the CLLP. These require, amongst other things, that development will protect the character of the countryside and not adversely affect the character or appearance of its surroundings and contribute positively to them.

Protected species

44. Skellingthorpe Old Wood is Ancient Woodland and designated as a County Wildlife Site. My site visit confirmed that the site is within a main wooded part of the area with significant tree cover. I consider that the combination of the nearby trees, together with the rural location, means the site has the potential to contain habitats that could serve both protected and non-protected species.
45. The appellant's extended phase 1 ecological survey was undertaken in December 2014 (the 2014 report). The report found that the site offered good potential for bat roosts and foraging opportunities. Furthermore, the surrounding area provides good quality habitat potential for amphibians and reptiles. No evidence of badgers was found. The report concludes that the development of the site based on the indicative layout would not be harmful to areas of potential habitat but an ecological walk over survey should be carried out about a month before any works are commenced.
46. The subsequent letter dated 17 October 2016 from the appellant's ecologist confirmed that he had visited the site in January 2016 and carried out a tree survey while also checking for bat roosts. As the tree survey is dated September 2015 and the ecologist's previous letter states that he visited the site in August/September 2015 I am taking the reference to January 2016 to be an administrative error. The letter goes on to confirm that he also looked for evidence of other protected species, having read the 2014 report. He found no significant signs of other species.
47. While I have had regard to the comments of the appellant regarding the nature of the later survey, the way the letter is worded, it seems to me that the principal purpose of the later survey was to look at trees and bat roosts with the ecologist "keeping an eye out" for evidence of other species. This does not suggest the depth of survey that was taken in relation to the 2014 report. As a result I cannot be sure that the submitted evidence gives an accurate up to date representation of protected species on the site.
48. In this case, there are nearby habitats which could provide a home for a number of protected species, such as bats, badgers, amphibians or reptiles. The lack of up to date ecological surveys means that there is an unacceptable level of uncertainty about how the proposal may affect protected species. The Framework indicates that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity and that opportunities to incorporate biodiversity in and around developments should be encouraged (Paragraph 118). This is confirmed by Paragraph 17 of the Framework, which details the core planning principles and indicates that planning should contribute to conserving and enhancing the natural

environment (bullet point 7). The Framework therefore makes it clear the importance the government attaches to conserving and enhancing biodiversity.

49. The lack of up to date information means that insufficient information exists for a decision maker to satisfactorily conclude that the proposed development would not result in material harm to protected species.
50. Accordingly, I conclude that the proposed development would be contrary to the provisions of the Framework, and saved Policy LW8 of the local Plan, which amongst other aims seek to conserve and enhance the natural environment.

Other matters

51. There was no dispute that there had previously been a house on the site. It was agreed at the hearing though that this use had been abandoned given the length of time that had passed since the demolition of the house.
52. The appellant had also received consent for a caravan for temporary residence in 1990 in association with his bee keeping business, but this had not been pursued at the end of the temporary period. I am not aware as to the specific circumstances which made the proposal acceptable at that time. In particular I note that the decision was taken prior to the adoption of the current Local Plan and the publication of the Framework. In any case I have determined the appeal based on its own merits.
53. The appellant raised appeal decision ref APP/N2535/D/10/2139772 in which the Inspector states that "it is an established planning principle that planning policies should be applied in the light of the particular circumstances of each case, rather than slavishly adhered to." In this instance I have had due regard to the circumstances particularly surrounding the appellant, his family and the nature of the proposal and the bee keeping business on the basis of the evidence put before me.

Balancing and conclusion

54. In considering the potential benefits of the proposal, I note that the new dwelling would contribute to the Council's five year housing land supply as required by the Framework. However, a net increase of one dwelling would be a small contribution so I afford this benefit only limited weight
55. In addition, the construction of the dwelling would derive some economic benefits but this would be for a limited time. Furthermore, given the small scale of the development, the contribution to the local economy from the spending power of future occupants is unlikely to be significant. While the proposal would provide employment for the appellant's son-in-law, the lack of clarity regarding the potential income within the business plan and therefore the level of wage available, limits the weight I can give this benefit.
56. The lack of harm to the character and appearance of the area, existing trees and hedges are not benefits justifying the development, but are a pre requisite of good design. I have already found that the benefit of a reduction in car journeys would be reduced due to the occupation of the house by the appellant's family and the likely dependence on the car for journeys to local services and facilities. I therefore give these benefits limited weight.

57. The proposed development would be in a functionally isolated location resulting in the inherently harmful effects I have already identified. It would also be harmful to highway safety. In addition I cannot be sure that the proposal would not be harmful to protected species. These impacts are contrary to both local and national planning policy to which I give considerable weight.
58. Furthermore, the appellant refers in his statement to the decline in the art of bee keeping and the number of people in the bee keeping profession. I do not doubt the appellant's commitment to, and enthusiasm for, bee keeping and that he has considerable skills to develop the current operation and contribute to the profession. Moreover it would be more convenient for the appellant if he were able to process the honey on site as part of his plans for the business. However, that does not amount to a functional need for a worker to be readily available at most times. As such I conclude that the case for the proposed house based on need is insufficient to justify an exception to policies designed to protect the countryside.
59. I have considered the benefits which would be derived from the appeal scheme but these carry limited weight. I therefore conclude that the considerable harm I have found would significantly and demonstrably outweigh the benefits I have identified when assessed against the policies in the Framework as a whole. Consequently the proposal is not sustainable development for which the Framework carries a presumption in favour. For this reason, and having regard to all other matters raised, I conclude the appeal should be dismissed.

Zoe Raygen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Rob Bradley	Agent
Nick Grace	Planning Consultant
Roger Morley	Appellant
Mrs April Baker	Appellant's daughter
Mr Graham Baker	Appellant's son-in-law

FOR THE LOCAL PLANNING AUTHORITY:

Steve Harvey	Area Planner, North Kesteven District Council
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DOCUMENTS

- 1 – Agreed Statement of Common Ground.
- 2 – Copy of saved Policy LW8 of the North Kesteven Local Plan 2007
- 3 – Inset Map 50 Skellingthorpe of the North Kesteven Local Plan 2007 showing appeal site, appellant's access route and the Sustrans cycle route
- 4 – Copy of extract from Bee Farmers Association – What is Bee Farming? 2015
- 5 – Appeal decision APP/R2520/W/15/3029982
- 6 – Appeal decision APP/N2535/D/10/2139772

DOCUMENTS SUBMITTED AFTER THE HEARING

- 1- Plan showing appeal site and public footpath
- 2- Letter from Christopher Barker dated 17 October 2016