The Planning Inspectorate

Appeal Decisions

Site visit made on 23 January 2017

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 31 January 2017

Appeal A: APP/C1760/C/16/3145859
Woodside Farm, Rectory Hill, West Dean, Salisbury SP5 1JL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Anthony Halfpenny against an enforcement notice issued by Test Valley Borough Council.
- The enforcement notice was issued on 19 January 2016.
- The breach of planning control as alleged in the notice is: Without planning permission the making of a material change in use of the land by the use of a steel portal frame building shown approximately in the position marked "X" on the plan (attached to the Notice) for the purposes of a dwelling house.
- The requirements of the notice are:
  1) To cease the use of the said building for the purposes of a dwelling house.
  2) To remove from the said building all domestic fixtures, fittings and appliances.
- The period for compliance with the requirements is six (6) months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed.

Appeal B: APP/C1760/W/16/3145854
Woodside Farm, Rectory Hill, West Dean, Salisbury SP5 1JL

- 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 Anthony Halfpenny against the decision of Test Valley Borough Council.
- The application Ref 15/02481/FULLS, dated 6 October 2015, was refused by notice dated 7 December 2015.
- The development proposed is change of use from AI building to residential.

Summary of Decision: The appeal is dismissed.

Procedural matters and background

1. The appeals concern the same development and thus I consider them together in my decision. Notwithstanding this, Appeal B was refused for three reasons and it is necessary to consider additional issues in respect of the planning appeal. The appeal by Mrs Halfpenny has lapsed because no fee was paid and accordingly shall not be considered. However this appeal was identical to that submitted by Mr Halfpenny and thus the issues before me remain the same.

2. Woodside Farm was purchased by the appellants in about 2002, and the main business is the raising of Connemara Stud ponies. The business also includes the processing of timber mostly for fence posts and for the provision of logs for

the domestic market[1]. At various times it appears that the appellants have also raised calves for onward sale and reared pigs. There were about a dozen calves on the holding at the time of my visit. The Connemara ponies were grazing in the paddocks and I saw one stallion within a stable. There were no foals or pigs visible. The calves occupy the stable building and a small open fronted barn. Within the largest building, the 'the L shaped barn', were 5 stalls and a room which appears to be used as a mess room, office and for tack storage. This room appears to have been in use as a rest room for supervising foaling in the early days of the stud enterprise at Woodside Farm.

3. The remainder of the barn is used for the storage of bales. The subject of these appeals is the change of use of an extension to the L shaped barn which was permitted in 2009. The approved use appears to have been as an artificial insemination (AI unit). The allegation of the Notice is the use of this former AI unit as residential accommodation. The associated planning appeal is for the conversion of this extension.

4. In 2005, a mobile home was permitted to support the equestrian business at Woodside Farm. This was approved for a temporary period for 3 years and the permission expired in May 2008. Applications for the erection of a permanent dwelling to replace the mobile home were refused in April 2008, September 2008, May 2009*, November 2010, May 2011*,and February 2014*. Those refusals marked with an * were subsequently dismissed on appeal.

5. Notwithstanding the temporary permission for the mobile home which expired in 2008 it appears that the appellants have remained living on site since 2005. Damen Associates say that the Council issued an Enforcement Notice in January 2015 and this resulted in the appellant moving from the deteriorating mobile home into the former AI unit.

6. The Test Valley Borough Revised Local Plan (2016) (RLP) was adopted after the refusal of planning permission and the issue of the Enforcement Notice, but in both cases, the emerging policies were relied upon as part of the decision making process. I must determine these appeals in the context of up-to-date policy and because the parties are aware of and have considered the recently adopted policy there will be no prejudice in my doing so.

Appeal A and Appeal B:

The main issue

7. The main issue in these appeals is whether or not there is an essential need for a rural worker to live permanently on the holding.

8. Policy COM10 of the RLP says that proposals for occupational accommodation for rural workers at or near where they work will be permitted subject to meeting various criteria. These include, in the context of an existing business which has been established for at least 3 years: firstly, an essential functional need based on the evidence of that business and for that dwelling and secondly evidence that the business is viable and established. I shall consider these in turn.

[1] It appears that the appellant intends to rent the timber yard out to another party though this may not have commenced to date.

Essential functional need

9. The Connemara stud business together with associated agricultural and forestry enterprises commenced on this site in about 2002 and as I have noted above initially benefitted from a temporary permission for the siting of a mobile home on the site. This was permitted because it was considered that there was an initial functional need for an on-site presence in order to build up the business.

10. However over the years that the business has operated there have been fluctuations in pony numbers and the intended expansion has not occurred. On the contrary animal numbers and foaling appear to have decreased. I acknowledge that due to global financial circumstances, and associated downturn in the value of horses, some consequential reduction was not surprising in the period around 2008-2012. But this trend seems to have continued even when prices stabilised so that stock numbers remained lower than originally forecast.

11. Consequently although, there had been initial agreement by the Council's agricultural advisors that an on-site presence was necessary in order that the welfare of animals could be assured, this judgment changed because of a lack of progress in the development on the business. However, Inspectors found in favour of the appellant, in terms of a functional requirement, in both the 2009 and 2011 appeals. However by the time of the 2014 appeal this changed. The Inspector opined, having heard detailed evidence over 2 days, that the functional test was no longer being met. At that time there were 3 stallions, 14 of the appellant's own horses, 2 young colts, 3 fillies and 5 livery horses; a total of 27 horses. In 2013 only one foal was born.

12. The appellant's evidence about the numbers of horses in recent years and the success in foaling appears to be inconsistent. The supporting statement submitted with the application, but dated October 2015, says that the number of breeding mares has continued to fall and livery has reduced to 2 horses. The appeal statement dated June 2016 says that 'foaling levels have increased with 4 this year (one born dead and one mare died during foaling). The appellant's business plan dated May 2016 further confirms the reduction in the Connemara pony herd but gives a different projection of 7 foals for 2016. The appellant's final comments dated July 2016 says that there are (only) 7 mares at the stud and that they are currently in foal. Later comments suggest that this is the number of foals expected for 2017 but this assertion is not verified. Neither is the length of the actual foaling season specified. The evidence is at best vague and uncorroborated by documentary records.

13. Despite the variations in stock numbers and the number of foals it is apparent that there has been a significant decrease in the number of horses on site from that in 2014, and the business plan forecasts that in the future the breeding herd will be limited to a maximum of 9-12 mature ponies (2 stallions and up to 10 mares). In these circumstances I find as a matter of fact that the functional need for an on-site presence has similarly reduced from that at 2014, and thus no longer justifies a permanent on-site presence. Moreover this is unlikely to change in the foreseeable future because the appellant's own forward projections do not now anticipate any increase to higher levels.

14. In terms of the calves, there is no evidence that these were on site at the date the Notice was issued. It is accepted in the business plan that calf rearing,

where the animals are bought in at 10 days old and fattened for 3-6 months, is an activity that can be expanded or contracted readily. I also saw that the calves occupy the buildings previously used for the horses and thus may well impact on the core business activities at Woodside Farm. In these circumstances I find that this agricultural activity does not alter my overriding conclusion that the functional need for a permanent on-site presence is not proven.

Viability

15. Before the business was established at Woodside Farm in about 2002 the appellant operated the stud from a different location. It therefore has had many years in which to become a viable and secure enterprise. Notwithstanding this I accept that the downturn in horse values around 2008-2012 was a matter outside the control of the appellant and thus this earlier period is of little relevance to the current circumstances.

16. The appellant says that in previous appeals and assessments there has been an unfortunate misunderstanding of what the minimum wage represents and what it provides for. Moreover in this appeal he suggests that the wage/profit does not need to cover 'housing' costs because the subject building has already been converted and thus there are no building costs to construct a dwelling and no need for any borrowing to pay for the conversion. Consequently it is argued that the profit, if it is to equate to a minimum wage, should be between £7,100 and £17,737[2].

17. I have been provided with accounts for the years ending October 2013, 2014 and 2015. These show the following profits, £5,053 (2013), £4586 (2014) and £1,074 (2015). Even if I was to accept that the 'living wage less housing costs equates to £7,100' as the appropriate target to achieve viability, the accounts show that not even this low level of profit has been achieved. I acknowledge that the business plan projects a substantial increase in profit but from the evidence I have before me, the appellant has not demonstrated that this is likely to be achieved. Moreover, there is no justification for selecting the lower figure for a minimum (or living) wage because the appellant is working and thus is not a pensioner. Consequently the profit (even accepting the suggestion of excluding provision for housing costs) should have been at least £17,737 if it was to be shown as viable.

18. Moreover, even if the calf rearing element is included, an activity which has commenced after the Notice was issued, anticipated profits of £2000, excluding any wage costs, would not make up the significant shortfall in the profits shown by the accounts. Neither is there any evidence before me that the wood yard has now been rented out to others and thus this potential stream of income (albeit with the loss of sales of wood products) cannot be taken into account at this stage.

19. Consequently, from the evidence before me, the appellant has not demonstrated that the business is viable and is on a secure footing.

[2] The former figure is said to be for a living wage for a pensioner couple and the latter for a couple employed at 1.5 FTE.

Conclusion on the main issue

20. RLP Policy COM2 says that outside the boundaries of the identified settlements development will only be permitted if it is essential for the proposal to be located in the countryside. RLP Policy COM10 says in turn that occupational accommodation for rural workers in the countryside will be permitted, subject to other criteria which are not determinative in this appeal, if there is an essential functional need for that dwelling, and the business is viable. For the reasons I have given above neither requirement is satisfied.

21. In coming to this conclusion I have taken account of the appeal decisions and agricultural appraisals of other rural enterprises both in the locality and further afield. But Policy COM10 gives a clear steer that each enterprise must be considered in the light of its own facts and thus comparisons with other sites, with different circumstances do not provide a precedent. As a comparison, the circumstances at, for example, Sinderkins Farm, are very different because the nature of that business which includes remedial farrier work and rehabilitation services for injured horses, is quite unlike the Connemara stud. In any event, it is a well-known premise, that appeals must turn on their own facts.

22. The National Planning Policy Framework (the Framework) says in turn that new isolated homes[3] in the countryside should be avoided unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place in the countryside. Because no essential need has been demonstrated, the use of the former AI unit for residential purposes conflicts with the aims of adopted policy and an underlying premise of the Framework.

23. The appellant has suggested that if I find that the tests of policy are not met I should grant permission for a temporary period to give the business an opportunity to develop. But the application subject of Appeal B was for a permanent permission and in any event the business has been in operation at Woodside Farm for about 14-15 years. There is nothing cogent before me to suggest a temporary permission would result in a financially viable business, and in coming to this finding I note that over the years business targets and projections have failed to materialise.

24. For these reasons my findings on the main issue weighs heavily against permission.

Other matters

25. The application subject of Appeal B was also refused for 2 other reasons; the impact on the New Forest Special Protection Area (SPA) and issues of highway safety.

26. The appellant says that he has lived at the appeal site since 2005 and thus there would be no increase in the use of the access or the impacts on the SPA. However, this occupation has not had the benefit of planning permission since 2008, and thus this argument has limited weight. Moreover because the appeal will fail on the main issue there is no need to consider either of these matters any further.

[3] Isolated in this context is taken to mean residential properties outside defined settlements.

Formal Decisions

Appeal A: APP/C1760/C/16/3145859

27. The appeal is dismissed, the enforcement notice is upheld, and planning permission is refused for the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/C1760/W/16/3145854

28. The appeal is dismissed.

Sukie Tamplin

INSPECTOR