
Appeal Decision

Site visit made on 18 April 2017

by Alex Hutson MATP CMLI MArborA

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

Decision date: 12 May 2017

Appeal Ref: APP/J1535/W/16/3164967

Disney Alpaca Stud, Barn Hill, Roydon, Harlow CM19 5LB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application under section 73A of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Sharon Taverner against Epping Forest District Council.
 - The application Ref PL/EPF/1485/16, is dated 25 May 2016.
 - The application sought planning permission for change of use of land to Alpaca Stud Farm with mobile home without complying with a condition attached to planning permission Ref PL/EPF/0492/09 granted on appeal Ref APP/J1535/A/09/2115187 dated 16 March 2010 and amended under appeal Ref APP/J1535/C/13/2210145 dated 4 July 2014.
 - The condition in dispute is amended condition No 4 which states that: On or before 31 July 2016, the residential use shall cease; the caravan and all materials and equipment brought on to the land in connection with the residential use shall be removed; and the land restored to its former condition in accordance with a scheme of work previously submitted to and approved in writing by the local planning authority.
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Decision

1. The appeal is dismissed and planning permission for change of use of land to Alpaca Stud Farm with mobile home without complying with a condition attached to planning permission Ref PL/EPF/0492/09 granted on appeal Ref APP/J1535/A/09/2115187 dated 16 March 2010 and amended under appeal Ref APP/J1535/C/13/2210145 dated 4 July 2014 is refused.

Preliminary matters

2. The appeal follows the failure of the Council to determine the planning application. The Council's appeal statement sets out the reasons why it considers the proposal would be unacceptable and this has formed the basis of the main issue.
 3. During my site visit, I observed a mobile home within the appeal site. The development is therefore in breach of the disputed condition. On this basis, I have dealt with the appeal under section 73A of the Town and Country Planning Act 1990. This is reflected in the banner heading above.
 4. The application was made on an application form which specifies that its purpose is for applications for the removal or variation of a condition following grant of planning permission. I note that the appellant states on the application form that in addition to seeking the removal of the disputed
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condition, approval is also sought for the construction of a permanent dwelling. A plan showing the location of the proposed permanent dwelling has been submitted. The appellant has also described how it would appear. However, such a development is outside the scope of an application under section 73A of the Town and Country Planning Act 1990 and would require a separate planning application to be made to the Council. I have therefore considered the appeal on the basis of the application to remove the disputed condition only.

Background and main issue

5. The appeal site lies within the Green Belt. Paragraph 89 of the National Planning Policy Framework (the Framework) sets out the categories of development which may be regarded as not inappropriate in the Green Belt, subject to certain conditions. A mobile home does not fall within any of these categories. As such, it would represent inappropriate development in the Green Belt. This is not a matter of dispute between the main parties. Paragraph 87 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 of the Framework states that substantial weight should be given to any harm to the Green Belt.
6. Planning permission was granted in March 2010 on appeal¹ for the change of use of land to Alpaca Stud Farm with mobile home. The change of use was found to be not inappropriate development within the Green Belt. Furthermore, the Inspector in that case concluded that there was a functional need for a worker engaged in the business to live at the site and that the business plan indicated that the enterprise would make a profit in year 3 and would therefore become viable. The Inspector considered that these factors provided the very special circumstances necessary to justify the mobile home at the time. However, condition No 4 imposed on the planning permission required a temporary period of 3 years for the mobile home. This was to allow the appellant the opportunity to demonstrate that the business was indeed genuine, economically viable and likely to endure.
7. The Council issued an enforcement notice in November 2013 for an alleged failure to comply with condition No 4 of the planning permission, on the basis that the longevity of the business had not been satisfactorily demonstrated. An appeal² was made against the enforcement notice. Whilst the appeal Inspector shared the Council's concerns, the enforcement notice was quashed and condition No 4 was substituted with a new condition to allow a further 2 year period for the mobile home. This was to allow the appellant the further opportunity to produce sufficiently robust evidence to demonstrate that the business was viable and likely to continue.
8. The removal of the disputed condition would effectively allow the permanent residential use of the mobile home. The main issue is whether the disputed condition is reasonable and necessary.

Reasons

9. As set out above, a permanent mobile home on the appeal site would be inappropriate development within the Green Belt. It should not be allowed

¹ Ref APP/J1535/A/09/2115187

² Ref APP/J1535/C/13/2210145

unless there are other considerations which, together, clearly outweigh the harm to the Green Belt by reason of inappropriateness, and any other harm, and which amount to very special circumstances which would be necessary to justify the proposal.

10. In addition to the harm by reason of inappropriateness, a permanent mobile home and associated domestic paraphernalia would result in a loss of openness to the Green Belt. It would also fail to assist with safeguarding the countryside from encroachment and thus would conflict with one of the purposes of including land within the Green Belt.
11. Paragraph 55 of the Framework seeks to avoid new isolated homes in the countryside unless there are special circumstances. The essential need for a rural worker to live permanently at or near their place of work in the countryside is identified as one such special circumstance. The appellant refers to Annex A of Planning Policy Statement 7 (PPS7) which sets out a functional and a financial test to determine any essential need for a permanent dwelling. Whilst PPS7 has been revoked and no longer has any status as national planning policy, it remains a useful basis for assessing an essential need in the absence of any substantive guidance within the Framework.
12. The Council appears to accept that the operation of the Alpaca Stud Farm creates a functional need for a residential presence on the appeal site at all times. Having regard to the evidence and the previous appeal decisions, I have no substantive reasons to consider otherwise. The Council's main concern relates to the long term viability of the business operation.
13. The appellant has submitted the profit and loss accounts for the business for the years ending 31 March 2014, 31 March 2015 and 31 March 2016. These accounts indicate a modest, progressive, pre-tax profit over these 3 years. The appellant contends that these accounts demonstrate that the business is viable and therefore demonstrates the essential need for a permanent residential presence on the appeal site. Nevertheless, as pointed out by the Council, these accounts are unaudited. As such, I cannot be confident that they portray the actual financial situation of the business. I also share the concerns of the Council that even if these accounts were accurate, any unforeseen costs or decrease in the value of the product could see any profit margin reduced to an unsustainable scale.
14. Furthermore, I have not been presented with any detailed business plans relating to the future operations of the business. The appellant considers there is little to be gained by formulating new business plans. In addition, it is alleged that accountant advice and experience has shown that the optimum return on head count is to maintain the current number of alpacas. Nevertheless, there is no compelling evidence to substantiate this claim. In the absence of such evidence and of any detailed business plans, this adds considerably to my lack of confidence in respect of the financial situation of the business and whether it is likely to continue for the foreseeable future.
15. I recognise that by not allowing the removal of the disputed condition, this would be likely to bring about the end of the business given the functional need for a worker on site at all times. Nevertheless, there is no presumption that a temporary grant of planning permission should subsequently be granted permanently. Moreover, the Inspector in the previous enforcement appeal highlighted that it is rarely justifiable to grant a second temporary permission

and in that case, made an exception to allow the appellant to produce sufficiently robust evidence to demonstrate the viability and longevity of the business. The appellant should therefore have been well aware of the risks posed in the absence of producing such evidence.

16. By virtue of a lack of audited accounts and detailed business plans, I consider that the evidence is insufficiently robust to demonstrate the viability and longevity of the business. Consequently, there is insufficient evidence to support an essential need for a permanent residential presence on the appeal site. Moreover, the removal of the disputed condition would run the risk of an isolated and unjustified permanent residential use in the countryside should the business cease to exist. Accordingly, no very special circumstances exist to justify inappropriate development in the Green Belt. Thus, I conclude that that the disputed condition is reasonable and necessary to protect the Green Belt from harm. It should therefore be retained.
17. Retention of the disputed condition would therefore accord with the abovementioned requirements of the Framework. It would also accord with saved Policies GB2A- Development in the Green Belt and GB17A- Agricultural, Horticultural and Forestry Workers' Dwellings of the Epping Forest District Local Plan Alterations 2006 which reflect these requirements.

Conclusion

18. For the reasons set out above and having regard to all other matters, I conclude that the appeal should be dismissed and planning permission refused.

Alex Hutson

INSPECTOR