
Appeal Decision

Site visit made on 14 June 2017

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 21st July 2017

Appeal Ref: APP/R2520/W/17/3170559

Land at Kelvindale, 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 planning permission.
 - The appeal is made by Mr Stephen Mayo against the decision of North Kesteven District Council.
 - The application Ref 16/0903/FUL, dated 17 July 2016, was refused by notice dated 8 September 2016.
 - The development proposed is dwelling (agricultural).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council has indicated that since the determination of the application, the Central Lincolnshire Local Plan (CLLP) (2017) has been adopted and that this has replaced the policies in the North Kesteven Local Plan (2007)(NKLP). For the avoidance of doubt, I have considered the appeal against the CLLP.

Main Issue

3. The main issue is whether there is an essential need for a rural workers dwelling at this location.

Reasons

4. The appeal site is a mixture of woodland and open fields. There is no dispute between the parties that the site lies outside any defined settlement and is within the open countryside. There are sporadically located dwellings in the vicinity of the site in large plots, but the area as a whole has an overwhelmingly rural character. Paragraph 55 of the National Planning Policy Framework (the Framework) states that isolated dwellings in the countryside should be avoided unless they meet one of a list of special circumstances. One of these is whether there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.
5. CLLP Policy LP2 establishes a spatial strategy and settlement hierarchy which limits development in the countryside to that which essential to the effective operation of a list of specific rural uses. CLLP Policy LP55 sets out a list of criteria that must be satisfied to justify a new dwelling in the countryside. These policies are broadly consistent with the Framework, though Policy LP55

sets out in more detail what information would be expected to be provided by the applicant to demonstrate that an essential need exists.

6. The appellant has not sought to provide any justification for the dwelling on these grounds, or in relation to the specific requirements of the superseded NKLP. The only evidence put forward for the need for a dwelling in this location is the general importance of agriculture to the economy of North Kesteven, and the number of agricultural workers in the district. This only refers to a general potential for appropriate occupation of the building. There is nothing to suggest the development would be related to any specific on-going or proposed agricultural or rural enterprise as required by the policy. This is not sufficient evidence to demonstrate an essential need exists in terms of Policy LP55. Accordingly, the development would conflict with CLLP policies LP2 and LP55 and paragraph 55 of the Framework which seek, amongst other things, to resist isolated homes in the countryside where there are no special circumstances.
7. Planning law¹ requires that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The appellant does not consider it necessary to meet the requirements of the CLLP and argues that there are sufficient material considerations in this case to permit the development. There is an extant planning permission for an agricultural worker's bungalow in close proximity to the location of the development. The appellant has argued that the proposal would, in effect, be a like-for-like replacement for the permitted bungalow. As a result, there would be no net increase in agricultural worker's dwellings on the site.
8. The first thing to consider when determining the weight to be given to a fallback position is whether there is a greater than theoretical possibility that the alternative development will take place. In this case, the permission for the bungalow dates back to 1965. A Certificate of Lawful Use or Development (CLUD) was issued in January 2013 which confirmed that the development had started and thus remains capable of being completed. The original permission for this bungalow also had a personal condition attached to it in relation to a planned, but never completed, poultry enterprise on an adjacent plot of land. This condition was removed following an application in 2016, but the agricultural worker condition remains in place.
9. There are no signs of any structures or building works on the site or any other investment associated with the bungalow or other associated enterprises. The permission has been extant for over 50 years already with no sign of it being completed. This provides me with little confidence of the intention to complete the building of the bungalow. Moreover, some of the reasoning given for the need for a new permission is that the development would allow for the space and energy efficiency requirements of modern families. This is suggestive that the extant bungalow is not necessarily of an appropriate size or standard for modern needs. This only adds to my view that it is unlikely to represent a realistic alternative to the appeal proposal. The appeal itself might suggest a desire to build something on the site. Nonetheless, the fact there is no rural business tied to the site, either in terms of the extant or proposed dwelling,

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990.

and the fact that any development would be somewhat speculative in nature also casts doubt on the reality of the fallback being fully completed.

10. The time the appellant has had to complete the extant scheme without doing so does not suggest to me that there is a strong likelihood of it ever being completed or that it is any more than a theoretical possibility that the site would ever be occupied by an agricultural worker. My attention has been drawn to a previous appeal on this site² where the Inspector also gave little weight to the fallback position. In that case, the proposal was for three new dwellings which had no agricultural ties. As such, there was no direct relationship between the proposal and fallback position. Nonetheless, the Inspector's general observations about the likelihood of development taking place are consistent with my own.
11. The extant permission is sited within an area of mature woodland. The appellant has argued that the completion of the extant permission would result in the loss of important trees and the siting of the proposal in the open field would have less impact on the local amenity and biodiversity value of the site. The Council has not disputed this.
12. The effect on the recreational landscape value of the area resulting from the extant permission would not necessarily be significant in its own right. The permitted bungalow would be well screened from the public footpaths and cycle paths that pass by the site and it is not unusual to see isolated dwellings scattered sporadically around the local landscape. Nonetheless, while the extant bungalow does not appear to be within the root protection area (RPA) of any of the trees, I recognise that development in this location is more likely to have a harmful effect than the proposal, which is beyond the tree line in an open field. I have therefore given this factor some weight, though when taking all matters into account it does not persuade me that this justifies the delivery of a new dwelling that is in conflict with the development plan.
13. Notwithstanding my views on the likelihood of the extant permission being completed, if I were to allow the appeal there would appear to be nothing to stop both dwellings being built. They do not share the same plot and thus the original permission would not be extinguished by the appeal scheme. An existing planning permission cannot be revoked by condition and the only way to ensure the extant permission would not be completed is through a planning obligation. I have not been provided with any form of legal agreement regarding this matter. Therefore, whilst I consider only moderate weight should be given to the fallback position, without such a mechanism in place allowing the appeal would open up the prospect for two agricultural worker's dwellings in this location without any clear or up to date justification for one under current national and local policy. In such circumstances, it would not be possible to consider the appeal proposal as a 'replacement' dwelling in any event.
14. The Council has also raised concerns over the size of the proposed dwelling. My attention was drawn to a number of examples of dwellings in the area which were granted permission subject to agricultural workers conditions. Some of these appeared somewhat larger than what is proposed here. Whilst I do not have the full details of these developments, I could see that many are as large, or larger, than the proposal. No specific policy or guidance has been

² Appeal Reference: APP/R2520/W/15/3029982

provided on how large a rural worker's dwelling should be. The dwelling would not be overly large in terms of modern living standards or compared to other dwellings in the locality. As such, in the event the appeal had been successful for other reasons, I would not have found against it in terms of its size.

15. Nonetheless, this does not alter the fact that there is no justification for the development in its own right and I do not consider the extant permission provides a sufficient material consideration to outweigh the conflict with policy identified above.

Other Matters

16. Reference is made in the appellant's evidence to other 'replacement' dwellings in the area having been granted permission. I do not have all of the details for these schemes and thus cannot confirm with any certainty that the circumstances of each dwelling are directly comparable to the appeal proposal. The Council's evidence does however make reference to there being newer, larger dwellings in the area that were replacements for smaller original dwellings. These would not reflect the circumstances of this appeal, however, as there is nothing tangible to replace and no substantive evidence that there ever realistically would be.
17. While I sympathise with the appellant in terms of there being other dwellings that have been permitted in the area, the requirements of local and national policy in relation to rural worker's dwellings are specific in nature. Having judged this appeal on its own merits, the examples provided do not alter my overall conclusions.

Conclusion

18. Taking all of the above matters into account, in the circumstances of this appeal, the material considerations considered above do not justify a decision other than in accordance with the development plan. For this reason, the appeal should be dismissed.

S J Lee

INSPECTOR