The Planning Inspectorate

Appeal Decision

Hearing Held on 27 June 2017

Site visit made on 27 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: 2nd August 2017

Appeal Ref: APP/P3040/W/17/3168150
OS Field 3962, Barnstone Lane, Granby, Nottinghamshire NG13 9PW

- 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 for planning permission.
- The appeal is made by Mr P Kerry, T & S Nurseries against Rushcliffe Borough Council.
- The application Ref 16/00542/FUL, is dated 26 February 2016.
- The development proposed is the erection of rural workers dwelling and agricultural/food production building.

Decision

1. The appeal is allowed and planning permission is granted for the erection of rural workers dwelling and agricultural/food production building at OS Field 3962, Barnstone Lane, Granby, Nottinghamshire NG13 9PW in accordance with the terms of the application, Ref 16/00542/FUL, dated 26 February 2016, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr P Kerry, T & S Nurseries against Rushcliffe Borough Council. This application is the subject of a separate Decision.

Preliminary Matter

3. The Council has indicated that if they had been in a position to determine the application, it would have been refused on the grounds that it had not been demonstrated the business was financially viable and therefore did not pass the financial test in Policy HOU4 of the Rushcliffe Borough Non-statutory Replacement Local Plan (RBLP) (2006).

Main Issue

4. The main issue is whether or not there is an essential need for a rural worker to live permanently at this location.

Reasons

5. The appeal site is a large area of agricultural land with a diverse range of uses, the most extensive of which is a rabbit breeding enterprise. There is also a small vineyard on the site and areas given over to tree planting. There are a

number of small scale buildings and other structures across the site associated with the rabbit business and an unauthorised mobile home.

6. A previous appeal decision[1] on this site allowed the development of a log cabin for a three year temporary period. The Inspector in that case found both a functional need for a worker to live on or near the site which could not be met by alternative accommodation and that the financial soundness of the business had been demonstrated. However, as the rabbit breeding business was not fully established, a temporary permission was considered appropriate to assess whether it would be sufficiently sustainable to justify a permanent dwelling. While the log cabin was not built, this appeal is still a significant material consideration as it established the principle of a dwelling in this location.

7. RBLP Policy HOU4 seeks to resist new dwellings outside settlements unless they are necessary for the purposes of agriculture and meet a number of specific criteria. This policy is not part of a statutory development plan. Moreover, although it broadly reflects the requirements of the National Planning Policy Framework (the Framework), it does not fully reflect paragraph 55. This states that local authorities should avoid isolated homes in the countryside unless there are special circumstances, such as the essential need for a rural worker to live permanently at or near their place of work in the countryside. The combination of its non-statutory status and inconsistency with the Framework means that little weight can be given to Policy HOU4. In such circumstances, the policies of the Framework are significant material considerations.

8. The main parties have also referred to the tests set out in Annex A of cancelled Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7). While they recognise this also carries little weight, they argue that it is useful guidance for considering the tests set out in Policy HOU4. The Framework itself does not define what constitutes an essential need. However, it would be reasonable to assume that there would have to be a physical or functional need for someone to be on the site at most times to meet the requirement. It would also be reasonable for there to be evidence that the business is likely to endure in the long term, so as to reduce the risk of the dwelling becoming an isolated home in the countryside contrary to paragraph 55. As such, while the tests in Policy HOU4 and PPS7 cannot be relied on, the concepts of functional need and financial viability remain useful in considering whether an essential need exists.

9. There is no dispute between the main parties that the functional need identified by the previous Inspector remains in place. This includes the findings of the two agricultural experts employed by the Council to assess the application. It is apparent that some of the more diverse range of enterprises on the site have either not been as successful as originally envisaged or do not form a significant part of the overall activity on the site. Nonetheless, my reading of the previous decision is that the established functional need was primarily related to the rabbit breeding business. Any weight given to other activities on the site did not appear to have a significant bearing on the decision.

10. The rabbit business appears to have become established and grown steadily since it started trading. There were around 240 breeding does on the site at the time of the Hearing, along with followers and bucks. This is broadly consistent with the expectations that were put to the previous Inspector and I

[1] Appeal reference: APP/P3040/A/12/2175713

saw nothing on my site visit which would make me question this figure. I also saw significant signs of investment in the business including fencing, buildings for the storage of feed and processing the rabbits and other associated paraphernalia and machinery. I also saw areas for the sale of pets, which is indicative of the more diverse range of sales that have been suggested. There was nothing to suggest that this is not a real or flourishing business or that the conclusions drawn by the previous Inspector do not remain valid.

11. A worker has lived on the site throughout, albeit in an unauthorised mobile home. This, or another like it, has been on site during the entire lifetime of the business. There is no substantive or corroborated evidence to suggest the person living in the mobile home is not the manager of the business, is not permanently employed or does not carry out a significant proportion of the work. There will inevitably be periods where the full time manager has some assistance. This does not mean that there is no functional need for a full time, permanent worker to be living at, or near, the site. Neither does it mean that any functional need can be met in another location. Again, there is nothing before me which suggests I should come to a different conclusion on alternative accommodation in the wider area than the previous Inspector.

12. Factors such as security and work associated with the birthing process, the health and well-being of stock, the management of predators and contact with customers remain as relevant now as they did previously. I am satisfied that there has been no material change in the functional need identified for the breeding business from the previous appeal and thus the relevant aspects of Policy HOU4 and PPS7 are met.

13. The financial data provided by the appellant are not fully audited accounts and are marked draft. Nevertheless, I am satisfied that they were the same as those that were subsequently signed off and that they provide a satisfactory level of detail for me to make a decision in the context of paragraph 55. The business has been established for over three years and its turnover has increased from around £63,000 in 2014 to just under £100,000 in 2016. When costs are taken into account, this translates into a profit of £19,388 in 2014, £28,098 in 2015 and £43,474 in 2016. These returns appear better than what was put to the previous Inspector and suggest that the business is performing well. While interested parties may question the validity of these returns, there is nothing substantive before me to suggest that I should not consider them as a truthful or accurate record of the rabbit breeding business over the last three years.

14. There are few, if any, other rabbit breeding enterprises of this type in the country which makes it difficult to find comparators. The main parties have referred me to information in the John Nix Farm Management Pocketbook (2017) which contains figures for anticipated costs and returns for rabbit breeding. The information within this is based on data provided by the appellant. Unsurprisingly, the figures in this document appear to be broadly consistent with the financial return submitted to the Council and thus provide some measure of comfort. That this independently produced document supports the appellant’s case is not a reason to question its robustness. The turnover of the business may surprise some, but I find no reason to conclude that such returns are not feasible when taking into account the fact not all sales are wholesale and both the amount of meat produced and mortality rate

of litters has been performing better than might be suggested by other sources.

15. Nonetheless, I have had regard to the analysis provided by local residents and taken account of the Council's concerns. Over time, it is likely the number of rabbits on the site, the costs of feed, veterinary care and employment will fluctuate, as will the price of wholesale meat, the revenue from retail or other sales, the amount of meat achieved from each rabbit, the size of litters, the mortality rate of each litter and other costs associated with the enterprise. This is the normal nature of business. It is not necessary in my view to carry out a forensic analysis of each of these factors in order to determine whether the business is likely to endure in the long term. There is clear evidence that the business has become established over a period of time and is profitable.

16. The number of full time equivalent workers on the site is likely to be somewhere between 1 and 1.5. The nature of the work suggests salaries are likely to be nearer to the £17,130 minimum wage suggested in John Nix rather than the £22,831 preferred by the Council, which includes overtime. The financial returns do not generally support the Council's view. Employment costs increased significantly in 2016 owing to the temporary incapacitation of the manager and the need for additional assistance. This figure more closely resembles the 'worst case scenario' put forward by the Council, yet a significant profit was still returned. It is apparent, therefore, that the performance of the business would be capable of accommodating fluctuations in employee needs and salaries.

17. The fact that much of the feed is fresh grass from the site itself, which is essentially free, accords with my observations of the site and may explain lower than expected feed costs. I also see no reason why costs associated with butchery could not be subsumed within employee costs. It was put to me that a recent Trading Standards report states that no slaughtering takes place on the site. This report was not submitted and thus I am satisfied with the appellant's explanation of what takes place on the site. Any issues over licensing of such activities are not matters before me.

18. No veterinary costs have been recorded thus far as there has been no need. The precautions taken to ensure the rabbits do not contract or transmit disease appear sensible and include investments in such things as fencing. Issues around spotting and treating disease are part of the functional need and, to an extent, would also be subsumed within staff costs. Nonetheless, even factoring in the worst case from the local resident's analysis, this would be unlikely to affect overall viability, even when other costs are included.

19. I am equally satisfied that the appellant's explanations for the fluctuations in other costs are sensible, robust and would have no significant bearing on the long term survival of the business. This is a viable on-going concern capable of accommodating fluctuating costs without any undue threat to its viability. Even if taking a more pessimistic view of outgoings than has been the case thus far, there would still be significant levels of headroom within the figures to remain profitable. In coming to this conclusion, I have been mindful that rabbit breeding for meat is not a common enterprise and is in its infancy in this country. The risk associated with disease is also noted. Nonetheless, while these factors create an element of risk, I do not consider them sufficient to justify withholding planning permission.

20. There would be no issue in funding the dwelling, either in terms of getting an appropriate mortgage or using funding from within the wider business of the appellant. Suggested build costs are logical and any reasonable cost of repayment should be within the surplus shown for the last three years. While there is no specific reference in either Policy HOU4 or PPS7 to funding agricultural buildings, this would remain a cost to the business that would affect its viability. As such, there is no reason in principle why consideration should not be given to whether or not the costs associated with this part of the development would undermine viability.

21. The cost of the agricultural building would be somewhat lower than that of the dwelling. It is of a relatively simple design and construction and would use more basic materials. There is no reason why funding for the building would not be forthcoming and it would be reasonable to assume that it could facilitate growth of the business or assist in making existing processes more efficient, thus increasing revenues. In addition, unlike the essential need of the dwelling, there would appear to be no necessity for the agricultural building to be constructed in order for the business to continue as at present. As such, it would presumably only be constructed if and when it was affordable. In any event, the agricultural building should not be considered an impediment to the long term viability of the business.

22. Taking all of the above matters into account, I find there is a functional need for a person to be present on the site and that, on the balance of reasonable probability, the business is of a scale and profitability that suggests it would continue to be a viable concern even with the development in place. Accordingly, I find that there is an essential need for a rural worker to live permanently in this location and there would be no conflict with paragraph 55 of the Framework as a result. Notwithstanding its status and the limited weight attributed to it, there would also be no conflict with Policy HOU4 in terms of the functional and financial requirements.

Other Matters

23. Policy HOU4 and PPS7 include reference to the size of the dwelling being appropriate to the business. This is not reflected in the Framework, but in any event the Council does not object to the size of the dwelling. Nonetheless, concerns were raised that it would be too large for an agricultural dwelling. The Council confirmed at the Hearing that there is no scientific way of assessing the appropriate scale of an agricultural dwelling and that agricultural dwellings of a similar size have been allowed elsewhere in the borough. In my experience, the size of the dwelling should be able to provide a reasonable level of accommodation and should not be of such a size that the business could not afford to construct it. I have already concluded it would be acceptable in this latter regard.

24. While it may be argued that all that is necessary for a rural worker is one bedroom, there is no reason why the family of the worker should not be permitted to live with them. Irrespective of the dispute of the exact level of floorspace provided, the dwelling would not be disproportionately large for a family dwelling and thus I see no conflict with Policy HOU4 in this regard.

25. The development would inevitably lead to some change to the appearance of the site. However, change does not always lead to harm. It is not unusual in a rural landscape to see agricultural buildings of the type proposed here. It is

neither of a scale or design incongruous to the character of the site, which is clearly that of a working rural enterprise. Paragraph 28 of the Framework states that the sustainable growth and expansion of all types of business and enterprise in rural areas should be supported, including through well designed new buildings. The use of the agricultural building would be appropriate and complementary to the main activity on the site and would thus meet the Framework's objective.

26. Similarly, where an essential need has been demonstrated, it cannot simply be argued that the delivery of an isolated dwelling is inherently harmful to the intrinsic beauty of the countryside and unacceptable in principle. There is an expectation in such cases that the development would be in the open countryside. The design and materials proposed for the dwelling are appropriate to the broad character of the area and would not appear out of place in the wider environment. There is also a significant level of screening from soft landscaping around the site. Whilst I accept this would not completely hide the buildings, particularly from higher land in the village or public footpaths around the site, it would nevertheless help to soften the overall impact of the development.

27. The development would be well outside the Granby Conservation Area (GCA) and well separated from the main built envelope of the village. It is also not within any identified areas of landscape value or protection. The agricultural land around the village helps to reinforce the rural character and setting of the village, but its role in this would not be undermined or harmed by the development. There would therefore be no harm to the setting of the GCA.

28. Matters relating to the health of the rabbits and any measures in place for resisting the spread of disease are not matters before me. Outside of any financial matters relating to the viability of the business, neither do they relate specifically to the development of the dwelling or agricultural building themselves.

29. While a permanent dwelling may facilitate the continued use of the site for rabbit breeding, there is nothing substantive before me that demonstrates any existing risks to local health and safety or that the development would result in any additional risks. Any matters relating to the storage of firearms are outside the scope of this appeal. The site is also well separated from the village and any nearby residents. There is no evidence that current activities are causing problems in terms of the living conditions of nearby residents and I do not consider the development would lead to such harm, particularly in terms of noise or disturbance.

30. Neither the Council nor Highway Authority objected to the development on highway safety grounds. There is good visibility in both directions from the existing access and levels of traffic are unlikely to increase significantly. There is no reason to conclude that the development would cause or exacerbate any highway safety risks.

31. There has been some suggestion from interested parties that the development is a pre-cursor to further development on the site. My decision has been based on the evidence before me, my observations of the site and the requirements of local and national policy. Any proposals in the future would be assessed on the same basis and thus such assertions have had little bearing on my decision.

Conditions

32. I have considered the Council's suggested conditions in accordance with the guidance contained in the Planning Practice Guidance (PPG). In addition to the standard condition which limits the lifespan of the planning permission, I have imposed a condition specifying the relevant drawings as this provides certainty.

33. I have imposed the suggested condition relating to agricultural occupancy to ensure consistency with national policy. Considering the nature of the essential need that exists, the specific reference to an agricultural worker is appropriate. In the interests of the character and appearance of the area, I have imposed a condition requiring the approval of details of materials to be used in the construction of the development.

34. A condition removing permitted development rights for the enlargement of the building is justified in this case to ensure the dwelling remains of a commensurate size for an agricultural business. I have removed the reference to 'alterations' from the suggested wording as this would be unduly onerous.

35. The Council suggested a condition limiting the use of the agricultural building to the use applied for and that it should not be used for any other purpose. As any use other than that applied for would need some form of approval in any event, this condition is unnecessary.

Conclusion

36. For the reasons given above I conclude that the appeal should be allowed.

S J Lee

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Zack Simons, Of Counsel	Instructed by Mr Philip Kerry
Philip Kerry	T & S Nurseries
Marc Willis BTP MRTPI MBIAC	Willis & Co
Peter Williams BSc MBIAC	Reading Agricultural Consultants

FOR THE LOCAL PLANNING AUTHORITY:

Joe Mitson	Rushcliffe Borough Council
A G Coombe	Sanham Agricultural Planning Ltd

INTERESTED PERSONS:

Hugh Sinclair	Local resident
Stan Taylor*	Local resident (*did not attend post-lunch session)
Philip Straw	Parish Council and local resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Rushcliffe Borough Council – written costs response
2. Analysis of 2016 Accounts for T&S Rabbit Farm, Granby (provided by Mr Taylor)
3. Extract from John Nix Farm Management Pocketbook 2017 edition

Schedule of Conditions

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2696/01/A; 2696/02/A; 2696/03/A; 2696/04/A; 2696/05.

3) Development shall not proceed beyond damp proof course level until such time that details of the facing and roofing materials to be used on all external elevations of the development hereby approved have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

4) The occupation of the dwelling hereby permitted shall be limited to a person solely or mainly working, or last working, in the locality in agriculture, as defined in Section 336 of the Town and Country Planning Act 1990, or in forestry, or a widow or widower or spouse of such a person, and to any resident dependents.

5) Notwithstanding the provisions of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), there shall be no enlargement of the dwelling hereby approved.