The Planning Inspectorate

Appeal Decision

Hearing Held on 12 July 2017

Site visit made on 12 July 2017

by John Morrison BA (Hons) MSc MRTPI

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

Decision date: 14th August 2017

Appeal Ref: APP/R1038/W/17/3168097
Manor Farm, Hut Lane, Killamarsh S21 1BQ

- 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 A Habberjam against the decision of North East Derbyshire District Council.
- The application Ref 16/00707/FL, dated 5 July 2016, was refused by notice dated 28 October 2016.
- The development proposed is the erection of an agricultural workers dwelling.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. There was some detailed initial discussion at the hearing with regard to the correct plans since there had been a number of revisions to those on which the Council had based their decision. In broad terms, suggested changes related to a minor re orientation of the building relative to its side boundary, the marking of fenced boundaries and the addition of annotation relating to existing structures on the site. The latter of these changes were copies that were produced at the hearing.

3. The Council made clear in their evidence that they did not object to the consideration of the revised plans and were satisfied at the hearing that the annotations relating to the existing structures did not fundamentally alter the case for discussion. I am inclined to agree with this approach, adding that, largely for this reason, no other party would be prejudiced by my acceptance of the most recent set of plans. Further new pieces of evidence were presented at the hearing and I refer to these in my findings. They related in the main to confirmative evidence that expanded on arguments that have already been made.

4. The Council also confirmed at the hearing that the draft local plan is currently at a consultation stage which is, in their opinion, still relatively early days. The date for adoption is still therefore some time away.

Main Issues

5. There are four main issues. These are:

- Whether the proposed development would be inappropriate development in the Green Belt;
- The effect of the proposed development on the openness of the Green Belt;
- The effect of the proposed development on the character and appearance of the area; and
- If the proposed development would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations such as, in this case, whether or not there is an essential need for an agricultural worker to live permanently at the appeal site so as to amount to the very special circumstances necessary to justify the proposed development.

Reasons

Inappropriate Development in the Green Belt

6. The Framework[1] considers the construction of new buildings in the Green Belt to constitute inappropriate development[2]. As the erection of a dwelling that does not fall within any of the exceptions listed in paragraphs 89 or 90 of the Framework, the Council considers that the scheme would be inappropriate development.

7. The appellant contends that the building is to be erected for the purposes of agriculture to, in effect, serve and support the agricultural function of the enterprise. Thus it would fall within the exception stated as the first bullet point of paragraph 89 which considers buildings for agriculture and forestry to not be inappropriate development in the Green Belt.

8. To my mind, and for the purposes of the Framework, the construction of new buildings is inappropriate development. Agricultural buildings may not be, but dwellings associated with an agricultural use are dwellings first and foremost and it is purely their occupancy that makes them tied to an agricultural use. By definition, they would be a dwelling (new building and inappropriate) by association they would support the agricultural use. In essence, they would not be for an agricultural function in themselves in the same way as say a barn, storage building or cow shed would be. To consider a dwelling such as the one proposed as a building for agriculture therefore would be stretching the definition too far.

9. Taking this into account, the proposed development would be inappropriate development in the Green Belt. This would be harmful by definition[3].

The Openness of the Green Belt

10. Openness is an essential characteristic of the Green Belt. Not limited to visual matters, there is also a spatial dimension to openness which can be taken to mean the absence of built form.

[1] The National Planning Policy Framework 2012
[2] Paragraph 89 of the Framework
[3] Paragraph 87 of the Framework

11. As I alluded to above, at the hearing the appellant presented a copy of the revised proposed block plan which showed the dotted outlines of existing structures on the site which are proposed to be removed to make way for the dwelling. From this information and my own observations on site, these structures comprise three steel shipping containers, one sheet metal clad shed, one timber domestic style shed, one lorry trailer body and a dog enclosure.

12. In the wider visual sense, the proposed dwelling would be relatively well screened by substantial boundary planting and the much larger scale agricultural buildings that make up the existing yard. In addition, the existing structures would make up a combined volume and floor space to which one could legitimately compare with the same of the new dwelling. This would not however tell the whole story.

13. Some of these structures are not buildings in the true sense and the new dwelling would represent a noticeable increase in scale, bulk and mass over them as well as an increased degree of permanence. This, in association with the establishment of enclosed gardens to the front, side and rear, hardstanding for vehicular parking and other domestic related paraphernalia would result in a net decrease in the spatial aspect of the Green Belt's openness, an effect which would be emphasised by the largely undeveloped nature of the appeal site as it currently is.

14. The loss of openness in the way that I have described it would result in some harm, harm to which I attribute substantial weight as per paragraph 88 of the Framework. This harm would be in addition to that which would arise out of the inappropriateness of the proposed development.

Character and Appearance

15. The existing structures adjacent to what would become the garden of the dwelling aside, the parcel of land on which it would be built is largely undeveloped. It is slightly elevated from the yard which comprises a series of adjoined and detached utilitarian designed buildings that house livestock, feed and machinery. The site is laid to grass, is overgrown in some places and high hedges and trees make up the boundaries.

16. The existing planting goes a long way to screening the majority of the existing buildings on the site. Notwithstanding this, the proposed dwelling would be noticeably smaller in scale relative to them. Some views of the dwelling may be available from the closest dwellings that front Mansfield Road but these will be read in the context of the already built up yard. The dwelling itself is of a relatively modern design in a straight forward two storey rectangular layout with a gable roof. Agreement of appropriate materials aside, I do not find it unduly harmful. The establishment of the residential curtilage would be contained within the confines of the existing yard.

17. Taking all of the above matters into account, I am content that the proposed dwelling would not be harmful to the rural characteristics of the countryside and thus it would comply with saved Policy GS6 of the Local Plan[4]. Being a lack of harm however it cannot be used to weigh against harm, this is therefore a neutral matter in my considerations.

[4] North East Derbyshire Local Plan 2005

Other Considerations

18. Amongst other things, paragraph 55 of the Framework suggests that isolated new dwellings in the countryside may be permitted where there is an essential need for a rural worker to live permanently at or near their place of work. There are two key elements to this test. Firstly that the need is essential, secondly that it is permanent.

19. The existing enterprise is a livestock operation, keeping a herd of cattle and some sheep. It is small in the grand scheme but this is not to be negative or downplay its importance. There is also what evidently comprises a smaller part of the business which is renting out land for third parties to graze horses.

20. The younger cattle are kept in a separate enclosure, a post supported mono pitched roof building in the yard. The resident bull is housed separately. The remainder of the herd, for the summer months, roam free in eight of the 21 other accessible fields that make up the rest of the holding. The appellant has confirmed that they generally rotate the aforementioned eight fields that were marked on a plan produced at the hearing. During the winter, the herd are housed.

21. The average working day begins at about 07:00 where the appellant currently travels in the region of 1 ½ miles from his current address in the village of Killamarsh. This takes on average ten minutes, plus a little extra to get through the two locked gates either end of the access track. This arrangement has been in place for approximately nine years, since the cessation of the tenancy for a previous farmhouse.

22. Duties during the working day mainly involve feeding and welfare checks. The latter of these carry on throughout the day and can also include responding to veterinary need, calving (which can happen all year round) and other matters as and when they arise. These can include, for example, maintenance, building work, security checks and cleaning. The appellant confirms that the working day can often run into the late evening. The work during an average day mainly involves the appellant himself, the appellant's partner assists when necessary.

23. Notwithstanding evidence that the Council's agricultural consultant has provided to the contrary, I heard sufficient information to satisfy me that the enterprise supports the need for at least one full time worker.

24. In terms of the sheep element of the enterprise, and as well as the duties I have referred to above, there is a specific time of the year that almost 24 hour observation is required. Generally this is the spring time, during the lambing season. Whilst the exact timing of this season can change dependent on demand amongst other things, it tends to have a beginning and end point. The appellant keeps a mobile caravan on the site for this element which, whilst not ideal, serves its purpose as temporary accommodation.

25. The appellant has produced a substantial body of evidence highlighting problems experienced by the industry more generally. These include security breaches, animal cruelty, animal death, theft and vandalism as well as the death of a worker from an encounter with a bull. This body of evidence relates mainly to the wider livestock community, although there was discussion at the hearing over the loss of two cows due to bloating and one found in significant

distress, discovered in a field approximately a week prior to the hearing. This third cow did ultimately survive.

26. I acknowledge that the loss of any livestock can be distressing on a personal level as well as carrying a financial cost. It would perhaps be fair to stress however that living on the site may not remove the danger of an accident befalling one or more of the herd altogether. Albeit there is some argument to suggest that one could come to the aid of a stricken animal quicker if one lived closer. Conversely, the somewhat dispersed nature of the herd during the majority of the year means that an event could conceivably take place, and not be known about for some time regardless of where the individual responding lived.

27. The appellant did suggest that living on site could mean a worker would hear a stricken animal and get to their aid quicker, although having had it demonstrated to me at the hearing just how dispersed the herd can be relative to where the dwelling is proposed, I cannot see how this could be guaranteed. In addition, I have to factor in that any worker would have to rest at some point and sleep where there is currently no alarm or monitoring systems in place to alert someone to an emergency situation.

28. This matter is perhaps more relevant to security. The site does not have any other deterrent in place bar a resident dog that appears to be kennelled. There is no CCTV system, alarm or night patrol in operation. There does not appear to be any warning signage that the site is under surveillance. The appellant did confirm that they have suffered a break in previously. Whilst I accept that some of these solutions can be costly, the appellant confirmed that he has not explored any of these possibilities or provided any detailed evidence as to why they have been discounted.

29. The appellant effectively runs the enterprise from an address off site. He has been doing so for the last nine years. I refer to this above. Whilst this presents its challenges (some of which were discussed), it highlights that the enterprise is less than remote and whilst I shall come onto this in more detail later, the business continues to be in profit. In essence, the performance of the business is not suffering as a result of it being operated from where the appellant currently resides.

30. In terms of whether a dwelling on the appeal site can be justified, an essential need must be demonstrated. This is a high test. For the reasons I have set out, and taking into account all matters that were discussed at the hearing, I am not persuaded that the need for the dwelling at the appeal site is essential.

31. As I have alluded to above, the accounting records that have been produced for the benefit of the case show that the business continues to be in profit year on year. This was for financial years ending 2013 to 2016. The appellant was able to explain the apparent fluctuation in levels between some years and I accept that it is entirely plausible that stock from one year may be sold the other side of the of the financial year end. In addition, there was discussion at the hearing over the financing of various building works that have taken and are taking place. I am satisfied that these are taken account of in the ongoing performance of the business.

32. The dwelling, it has been set out, would be financed by other means although I was keen to explore whether the profit of the business could sustain it in

investment terms given that if the business was ever sold, that investment from outside sources would have to be taken into account to give an accurate reflection of its financial standing going forward. Taking into account interest rates on borrowing, it seemed eminently possible that the profits of the business could afford the repayments for the approximate cost of the dwelling proposed.

33. With regard to the evidence prior to the hearing, it was unclear as to what part of the business, and indeed to what extent, the third party horse grazing arrangement contributed towards the entire income. Having discussed this element and taking into account performance overall when the number of horses reduced and the number of cattle increased, I am satisfied that this element of the business was more supplementary than integral to income.

34. The appellant is from a strong farming background and with this and the above factors in mind, I am satisfied that the enterprise is on a sound financial footing. Having had sight at the hearing of accounts from the year ending 2017 this continues to be the case. I would therefore be content to conclude that the business will endure in the long term.

35. The appellant advanced at the hearing, supported by a map extract from the same document that the draft local plan makes revisions to the Green Belt boundary relative to Killamarsh and a proposed housing allocation would run very close to the appeal site. Some would be on land under the ownership of the appellant. The appellant suggests that this would have a materially greater effect on the area in both Green Belt and housing terms than the appeal proposal.

36. Be this as it may, these are draft proposals that have yet to be tested through a public examination. They do not currently form part of the adopted development plan. Thus they carry only very limited weight. The appeal site is, and indeed would continue to be should the proposals be adopted in their current form, in the Green Belt in any event. One could also legitimately argue that since some of the land in question is under the ownership of the appellant, they would have at least some say in the development of it for housing in the future. For these reasons, this evidence does not alter my findings on the main issues.

37. There was also some discussion at the hearing over the size of the dwelling. This was in the context of both its effect on the openness of the Green Belt as well as whether such could be justified in terms of the needs of the enterprise first and foremost.

38. Putting aside my findings on the Green Belt, I do not find the overall size of the dwelling unacceptable for its purpose. I heard that concessions have been made on a previously proposed scheme. The facilities inside the proposed dwelling before me would provide for a separate farm office and boot room, both of which are compact. The appellant also has a young family of two school age children and I consider that the provision of accommodation in this context is not overly large and would provide for comfortable living for a family of four. Be this as it may, my overall findings remain unchanged.

39. The appellant has brought a number of appeal decisions to my attention which address matters similar to the ones in the scheme before me. I have however assessed the scheme before me on its own merits and tested the available

evidence accordingly with due regard to the development plan the Framework. In essence, the examples cited do not persuade me to allow the appeal in light of the evidence that I have seen and heard with regard to this particular case.

Conclusion

40. The proposed development would be inappropriate development in the Green Belt. Harm would be caused to the Green Belt by virtue of this, harm which would be exacerbated by the reduction in openness as I have described it. The Framework sets out that harm to the Green Belt should be ascribed substantial weight. A case for a dwelling to house an agricultural worker has been presented and notwithstanding that the business with which it would be associated would likely endure in the long term, the need that has been advanced falls short of being essential based on the evidence presented to me.

41. I have taken into account all of the other considerations above as well as the third party expressions of support. Together however they do not outweigh the harm the scheme would cause. A case for very special circumstances in this light has not therefore been demonstrated.

42. These harms would result in clear conflict with saved Policies GS2 and H3 of the Local Plan and section 9 of the Framework. These Policy stances require, amongst other things, a need for an agricultural worker's dwelling to be essential and permanent as well as seeking to protect the essential characteristics of the Green Belt.

43. For these reasons, and having regard to all other matters raised, the appeal is therefore dismissed.

John Morrison

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Andrew and Mrs Nichola Habberjam	Appellants
Mr Craig G Barks MRICS	Bagshaws

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Susan Wraith	North East Derbyshire District Council
Mr Ken Huckle	North East Derbyshire District Council

DOCUMENTS SUBMITTED AT THE HEARING

FOR THE APPELLANT:

- A4 plan showing extent of land holding including field reference numbers
- Extract from draft local plan showing inset map for Killamarsh including relevant policy extracts
- Revised A4 block plan showing annotated existing building locations, types and sizes
- A3 sight line plans in respect of suggested condition 03
- Year ending 2017 accounting information
- Written letter response from the appellant to a third party representation
- A4 picture showing stricken cow laying at the base of a hedge
- Document setting out updated livestock numbers and supporting data
- A3 street scene plan missing from original set