
Appeal Decision

Hearing Held on 17 January 2018

Site visit made on 17 January 2018

by M Seaton DipTP MRTPI

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

Decision date: 04 July 2018

Appeal Ref: APP/C2741/W/17/3180738

Land South of Mayfields, Dauby Lane, Kexby, York, North Yorkshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mrs Susan Goodwill against the decision of City of York Council.
 - The application Ref 16/02608/OUT, dated 25 October 2016, was refused by notice dated 7 March 2017.
 - The development proposed is the construction of a rural workers dwelling on land to the south of Mayfields required in connection with Primrose Bank Nurseries.
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Procedural Matters

1. The application was submitted in outline with access and layout to be considered at this stage. The remaining matters related to appearance, landscaping and scale are therefore reserved for later consideration. I have dealt with the appeal on this basis and treated the submitted plans where pertinent as an indication of the proposed development.
2. Since the submission of the original planning appeal, a High Court Judgement (HCJ) was published on 15 November 2017 in respect of *Braintree District Council v Secretary of State for Communities and Local Government, Greyread Limited & Granville Developments Limited [2017] EWHC 2743 (Admin)*. This judgement concerned the interpretation of the term "isolated homes in the countryside", within paragraph 55 of the National Planning Policy Framework (the Framework). The Council and the appellant were invited following the Hearing to provide any further comments on the relevance of the HCJ on their respective cases, and the responses received will be addressed within the context of the main reasoning related to this appeal decision.
3. Additionally, during the course of the appeal the Inspector has become aware that the Council has recently published the *City of York Local Plan – Publication Draft (February 2018)* for consultation, the period for which ran from 21 February 2018 – 4 April 2018. As a consequence, the opportunity was provided to the Council and appellant to make additional comments in respect of whether the publication would have any bearing on their submitted evidence, and the weight to be attributed to the document. The further comments received will also be addressed within the context of the main reasoning related to this appeal decision.

Decision

4. The appeal is dismissed.

Application for costs

5. An application for costs has been made by the Council against the Appellant. This application will be the subject of a separate Decision.

Main Issues

6. The main issues are:
- whether the proposed development would amount to inappropriate development for the purposes of the Framework and the Development Plan;
 - the effect on the openness of the Green Belt and the purposes of including land within it;
 - whether there is an essential need for a rural worker to live at their place of work in the countryside; and,
 - if the development is deemed inappropriate, whether the harm to the Green Belt by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

7. The appeal site occupies a location to the west of the village of Kexby and is adjacent to Dauby Lane which links the A1079 at Kexby to the village of Elvington to the south. The appeal site is comprised of an area of open land situated to the south and west of Primrose Bank Nursery, which is identified as a 3.37 hectare holding accommodating both the primary horticultural enterprise specialising in the production of high value and other plants, as well as sheep and poultry enterprises. The appeal site is agreed by the parties to occupy a location within the Green Belt, and on the basis of the submissions and my observations, I am satisfied would be classified as located within the open countryside.

Development plan

8. The completed Statement of Common Ground (SoCG) indicates that the appellant and the Council agree that the Council does not have a full formally adopted Development Plan. A publication draft of the emerging Local Plan was consulted upon earlier in 2018, and it has been drawn to my attention by the appellant that the emerging Local Plan was submitted for examination on 25th May 2018. However, in advance of the emerging Local Plan being formally examined, I am satisfied that it must carry only very limited weight at this early stage. As a consequence the Council continues to rely upon the Framework and The City of York Draft Local Plan – incorporating the 4th set of changes (the Local Plan), which was approved for development control purposes in April 2005, with both material considerations. The exception to this is in respect of the saved Policies of The Yorkshire and Humber Plan: Regional Spatial Strategy to 2026 (the RSS), as they relate to Green Belt objectives, as set out in Statutory Instrument 2013 No. 117, which sets out the partial revocation of the RSS.

Whether inappropriate development

9. Paragraphs 87-89 of the Framework state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt and "very special circumstances" will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Subject to a number of exceptions, the construction of new buildings should be regarded as inappropriate in the Green Belt.
10. The appellant has referred me to the first bullet point within paragraph 89 of the Framework, which sets out that buildings for agriculture and forestry are to be regarded as an exception to inappropriate development in the Green Belt. Furthermore, in this respect I have been referred to Policy GB6 of the Local Plan which sets out that housing development outside of settlement limits within the Green Belt and open countryside will be permitted where it is essential for agriculture or forestry in that area. I am also mindful that Policy GB7 of the Local Plan, specifically addresses agricultural or forestry dwellings outside defined settlement limits. The Policy states that such dwellings are acceptable where it can be demonstrated that the dwelling cannot be located within an existing settlement, is essential to the functioning of a well-established holding, would be located on the holding concerned, and is appropriately located adjacent to any existing buildings.
11. I am mindful that the Local Plan is a material consideration, albeit that the approach to development within the Green Belt has been significantly updated by the Framework, with the specific criteria in the Local Plan related to agricultural or forestry dwellings not reflected within the Green Belt chapter of the Framework. I have carefully considered the appellant's contention regarding the need for the dwelling to support the function of Primrose Bank Nursery, a matter to which I will return. However, dwellings for rural workers in agriculture or forestry are nevertheless primarily intended for residential use, and consequently they are not buildings for agriculture or forestry, even though I accept that they are intended to support such a use.
12. The proposed dwelling does not specifically fall within any of the other exceptions set out within paragraphs 89 or 90 of the Framework, and therefore I attach substantial weight to the harm arising due to the inappropriate nature of the development. In this respect, I also find there to be conflict with the saved elements of the RSS.

The effect on the Green Belt and the purposes of including land within it

13. Paragraph 79 of the Framework identifies that openness and permanence are the two essential characteristics of Green Belts, whilst paragraph 80 highlights that the Green Belt serves five purposes, including checking the unrestricted sprawl of large built-up areas; preventing neighbouring towns from merging into one another; safeguarding the countryside from encroachment; preserving the setting and special character of historic towns; and assisting in urban regeneration by encouraging the recycling of derelict and other urban land.
14. The proposed dwelling would occupy a location where there would be a limited encroachment of development into the countryside on this otherwise open and undeveloped site. I acknowledge that various options for the location of the

development have been considered. These include the re-use of existing buildings, extensions to existing buildings, and a position in much closer proximity to the nursery, but the options were considered to restrict the future ability of the enterprise to expand. However, the dwelling would be set within relatively close proximity to the existing development associated with the nursery, and would benefit from some existing screening.

15. Nevertheless, I find the appeal site currently makes a positive and significant contribution towards the openness of the Green Belt at this point. As a consequence, the proposal would result in a permanent loss of openness to the land within the Green Belt, and would represent an encroachment into the countryside. This would be contrary to the third purpose of including land within the Green Belt set out at paragraph 80 of the Framework.

Agricultural Need

16. I am mindful of the support for a prosperous rural economy that paragraph 28 of the Framework provides, and in particular the promotion and development of agricultural businesses. I have also had regard to the consideration of functional and financial tests as a key component of former national policy set out in Annex A of PPS7: Sustainable Development in Rural Areas ('PPS7 Annex A'). However, this was superseded by the Framework which no longer refers to the functional and financial tests *per se*. Nevertheless, both parties have referred to PPS7 Annex A in their evidence and the SoCG, and confirmed at the Hearing that they were satisfied with its use as an appropriate yardstick.
17. Paragraph 55 of the Framework has also been referred to within the reasons for refusal, in the context that isolated homes in the countryside should be avoided unless there are special circumstances, such as an essential need for a rural worker to live permanently at or near their place of work. However, in light of the conclusions reached by the aforementioned HCJ, I do not consider that paragraph 55 of the Framework is engaged. The appeal site could not reasonably be regarded as isolated in applying its ordinary meaning as set out in the HCJ of '*far away from other places, buildings or people; remote*', as the proposed development would occupy a position in close proximity to the existing dwellings of Mayfields and Redroofs, and is located relatively close to the village of Kexby.
18. Primrose Bank Nurseries are identified as an award-winning family-run business, which has been established for over 15 years, and specialises in hardy perennials and produces over 600 varieties of plants, including rare varieties, which are sold from the site and from various horticultural shows such as Chelsea, Tatton Park and Hampton Court Flower Show. The business also takes orders over the telephone, and there is a stated intention to develop an internet retail business.
19. In addition to the general and appointment-only opening of the nursery during the spring and summer months, during December, and for open days in the spring, the nursery has hosted afternoon tea events in the garden to encourage visitors. Further diversification of the business has occurred with the keeping and grazing of Hebridean breeding ewes and the keeping of 200 head of poultry, which are bred and sold to customers.
20. From the evidence placed before me and at the Hearing, the existing business is clearly well-established and set on a sound and enduring footing, which is

not a matter disputed by the Council. The labour requirements of the business are also not disputed by the Council, and I see no reason on the basis of the submissions to disagree with this conclusion. I have had regard to the appellant's submissions in respect of the lack of availability of an appropriate specialist labour pool in the area, and the Council's contrary comments in this respect. However, I am not persuaded that this is a critical matter for the purposes of this proposal as the appellant's daughter and partner are identified as intending to fulfil any shortfall in required labour for the business, which would be created by the partial retirement of the appellant's partner.

21. I observed at the site visit that all existing agricultural buildings appeared to be in use for purposes related to the enterprise, and a single existing dwelling which is not tied to the business known as Redroofs, was also located within the enterprise. This dwelling is occupied by the appellant and her partner, with the additional dwelling required for the appellant's daughter and her partner, who it was identified currently live in a nearby village, to support the running of the business and provide an additional permanent presence within the close vicinity of the nursery.
22. The appellant has set out in the written submissions and at the hearing their reasoning for the essential need for a permanent presence on the appeal site. Principally, the reasons relate to the need to be available to manage the environmental control systems within the glasshouses, and to address animal health and welfare of the livestock with regards to the supervision of sick animals and the management of animals due to give birth.
23. It has also been contended that a further permanent presence on the site is required during the show season when the appellant and their partner are away for periods of time, with absences in 2018 estimated to be in the region of 102 days, as well as for the future due to the aspiration of the appellant's partner to at least partially retire.
24. In respect of the environmental management and supervision of plant irrigation and watering, it is evident that the principal concerns in this respect are influenced by weather conditions, with frost cited as a particular risk factor to damage to the watering infrastructure at the nursery.
25. I appreciate given the significant variety of plants that an automated system may not present as an appropriate or viable technical solution. However, whilst I accept that the weather may warrant particular special attention to the infrastructure during particular times of the year, this would to a certain degree be limited to the winter season, and would be predictable through weather forecasting when the irrigation system may need to be drained in advance. Whilst a temporary additional presence on or close to the site during inclement weather may be justifiable on occasion or a seasonal basis, it is unlikely that such a presence would be required constantly during the winter period or for the rest of the year.
26. I have noted from the submissions that other activities including hand watering and the movement of plants from warmer to cooler glass areas, and activities directly related to the production, propagation, and preparation of plants would be undertaken during the daytime. Additional development of the business in respect of the improvement of marketing, retail sales via internet or mail order, or the development of further talks, tours or visits to the nursery would also not warrant a 24 hour presence. The diversification of the business to provide,

amongst other things, afternoon tea would also not provide the necessary justification.

27. I have carefully considered the impact of attendance at the various national shows by the appellant and partner, and the existing arrangements which require the appellant's daughter and partner to be in attendance at the site in their stead. However, in respect of the plants, I note the absences fall principally during a period of the year when the need for a 24 hour presence would not normally be expected or has been demonstrated. Furthermore, when questioned on current arrangements for managing the nursery during the periods of absence from March - October, it was clear from the verbal submissions that beyond late evening attendance at 10:30-11:00pm to secure livestock and check security and the plants, and then early in the morning at about 6:00am, no further visits or direct monitoring of the site are made during the overnight period. There was no suggestion made that this arrangement has led to losses or damage to the plants on the basis of an adverse impact on their health and vitality. Furthermore, with the appellant's daughter residing in Elvington about 5 minutes drive away, I am satisfied that this in itself would not provide a justifiable reason for an additional permanent 24 hour presence during the summer months.
28. Turning to animal welfare, the appellant cited the legal requirements of The Animal Welfare Act 2006 and the duty of care imposed on the farmer towards livestock. In this respect, I accept that during the lambing period from the beginning of April - mid-May, and at times when there may be sick or injured animals, it may be necessary to maintain a 24 hour presence at the nursery. However, whilst I acknowledge there is likely to be some overlap between this period and the show season, the appellant indicated at the Hearing that the livestock element comprises only 7% of the overall business, and irrespective of whether future growth of this side of the business is planned, the requirements to be on site would be likely to be on a temporary or occasional basis only in connection with the livestock.
29. I have also had regard to concerns expressed by the appellant over the need to maintain the security of the site, and that this would justify a further permanent on-site presence within sound and sight of the nursery. However, whilst I acknowledge the concerns which have been expressed with regards to the level of rural police resourcing available within North Yorkshire, I am not persuaded that adequate security measures could not be installed on the site to act as a deterrent to potential illegal activity.
30. I would agree with the Council that the incorporation of fencing, alarms and CCTV would be a reasonable security response and deterrent to provide coverage for the site. I acknowledge the value of the plants and livestock on the site, but the need for an on-site presence for security purposes would not in itself justify the need for a dwelling. In the absence of any definitive evidence or testimony from the police relating to the security concerns, I have not attached more than limited weight to this matter.
31. As a result of the appellant's conclusion that an essential need exists for a permanent presence on the site, no detailed search of the wider area for alternative properties has been adduced.

32. On the basis of the written and verbal submissions, I am satisfied that an essential need for a rural worker to live in this location has not been demonstrated with regards the proposed dwelling.

Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations

33. I have identified that the scheme would amount to inappropriate development in the Green Belt, and the presumption against inappropriate development means that this harm alone attracts substantial weight. The development would also have an adverse effect on the openness of the Green Belt and would result in some limited harm by way of encroachment into the countryside. The development would therefore be contrary to the purposes of the Green Belt as set out in the Framework. I have also found that an essential functional need for a permanent rural worker's dwelling on the appeal site has not been demonstrated.
34. I am mindful that the appeal proposal would incorporate an access on to Kexby Lane which has been assessed to be acceptable in the context of the outline proposal. However, this is a neutral factor in the planning balance which would neither weigh in support of, or against the proposal.
35. With reference to the emerging Local Plan, the appellant has drawn my attention to paragraph 2.6 which it is contended provides a greater emphasis on recreation, which it is maintained is consistent with the aims and objectives of the horticultural business in respect of the provision of additional recreational benefits. In particular, reference is made to the provision of disability friendly recreation space and yearly activities at the nursery, as well as support for the Royal Horticultural Society policies to encourage children and those with disabilities into gardening, young people into horticulture, land and countryside management, and the growing awareness of the benefits of horticulture to mental health. I accept from the appellant's submissions that the development of the existing business would have the potential to meet this objective, although the current status of the emerging Local Plan limits the weight which would be attached to this consideration.
36. In reaching my decision, I have had regard to the appellant's indication that if the government methodology to calculate housing need which was published in November 2017 was used, the emerging local plan would fall short of providing sufficient supply of housing in accordance with the DCLG calculations for housing need. However, even if it were appropriate to assess the Council's position on housing supply in these terms, the proposed dwelling would make only a very limited contribution towards the supply of housing in the local area. I am also mindful that the local economy would have the potential to enjoy some limited benefit during the construction period, and from any expenditure from the future occupiers, to which I would also attribute some limited weight in support of the development.
37. In determining this appeal, I have been mindful of the references which have been made to the approval by the Council of other residential developments for rural workers within the wider York area. Whilst I have had regard to the development summaries as provided, I have no details of the specific circumstances of the related enterprises which led to these planning

permissions being granted. In any event, I have determined this appeal on the basis of its own planning merits.

38. Notwithstanding the harm identified above, I have had careful regard to the benefits of the development as advocated by the appellant, and accept that these must carry some limited weight in favour of the proposals. Nevertheless, these would not be sufficient to clearly outweigh the harm to the Green Belt and other harm. Consequently, the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist.

Conclusion

39. For the reasons above, and having regard to all matters before me, the appeal must be dismissed.

M Seaton

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Davina Fillingham	Stephenson & Son (Appellant's Agent)
Alice Hood	Stephenson & Son
Sue Goodwill	Appellant
Tracey Botha	Appellant's Daughter

FOR THE LOCAL PLANNING AUTHORITY:

Erik Matthews	Planning Officer, City of York Council
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DOCUMENTS SUBMITTED AT AND FOLLOWING THE HEARING

- 1 Event Leaflets including advertisements for The Yorkshire Snowdrop Trail, National Garden Scheme – Open Garden, and Afternoon Tea in the Garden.
- 2 List of Conditions, and e-mail from appellant dated 29 January 2018 agreeing to the List.
- 3 Council comments on HCJ, received 6 February 2018.
- 4 Appellant comments on HCJ, received 8 February 2018.
- 5 Council response on emerging Local Plan, received 30 May 2018.
- 6 Appellant response on emerging Local Plan, received 1 June 2018.