
Appeal Decision

Site visit made on 4 June 2019

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2019

Appeal Ref: APP/V2255/W/18/3209070

Greenacres Farm, Norton Road, Norton ME9 0EZ

- 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 David Butler against the decision of Swale Borough Council.
 - The application Ref 17/505803/FULL, dated 3 November 2017, was refused by notice dated 18 July 2018.
 - The development proposed is the conversion of an agricultural building to a rural worker's dwelling.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The National Planning Policy Framework (the Framework) was published following the decision of the Council. The Council and appellant had the opportunity to comment and I have taken its contents into account in coming to my decision.

Main Issue

3. Whether there is an essential need for a dwelling to accommodate a rural worker.

Reasons

4. Greenacres Farm comprises a top fruit and stone fruit operation producing cherries, apples and pears. I understand that the appellant has also been running a concurrent business at the site. It is outside built-up area boundaries and in the open countryside, an isolated rural location some distance from the nearest settlement.
5. The Framework confirms that new isolated homes in the countryside should be avoided unless there are very special circumstances, such as the essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work. I note that the reference to those taking majority control of a farm business did not appear in the earlier Framework against which the planning application was determined.
6. Policies ST3 and CP3 of the Swale Borough Local Plan (LP) resist the provision of new dwellings within the open countryside. However, Policy DM12 of the LP enables provision of dwellings for rural workers provided that there is an essential need for a full-time worker to be readily available at most times,

- there be no suitable existing dwelling available nearby, the dwelling would maintain or enhance the landscape and countryside character and to explore the conversion of existing buildings before considering a new building.
7. The Council accept that there is an essential need for a rural worker to live at Greenacres Farm and support the farm business. I see no reason to disagree with their conclusion in this regard.
 8. I note that there is an existing dwelling at the farm that was granted planning permission in 2009 to provide for that need. The occupant of the existing dwelling has recently retired due to ill health and they continue to occupy that dwelling in accordance with the restrictions placed on it. They do not wish to vacate this property. The appellant would be taking majority control of the farm business. Nevertheless, this would not, in and of itself, justify the provision of a second dwelling if that need could be provided by alternative means.
 9. Therefore, for the purposes of my decision and taking account of relevant case law¹, I need to firstly consider whether the occupants of the existing dwelling could reasonably provide the necessary support for the farm and if they cannot, secondly, ascertain whether that accommodation can reasonably be held to be available.
 10. I note that the principal reason for the essential need is to check the cold storage building three times a day and address any alarms in that building. It is unclear how often attendance is required to deal with those alarms, or the amount of work required when the alarms are activated. In addition, reference is made to the need to deal with frost, manage the seasonal work-force and this isolated farm business is susceptible to rural crime such as vandalism and theft. I understand that the amount of land under production has grown in recent years and has undergone significant investment in replanting orchards with higher yielding varieties and expanding cherry production.
 11. I have limited details as to the reasons why the occupant of the existing dwelling has retired or whether they would be able to provide some support to the business, such as dealing with alarms in the building and providing surveillance and security, including in relation to rural crime. If they were able to provide sufficient support to allow the business to operate, a second dwelling would not be required. However, on the basis of the evidence in front of me and taking account of the fact that the appellant would be taking majority control of a farm business, I am unable to conclude whether or not they would be available to provide that support.
 12. If they were unable to provide that support, it is suggested that they could vacate the property to free it up for occupation by the appellant and his family. I understand that the existing occupant continues to comply with the occupancy restrictions on the dwelling arising from the earlier planning permission. They do not wish to vacate that property. However, it is not clear whether that dwelling would become available at some point in the future to meet the needs of the enterprise. The proposal may only, therefore, be required for a temporary period. The proposal is for permanent occupation and it is unclear for what period the dwelling would be required. On the basis of the

¹ Keen v Secretary of State for the Environment and Aylesbury Vale District Council [1996] JPL 753 and J R Cussons and Son v Secretary of State for Communities and Local Government [2008] EHC 443

evidence and taking account of these factors, it is unclear whether or not the accommodation can reasonably be held to be available. In any event, this would not overcome the issue as to whether the occupants would be available to support the business.

13. Policy DM12 of the LP states that the dwelling should maintain or enhance the landscape and countryside character and to explore the conversion of existing buildings before considering a new building. The building to be converted was constructed under agricultural permitted development rights set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) in 2015. In this case, I note that the proposal would convert an existing building and such a conversion would maintain the landscape and countryside character of the area.
14. For these reasons, I conclude that, although there is an essential need for a dwelling to accommodate a rural worker, there is an existing dwelling on the site. It has not been established that the existing dwelling would not be available to meet that need. Consequently, I am unable to conclude that the proposed conversion of an agricultural building to a rural worker's dwelling would be required to meet that need. As such, the proposed development would not comply with Policies ST3, CP3 and DM12 of the LP or the Framework.
15. As a result, the proposal would also conflict with Policy DM14 of the LP that provides general development criteria including that development should accord with the policies of the LP unless material considerations indicate otherwise.

Other matters

16. Reference has been made to a potential mobile home in order to meet the need for a rural worker's dwelling. However, the appeal relates to permanent accommodation and a mobile home does not form part of this application such that it is not before me to consider. I note that the existing dwelling is not of sufficient size to accommodate the existing occupants and the appellant with his family. I understand that no housing is available close to the farm that would be affordable to the appellant or meet his identified needs.
17. The appellant has suggested restrictive occupancy conditions for the proposed dwelling. However, an agricultural occupancy condition would be required if the appeal were to be allowed in any event. As a result, this would not overcome my conclusions on the main issue.
18. A Unilateral Undertaking has been submitted under Section 106 of the Town and Country Planning Act 1990 to link the proposed dwelling to the agricultural land, including the existing dwelling. This would provide some certainty regarding the relationship of the dwelling to the agricultural land associated with it. Nevertheless, it would not alter my conclusions on the main issue.
19. I note that Class Q, Part 3, Schedule 2 of the GPDO would normally allow the conversion of agricultural buildings to residential use. However, as this building was constructed under agricultural permitted development rights, the GPDO would not allow conversion of a building on the farm under Class Q until at least 2025. This potential conversion would comprise a fall-back position. Had this building not been constructed, it may have been possible to convert another building to residential use to provide for the appellant's needs. I have

taken these factors into account as material considerations of considerable weight, but they would not overcome my conclusions on the main issue.

20. My attention has been drawn to other appeal decisions. That at Rye Topping Farm, Scarborough² related to an additional dwelling where the existing dwelling was occupied by the elderly mother of the appellant, who continued to be involved in the running of the farm business. Significant detail was provided to justify the need for that additional dwelling that hasn't been provided in this case. This decision pre-dates the latest Framework.
21. More information was also provided in support of a need for additional dwellings at Ashlyn Farm, Somerset³ and at Rigg Hall, North Yorkshire⁴. The circumstances presented in both cases justified provision of an additional dwelling. Both were assessed against Planning Policy Statement 7: Sustainable Development in Rural Areas that was replaced by the original Framework.
22. I note that these appeal decisions relate to sites in other parts of the country and are subject to other local planning policies, such that there was a different policy framework to those decisions. Taking all this into account, I consider that they are not directly comparable to this case and I need to consider this appeal on its individual merits.
23. The appeal site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) that is designated to protect rare and vulnerable birds including regularly occurring migratory species. New residential development would be likely to place additional pressure from recreational disturbance on the SPA. The proposed development, in combination with other projects, would contribute to that pressure. Nevertheless, were I to consider allowing the appeal, I would need to consider whether an appropriate assessment would be required in relation to the effect of the development on the SPA.
24. As I have concluded that the proposed development would conflict with other development plan policies, I have not completed an appropriate assessment. I understand that the appellant has made a payment toward the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy. However, without an appropriate assessment it is unclear whether or not the financial contribution would provide adequate mitigation of any effects of the development on the SPA. On that basis, I conclude that there is an unacceptable risk of harm on the SPA such that the proposal would be likely to conflict with the Birds Directive and the Framework. These seek to protect nature conservation sites of international importance, such as SPAs, including requiring adequate measures are put in place to avoid or mitigate any potential adverse effects on the ecological integrity of SPAs.

Conclusion

25. For the reasons set out above, I conclude that on balance the proposed development would not accord with the development plan. Thus, having had regard to all other matters raised the appeal should be dismissed.

AJ Steen INSPECTOR

² APP/H2733/W/17/3186812

³ APP/V3310/A/09/2118524

⁴ APP/W9500/A/08/2087370