The Planning Inspectorate

Appeal Decision

Hearing held and site visit made on 24 July 2019

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2019

Appeal Ref: APP/H3320/W/18/3215240
Land off Lime Street, Stogursey, Bridgwater TA5 1QL

- The appeal is made under section 78(1)(b) of the Town and Country Planning Act 1990 as amended against a refusal to grant approval to details required by a condition of an outline planning permission.
- The appeal is made by Mr M Plowright against the decision of West Somerset Council.
- The application Ref 3/32/18/001, dated 12 January 2018, sought approval of details pursuant to condition 1 of planning permission Ref 3/32/17/008, granted on 7 November 2017.
- The application was refused by notice dated 4 May 2018.
- The development proposed is the erection of an agricultural workers dwelling (in compliance with the details shown on plans 2175/01, 2067/01, 2067/02, 2067/03 2067/04, 2067/05).
- The details for which approval is sought are layout, scale, appearance, access and landscaping (the 'reserved matters').

Decision

1. The appeal is dismissed.

Preliminary matters

2. On 1 April 2019 West Somerset District Council merged with Taunton Deane Borough Council, forming Somerset West and Taunton Council. Nevertheless, until superseded, the existing development plan documents of the former Councils remain extant. Each proposal must be determined on its particular merits in accordance with the development plan unless material considerations indicate otherwise.

3. In this instance the development plan includes policies of the West Somerset District Plan (adopted 23 November 2016, the 'LP'). I understand work underway by Stogursey Parish Council preparing a neighbourhood plan is yet to advance to a stage such that it may be accorded significant weight. I have also had regard to various other material considerations including the National Planning Policy Framework (updated 19 February 2019, 'NPPF') and the Planning Practice Guidance ('PPG', including as updated on 22 July 2019), and to a previous appeal here in 2013.[1] In so far as necessary and relevant to this case there has been appropriate opportunity for comment on that context.

4. Following permissions for a temporary dwelling dating back to 2010 the Council granted outline permission for a permanent agricultural workers' dwelling via decision notice dated 7 November 2017 (Ref 3/32/17/008, the 'original

[1] PPG Reference ID: 67-010-20190722 in particular, and appeal Ref APP/H3320/A/13/2197662.

permission'). At that stage details of access, appearance, landscaping, layout and scale were reserved for future consideration (the 'reserved matters'). The substantive dispute between the main parties relates to the scale of the dwelling now proposed, in so far as whether or not that would be consistent with the terms of the original permission and otherwise acceptable. Secondly, and somewhat connected, is a dispute regarding whether or not the dwelling proposed could be constructed and financed without undermining the ongoing viability of the agricultural enterprise or holding (known, curiously, as 'Lime Street Buildings').

Main issues

5. Based on all I have read, heard and seen, the main issues are whether or not (i) the scale of the dwelling proposed is commensurate with the agricultural needs that justified the original permission, (ii) the ongoing viability of the agricultural enterprise would be unacceptably compromised by consequence of undertaking the development as is now proposed.

Policy context

6. Pursuant to LP policy SD1, which sets out how the Council will apply the presumption in favour of sustainable development, policy SC1 guides development towards a settlement hierarchy broadly in line with the scale and function of settlements. Whilst there is some flexibility in respect of development around settlement boundaries, LP policy SC1 sets out that development in the open countryside will be considered under policy OC1. Policy OC1 explains that development in the open countryside is not generally appropriate, barring several exceptions. One such exception, reflective of NPPF paragraph 79(a), is where it is essential for a rural worker to live in such a location.

7. The purpose of that policy is stated to be principally in order to 'protect the open countryside from damaging development…'. Likewise NPPF paragraph 170 sets out how planning should recognise the intrinsic character and beauty of the countryside, and to the same end certain permitted development rights for agricultural buildings require their removal if they become redundant in time.[2] Policies of the development plan, and equally of the NPPF, pull in different directions. There is also support via LP policy OC1 for development 'beneficial for the local community and local economy'. Similarly NPPF paragraph 83 supports the sustainable growth and expansion of all types of businesses in rural areas.

8. Explanatory text to LP policy OC1 clarifies that the justification for an essential need should include both 'a functional need for a dwelling in that location and economic evidence to demonstrate the potential viability of the scheme'. That phrasing is similar to that of superseded Planning Policy Statement 7 and Annex A to it. Although no longer current policy, approaching the issue of whether or not an essential needs exists in those terms has to some extent become established practice. It is moreover, in my view, logical to consider the nature of the work that the occupant(s) of the proposed dwelling would be engaged in, its intensity, and the likely viability of the enterprise in assessing

[2] Schedule 2, Part 6 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

whether or not an 'essential need' has been demonstrated. Similar terminology appears in the PPG.[3]

9. I acknowledge that there is no floorspace threshold, whether definitive or indicative, in the LP or otherwise regarding the scale that may be appropriate for a rural worker's dwelling here. That is unlike the situation elsewhere. Paragraph 10.58 of the Somerset Local Plan supporting policy HG9 (adopted March 2015) has been brought to my attention by the appellant in this respect by way of example. That sets out as a guideline that a floorspace of 175 square metres is likely to be suitable in respect of most holdings. However the characteristics of agriculture, its prevailing scale, and the nature of associated farmhouses may very well differ in other locations to that which is typical in this area. At best, that floorspace is a rough proxy. Moreover I understand from discussion during the hearing that different indicative thresholds are given in different areas.

10. Contrary to the position of the appellant, in my view whether or not an 'essential need' exists must relate not only to the need for a dwelling but to the particular nature of that dwelling. That is little more than a statement of logic regarding the relationship of justification on the one hand with scale on the other. In the absurd a twelve bedroom property would not cater solely for the needs of a single farm worker (and likely have an undue effect on the character of the countryside). Whilst arrived at independently, that logic is essentially reflected in paragraph 17 of the previous inspector's decision. It is also articulated in the supporting justification for LP policy OC1: 'the proposed accommodation should be commensurate with the established functional need for accommodation in that location'. Whilst the correlation need not be exact, in my view there should be a reasonable linkage between the nature and intensity of work and associated accommodation requirements.

Reasons

11. Whilst policy and financial circumstances have moved on, the location, surrounding context, and nature of the enterprise and holding to which the proposal relates is largely the same as that described by the inspector who determined the 2013 appeal. There is no challenge to the veracity of any points made in that decision. I note in particular paragraph 7 of her decision in addition to paragraph 17 cited above. Those elements set out, in summary, the general position that it is the objectively established needs of a rural worker to reside in a particular location that is the basis for determining whether such development is acceptable rather than personal preferences. Individuals may work in varying ways depending on their character, abilities, or other factors.[4]

12. The appeal site is a parcel of land of approximately 0.1 ha cut out of the wider Lime Street Buildings holding. That holding now amounts to some 125 ha of land owned by the appellant and 281 ha of rented land. Those figures align with the extent of the holding described in the 2013 appeal, save for an additional 8 ha which I understand was purchased in 2018. The land held comprises a number of scattered parcels of land. The appeal site is, however, close to the location of a mobile home which traces its origins back to 2010 and also to substantial barns. Notwithstanding the dispersed arrangement of the

[3] Reference ID: 67-010-20190722.
[4] That is notwithstanding inevitable variety in practice, as referenced in the Nix Farm Management Pocketbook.

holding I am told that the adjacent barns are the only cluster of buildings available for storage and bringing livestock under cover.

13. The appeal site is broadly level and laid to grass. It is accessed via and falls near Shurton Lane, a narrow lane which tracks northwards from the limits of the established built form of the village of Stogursey some 250 metres away around Northfield Close. The topography declines gently from Shurton Lane through the appeal site towards a footpath enclosed by established hedgerows which tracks beside the Stogursey Brook and passes a water recycling centre. The surroundings to the appeal site are strongly rural in character. They are characterised by a patchwork of generally good-sized fields cut by established hedgerows, with only occasional buildings and farmsteads dotted about. There are on occasion expansive views of the landscape. From the footpath which runs perpendicular to Shurton Lane north of the appeal site there are some views towards Hinkley Point and reciprocally towards Stogursey; the spire of the Church of St Andrew being visible in the distance above trees.

14. Stogursey is defined as a primary village via LP policy SC1, where 'limited development' is accorded in-principle support. I am told that the appeal site falls around 460 metres, or less, from the centre of the settlement and various services and facilities there. The appellant has brought to my attention case law relating to the application of NPPF paragraph 79 and, specifically, the implications of the word 'isolated' in that context.[5] However it was clarified at appeal that such references were made solely by way of illustrating the context of the appeal site; it was not put to me that the proposal should be considered other than with reference to LP policy OC1 and NPPF paragraph 79. Indeed to approach this decision otherwise would go beyond the remit of this appeal and revisit matters settled in the determination of the original permission.

The scale of the dwelling

15. I understand that the enterprise here has built up since around 1967. It is now such that, at any one time, there may be around 375 cows of varying ages present alongside about 1400 breeding ewes. The livestock headcount has not increased significantly compared to 2013.[6] The enterprise is therefore intrinsically reliant on the successful breeding, calving and nurturing of a significant number of livestock. Whilst I will return to the quantity of work generated by the herd size, those activities will inherently generate the need to closely monitor the wellbeing of animals, assist during birth, and to treat various pathogens. Undoubtedly the nature, intensity, unpredictability and toil involved in such work generates a need for on-site accommodation.

16. The original permission was supported by an Agricultural Appraisal of 2017 ('AA'), which gave the same livestock figures as cited above.[7] It is a broadly accepted benchmark that a rural worker may reasonably undertake 275 days' work a year. Many, of course, work significantly longer in reality. That metric is commonly abbreviated as standard man days or 'SMD', which I have adopted for brevity. The AA calculates that an enterprise of this scale and intensity would generate 1,279 SMD annually. That equates to 4.6 'labour units', i.e.

[5] Braintree District Council v SSCLG & Ors [2017] EWHC 2743 Admin and the subsequent Court of Appeal judgement handed down on 28 March 2018.
[6] Paragraph 7 of the previous appeal gives an approximate figure of 1700.
[7] Undertaken by Sheamus Machin FRICS FAAV.

individuals required to run the holding on a continuous basis. I note that excludes a 15% margin typically included for general upkeep.

17. That evidence is not challenged by the Council. However in practice it is principally the appellant along with his son and grandson who operate the holding. I understand that they undertake the majority of the work themselves, aside from occasionally contracting specialists or labour for intensive tasks as needs be. I will return to that. Therefore in practice the objectively calculated labour requirements of 4.6 or more individuals is being undertaken by only three people. If a 15% upkeep margin were to be included, each member of the family referenced above would need to work around 490 SMD a year (not far off double the standard metric of 275 SMD).

18. It was established as common ground between the main parties during the hearing that the dwelling proposed would have a gross internal area of around 222 square metres (irrespective of the function that certain areas are intended to fulfil).[8] The Council contends that is beyond what is reasonably required. That figure also appears to exceed the indicative figure given in the Design and Access Statement supporting the original permission ('DAS'), namely that the 'residential accommodation' would amount to no more than 180 square metres floorspace. The appellant's distinction between a 'primary' agricultural workers' dwelling and any other form of agricultural dwelling is not an established phrase in policy or guidance.

19. If the combined floorspace of the single storey elements of the proposal (including a utility room, office, shower room and garage) are deducted from 222 sqm, a residual figure of around 174 sqm results. The appellant contends that only that residual should be seen as 'residential accommodation', and therefore by extension that the present scheme would be compliant with the terms of the DAS. I disagree. That suggests some sort of arbitrary separation whereby a 'principal' rural worker occupying the property would never enter the property via the utility room, or that he would be engaged solely in management and administration rather than getting his hands dirty. That argument also suggests that none of those elements of the property would have a hybrid use, being part residential space and part used by farm workers.

20. Nevertheless in respect of the outline permission scale was a reserved matter. I understand there is no explicit reference to the figure of 180 sqm in the Council's assessment of the former scheme, albeit that it may have been taken into account in that context. The subsequent application for approval of details, the subject of this appeal, is the avenue through which that matter should properly be assessed. Moreover in practice some of the floorspace within the dwelling proposed would be used by rural workers engaged in tending to livestock and undertaking other activities who are not occupants of the dwelling proposed. I heard, and accept, that such activities are presently undertaken with some inconvenience given the confines of the mobile home.

21. It is commonplace also for farms to have separate office buildings and for dwellings to have detached garages. In this instance those elements are an integral part of the house whereas they could have readily been designed as

[8] The reference to 250 square metres floorspace in the associated officer report being an approximation rather than precise calculation.

free-standing elements, in which case the functional separation would have been clearer (although, potentially, visual effects greater). Furthermore I have set out above that the holding is substantial. The intensity of work generated is sufficient to provide full-time employment for between 3 and 5 individuals. In that context a dwelling with a floorspace of around 222 sqm comprising four bedrooms, with some discount for elements that would be used from time-to-time for farm management or by non-resident workers, would not be excessive in this specific instance.

22. Moreover the fundamental purpose of policy OC1 is to ensure that the character of the countryside is protected. I have noted the concerns of Stogursey Parish Council regarding the visual effects of the scheme, and accept that the dwelling proposed would be visible from Shurton Lane and nearby rights of way on occasion. It would also introduce built development exceeding the scale of the mobile home currently on site, and be apparent from several surrounding public footpaths around the area which I walked during my site visit (albeit partially and fleetingly in many instances).

23. However, as set out above, the appeal site is relatively flat. The intended location of the dwelling is also reasonably set back from Shurton Lane which in this location is flanked by established hedgerows. That would reduce its visual prominence. The form of the dwelling proposed would also be partially obscured from certain vantage points by the presence of nearby agricultural barns. By virtue of the topography, established hedgerows and trees in the landscape, and the separation distance from Stogursey, in my view the effect of the development would be highly localised. In that context the dwelling proposed would not appear excessive. I furthermore note that the appeal site is not within an area designated on account of its natural character, and that landscaping would assist in enabling the scheme to blend in with its surrounding over time (which could be secured via appropriately worded conditions specifying necessary details were the development otherwise acceptable).

24. I therefore concur with the Council that no substantive visual or landscape harm would result. That is the underlying aim which OC1 seeks to achieve (and, incidentally, reinforces the rationale for essential need being related to the nature of associated accommodation). Whilst I accept the scale is generous in relative terms compared to the prevailing size of new homes and that which would be needed in respect of many agricultural enterprises, with regard to the particular circumstances here and the surrounding context, I conclude that the scale of the dwelling proposed is broadly commensurate with the agricultural needs that justified granting the original permission and otherwise acceptable. I therefore find no conflict in this respect with the relevant provisions of OC1 or NPPF paragraphs 79 or 170.

Financial viability

25. Since 2013 the profitability of the enterprise has improved, as reflected in the AA. In the last three financial years ending March 2019, the net income returned has increased from around £30,561 to £33,936 to £39,706. Proportionately those figures represent around a 11% increase in profitability 2017-18 and 17% 2018-19, a solid trajectory. That is notwithstanding greater variance in preceding years, and some figures with limited explanation (for

example a 93% increase in contracting costs between 2017 and 2018). I am told profitability has improved principally as a result of paying down existing debts, receiving greater funding from the Basic Payment Scheme, and fewer unforeseen circumstances and one-off expenses occurring.

26. However that increase in turnover must plateau at some point. As reasoned above, the extent of the holding and number of livestock has remained effectively constant since 2013. It has not been argued that the appellant has future plans to expand the enterprise. The enterprise is still indebted, with loan interest that appears to now stand at around £17,311 annually. It is also prudent to make some contingency for unforeseen circumstances, whilst I accept that there is nothing in the foreseeable future to indicate that it would not be possible to achieve the current net return from the enterprise in future years.

27. Setting aside those qualifiers, at present an annual return of £39,706 shared equitably between three individuals would amount to £13,235 each. Many agricultural workers accept lower levels of income than standard minima, however that is well below the National Minimum Wage ('NMW', and also below the lower figures last set in that regard by the Agricultural Wages Board in 2013). Moreover in practice that sits awkwardly with the justification that the enterprise generates an empirical need for between 4.6 and 5 labour units. £39,706 cut five ways is around £7,941. That is approximately half the NMW. Whilst I accept margins are tight in agriculture, significant investment has been undertaken by the appellant, and debt is beneficial in some circumstances, based on the evidence before me the operating margins in this instance are exceptionally tight or untenable if standard methodologies and assumptions are applied.

28. At the time of the hearing I had a letter before me from NatWest dated 25 October 2018. That indicated they were prepared to finance some £160,000 of the anticipated cost of constructing the dwelling as represented on the plans listed in the banner heading. The anticipated cost of the dwelling, with some exclusions, is given in appendix three to the appellant's statement of case prepared by a chartered surveyor as £264,900.70.[9] I understand that some works have been undertaken amounting to around £9,000, and the appellant may have more savings than initially predicted. However that first letter did not specify the terms on which the loan was offered. The absence of that information posed a fundamentally unanswered question as to the potential effect of repayments on future financial projections.

29. At my request the appellant submitted further correspondence from NatWest dated 25 July 2019. That second letter indicates the loan would be on a variable rate basis currently standing at 4.62%.[10] Indicatively that results in an annual repayment total of around £10,773.24. Were that discounted from income for 2019, the enterprise would have a net profit of £28,933, returning around £9,644 to three individuals or £5,787 to five workers. That repayment schedule is intended over 25 years. Even with significant existing capital, on that basis I cannot conclude that the dwelling could be constructed as proposed and the enterprise continue to be viable in the foreseeable future. Even with

[9] A figure the Council accept is broadly in the right territory.
[10] 3.87% plus Bank of England Base Rate of 0.75% presently.

increased profitability and no unforeseen circumstances there is a very real likelihood that such costs could not be sustained.

30. Following a previous letter on behalf of Thomas Westcott Chartered Accountants of 30 October 2018 attesting to ability of the enterprise to finance a loan sufficient to enable the construction of the dwelling proposed, a further letter from that company on behalf of the appellant was submitted on 31 July 2019 after the hearing had closed. The Council is of the view that I should disregard the second Westcott letter on the grounds of procedural fairness. Bluntly, whilst I accept the intention of that letter was for clarification, there is neither clear justification as to why that information has only become available latterly nor detailed evidence in support of the figures therein quoted. Nevertheless the substance of that letter does not alter my conclusions.

31. The second Westcott letter explains that the farm business has three main workers Mr M Plowright, Mr J Plowright and Mr M McGuiness (father, son and grandson). For the year ending 31 March 2019 contracting expenses are given as £31,516 in the accounts. Of that figure I am told Mr McGuiness received £15,992. Therefore an element recorded under the heading of 'purchases' for Lime Street Buildings actually went to an individual engaged in the running of the enterprise. That, in effect, buoys up the financial position (exceeding the reduction that would arise were the NatWest building loan taken out). However from the accounts, 2019 is an atypical year in terms of contracting costs. The figure for 2018 appears to be £22,242 and for 2017 £12,472. It is therefore not clear whether reliance can be placed on that income for Mr McGuiness, and there is no robust evidence before me as to the factors that affect that level of income in practice (for example whether contracting expenses are cyclical or likely to remain constant in the future).

32. I acknowledge that the enterprise has existed for many years based on the energy and grit of the appellant and his family. I accept that profitability is improving, and that a loan offer for building the proposed house has been made. However even as they stand operating margins are very tight and would be reduced still further by the loan proposed, significantly below reasonable minima. Consequently I am not satisfied that the proposal is justified in financial terms in accordance with the relevant provisions of LP policy OC1, NPPF paragraph 79 and with regard to the approach in the PPG. Allowing the scheme as it stands would undermine the premise upon which outline permission was originally justified.

Other matters and conclusion

33. The reasoning in respect of the main issues leads me to the question that, if no harm to character and appearance would result, is it legitimate for planning to concern itself with the future viability of an agricultural enterprise? My view is yes. Where an essential need exists is one exception to the general position that new isolated homes in the countryside should be avoided. That approach exists, amongst other things, in order to protect the intrinsic character of the countryside. Therefore the context in which development here is justified is fundamentally premised on their being a demonstrable need. The existence of that need sets the benchmark for determining the acceptability of any resultant visual effects.

34. As reasoned above I am not satisfied that the scheme could be undertaken in a manner so as to avoid undermining the viability of the enterprise, the basis on which outline permission was granted, and thereby changing the context in which effects to character and appearance are assessed. The proposal would undoubtedly entail benefits to the appellant, his living conditions and the facilities available to farm workers. However those benefits do not amount to an essential need, the enterprise has evidently persisted for some considerable time, and profitability improved, in the absence of a permanent dwelling. There is no robust evidence as to any alternative approaches that have been considered and discounted for whatever reason, for example less costly schemes. I mention those latter points only in so far as, had there been compelling evidence, that may have carried weight in favour of allowing the appeal.

35. Nevertheless, for the above reasons, having taken account of the development plan as a whole, the approach in the NPPF, and any other relevant material considerations, I conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

M Plowright	Appellant
C Plowright	Appellant
Edward Persse MRTPI	EJFP Planning Ltd.
Sheamus Machin FRICS FAAV	Agricultural Consultant
Kelly Davies	Thomas Westcott Chartered Accountants

FOR THE LOCAL PLANNING AUTHORITY:

Anthony Bird	Somerset West and Taunton Council

INTERESTED PERSONS:

J Ody	On behalf of Stogursey Parish Council

HEARING DOCUMENTS

1) Unaudited business accounts for 31 March 2019.