Appeal Decision

Hearing Held on 23 July 2019

Site visit made on 23 July 2019

by Martin Chandler BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2019

Appeal Ref: APP/T3725/W/18/3215137
Faerie Tale Farm, Rouncil Lane, Kenilworth CV8 1NN

- 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 Ms K. Vaidya on behalf of Faerie Tale Alpacas Limted against the decision of Warwick District Council.
- The application Ref W/18/1180, dated 18 June 2018, was refused by notice dated 12 September 2018.
- The development proposed was originally described as: 'retention of timber cabin for occupation by a rural worker'.

Decision

1. The appeal is allowed and planning permission is granted for a timber cabin for occupation by a rural worker at Faerie Tale Farm, Rouncil Lane, Kenilworth CV8 1NN in accordance with the terms of the application, Ref W/18/1180, dated 18 June 2018, subject to the attached Schedule of Conditions.

Application for Costs

2. At the Hearing an application for costs was made by Ms K. Vaidya on behalf of Faerie Tale Alpacas Limited against Warwick District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal site is located within the Green Belt and planning permission was granted at appeal[1] on 11 November 2014 for the siting of a temporary agricultural worker's mobile home. The temporary permission lasted for a period of 42 months and expired on 11 May 2018. It has therefore lapsed although the structure continues to exist on site.

4. In allowing the appeal, I have amended the description of development from that set out on the planning application form by removing reference to the retention of the structure. This is because the retention of a building is not an act of development. In making this change, I am satisfied that the interests of the main parties have not been affected.

[1] APP/T3725/A/11/2159250

Main Issues

5. Paragraph 143 of the National Planning Policy Framework (the Framework) states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

6. Paragraph 145 of the Framework states that the construction of new buildings should be regarded as inappropriate development in the Green Belt. Whilst there are exceptions to this, it was agreed at the hearing that the proposal would not fulfil any of these requirements. Accordingly, it is common ground between the parties that the proposal constitutes inappropriate development within the Green Belt. Consequently, the main issues are:

   i) the effect of the proposal on the openness of the Green Belt;

   ii) the effect of the proposal on the character and appearance of the area;

   iii) whether the harm 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 it.

Reasons

Openness

7. The proposal would retain the existing timber cabin on the site. Adjacent to the cabin is a larger agricultural building, however, other than that and a small caravan, the appeal site comprises of an open and working Alpaca farm. Long views can be achieved of other farm-related buildings in the surrounding countryside, but these are limited. As a consequence, the overwhelming characteristic of the appeal site and its surroundings is one of open countryside.

8. In the context of the broader site, as well as the adjacent storage building, the cabin is not an overly imposing structure. However, it represents an additional building on a site which is primarily characterised by its openness. The proposal would make the presence of the structure a permanent feature of the site. Consequently, I conclude that it would cause harm to the openness of the Green Belt and due to the size of the building, this harm would be of a moderate level. Accordingly, the proposal conflicts with the requirements of Policy DS18 of the Warwick District Local Plan 2011 – 2019 (2017) (LP) which defines the extent of the Green Belt and applies the policies set out within the Framework.

Character and appearance

9. As identified above, the site is located within the open countryside. It hosts a tree-lined brook and a public footpath, both of which run through the site on a broadly north east to south west axis. Within the site, the land levels undulate and there are a number of large mature trees. In addition, the boundaries of the site are also defined by mature landscaping. These attributes combine to provide a pleasant verdant and rural character and appearance to the site and the surrounding area.

10. The timber cabin is a domestic building. It has a tiled roof, with a flue, aerial and solar panels. It also has a small decked area to the front which provides a seating area. These features give the cabin a demonstrably domestic

appearance which is distinctly at odds with the rural character and appearance of the area.

11. The building is well screened from Rouncil Lane when viewed from the east of the site. However, it is highly prominent from the footpath within the site. In addition, it is visible in long views from Rouncil Lane to the north. Due to its prominence and its domestic appearance, the structure is distinctly at odds with the prevailing rural character. I therefore conclude that the cabin has a harmful effect on the character and appearance of the area. Consequently, the proposal would fail to accord with Policy BE1 of the LP which requires new development to positively contribute to the character and quality of its environment.

Other considerations

12. Paragraph 144 of the Framework states that substantial weight should be given to any harm to the Green Belt. It also states that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. I therefore now turn to consider such other considerations.

13. Faerie Tale Farm is a commercial agricultural business which breeds and sells alpacas with the aim of establishing a high-quality breeding herd. It also sells garments processed from alpaca fleeces as well as offering alpaca experiences for visitors to the farm. The land associated with the farm comprises some 5.86 hectares which is primarily used as pasture land.

14. Paragraph 79 of the Framework states that decisions should avoid the development of isolated homes in the countryside unless specific circumstances apply. One such circumstance is whether there is an essential need for a rural worker to live permanently at or near their place of work. The term 'essential need' does not make specific reference to functional need or financial viability. However, it is common ground between the parties that to comply with the requirements of the Framework, and to demonstrate that the proposal is a sustainable form of development, both aspects are relevant in the assessment of the appeal.

15. Policy H12 of the LP states that permanent housing for rural workers in the open countryside will be permitted where it can be demonstrated that there is an essential need to live permanently at or near their place of work. It is therefore entirely consistent with the Framework. The policy establishes five criteria when assessing need and it is common ground that the proposal meets criteria a, b, d, and e. These relate to functional need, employment on the site, size of dwelling, and other existing accommodation in the area.

16. Criterion c requires the business to be financially sound and have a clear prospect of remaining so. At paragraph 4.83, the Explanatory Text states that financial viability can be established if the unit has been established for at least 3 years, has been profitable for at least one of them, is currently financially sound, and has a clear prospect of remaining so. The unit has been established for over 3 years and consequently, the decisive factors relate to the other requirements of the explanatory text.

17. At the Hearing, substantial discussion took place around the recent financial performance of the business. This included evidence submitted in advance of the Hearing in relation to the 2017/18 financial year, as well as the current financial year up to the end of June 2019. Whilst this latest year is after the expiry of the temporary planning permission, Policy H12 makes no reference to extant planning permissions or otherwise. Therefore, there is no compelling reason why the latest figures should not form part of my consideration of the appeal.

18. With a simple regard to profit, the latest figures show that a profit of £28,603 was made in 2018/19. This follows profits of £2,769 in 2017/18, and £7,243 in 2016/17. Consequently, from a profit perspective, the proposal complies with the Explanatory Text to Policy H12. However, to demonstrate that the business is financially sound and has a clear prospect of remaining so, the overall financial performance of the business has to be considered. In this respect, at the hearing, discussion principally focussed on the business's approach to its accounts, as well as cash injections to the business from shareholders, the payment and level of salary and other staff costs, and also the non-payment of rent.

19. The financial details submitted with the appeal identifies substantial sums of money coming into the business under what is termed 'Transfers to Herd'. In 2016/17, the figure was recorded at £25,370, and in 2017/18, it was £25,100. The figure has increased to £47,386 in 2018/19. 'Transfers to Herd' is an accounting mechanism that enables the business to split its herd into trading stock as a current asset, and breeding stock as a fixed asset. Although it was agreed at the Hearing that it is a well-established and accepted accounting practice in agriculture, concerns have been raised in relation to the figures provided.

20. The figures are essentially derived from the value of the trading stock increasing which is primarily achieved by the business selling lower value alpacas and improving the herd with self-sown cria. However, it is also influenced by the size of the herd. It was confirmed at the Hearing that the current trading stock consists of 71 alpacas, made up of 41 adult females, 3 female cria, and 27 males. The breeding stock consists of an additional 14 alpacas which takes the size of the overall herd to 85 alpacas in total.

21. The appellant has confirmed that the valuation of the herd is based on three factors. These are the sale values achieved by the business, information on the alpacas seller website, and advice from individual valuers approximately every 2 years. The herd value is therefore not simply derived by the business-owner but is also moderated by a broader range of external factors. The appeal site does have an upper stocking level, beyond which agistment costs would have to be paid. However, the business model is based on the value of the herd continuously improving, and I have no compelling evidence before me that would suggest that the appellant has not been consistently successful in this regard in recent years.

22. The continuous improvement of the herd requires purchases to enable suitable breeding and this carries a cost. Accordingly, purchase costs are factored into the overall financial performance of the business. Although there was a nil cost in 2015/16, purchase costs of £20,000, £7,050 and £36,269 are accounted for in 2016/17, 2017/18 and 2018/19 respectively.

23. At the hearing it was suggested that an opening and closing stock value might provide a financial picture that might be easier to comprehend. Whilst such an approach might be based on figures that may be more tangible, it is not a requirement of the business, and more significantly, it is also not a requirement of Policy H12. The finances of a business can be presented in many ways and it is vital that these are accurate. However, based on the evidence before me and the discussion at the hearing, I am satisfied that the financial details submitted suitably identifies the increasing value of the herd, but also the costs involved to realise this increased value. In my view therefore, the evidence does not portray a distorted picture and instead suitably demonstrates the costs and added value in an appropriate manner. I am therefore satisfied that the herd value is suitably cautious and robust, and that increases in value are appropriately factored into overall profit levels.

24. In each of the last 4 financial years, the business has received financial injections from shareholders. In 2015/16, £41,600 was injected into the business and in 2016/17, the sum was £19,200. In 2017/18, £33,000 was injected into the business, and in 2018/19, the figure is £10,000. In total, and including the injections over the last 4 years, the evidence shows that the overall figure for called up share capital is £304,500.

25. The business is not a Public Limited Company and instead, it is family run. Consequently, the appellant considers that share values and the use of private money to finance elements of the business are not overly relevant in relation to its financial performance because it is not accountable to external shareholders. Despite this, it is clear to me that additional investment into the business, whether through private or public money, is a relevant indicator in relation to financial soundness.

26. The £33,000 investment was used for the construction of the agricultural building. This has now become a fixed asset of the business and has enabled it to expand its activities on site. In this respect, I am satisfied that the money represented an investment into the business rather than being used simply to sustain its operations. In addition, the appellant has pointed to the abnormal costs of the professional fees associated with this appeal and the appeal in 2014, both of which necessitated additional funds being invested into the business. The history of the site and the nature of the professional fees are such that I am satisfied that they should not be regarded as typical running costs for a business of this nature. Accordingly, I consider it reasonable that additional funds were necessary to meet these abnormal costs.

27. The overall value of the business has been steadily increasing over the last 4 years. In 2015/16 the value was £94,404 and this has now increased to £195,182. Whilst this is less than the called up share capital figure, it is showing an upwards trajectory with a reduction in the difference between the two figures since 2015/16, and in the last year, the value increased by nearly £40,000.

28. It was confirmed at the Hearing by the appellant, that without these financial injections, the business would have ceased trading. The reliance on shareholder injections therefore weighs against the suggestion that the business is financially sound and sustainable. Despite this, much of the investment has provided a fixed asset rather than being used to supplement

running costs, and the evidence also demonstrates that without the cash injections, the business would still have been profitable in the last 2 years.

29. Consequently, due to the increasing value of the business and its most recent financial performance, I am satisfied that the investment in the business has been worthwhile and does not indicate that the business is financially unsound.

30. The business also pays a Director's salary before profits are taken. Although historically the salary has been low, it has increased in the latest financial year. Moreover, due to the positive cash flow position of the business, the salary could have been paid without reliance upon the cash injections identified above in 2 out of the last 3 years.

31. There are no costs attributed to additional staffing for the business but the appellant confirmed at the Hearing that additional help is sometimes provided by unpaid work experience. Additionally, the appellant's mother, who is also a Director of the business, has provided occasional assistance. Despite this, the overwhelming majority of the work is undertaken by the appellant who appears both knowledgeable and passionate about the industry. Although the business is a large undertaking for one person, based on the evidence before me, and what was heard at the hearing, I have no compelling evidence that would suggest that the current level of activity could not be sustained by a single worker. As a consequence, I am satisfied that the staffing costs paid by the business provide a reasonable return for the sole worker before any profit is taken.

32. The business also currently occupies the site without paying rent. This is despite the suggestion in the previous appeal that an enhanced level of rent was to be budgeted for. It was agreed at the hearing that a suitable annual rent level for an enterprise of this size would be between £2,000 and £2,500. In light of the profit levels identified above, if rent were to be charged at such a level, it could be absorbed by the business without unduly compromising its profitability.

33. Finally, the debtor amount of £8,500 showing on the latest figures is due to an outstanding payment in relation to the sale of 3 female alpacas, sold for £16,900 inclusive of VAT. Consequently, I am satisfied that this figure has little bearing on the financial performance of the business.

Summary of financial viability

34. The explanatory text to Policy H12 establishes four strands that relate to financial soundness. Whilst the presentation of the evidence has been criticised by the Council and the Parish Council in terms of being unnecessarily complicated, it was heavily scrutinised at the hearing.

35. However, as identified above, I am satisfied that the business has realised a profit in the last 3 years. In addition, based on the evidence before me and on the basis of what was discussed at the hearing, net assets are increasing in value, cash in the bank is increasing, and retained earnings (the overall loss of the business) is getting smaller. Moreover, a positive cash flow position has also been achieved in 2 out of the last 3 years and the Director's salary has also increased and is paid before profit is taken. Finally, whilst not tangible in relation to financial soundness, the business appears to be well-thought of and is reputationally improving.

36. In my view therefore, for the reasons identified above, I am satisfied that the tangible financial indicators of the business paint a generally positive and improving picture. Consequently, I am satisfied that the business is financially sound and has a clear prospect of remaining so. Therefore, when assessed against the requirements of Policy H12, I conclude that there is an essential need for the appellant to live at the site. This is fundamental to my assessment of the proposal and consequently, weighs very heavily in favour of the appeal.

Planning Balance

37. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In this appeal, there would be harm to the openness of the Green Belt as well as to the character and appearance of the area. Although this harm would be moderate, the Framework states that substantial weight should be given to any harm to the Green Belt.

38. Paragraph 144 of the Framework states that substantial weight should be given to any harm to the Green Belt. It also states that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

39. The Framework seeks to support a prosperous rural economy. In addition, it recognises the need for planning decisions to be responsive to local circumstances and that isolated homes in the countryside can be acceptable where there is an essential need for a rural worker to live at their place of work.

40. It is common ground that there is a functional need for the appellant to live at the site. In addition, for the reasons identified above, I have found that the business is financially sound and has a clear prospect of remaining so. Consequently, there is an essential need for the development. In this respect, the proposal is entirely consistent with Paragraph 79 of the Framework as well as Policy H12 of the LP. As identified above, this is fundamental to my assessment of the appeal and weighs very heavily in its favour.

41. Due to the benefits that the proposal would bring to the appellant as well as to the rural economy, I am satisfied that these matters are sufficient to clearly outweigh the harm to the Green Belt that I have identified. Furthermore, based on the totality of the evidence before me, and looking at the case as a whole, I am satisfied that very special circumstances do exist to justify the proposal.

Conditions

42. In light of my findings set out above, due to the isolated location of the cabin, a condition is necessary to restrict the occupation of the dwelling to that of a rural worker.

43. Due to the rural location and in the interests of visual amenity, a condition is also necessary to control the installation of lights at the property. Finally, I am also satisfied that due to the rural location of the building in the Green Belt, there is clear justification to remove permitted development rights from the dwelling. Although there is limited scope for such alterations, where these are proposed, they should be the subject of a planning application to ensure suitable control is retained by the Council.

44. At the hearing, there was some discussion in relation to the provision of a permanent electricity supply at the site as well as securing the removal of the existing touring caravan from the site through the imposition of a suitably worded condition. However, the exact requirements of such a condition were unclear and compliance may rely upon the actions of third parties. Consequently, imposing a condition of this nature would fail the tests of precision and reasonableness. Furthermore, there is no compelling evidence before me that confirms that such a condition is necessary to make the development acceptable. I have therefore not imposed a condition of this nature and I am satisfied that, in doing this, it has no bearing on the acceptability of the proposal.

Conclusion

45. For the reasons identified above, and having regard to all matters raised, the appeal is allowed.

Martin Chandler

INSPECTOR

SCHEDULE OF CONDITIONS

1) The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.

2) Notwithstanding the provisions 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), no enlargements, improvements or other alterations of the dwelling hereby permitted shall be carried out other than those expressly authorised by this permission.

3) Other than those that already exist, no external lights shall be placed within the site, or the adjacent land in the ownership of the appellant, unless it is in accordance with a lighting scheme which shall first have been submitted to and approved in writing by the local planning authority.

APPEARANCES

FOR THE APPELLANT

Hugh Richards	No. 5 Chambers
Marc Willis	Willis & Co
Monzur Sumon	SKN Services
Mike Warren	Farm Management Consultant
Kierti Vaidya	Company Director
Kirit Vaidya	Company Director
Anne Vaidya	Company Director

FOR THE LOCAL PLANNING AUTHORITY

Dan Charles	Warwick District Council
Paldip Shalma	Warwickshire County Council
Paul Rhodes MRICS	Rhodes Rural Planning

INTERESTED PERSONS

Janet Gee	Parish Council

DOCUMENTS SUBMITTED DURING THE HEARING

1) Statement of Common Ground
2) Appellant's application for costs
3) SKN Chartered Accountants and Business Advisors: Response to Bernard Rogers & Co document
4) Michael Warren response to Bernard Rogers & Co document
5) Trip Advisor review titled: Love animals? You'll love this.
6) Endorsement from customer dated 16 July 2019