

Appeal Decision

Hearing Held on 25 September 2019

Site visit made on 25 September 2019

by M Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2019

Appeal Ref: APP/L3245/W/19/3230826

Moston Grange, Junction Hermitage Lane to A49 Lee Brockhurst, Moston, Stanton Upon Hine Heath SY4 4LU

- 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 Miss Anna Brown against the decision of Shropshire Council.
 - The application Ref 18/05530/OUT, dated 29 November 2018, was refused by notice dated 12 February 2019.
 - The development proposed is described as the proposed erection of a rural enterprise dwelling of up to 100sqm to support the equestrian business as well as erection of dutch barn.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline. The application form indicates that approval was sought only for the matter of access. I have determined the appeal on this basis.
3. In addition to the proposed dwelling, the application also included the erection of a dutch barn. The Council has no objection to this element of the appeal and based on what I have seen, I have no reason to disagree. I have therefore focussed my consideration on the proposed dwelling.
4. Prior to the hearing, a S106 planning agreement between the appellant and the Council, was submitted, in respect of the floorspace of the dwelling and a contribution towards affordable housing should any occupancy condition placed on the dwelling be removed.

Applications for costs

5. At the Hearing an application for costs was made by Miss Anna Brown against Shropshire Council, as well as by Shropshire Council against Miss Anna Brown. These applications are the subject of a separate Decision.

Main Issue

6. The main issue raised in this case is whether or not the proposed dwelling is justified, having regard to national and local planning policies which seek to restrict new residential development in the countryside.

Reasons

Background

7. The appellant currently operates an equestrian business from the site, consisting of the livery and training of horses. The establishment comprises a building accommodating an indoor training arena and stabling, an external training area and a circular sand school. Adjacent to the site lies an existing dwelling, Moston Grange, and a number of stone outbuildings, however these are not within the ownership of the appellant.

Policy context

8. Policy CS5 of the Shropshire Local Development Framework: Adopted Core Strategy (2011) (the Core Strategy) outlines that new development in the countryside will be strictly controlled and where dwellings are proposed to house agricultural, forestry or other essential countryside workers, the need for the proposal will need to be demonstrated.
9. Policy MD7a of the Shropshire Council Site Allocations and Management of Development Plan (2015) (the SAMDev Plan) states that in respect of housing in the countryside, dwellings will be permitted to house essential rural workers if, in the case of a primary dwelling to serve a business, relevant financial and functional tests are met, it is demonstrated that the business is viable in the long term and that the cost of the proposed dwelling can be funded by the business.
10. The site does not lie within any defined settlement and therefore for the purposes of the policies above, the site lies within a countryside location. I note the appellant refers to the site lying within the named settlement of Moston. However, from my observations, whilst the site is near to a number of buildings, the it lies in a countryside location and the area does not comprise a settlement. As such, there would be conflict with policy unless the proposal meets the policy requirements above.
11. The Council has concern over the financial viability of the enterprise, which the appellant considers is not a pertinent matter and has referred to the lack of a financial test within paragraph 79 a) of the National Planning Policy Framework (the Framework). Whilst I acknowledge that this paragraph refers only to there needing to be an essential need, as I have outlined above, the policies of the development plan do refer to financial tests, particularly long-term viability and the business being able to fund the construction of the new dwelling.
12. I have had regard to the judgement in *Embleton*¹ as referred to by the appellant. *Embleton* made it clear that the Framework does not require a financial test, however it does not prevent financial information from being considered. As such, whilst the development plan policies require further information, they are not inconsistent with the requirements of the Framework and the development plan is the starting point for consideration of the proposal. Accordingly, I consider it appropriate to consider the financial viability of the enterprise.

¹ Regina ex parte Embleton PC and David Ainsley v Northumberland CC and Ivor Gaston [2013] EWHC 3631 (Admin)

Essential need

13. The appellant asserts there is an essential need for a new dwelling at the site in order to manage the enterprise. At the hearing it was confirmed that the operation involves the stabling of clients' horses, the training of horses that are brought to site, as well as the stabling of some of the appellants own horses. There are 16 boxes within the stabling area, with 12-14 horses at the site as a maximum, most of which would be clients' horses. At the time of the hearing it was confirmed however that there were only 4 horses at the site.
14. In support of the contention that a 24-hour presence is required at the site the appellant highlighted a number of matters. These included the risk of fire that is present at equestrian facilities, particularly in light of the presence of dry hay and electrical equipment, as well as the need for security of the horses, the need to monitor the health of the animals and ensuring that during the winter water provision facilities do not freeze over.
15. Fire, I appreciate, is a concern and can quickly take hold of a building. Any risk in this respect could, in my view, be mitigated satisfactorily by the installation of a fire detection, alarm and sprinkler system. I accept that rural security can be an issue, particularly where valuable equipment or animals are kept on a site. However, I am not convinced that concern in this respect cannot be alleviated by the implementation of surveillance and alarm solutions or other security measures.
16. In terms of health concerns, the appellant stated that it is necessary for someone to be within "sight and sound" of the animals in order to attend to issues that could arise outside of the normal working day. When asked about occurrences of illness the appellant stated that this did not happen often. Problems such as colic tend to occur after an evening feed and when such problems have been known, the appellant has stayed at her parents' house, which is adjacent to the site. An overnight stay was also required when a foal was born, however this is not a common occurrence. When I enquired as to how often it has been necessary to stay with her parents, it was stated that it has been necessary 4 or 5 times over the last 4 or 5 years, equating to once a year on average. This is not, to my mind, indicative of an issue that requires or justifies a permanent on-site presence at the site. It was mentioned that there is a need to ensure water supplies do not freeze during the winter, but I do not see why automated systems could not be utilised to achieve this.
17. I am aware that currently the appellants' parents occupy the adjacent dwelling and assist in the monitoring of animals. It was confirmed at the hearing that they help to feed the horses, undertake a final check in the evening and that there is no further check until the morning when the appellant arrives at the site. This demonstrates that there is not an ongoing requirement to check on the animals during the night.
18. When asked how the appellants parents would become aware of any problem it was stated that it is likely they would hear the animals if in distress. However, this cannot be relied upon, particularly given the separation distance between the existing dwelling and the stabling. As such, the existing presence of the appellants parents near to the site and their intention to move away from the site, does not demonstrate that an existing essential supervisory presence will be lost. There is currently CCTV installed and this is monitored from within the existing dwelling. However, this does not cover the interior of the stables. The

extension of the coverage of the CCTV could clearly help with any need to monitor the animals.

19. I am conscious of the regulations for the welfare of animals which I have been referred to and the need to ensure that sufficient welfare arrangements are in place. However, I have not been convinced that a permanent, 24-hour a day on-site presence is required in order to provide this. I am also mindful that the appellant highlighted that one of the first questions potential clients ask is whether there is anyone living on the site and that they are happy when informed that the appellants parents live adjacent. However, whilst I acknowledge this may be a preference of some clients, it has not been robustly demonstrated that the lack of an on-site presence would dissuade clients from utilising the facilities, to such an extent as to threaten the viability of the enterprise.
20. I have also had regard to a specialist report in respect of a different establishment, that was drawn to my attention by the appellant, which discussed the need for an onsite presence to ensure the welfare of horses. However, that enterprise accommodated a larger number of horses and there was breeding taking place necessitating the supervision of mares in foal and giving birth. It also refers to livery or youngstock not requiring 24-hour supervision to meet their welfare requirements. As such, the circumstances of that operation were different from that which is before me and as such it does not convince me of any need for a permanent onsite presence.
21. Thus, it has not been sufficiently demonstrated that there is an essential need for a worker to be present on the site at all times of the day, for the proper functioning of the enterprise.

Long-term viability

22. A number of Profit and Loss Accounts have been provided, however the last of these is for the year ended April 2016, which showed a profit of almost £7,000. The preceding year a loss of £9,450 was shown. For the subsequent years, no Profit and Loss Accounts have been provided, with the appellants accountant stating in an Addendum, that it is not considered necessary as net income figures are shown within their original report. However, these figures are stated to include profit from the appellants self-employment i.e. the equestrian business, as well as income the appellant receives from other employment. The amounts from each employment are not quantified and there is no information on how secure the other employment is and whether it will continue in the future.
23. The combined income figures do not provide comparable information to the detailed account information provided for the years prior. Without clarity of this matter, in the form of detailed accounts demonstrating where income is derived from, I cannot be satisfied that the equestrian business run by the appellant is sufficiently viable in its own right at this time.
24. The appellant has also submitted a business plan however this lacks detail in terms of the costings and expenditure which would be directed towards the growing of the business, for example employing additional workers and the construction of the proposed barn.

25. It is also stated that the construction of the new dwelling will be funded by the sale of the appellants existing property in a nearby settlement. At the hearing it was confirmed that this property was a personal asset of the appellants and not a business asset. As a consequence, whilst it was asserted that the existing business supported the mortgage payment which the appellant makes on this property, this demonstrates that the construction of the new dwelling will not be funded by the business itself.
26. It was also raised that the land on which the equestrian enterprise operates is not within the ownership of the appellant, but rather it is owned by the appellants parents. There are leases currently in place on the land that the appellant has benefit from and there was discussion in respect of how secure such leases were. It was stated that whilst the term of the lease is for 5 years, that the buildings and training areas are on the basis of a non-excluded lease which provides security that the lease can continue after its term.
27. However, the paddock which is primarily utilised is held on the basis of an excluded lease and as such there is no certainty after the 5-year term that this land would be secure. This was on the basis that the adjacent dwelling would be put up for sale in the future and it was preferable for land to be marketed with it. It is quite possible therefore that in the future, this land would not be available. It was contended that other land is within the appellants parents' ownership and could be made available, but there is no certainty in this respect. Whilst acknowledging the willingness of the parents to assist the appellant in the enterprise, I cannot be satisfied that in the future there will be land available for the enterprise to take place on.
28. It has also been highlighted by the Council that the planning permission which exists for the current building at the site, containing the riding arena, is subject to a planning condition which limits the use to private purposes only, excluding any commercial use. Whilst this matter is not determinative to my decision, it nonetheless creates a degree of uncertainty in respect of the business.
29. Consequently, I find that it has not been demonstrated that the enterprise is financially secure, that the enterprise can fund the construction of the new dwelling or that there is sufficient long-term certainty in respect of the operation taking place at the site.

Alternative accommodation

30. It has been suggested by the Council that there may be the possibility of converting one of the existing outbuildings that are located adjacent to the site. These are not within the ownership of the appellant and as such there would be cost involved with not only undertaking the conversion of such a building, but also of purchasing it in the first instance. In this regard, I am satisfied that this would not be a viable option for the purposes of this appeal.
31. The appellant maintains that no other dwelling in the area would serve the needs of the enterprise as it is not on the appeal site. In light of my finding above, that there is not an essential need to be at the site, I am of the view that a nearby dwelling, rather than a dwelling on site, could serve the enterprises' needs. Little information has been submitted in respect to other nearby dwellings. However, it is noted that the appellant currently lives approximately 5 miles from the site, involving only a short drive to the site. As

such, based on the evidence before me, it would appear that the needs of the enterprise can be met by the appellants current home.

Finding on main issue

32. For the reasons given, I conclude that it has not been demonstrated that there is an essential need for a rural worker to live at or near the appeal site and, therefore, the proposed dwelling in the countryside is not justified. In addition, it has not been demonstrated that the existing operation is sufficiently viable in the long-term or that alternative accommodation options are not available. Accordingly, the proposed development conflicts with adopted Policy CS5 of the Core Strategy and Policy MD7a of the SAMDev Plan, the relevant requirements of which are set out above.

Other Matters

33. I appreciate that the appellant trains horses to a high standard and that she attracts clients from a wide geographic area. There are also economic contributions to the local economy as a result of the equestrian enterprise. Whilst these matters are noted, they are not sufficient to outweigh the harm that I have identified above.

Conclusion

34. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Martin Allen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Rob Mills
Anna Brown
Alan Brown

Les Stephan Planning Ltd.
Appellant
Appellants' father

FOR SHROPSHIRE COUNCIL:

Philip Mullineux
Jane Preece

Principal Planner, Shropshire Council
Technical Specialist Planning Officer,
Shropshire Council

DOCUMENTS

- 1 Addendum to Accountants report
- 2 Bank Statements (copies available at hearing, but not submitted)