



Appeal Decision

Hearing held on 3 December 2019

Site visit made on 3 December 2019

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 January 2020

Appeal Ref: APP/J1860/C/18/3211868

Land adjoining Welland Farm, Marlbank Road, Welland, Malvern, WR13 6NB (also known as Rosebud Meadow Camping Site).

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Miss Rosie Clare against an enforcement notice issued by Malvern Hills District Council.
- The enforcement notice was issued on 22 August 2018.
- The breach of planning control as alleged in the notice is the unauthorised change of use of the land from agricultural to a mixed use of agricultural and the siting of a caravan for residential purposes as shown in the approximate position hatched green on the attached plan.
- The requirements of the notice are: -
 - 5.1 Permanently cease the use of the land for residential purposes.
 - 5.2 Permanently remove the mobile home and associated decking structure as approximately shown hatched green on the attached plan from the land.
 - 5.3 Lawfully remove all resulting materials and reinstate the land to its previous condition before the breach took place.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

Summary Decision: The appeal is allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.

The Notice

1. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
2. For the reasons of clarity and accuracy it was agreed at the hearing that the words '*the unauthorised*' would be deleted from paragraph 3 of the enforcement notice and replaced with '*without the benefit of planning permission the material*'. It was also agreed that the mixed use cited in paragraph 3 of the notice should include equestrian and glamping/camping uses based on recent planning permissions that had been granted/implemented on the appeal site. It is also not necessary to include what the former use of the land was. As such, I intend to delete the words '*from agricultural to a mixed use of agricultural*' and replace them with '*to a mixed use of agriculture*,

equestrian, glamping'. I consider that these corrections can be carried out without injustice to the parties.

Procedural Matters

3. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. However, the sections relevant to this appeal have not materially altered and the parties have had the chance to comment on it during the appeal process. I am required to consider the appeal on the basis of the current Framework.
4. At the hearing the Council stated that it considered that the siting of the caravan for residential purposes given its location on the land and its proximity to the agricultural building does not harm the character and appearance of the area or adversely affect the landscape and scenic beauty of the Malvern Hills Area of Outstanding Natural Beauty (AONB).
5. Both main parties agreed that the caravan, despite being close to the agricultural building, is physically and visually separate from the settlement of Welland and in that sense it is within an isolated location. Furthermore, for the purposes of Policy SWDP 2 of the South Worcestershire Development Plan (SWDP) the caravan is within the open countryside.

The appeal on ground (a) and the deemed planning application

Main Issue

6. Taking into account the above, and the evidence before me I consider that the main issue is whether the siting of a caravan for residential purposes complies with the relevant development plan policies and the Framework.

Reasons

7. SWDP Policy SWDP 19 states that for a new agricultural or other rural enterprise, a time-limited permission may be granted for a temporary dwelling, such as a mobile home or caravan, until the economic viability of the enterprise is established. It goes on to state that applications for such dwellings must meet the functional and economic tests contained in Annex G. This policy is consistent with paragraph 79 (a) of the Framework which states, amongst other things, that planning decisions should avoid the development of isolated homes in the countryside unless there is an 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 in the countryside.
8. Annex G sets out that to demonstrate a functional need for a dwelling evidence will be required to prove that any additional dwelling proposed for the operation of the farm / rural enterprise is necessary. This is for reason of animal welfare, security of animal stock or other stock, security of buildings or machinery, or the maintenance or delivery of essential processes, a full-time worker is required to live on the unit for most of the year. Also, that no other dwellings are available within or adjacent to the site or a nearby settlement that can meet the required need.
9. The appellant's enterprises are relatively new, and the appellant has stated that she seeks to retain the caravan on a temporary basis. The appellant runs 3 main enterprises from the appeal site which include the operation of

- glamping pods/camping, the breeding of miniature horses and the keeping of goats/sale of goat's milk products. During the hearing and within her evidence, the appellant set out in detail why she believes that a constant on-site residential presence is necessary to meet the requirements of the enterprises.
10. The reasons include the horses and goats kept at the site needing to be fed, stabled/housed at night and let out during the day and also to observe the safety of activities taking place within the site. I acknowledge that the proximity of the glamping/camping guests to the animals on the overall site could raise some security and welfare/safety issues as highlighted within the evidence before me and by the appellant at the hearing. There is also a public right of way (PROW) that runs close to boundaries of the site.
 11. To my mind, however, these activities of themselves could reasonably be carried out during working hours and that providing guests with information/advice on welfare safety issues in combination with signage/fencing and CCTV could minimise any issues arising from the proximity of any guests and members of the public to the livestock. Therefore, an overnight presence within the site, whilst more convenient, would not be essential on that basis.
 12. Notwithstanding the above, it is clear that animal welfare is at the forefront of the appellant's mind. She has set out within her statement and at the hearing that horses can be susceptible to certain types of potentially fatal health complications such as colic and may also become stressed from unexpected events. At the hearing the appellant gave details of emergencies that had occurred at the site in relation to the birthing of foals and kids. I am mindful that there are technologies available as suggested by the Council that serve to closely monitor the health and condition of animals. However, it would appear that these technologies may not presently be compatible with miniature horses or goats.
 13. Remote monitoring via CCTV with audible sound, as an alternative to a resident being located close to the main building and attuned to the associated noises, may be technically feasible. However, the appellant stated that there was very little 3G/4G signal within the surrounding area and I observed that this appeared to be the case whilst undertaking the site visit. Moreover, I was informed at the hearing that the onset of birthing and other medical issues may initially result in small changes to behaviour which are only readily identifiable by an experienced person and that at times animals have to be monitored on an hourly basis. I understand that audible cues are often as important as visual changes for identifying disruption to normal behaviour. These small changes may nevertheless have severe consequences in short order if not treated effectively.
 14. Medical issues and other unforeseen circumstances such as security incidences may, by their nature, occur on an ad-hoc basis at any time of day. An on-site presence could not prevent all unforeseen circumstances nor remedy all welfare issues. However, it would nevertheless enable an almost immediate response to be taken, thereby catching issues earlier before they become more serious and reducing animal distress.
 15. I am also cognisant that the livestock element appears to be important to the long-term viability of the enterprises. It seems that, given time to develop and expand as anticipated in the business plans, these elements of the business

have the potential to grow into viable enterprises. In addition, the birthing of the foals and kids is not seasonal and to ensure that soap production is consistent the appellant tries to/aims to stagger the birth of kids throughout the year.

16. In the early stages of a rural enterprise becoming established, livestock levels would reasonably be expected to grow as the enterprise matures. Although the overall animal welfare risk may be comparatively low at present considering the limited scale of the operation, the frequency of such times would increase with the numbers of animals. Furthermore, the enterprises are in an embryonic state at present and it seems to me that the impact of losing an animal, though potentially insignificant in relative terms, could in this case be disproportionately harmful to these parts of the enterprises.
17. The number of animals on the site has grown recently with the purchase of additional goats and the appellant predicts that more horses and goats would be required within the next three years. I therefore find that it is more likely than not that the appellant will continue with the expansion and development of the livestock parts of the enterprises.
18. I acknowledge that the evidence before me does not detail the specific labour requirements of each part of the enterprises. Nonetheless, I have no reason to dispute that the appellant undertakes the majority of the glamping management, livestock husbandry and goat's milk soap production herself and that additional assistance is provided by other rural workers presently on a part time basis. It would appear that at the present time it is highly likely that the appellant works on a full-time basis within the enterprises and that a large proportion of her day is devoted to the welfare of the livestock.
19. In addition, within a few years, it is likely that she would be able to fully demonstrate a functional/essential need for a full-time rural worker to live on the site for most of the year for the reason of animal welfare. The Planning Practice Guidance (PPG) states that in the case of new enterprises, consideration should be given as to whether it is appropriate to grant permission for a temporary dwelling for a trial period. Under these circumstances, I consider that a condition restricting the time period for the siting of the caravan would give the Council the opportunity to review the enterprises and the functional/essential need arising from the livestock levels at that time.
20. Whilst, there may be accommodation available within the surrounding area that could offer alternative housing given the context above, in my view, it cannot meet the required need.
21. Annex G relating to SWDP Policy SWDP 19 states that evidence will be required to establish that in the case of a proposal for a temporary dwelling that the new enterprise has been planned on a sound financial basis and that the size of the dwelling proposed is commensurate with the established functional requirement of the enterprise.
22. The appellant has provided details showing income and expenditure for the financial year 2018-2019. These indicate that the appellant's enterprises made around £33,000 net profit that year. The majority of income being derived from the glamping/camping. Nevertheless, the appellant stated at the hearing that she did not take a wage for herself that year but has sunk all of the money

back into the enterprises. Furthermore, it would appear that the success of the miniature horse breeding programme is likely given the success of the appellant's horses at horse shows/championships. In addition, the goat's milk soap production and sales appear to be increasing.

23. The appellant appears determined to make a success of the enterprises despite the changes that have occurred since she purchased the site. The projections for the enterprises as a whole show net profit to be: around £62,000 in 2020/21; £120,000 in 2012/22 and £180,000 in 2022/23. Whilst, her aspirations are ambitious nothing I have heard or read leads me to doubt that the business is not planned on a sound financial basis. Moreover, the prediction is that reasonable and sufficient taxable profits would be generated by the enterprises to provide a reasonable return and provide sufficient funds for a rural worker's wage.
24. Whilst, it has not been demonstrated that the existing enterprises are economically viable they are already showing signs that they could be viable. I consider that a condition restricting the time period for the siting of the caravan would also give the Council the opportunity to review the state of the overall enterprise and assess whether it has continued to grow in a manner which proves its longer-term viability.
25. I have not been provided with any compelling evidence to suggest that the size of the caravan is not commensurate with the functional requirement of the enterprises.
26. Even though, the caravan is within an isolated location in that it is physically and visually separate to the settlement of Welland there is no dispute that its services and facilities are within an acceptable walking and cycling distance of the appeal site. As such, I consider that occupiers of the caravan would have accessible travel choices available to them.
27. It follows that for the above reasons, the siting of a caravan for residential purposes on the appeal site for a temporary period is not in conflict with SWDP Policies SWDP 2, SWDP 4 and SWDP 19 insofar as they seek to strictly control residential development in the open countryside and to minimise the demand for travel. It also complies with the PPG and paragraph 79 (a) of the Framework.

Other matters

28. The references to other development plan policies have been noted. However, the development plan policies to which I have referred are considered the most relevant to this appeal.
29. Reference is made to listed buildings, Marlbank Farmhouse and a barn adjacent to it, within the evidence before me. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
30. Based on the evidence before me, including the list descriptions, and my observations I consider that their significance appears to be mainly derived from their age, historic fabric, form, architectural features and their historical

use. Their significance is mainly experienced from within the grounds of the farmhouse and can be experienced from its access drive and the PROW. There is no indication that there is or was a functional link between the appeal site and the listed building. Moreover, I observed there is very little if any intervisibility between the listed buildings and the part of the appeal site where the caravan is sited. As such, I consider that the development has a neutral impact on the special interest and significance of the listed building and the expectations of the Act are met.

31. Third parties have objected to the development on a wider basis in relation to the impact of the development on the AONB, the nearby Castlemorton Common Site of Special Scientific Interest (the SSSI), the shared access drive and in relation to noise and disturbance. As stated above, the Council agreed at the hearing that the development does not adversely affect the landscape and scenic beauty of the AONB. Based on my observations of the site and its surroundings I am in no doubt that given its siting adjacent to a substantial existing building means that the caravan does not draw the eye as an incongruous or alien feature. As such, I consider that the development has a neutral impact on the landscape and scenic beauty of the AONB.
32. At the hearing the implications of the development on the SSSI were discussed. I was told that Natural England had withdrawn its objection to a planning application for additional glamping pods on the appeal site based on the proposed installation of a treatment plant for foul and surface water. Furthermore, there was no dispute that a planning condition could be imposed ensuring that the details of the foul and surface water scheme for the development were approved by the Council and implemented within set time limits. In addition, it was agreed that a condition controlling any additional external lighting would ensure that the development would not have an adverse impact on protected species such as bats. In combination, this would ensure that there is no adverse impact on the special interest of the SSSI from the development.
33. I note that there appears to be a dispute in relation to the use of the access drive, its ownership and maintenance. However, ownership issues are a private matter and not within my jurisdiction. Planning permission would not override any legal rights of access.
34. Given that the development relates to the siting of a caravan for residential purposes it is highly unlikely that its occupation and the traffic solely associated with it would cause significant adverse impacts on health and the quality of life of the occupiers of adjacent properties. Furthermore, noise and disturbance were not included in the Council's reasons for issuing the enforcement notice.
35. Whilst I understand that my decision will be disappointing for some local residents, the information before me does not lead me to conclude that these other matters, either individually or cumulatively, would be an over-riding issue warranting dismissal of the appeal.

Conditions

36. I have considered the conditions put forward by the Council against the requirements of the PPG and the Framework. In the interests of conciseness and enforceability the wording of some of the conditions has been amended.

37. A condition restricting the permission for a temporary period only as a trial period to allow the Council the opportunity to review the functional/essential need and economic viability associated with the enterprises is necessary. A condition relating to the occupancy of the caravan is needed to ensure that the circumstances under which the application is being granted remain in place for the duration of the permission.
38. A condition requiring the agreement and implementation of details of surface and foul water drainage measures is required in order to safeguard against any adverse impact to the SSSI. The purpose of the condition is to require the appellant to comply with a strict timetable for dealing with the submission of details and the implementation of a scheme which needs to be addressed in order to make the development acceptable.
39. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the use of the site authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.
40. A condition controlling the provision of any additional external lighting is required in the interests of protected species.
41. As the development has been substantially completed the Council's suggested condition 1 is not necessary. From the information before me, my visit and the discussions at the hearing, I also do not consider that conditions requiring details to be agreed and implemented regarding access, turning, parking, landscaping, boundary treatments and ground remediation would meet the test of necessity.
42. Whilst I acknowledge renewable energy and carbon reduction objectives, I am not satisfied that a condition requiring the implementation of such measures on the site would be proportionate and therefore reasonable, given the temporary nature of the permission.
43. Taking into account the above I do not intend to impose the Council's suggested conditions 1, 4, 5, 6, 8 and 9.

Conclusion

44. For the reasons given above I conclude that the appeal should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act, which will now relate to the corrected allegation.

The appeal on ground (g)

45. Because of my decision to allow the ground (a) appeal subject to conditions, the enforcement notice will be quashed and consequently the appeal on ground (g) does not fall to be considered and I need take no further action in this regard.

Formal Decision

46. It is directed that the enforcement notice be corrected:

- by the deletion of the words '*the unauthorised*' from paragraph 3 of the enforcement notice and replace them with '*without the benefit of planning permission the material*';
- by deleting the words '*from agricultural to a mixed use of agricultural*' also from paragraph 3 of the enforcement notice and replacing them with '*to a mixed use of agriculture, equestrian, glamping*'.

47. Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act, for the development already carried out, namely the change of use of the land to a mixed use of agriculture, equestrian, glamping and the siting of a caravan for residential purposes as shown in the approximate position hatched green on the attached plan on the land adjoining Welland Farm, Marlbank Road, Welland, Malvern, WR13 6NB (also known as Rosebud Meadow Camping Site), subject to the following conditions:

- 1) The siting of the caravan hereby permitted shall be for a limited period only, being the period of three years from the date of this decision. The caravan shall cease to be occupied, shall be removed and the land restored to its former condition on or before the date three years from the date of this decision (including removal of boundary treatments and the associated decking structure, re-soiling and grass seeding to a profile that matches that of the land surface immediately adjacent to the development).
- 2) The occupation of the caravan hereby permitted shall be limited to a person solely or mainly working or last working in the locality in agriculture as defined in section 336(1) of the 1990 Act or equine business management or forestry or a widow or widower or surviving civil partner of such a person, and to any resident dependants.
- 3) Unless within 2 months of the date of this decision a scheme for foul and surface water drainage, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the caravan for residential purposes shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained in use whilst the development is in place. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 4) No additional external lighting shall be erected in association with the development hereby approved.

D. Boffin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Robert Fox BSc (Hons) MRICS FAAV – Fox Rural

Rosie Clare

FOR THE LOCAL PLANNING AUTHORITY:

Aaron Black BSc (Hons) – Planning Enforcement Officer

Lee Walton – Planning Officer

INTERESTED PERSONS:

Angela Waller – Welland Farm

DOCUMENTS SUBMITTED BEFORE THE HEARING

1. A copy of the decision notices, their associated approved plans and the relevant Council's Officer Reports for planning applications reference nos: 15/00575/FUL, 15/01725/CCO and 17/1958/FUL;
2. A copy of the list descriptions for Marlbank Farmhouse and the adjacent barn;
3. A copy of the reasons for designation relating to Castlemorton Common SSSI.