
Appeal Decisions

Hearing Held on 21 January 2020

Site visit made on 21 January 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2020

Appeal A Ref: APP/C3620/W/19/3236432

Lot 7, South of Wellspool Farm, Stan Hill, Charlwood RH6 0ES

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr E F K R Poege against the decision of Mole Valley District Council.
- The application Ref MO/2018/0633/PLA, dated 6 April 2018, was refused by notice dated 25 March 2019.
- The development proposed is the erection of a machinery shed and fodder shed.

Appeal B Ref: APP/C3620/W/19/3236433

Lot 7, South of Wellspool Farm, Stan Hill, Charlwood RH6 0ES

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- The appeal is made by Mr E F K R Poege against the decision of Mole Valley District Council.
- The application Ref MO/2018/0634/PLA, dated 6 April 2018, was refused by notice dated 25 March 2019.
- The development proposed is the siting of a temporary rural workers dwelling, erection of 4 goat sheds, construction of a track and the erection of post and rail fencing.

Decision

1. Appeal A is allowed, and planning permission is granted for the erection of a machinery shed and fodder shed at Lot 7, South of Wellspool Farm, Stan Hill, Charlwood RH6 0ES in accordance with the terms of the application, Ref MO/2018/0633/PLA, dated 6 April 2018, subject to the conditions in the attached schedule A.
2. Appeal B is allowed and planning permission is granted for the siting of a temporary rural workers dwelling, erection of 4 goat sheds, construction of a track and the erection of post and rail fencing at Lot 7, South of Wellspool Farm, Stan Hill, Charlwood RH6 0ES in accordance with the terms of the application, Ref MO/2018/0634/PLA, dated 6 April 2018, subject to the conditions in the attached schedule B.

Procedural Matters

3. As set out above there are two appeals at the site. They differ in that appeal A proposes machinery and fodder storage buildings and appeal B is for a rural workers dwelling, four goat sheds, fencing and track. Nevertheless, they relate to the same proposed goat breeding and rearing enterprise and much of the evidence in relation to the need for the development considers the proposals

together. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

Main Issues

4. The main issues are:

- Whether the proposals would be inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
- The effect on openness;
- In the case of agricultural development, whether it is reasonably required for the purposes of agriculture having regard to relevant development plan policy, and;
- If inappropriate, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

5. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
6. Development within the Green Belt is inappropriate with the exceptions of the types of development listed in Paragraphs 145 and 146 of the Framework. Criterion (a) of Paragraph 145 allows for buildings for agriculture and forestry.
7. It is the appellant's view that, save for the temporary rural workers dwelling, the other buildings are not inappropriate by virtue of the exceptions contained in sub paragraph (a) of paragraph 145. At the hearing, taking into account the floor plan¹ showing the storage arrangements within the proposed machinery store, the Council broadly accepted that the machinery store, feed store and goat sheds (hereafter referred to as agricultural buildings) constitute buildings for agriculture. Accordingly, based on the evidence presented, the agricultural buildings in both appeals would fall within the exception permitted by paragraph 145(a) of the Framework.
8. There was no dispute between the parties that the rural workers dwelling did not constitute an agricultural building and therefore, would not fall within any of the exceptions listed in paragraph 145 of the Framework. As such, this element of appeal B would amount to inappropriate development within the Green Belt.

Openness

9. Policy RUD14 of the Mole Valley Local Plan, October 2000 (LP) applies to agricultural development requiring planning permission and sets out criteria for

¹ Issues for hearing document dated 20 January 2020

consideration. This includes whether the proposal would detract significantly from the appearance and openness of the countryside. However, paragraph 145(a) of the Framework, in contrast to other sub-sections of the same paragraph, does not include a specific caveat that the development should also preserve the openness of the Green Belt and not conflict with the purposes of including land within it. On that basis, as has been confirmed in caselaw² there is no requirement within the Framework to further assess the impact on openness, as it is implicitly taken into account in the exception.

10. Therefore, this specific criterion of policy RUD14, which predates the Framework by some margin, is more exacting than the Framework in this regard. Paragraph 213 of the Framework advises that due weight should be given to development plan policies adopted prior to the Framework according to their degree of consistency with it. In respect of the consideration of openness, I therefore attribute greater weight to the approach in the Framework than policy RUD14. As a result, given that I have found the agricultural buildings to be not inappropriate within the terms of the Framework, there is no further requirement to consider their impact on the openness of the Green Belt
11. Nevertheless, the same cannot be said of the proposed rural workers dwelling which would be inappropriate development. Planning Practice Guidance (PPG)³ advises that openness is capable of having both spatial and visual aspects. At my visit, I observed the appeal site to be open grassland with an absence of built form. The proposed dwelling would comprise a single storey structure with a footprint measuring approximately 12.3m x 6.3m⁴. Notwithstanding its relatively modest size, its presence, lighting, associated curtilage and vehicle parking would inevitably cause a degree of spatial and visual harm to the open nature of the site.
12. However, the extent of the harmful impact would be tempered by the limited period of time sought. Furthermore, conditions might be used to impose restrictions in relation to the extent of the domestic curtilage, parking area, external lighting and domestic permitted development. Additionally, the presence of the structure would be difficult to see from nearby roads and public rights of way which reduces its visual impact in the wider area.
13. Taking these factors together, overall the proposed dwelling would result in limited harm to the openness of the green belt.

Whether reasonably required for the purposes of agriculture

14. Amongst other matters, policy RUD14 of the LP only permits agricultural development where it is reasonably necessary for the purposes of agriculture within the holding. At the hearing the parties agreed that the policy was therefore, applicable to the consideration of the agricultural buildings but did not apply to the proposed dwelling.
15. The appellant has provided a justification and supplementary information⁵ for the agricultural buildings setting out the nature and extent of the specialist

² Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404

³ Paragraph:001 Reference ID:64-001-20190722

⁴ Drawing reference KCC2314/03

⁵ Essential Needs Appraisal April 2018, prepared by Kernon Countryside Consultants Ltd and Issues for the Hearing Document dated 20 January 2020

goat breeding enterprise which seeks to establish a foundation herd for the Kiko breed of goat in the UK.

16. The Council's agricultural consultant⁶ concluded that the need for four goat sheds was adequately shown and that the machinery store and open sided fodder store were reasonable to meet the needs of the enterprise. In relation to the machinery store, this is reinforced by the sketch plan⁷ showing the nature and size of the equipment.
17. The Council has not provided further substantive evidence that the agricultural buildings and associated development would not be reasonably necessary to the functioning of the agricultural holding, nor is it now suggested that, aside from the proposed dwelling, the proposals would not constitute agricultural development. On this basis, the conclusions of the Council's agricultural consultant carry considerable weight.
18. Furthermore, paragraph 83(b) of the Framework indicates that as part of supporting a prosperous rural economy planning decisions should enable the development and diversification of agricultural businesses.
19. Accordingly, I find on the evidence before me, that the proposed machinery store, fodder store, goat sheds, associated access track and hardstanding and post and rail fencing would be reasonably necessary for the proposed goat breeding business, and therefore, for the purposes of agriculture. Hence, there would be no conflict with criterion 2 of policy RUD14 of the LP in this regard.

Other considerations

20. Paragraph 79 of the Framework stipulates that planning decisions should avoid the development of isolated homes in the countryside subject to express exceptions. This includes a dwelling where there is an essential need for a rural worker to live permanently at or near their place of work in the countryside. Both parties accept that the proposed dwelling would comprise an isolated home in the countryside. Essentially, they disagree as to whether there is an essential need arising from the proposed goat breeding activity.
21. PPG⁸ sets out considerations that may be relevant to take into account when applying paragraph 79(a). This includes the consideration of the evidence to support the necessity for a rural worker to live at their place of work and whether there is available existing accommodation on site. It also specifically refers to new enterprises and states that it might be appropriate to consider granting permission for a temporary dwelling for a trial period.
22. The appellant intends to initiate a new enterprise to keep a herd of approximately 85 Boer doe goats which would act as surrogate mothers to Kiko goat embryos. This would require skilled work in embryo implantation and in overseeing kidding. The Kiko breed is a relatively new breed of goat, not yet established in the UK, which due to its hardier nature may prove an attractive prospect for UK farmers looking to rear goats for meat. Establishing a foundation herd in the UK, constitutes a new agricultural venture, which means that directly comparable examples in the UK do not currently exist. Accordingly, there is an increased risk associated with the assumptions and

⁶ Reading Agricultural Consultants comments dated 5 June 2018 & 18 February 2019

⁷ Issues for the Hearing document 20 January 2020

⁸ Paragraph 010 ID:67-010-20190722 Revision date 22.7.19

estimates made in relation to the likely practices and costs arising from the enterprise that would not be the case for more established agricultural business models.

23. The submitted Essential Needs Appraisal explains the requirement for a rural worker to be physically close to the breeding does in order to effectively undertake regular necessary health and fertility checks as well as the general care required for good animal welfare. This is especially the case when does kid. Furthermore, living on the site would allow for a swift response to deal with any health concerns that might otherwise risk an effective breeding operation. This is reinforced by the comments of the Council's Agricultural Consultant who stated that *'Overall, I would accept that once established, the enterprise is likely to require a full-time worker to reside on site'*.
24. Carrying implanted embryos makes does more prone to spontaneous abortion and the presence of a trusted skilled rural worker would reduce factors that cause stress. At the hearing the appellant outlined how alternatives such as surveillance equipment or visiting workers would not provide the equivalent round the clock or swift responsive care that a resident worker would, which is necessary for a sensitive breeding operation to be effective.
25. The Council did not present evidence disputing the practical need for a skilled stockperson to be on hand to oversee the effective operation of the breeding enterprise. Neither does the Council suggest that there is available alternative accommodation within suitable proximity of the appeal site. Rather their principal concern is in relation to the financial risk associated with the enterprise overall.
26. I am referred to the PPG which includes consideration of the degree to which there is confidence that the enterprise will remain viable for the foreseeable future. Any new enterprise has inherent risks, which are exacerbated in this case given that it is largely untested, particularly in relation to the likely future sale price of Kiko goats in the UK. However, in seeking an opportunity to test his business model for a trial period, the appellant acknowledged the risks and the consequences in the event it was not successful. Moreover, he has relevant agricultural experience combined with accountancy expertise which places him in a reasonably informed position to take a calculated risk in investing in a new agricultural venture.
27. Additionally, the Council's agricultural consultant⁹, having seen the appellant's financial projections concluded that the only way to robustly test the applicant's proposal would be for an initial three year period. The Council were unable to suggest any alternative methods of testing a new business model such as the appeal proposal. Taking these factors together, it is my view that these amount to circumstances where it would be appropriate to employ a trial period as referenced in the PPG. Furthermore, such an approach would accord with enabling the diversification of agriculture in paragraph 83 of the Framework.
28. Accordingly, I find that there is an essential need for a rural worker to live at the appeal site arising from the needs of the proposed agricultural enterprise in line with paragraph 79 of the Framework. However, the permanence of that need can only be robustly tested through a trial period of operation.

⁹ Reading Agricultural Consultants 18.2.19

Other matters

29. In reaching my findings I have had regard to the representations received. Many of these raised concerns regarding the sub-division of the former field into smaller agricultural plots and the potential cumulative impact from buildings and traffic. However, each planning application must be considered on its own merits against the relevant local and national planning policies. Therefore, the potential for other future developments is of limited weight when considering the individual merits of the proposals before me. Nevertheless, it is a matter which I have taken into account in my consideration of planning conditions. Moreover, my observations of the access arrangements and visibility combined with the relatively modest nature of the proposal would not suggest that the proposal would result in unacceptable harm to highway safety.
30. Concerns raised in relation to livestock waste causing environmental damage is a matter that can be adequately addressed by condition.
31. Some concerns were raised in relation to animal welfare that the proposed stocking levels would be too intensive. However, the evidence¹⁰ indicates that there will be sufficient area available to generally accord with the minimum space standards recommended by the British Goat Society.

Green Belt balancing exercise

32. Paragraph 144 of the Framework advises that substantial weight should be given to any harm to the Green Belt. Moreover, very special circumstances to allow inappropriate development will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
33. I am referred to a number of appeal decisions¹¹ most of which concern proposals for rural workers dwellings in the Green Belt. However, I note that in the enforcement appeals relating to Lot 5 Wellspool Farm, which is close to the appeal site, the appellants claimed that the caravan was not being used for residential purposes and therefore, did not propose a rural workers dwelling. Moreover, none of the cases were proposing a new agricultural venture similar to the goat breeding enterprise in the case before me. Furthermore, most of the examples were seeking a permanent dwelling rather than a temporary dwelling and, in some instances, there was existing alternative accommodation available. It follows that the justification put forward in each case, and subsequently found to be inadequate by the respective Inspector, differed significantly from the case before me. Accordingly, as they are not directly comparable to the circumstances of the appeal proposals, they are of limited weight. In any event, I have considered the proposals on their own merits.
34. With the exception of the rural workers dwelling, the agricultural buildings in appeals A and B do not constitute inappropriate development in the Green Belt as they fall within the exception of paragraph 145(a) of the Framework. It follows that they would not result in harm to the Green Belt. Moreover, I have found that they would accord with policy RUD14 of the LP. Therefore, in accordance with the presumption in favour of sustainable development set out

¹⁰ Page 2, Reading Agricultural Consultants letter 18 February 2019

¹¹ Referenced APP/C3620/C/17/3169644-47 (linked appeals); APP/R4408/W/3138141; APP/M0655/W/19/3232938; APP/F4410/W/15/3136508 & APP/M0655/W/18/3219291.

in paragraph 11 of the Framework, this means these components should be approved without delay.

35. However, the rural workers dwelling in appeal B would amount to inappropriate development, and limited harm would be caused to the openness of the Green Belt. These factors attract substantial weight.
36. Balanced against this is the essential need for a rural worker to live at the appeal site for a limited trial period which would enable agricultural diversification. These are factors which attract sufficient weight to clearly outweigh the harm by reason of inappropriateness and the limited harm to the openness of the Green Belt. Consequently, I find that the very special circumstances necessary to justify the temporary rural workers dwelling do exist.

Conditions

37. The three year period in which both planning permissions may be implemented is a statutory requirement. I also consider that it is necessary to specify the plans that are approved in each case and that the development shall be undertaken in accordance with them, in order to provide certainty. Notwithstanding discrepancies in the numbering of the prefix of the drawing number on some of the plans, in the conditions below I have used the drawing numbers agreed in the Statement of Common Ground dated 17 January 2020.
38. It will be seen from my reasoning that in relation to the proposed dwelling in appeal B, I have accepted that it is appropriate to test the soundness of the commercial goat breeding enterprise by way of a trial period. This needs to be of sufficient length to provide evidence regarding the longer-term prospects of the enterprise. It follows that the trial period should allow for the operation of the business for 3 years. In addition to that, the period should make an allowance for the construction of the buildings and implementation of services to the land prior to the commencement of the business operation. Therefore, in total, a period of 4 years from the date of this decision would allow for a reasonable trial period, whilst also giving certainty as to when the dwelling should be removed.
39. It further follows that as I have given weight to the agricultural needs arising from the business, the occupation of the dwelling in appeal B should be restricted to reflect that. Moreover, in order to limit the harm to the Green Belt, the extent of the domestic curtilage and parking area should be clearly established, and householder permitted development rights allowing for extensions and outbuildings should not apply. Conditions 5 and 6 of appeal B reflect this.
40. At the hearing the Council outlined concerns regarding the concentration of agricultural buildings at the site should the proposed goat breeding enterprise not prove viable in the long term, as well as concerns in relation to the cumulative number of agricultural buildings on the surrounding sub-divided plots of the former field. I acknowledge that these factors justify consideration of how a reasonable balance might be struck in supporting new rural enterprises, which inherently carry a greater risk, whilst protecting the Green Belt. Moreover, the sub-division of the surrounding agricultural land has the potential to result in a higher concentration of agricultural buildings relative to the land than might otherwise more conventionally be the case. Accordingly, it

would be reasonable to safeguard against this impact in the event that the buildings cease to be used for agricultural purposes.

41. The Council suggested conditions restricting the use of the agricultural buildings and their removal in the event such use ceases. However, a condition only permitting agricultural use would fail the test of necessity, as given the form and size of the agricultural buildings, changes to other uses would be likely to amount to development that would require specific planning permission. Moreover, in the event of an unauthorised use the Council retains discretionary enforcement powers and could resolve to use those without the need for a condition.
42. In relation to the removal of the agricultural buildings, such a limitation is particularly onerous in relation to buildings designed for permanent construction and consequently, in order to be reasonable, such a requirement should be proportionate to the nature of the harm. For comparative purposes, my attention was drawn to the condition in paragraph A.2 (5), Part 6, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the Order) which requires the removal of an agricultural building granted under Class A of Part 6 of the Order. The limitation imposed by the condition in the Order applies for 10 years following the substantial completion of the building. Following that period, even if the agricultural use were to cease, the building need not be removed. Therefore, the removal limitation does not apply in perpetuity and the onerous limitation is tempered, which provides useful and relevant direction as to an appropriate degree of control in the case before me.
43. Accordingly, in recognition of the substance of the Council's concerns, I have imposed a condition in relation to the agricultural buildings proposed in both appeals, which is modelled on the condition in Part 6 of the Order and is linked to the proposed goat breeding enterprise. As such, it is reasonably measured so as to meet the tests for conditions set out in paragraph 55 of the Framework, but sufficiently restrictive to obviate the need to remove permitted development rights afforded under Schedule 2, Part 6, Class B agricultural development on units of less than 5 hectares, which includes provision for moderate extensions to agricultural buildings.
44. In order to limit the visual impact on the openness of the Green Belt and rural character of the area, I consider that it is necessary to retain control over the level and nature of external lighting in relation to both proposals. I have adapted the suggested wording to include an appropriate trigger for details to be agreed and to require its implementation. Moreover, external storage outside buildings is restricted to the limited area between the machinery and feed store buildings.
45. I also accept that, in relation to appeal B, in order to prevent unreasonable environmental impact on the natural environment and nearby users of land, it is reasonable and necessary to agree appropriate arrangements for the disposal of waste material arising from the keeping of goats. For related reasons, it is appropriate that run off from the proposed hardstanding is appropriately dealt with and a similar condition is imposed on both appeals.
46. It is likely that internal fencing will be required around the respective goat sheds to allow for an outside area for the animals, as well as the sub-division of the grazing land to keep livestock separated where necessary. Whilst this might

normally be carried out under Schedule 2, Part 2, Class A of the Order, an Article 4 direction¹² covering the site area would prevent this. Accordingly, in relation to appeal B, it is necessary and reasonable to agree a plan for the erection of such fencing within the site, otherwise it would necessitate a separate planning application.

Conclusion

47. For the reasons given above I conclude that both appeals should be allowed

Helen O'Connor

Inspector

¹² Dated 4 January 2016

APPEARANCES

FOR THE APPELLANT

Tony Kernon BSc (Hons) MRICS FBIAC

Ken Poege

Kernon Countryside Consultants Ltd

Appellant

FOR THE LOCAL PLANNING AUTHORITY

Jenny Seaman

Donna Penson

Senior Consultant Planner, Mole
Valley District Council

Planning Officer, Mole Valley District
Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Document entitled 'Issues for the hearing' dated 20 January 2020
2. Copy of Article 4 Direction dated 4 January 2016 ref 000588/DTP

Conditions Schedule A in relation to Appeal A, APP/C3620/W/19/3236432

(5 conditions)

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan – Machinery and Feed Sheds KCC2314/05; Block Plan- Machinery and Feeds Sheds KCC2314/06; Machinery Shed Elevations KCC2314/07; Access Details KCC2313/09 and Feed Shed Elevations (revised) KCC2313/10.
- 3) Should the use of the machinery shed or feed shed for the purposes of commercial goat breeding permanently cease within 10 years from the date on which the building(s) were substantially completed then the building(s) must be removed from the land and the land restored to its condition before the development took place.
- 4) Prior to the first use of either building hereby permitted, details of any external lighting shall be submitted to and approved in writing by the local planning authority. Thereafter, the development shall proceed in accordance with the agreed details.
- 5) The hard surfacing hereby permitted shall be constructed from either porous materials or shall make adequate provision for the run-off from the hard surface to a permeable or porous area.

Conditions Schedule B in relation to Appeal B, APP/C3620/W/19/3236433

(12 conditions)

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan – Access Track, Temporary Dwelling and Goat Sheds KCC2314/01; Block Plan- Access Track, Temporary Dwelling and Goat Sheds KCC2314/02; Temporary Dwelling Elevations KCC2314/03; Goat Shed Elevations KCC2313/04 and Access Details KCC2313/09.
- 3) The residential dwelling hereby permitted shall be for a limited period being the period of 4 years from the date of this decision. The residential building hereby permitted shall be removed and the land restored to its former condition on or before that date in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.
- 4) The occupation of the dwelling shall be limited to a person solely or mainly employed in agriculture as defined in section 336(1) of the Town and Country Planning Act 1990, including any dependant of such person residing with him or her.
- 5) Prior to the first occupation of the dwelling a plan showing the extent of the residential curtilage and proposed vehicle parking area shall be submitted to and agreed in writing by the local planning authority. Thereafter, the development shall proceed in accordance with the agreed details.
- 6) 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 development shall be carried out under Schedule 2, Part 1 (Development within the curtilage of a dwellinghouse) classes A, B, C, D and E other than those expressly authorised by this permission.
- 7) Should the use of the goat sheds for the purposes of commercial goat breeding permanently cease within 10 years from the date on which the goat sheds were substantially completed then the buildings must be removed from the land and the land restored to its condition before the development took place.
- 8) Prior to the first use of any building hereby permitted, details of any external lighting shall be submitted to and approved in writing by the local planning authority. Thereafter, the development shall proceed in accordance with the agreed details.
- 9) No storage of equipment or machinery shall take place outside of the buildings other than within the red line on plan KCC2314/05 Location Plan – Machinery and Feed Sheds submitted in relation to application reference MO/2018/0633/PLA.
- 10) Prior to the introduction of livestock onto the site, details of waste storage and disposal arrangements shall be submitted to and approved in writing by the local planning authority. Thereafter, the development shall proceed in accordance with the agreed details.

- 11) The hard surfacing hereby permitted shall be constructed from either porous materials or shall make adequate provision for the run-off from the hard surface to a permeable or porous area.
- 12) Prior to the introduction of livestock onto the site a plan showing any fencing within the site shall be submitted to and approved by the local planning authority. Thereafter the development shall proceed in accordance with the approved plans.