



Appeal Decision

Hearing held on 11 February 2020

Site visit made on 11 February 2020

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2020

Appeal Ref: APP/C3105/W/19/3237280

Huckleberry Farm, Heathfield, Kidlington OX5 3DU

- 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 and Mrs Joanne Arnold against the decision of Cherwell District Council.
 - The application Ref 19/00621/F, dated 4 April 2019, was refused by notice dated 3 July 2019.
 - The development is described as retrospective application for the continued use of transportable building to be made permanent. Application number 13/01054/F.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. At my site visit, I saw that a dwelling was already in place. I note that the submission states that the application was retrospective and that both main parties considered this to be the case. While the overall proportions of the dwelling appear comparable to the submitted plans, I cannot be sure that the site at present accords with the appeal scheme. I have therefore dealt with the appeal on the basis of it being a proposed development as shown on the plans.
3. I have taken the description of development in the banner heading above from the application form. A different description was agreed at the Hearing. However, as I am dismissing the appeal there is no need to alter the description. It was also agreed at the Hearing that the address should be taken from the decision notice.
4. The appellants submitted an extract from their tax return for 2018-2019 and details of the accounts for the business up to 15th January 2020 at the Hearing. Two letters of support from nearby residents were also submitted as well as an aerial picture highlighting nearby sites that the parties referred to. The Council confirmed it was content for me to take these into account when making my decision and they formed part of the discussions during the Hearing.
5. The main elements of the scheme have not altered from that originally submitted and upon which consultation took place. Against this backdrop, no injustice would be caused to any appeal party or third party by my taking this information into account and I have done so.

Main Issues

6. The main issues of the appeal are;

- Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (Framework) and any relevant development plan policies,
- The effect of the proposed development on the character and appearance of the area,
- Whether the proposed development would provide a suitable site for housing, having regard to the proximity of services and facilities, and
- If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether Inappropriate Development

7. The appeal site is located within the Green Belt. Paragraph 145 of the Framework states that the construction of new buildings in the Green Belt shall be regarded as inappropriate development. Policy ESD14 of the Cherwell Local Plan 2011-2031 Part 1 adopted 2015 (LP2015) states that development proposals within the Green Belt will be assessed in accordance with government guidance contained in the Framework. It also states that development is only permitted if it maintains the Green Belt's openness and does not conflict with the purposes of the Green Belt or harm its visual amenities.
8. At the Hearing the appellants suggested that the proposed development could be interpreted as falling within the Green Belt exception of buildings for agriculture and forestry. Whilst it is proposed that the building would support an agricultural enterprise, it would nonetheless be used primarily for residential purposes. Consequently, the proposal would not be a building for agriculture or forestry. In addition, while affordable to the appellants, the scheme would not accord with the definition of affordable housing in the Framework. Therefore, the development would not meet any of the exceptions under paragraph 145 of the Framework.
9. The main parties referred to the accommodation being a mobile home and transportable. The Framework includes an exception for development in connection with material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds). This is not inappropriate development as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.
10. Openness can have a spatial aspect as well as a visual aspect. There is already physical development on the appellants' land and in the wider area that reduces the openness of this part of the Green Belt. Nonetheless, by introducing the transportable building the scheme would inevitably reduce the openness of the Green Belt in spatial terms.

11. The retention and strengthening of trees and hedgerows along the roadside boundary would reduce the prominence of the scheme. I acknowledge that this is a private road and that visitors may not have seen the existing property when passing the site. Nonetheless, there would still be glimpses of the appeal site, including any domestic paraphernalia, from the road, in particular from the access to the site. As such, the development would visually reduce the openness of the Green Belt.
12. A temporary permission was suggested by the appellants and this would reduce the duration of the effect on openness. Even so, and whether a change of use of land, or a permanent building, the scheme would reduce the openness of the Green Belt in both spatial and visual terms. While the harm would be moderate, this is contrary to the Framework where it states an essential characteristic of Green Belts is their openness.
13. Therefore, when judged against national and local policy I conclude that the development is inappropriate development in the Green Belt. The Framework states that this is, by definition, harmful to the Green Belt and should not be approved, except in very special circumstances. The scheme would also conflict with Policy ESD14 of the LP2015 and the Framework as it would fail to assist in safeguarding the countryside from encroachment. Furthermore, it does not comply with the fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open.

Character and Appearance

14. There are agricultural buildings and equipment on the land associated with the appeal site at present. Moreover, there are a mix of uses and forms of development in the area. This includes residential properties further along the road that are generally 2-storey brick or render dwellings. However, the appeal site would be visually and physically separated from these as its immediate surroundings are undeveloped and open fields. The appeal scheme would, therefore, be viewed as part of the open countryside.
15. I acknowledge that there is residential accommodation on site now, and that this is said to have been present for several years by the main parties. Nevertheless, this only served to demonstrate that by introducing a residential use and the associated domestic paraphernalia into the site, the appeal proposal would be incongruous with and harmful to the appearance of the area.
16. By introducing residential accommodation of a greater size than many, if not all, of the existing agricultural buildings and structures on site, the scheme would significantly alter the site's character. While many parts of the surrounding countryside would remain unaltered, this would diminish the contribution the site makes to this primarily rural area.
17. A planning condition to secure a landscape scheme has been suggested by the main parties in relation to existing and proposed landscaping. This would help to screen the proposal which is only single-storey. Nevertheless, while I acknowledge such conditions can be appropriate in certain instances, the existence of screening is not a good justification to allow a development that would cause harm.
18. I am not convinced that the land being left unmanaged would be more harmful to the character and appearance of the area than the proposed development.

19. Therefore, I conclude that the proposal would unacceptably harm the character and appearance of the area. It would be contrary to Policies ESD13 and ESD15 of LP2015 and saved Policies C28 and C30 of the Cherwell Local Plan 1996 (LP1996). These, in part, require developments to be sympathetic to, complement and enhance the character of their context and prevent visual intrusion into the open countryside.
20. I note comments from the appellants regarding permission not being sought under the design of exceptional quality criteria of Paragraph 79 of the Framework. Nonetheless, the scheme would be contrary to the Framework where it states decisions should ensure that developments add to the overall quality of the area and are sympathetic to local character.

Proximity of services and facilities

21. Both the Council and the appellants drew my attention to various services, facilities and public transport options in a number of settlements in the wider area. This included in Kidlington, Bletchington and Islip. Nonetheless, there is no such provision in Heathfield itself.
22. With the distances involved it may be technically possible to access some of the services and facilities in the wider area by foot or bicycle. Nonetheless, given the lack of footways and lighting on the roads involved as well as the speed limits, it would be unrealistic and unlikely. Therefore, while it may only be a short drive to reach them and this would allow the occupiers of the dwelling to utilise their time in other ways, this demonstrates that they would be heavily reliant on the use of motor vehicles.
23. The case was put to me by the appellants that if someone was not living on site, this would increase the number of journeys to and from it due to the need to care for the animals at the farm and a greater anxiety due to being absent. Nevertheless, there was limited evidence in this regard, particularly if alternative management patterns of the holding were to be considered. In addition, there could be a number of occupants at the property with their own travel patterns.
24. As a result, the proposal would increase private motor vehicle movements. I recognise that there is generally a greater reliance on the private car in more remote rural areas. Notwithstanding this, it remains the case that there would be a lack of sustainable transport choices available to enable future residents to conveniently access services and facilities.
25. I therefore conclude that the site is not a suitable site for housing, having regard to its proximity to services and facilities. The appeal proposal would fail to accord with ESD1 and Villages 1 of the LP2015. These, amongst other things, seek to distribute growth to the most sustainable villages, reduce the need to travel and encourage sustainable travel options to reduce dependence on private cars. Moreover, it would be contrary to the Framework in relation to minimising pollution and the environmental impacts of traffic.

Other Considerations

26. Paragraph 144 of the Framework states that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness,

and any other harm, is clearly outweighed by other considerations. I turn now to address those other possible considerations.

Essential Need

27. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise. While the LP1996 pre-dates the Framework by many years, this does not automatically imply it is out of date or inconsistent with the Framework.
28. Policy H18 of the LP1996 states that beyond the built-up limits of settlements there are only limited circumstances where new dwellings will be permitted. One of these is where it is essential for agricultural or other existing undertakings. Reference to any location outside settlement limits differs from the wording of the Framework. Nevertheless, this approach is generally consistent with the requirements of paragraph 79 of the Framework, particularly in relation to the essential need for a rural worker to live permanently at or near their place of work in the countryside, which is identified as a special circumstance.
29. The Council and appellants agree that the proposal would be an isolated dwelling with regard to paragraph 79 of the Framework. I have reached the same finding.
30. The appellants drew attention to Paragraph 61 of the Framework. This states that housing needed for different groups in the community should be assessed and reflected in planning policies. I appreciate that individuals will have different needs and considerations of where and how they wish to live as well as their own standards of living.
31. Nonetheless, rather than denying the appellants' needs, Policy H18 of LP1996 and the Framework recognises that there will be occasions where in locations such as the appeal site, new dwellings can be acceptable. Planning Policy Statement 7 and its Annex have been cancelled, and therefore can be afforded no weight. Nevertheless, national and local planning policies require a new dwelling in these locations to be justified by an essential need. Therefore, in this regard Policy H18 of the LP1996 is broadly consistent with the Framework.
32. The parties agreed that in order to assess whether there is an essential need for the appellants to live on the site considerations would include the nature, needs and size of the livestock at the land.
33. The appellants explained that poor health of several members of their family also residing at the site required them to devote a lot of time towards their care and treatment. As a result, the business had not progressed as they intended, or had outlined, when temporary planning permission was granted in 2013.
34. The angora goats previously indicated as part of the business plan have now been sold. Currently the business has 20 breeding goats, 12 of which are in kid at present. A permanent residential presence at the site would clearly provide benefits to the efficiency of the enterprise by removing the need for the appellants to undertake repeat trips between her home and the holding. This would be particularly beneficial during kidding and in the weeks after where

bottle feeding at regular intervals can be needed. I note the incidents that have already occurred during kidding where being on site prevented a loss of livestock such as New Year's Day 2019.

35. I am conscious of the regulations for the welfare of farmed animals, and I accept that these do not relate to a specified number of animals. There would be periods of intensive husbandry and welfare. However, even with the staggering of the breeding, there is a limited overall number of breeding goats. Moreover, the need to be on site would be greatly reduced during the winter months when the appellants indicated that to the extent that it is in her control, they try to avoid kidding. Furthermore, I am not convinced that alternative management patterns would be unable to address this matter.
36. The appellants said that at present there are approximately 350 laying chickens on the site. Following problems with incubators, the appellants explained that these are no longer hatched on site and instead brought in as chicks. The chickens need to be let out early, fed, watered and eggs collected across the site each morning and rounded up again at night. There are also a small number of ducks. A presence on site would undoubtedly assist in making these activities, and in ensuring that the heat plates are operating correctly, easier. Nonetheless, although these activities take place throughout the year, in my assessment they do not justify a need to live on the site.
37. The sorting of eggs takes place at the site. However, this could take place elsewhere. The Council suggested that alternative management practices and/or the use of technology would reduce the need to be on site in terms of maintaining the lighting/heating. I appreciate that currently electricity on site is largely dependent on the solar panels on the dwelling. Nonetheless, from the evidence before me and raised at the Hearing, there has been no compelling case that alternative arrangements would be unsuccessful.
38. Breeding pigs are no longer proposed. However, upon orders pigs are bought in as weaners and reared up to 6 months. While the appellants suggested there have been up to 14 on the site at one time, they indicated that there are none on site at present. There will inevitably be activities associated with the welfare and development of the pigs. Nonetheless, the irregular nature and stocking levels of this part of the business, and that these are not typically on site over winter, reduces the times when there is an associated need to be on site.
39. There will be activities associated with the small number of sheep, rabbit and other animals already referred to. These were said to include visits to vets, vaccinations, trimming and being able to spot signs of disease. Nonetheless, these will be relatively infrequent and while they may on occasions require more than 1 person, they do not justify a need to live on the site. In addition, it has not been demonstrated that a worker residing on the site is the only way to prevent animals becoming stuck in the fencing or ensure they are freed swiftly.
40. I note that there are concerns relating to livestock security and that the position of the dwelling would block views from the road. The appellants explained that the livestock on site was tame and friendly and this could make them more susceptible to being taken, as would their size. It was also suggested that the proximity of the site to major roads would make thefts more likely. I accept that rural security can be a significant problem, and that the loss can cause considerable financial and practical disruption. Nonetheless,

while there were anecdotal details of incidents at other farms in the area, there has been no firm evidence presented to me of the scale, frequency or nature of such occurrences.

41. There are various surveillance and alarm solutions along with other potential security measures which the appellants could utilise. These could alleviate or at least reduce the risk of security issues, and it is not clear the extent to which these have been considered by the appellants. Consequently, I am not persuaded that security amounts to a concern of any significant weight in favour of this appeal.
42. The appellants indicated that they intend to increase the sheep breeds and numbers to expand the range of fleece colours. At the Hearing they estimated that this could potentially increase the number by 20 and some kids may also be kept for meat and/or breeding. This would increase the needs of the holding. However, there is no business plan or indication of a clear commitment to when or how this would take place. It is also unclear what effect this would have on operational needs of the business or whether the land could accommodate the increased livestock.
43. Planning Practice Guidance (PPG) provides some guidance in terms of assessing need for an essential rural worker's dwelling. It refers to the degree to which there is confidence that the enterprise will remain viable for the foreseeable future. The parties agreed that this was a relevant consideration but disputed what level of profit should be considered sufficient to demonstrate the viability of the business.
44. No accounts relating to the business were submitted by the appellants with their application or appeal. The appellants explained that the business had only begun to operate more formally in recent times due to the effect of family medical issues beforehand. An extract from the appellants' tax return for 2018-2019 and details of the accounts up to 15 January 2020 were submitted at the Hearing. These indicated that there was a profit from the business. Nonetheless, despite the business having been in operation for several years, no information has been provided for any previous years.
45. There is a limited level of detail in the 2018-2019 tax return and no breakdown of what the incomes and outgoings of the business were over that period. Furthermore, repayments of a partly commercial mortgage did not appear to be included in that document and is not listed in the more recent accounts. This is said to be in the region of £550 per month with yearly payments being greater than the total expenditure shown for 2018-2019.
46. The appellants explained that the repayments were made from another part time wage that comes into the household and that the loan was partly for domestic purposes. Nevertheless, they also confirmed that as well as being for the residential building on site, this loan was also for livestock, agricultural buildings and equipment associated with the business. Including this in the business account would have an impact on the profitability of the business. Furthermore, it was also unclear how the accountant reached the figures for 2018-2019.
47. I appreciate that the on-site provision of electricity and food reduces expenses for the appellants. In addition, there will be further sales of eggs and other incomes expected for the remainder of this financial year. Nevertheless, even if

- I were to agree with the appellants that a profit level in line with 50% of the universal tax credit limits was sufficient, on the basis of the information before me I cannot be sure what the current viability of the business is.
48. In the absence of any business plan, full details of previous accounts and future financial projections, I cannot be sufficiently confident that the business would be viable for the foreseeable future.
49. The appellants referred to a property search carried out shortly before the Hearing. They did not consider that there was anything suitable within close proximity to the site or that was within their budget. This was also the case for the shared occupancy property highlighted by the Council during the application given their ability to obtain a mortgage.
50. Notwithstanding this, no detailed evidence was submitted with regard to whether any alternative accommodation close to the site is available to purchase or rent. Moreover, it was unclear if, or when, any previous searches were carried out as well as their extent or financial limits. Consequently, I have no significant evidence that the potential purchase of an existing dwelling nearby has been fully considered, or whether the potential maximum budget for doing so has been ascertained.
51. In light of the above, I consider that there is little substantive evidence before me that no suitable alternative dwellings are reasonably available to the appellants.
52. Permanent planning permission was sought by the appellants. The appellants consider that temporary permission would allow time for the business to progress now that they are able to spend more time on it and that it is moving forward. I do not dispute the passion or effort that the appellants have put into the business or would do so in the future. I also understand the shock that the refusal of planning permission may have caused.
53. Nonetheless, a temporary planning permission was given in 2013 and several years have passed since this expired. The PPG states that it will rarely be justifiable to grant a second temporary permission. The business has not developed as previously stated. I have not been convinced that the business at present requires a worker to live at the site. In addition, there is no clear evidence before me of how the business would operate in the future or whether it would be viable.
54. Consequently, for the reasons given, and on the basis of all the evidence I have read and heard, I conclude that it has not been demonstrated that there is an essential need for a rural worker to live at or near the site. Therefore, the proposed dwelling is not justified. In addition, it has not been demonstrated that alternative accommodation options are unavailable. Accordingly, the proposed development conflicts with Policy H18 of the LP1996 and the Framework.

Further Considerations

55. I sympathise with the medical and health issues that members of the appellants' family have experienced. Moreover, I acknowledge the benefits that working and/or being near to the animals on the farm bring in aiding their progress. Therefore, on the evidence before me, this matter attracts moderate weight in favour of the proposal.

56. My attention was drawn to several other developments and planning permissions granted for development in the Green Belt and the removal of a restrictive occupancy condition at a nearby cattery. I do not have full details of these schemes and the considerations that led to them being granted. Therefore, I cannot be confident that they represent a direct comparison to the scheme before me.
57. Developments such as golf driving ranges, domestic outbuildings and agricultural buildings would fall under different Green Belt exceptions to the appeal scheme. Furthermore, the proposal before me is materially different to the previous temporary permission given the changes in the scale and nature of the operations at the site. As such, I give these other schemes limited weight.
58. Even if I were to consider there to be a shortfall in the housing land supply in the area, the Framework indicates that the presumption in favour of sustainable development does not apply where the application of policies that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. The Green Belt is an example of such an area/asset and the proposal is contrary to the relevant policies of the Framework in regard to these.
59. The contribution of one dwelling to the supply and mix of housing would be minimal. Furthermore, were there a need for the Council to find the appellants and their family a home, there is no substantive evidence before me to indicate the Council would be unable to do so. This therefore attracts little weight.
60. I acknowledge the encouragement in national policy for generating a prosperous rural economy. The appellants raised the issue of political uncertainty around farming and food supply. I am aware of the letters of support both during the application, the appeal process and those provided at the Hearing in terms of the economic and social benefits that the business has brought to the area. Nonetheless, there is no firm evidence before me to suggest that without the proposed dwelling on site the business would fail to function or grow. Moreover, there is little evidence regarding the extent of the contribution that the business makes to the local economy. Therefore, I give this limited weight.
61. The appellants suggested at the Hearing that the proposal was a form of self-build housing. There is no clear evidence that there is a need for additional self-build plots in the area. While there is positive support for the provision of such units in national policy, even if I were to consider the dwelling as such, in the absence of a legal agreement there would be no mechanism to secure the dwelling as a self-build unit.
62. The appellants stated that there is various wildlife at the site and the existing dwelling. No firm evidence has been presented in relation to this. As such, I give this matter little weight.

Conclusion

63. The proposal would be inappropriate development in the Green Belt. It would also lead to a moderate loss of openness to the Green Belt. Furthermore, the development would harm the character and appearance of the area and

occupiers would be reliant on the private car to access services and facilities. These harms attract substantial weight.

64. In exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. However, it does not follow from the PSED that the appeal should succeed.
65. I acknowledge the personal circumstances of the case which include medical and health issues relating to those currently living at the site along with the needs and desire of them to continue to do so. While this decision does not pre-judge or prejudice any future actions by the Council, I recognise that the failure of this appeal would put the occupation of the existing dwelling by the appellants at risk. This would represent an interference with their rights under Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998. I have given this matter weight in my decision.
66. Given that the planning system operates in the wider public interest which has legitimate aims of upholding the purposes of planning policies, the harm I have identified in respect of the main issues outweighs these personal matters. In this case, I consider that greater weight attaches to the public interest. Dismissing the appeal is therefore proportionate, necessary and justifiable, and it would not result in a violation of the human rights of the appellants or her family.
67. Drawing all the above matters together, it is my firm view that the substantial weight arising from the Green Belt harm, together with the other harm identified, would not be clearly outweighed by the other considerations and further considerations detailed above. As such, I conclude that very special circumstances do not exist to justify this inappropriate development in the Green Belt.
68. The proposal would be contrary to Policies ESD1, Villages 1, ESD14, ESD13 and ESD15 of the LP2015, Policies C28, C30 and H18 of the LP1996 as well as the Framework.
69. Therefore, for the reasons given, and having taken into consideration all other matters raised, I conclude that the appeal is dismissed.

Stuart Willis

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Mrs Joanne Arnold Appellant

Dr Robin Hooper Hooper Enterprise Associates Limited

FOR THE LOCAL PLANNING AUTHORITY:

Shona King Cherwell District Council

Matthew Swinford Cherwell District Council

Paul Rhodes Rhodes Rural Planning

DOCUMENTS SUBMITTED AT THE HEARING:

1. Business Accounts 1/4/19-15/1/20
2. Tax Return Extract 2018-2019
3. Letter from 2 Heathfields Cottages, Heathfield
4. Letter from Buttercup Barn, Wardington
5. Aerial Picture highlighting nearby developments