
Appeal Decision

Site visit made on 23 March 2020

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th April 2020

Appeal Ref: APP/V2635/W/19/3242691

Fendick Fisheries, Methwold Road, Brookville, Norfolk PE33 9TH

- 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 Mark Fendick (Fendick Fisheries) against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 19/00304/F, dated 13 February 2019, was refused by notice dated 18 October 2019.
 - The development proposed is continued use of existing permitted 'log cabin' mobile home to provide accommodation for site warden, restricted to 11 months per year, and only to be occupied by person or persons directly related to the site operation.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Despite the description of development set out above, I consider the description found on the Decision Notice and the Appeal Form better reflects the scheme that is before me and that which the Council considered. The development proposed is therefore for 'continued use of existing permitted 'log cabin' mobile home accommodation for site warden'. I have therefore dealt with the appeal on this basis.
3. It was clear from my site visit that the mobile home is already in situ on the site and the main parties have indicated that it is already being occupied on a permanent basis by a site warden. I have therefore determined the appeal on the basis that the development has already occurred.

Main Issue

4. The main issue is whether there is an essential functional need for the proposed development and whether this will accord with national and local planning policies for development in the countryside.

Reasons

5. The appeal site concerns a mobile home situated within land occupied by a commercial fishery, comprising five lakes and areas for touring caravans and camping, all served by a toilet/shower block and small café. The appellant's landholding also includes a small animal petting collection and nature walks.
6. The appellant is the sole occupant of an existing dwelling situated close to the site's entrance from Methwold Road. This was granted permission by the

Council in 2007¹, as a functional need was identified at that time for a single permanent dwelling. The previous permanent residential accommodation on site was situated within the mobile home, which was retained but only for use thereafter as holiday accommodation.

7. For the purposes of planning policy, the site is situated within the countryside as defined by Policy CS02 of the Council's Core Strategy (Adopted July 2011) (the CS) and Policy DM2 of the Site Allocations and Development Management Policies Plan (Adopted September 2016) (the SADMPP). The latter suggests that development in the countryside is limited to particular types identified as suitable by other policies of the local plan. This includes rural workers' housing, to which Policy DM6 of the SADMPP applies. This policy suggests that new permanent dwellings should only be allowed to support existing rural based activities on well-established rural based enterprises, providing there is a clearly established existing functional need, requiring occupants to be adjacent to their enterprises in the day and at night and this need could not be met by existing dwellings within the locality. The functional need also includes a financial test, which I will come to later.
8. The proposal is for a second permanent unit of accommodation to be occupied by a site warden employed in connection with the appellant's business. The appellant and warden will work shifts to enable a 24hour presence onsite to monitor oxygen levels within the lakes and persons fishing; ensure the security of the site, including the prevention of unauthorised entries during the night time; book caravans into the site; and maintain the site and its facilities.
9. A reduction in oxygen levels in the fishing lakes, due to a failure in the mechanical aeration pumps, could cause the loss of fish. This would potentially lead to significant financial losses for the appellant's business, particularly through the loss of specimen species. The lakes are therefore continually monitored and dead fish removed in order to reduce the potential spread of disease. Whilst the requirement for the latter could be affirmed through visual inspection, it is unlikely that the former could be resolved by visual inspection alone. Moreover, sudden changes in oxygen levels are more likely to be effectively monitored by sensors. This does not therefore substantiate the functional need for the proposed development.
10. I appreciate that there is a risk of theft, particularly of specimen fish species and maintenance machinery stored within the site, especially so during the hours of darkness. However, there is no substantive evidence before me to suggest that thefts have taken place on site or that other security deterrents have been explored or would not be as equally effective as patrols within the site, e.g. automated barriers installed at the site's entrance and/or CCTV. I am mindful of the Framework's aim to achieve safe places but in the absence of information on thefts, other security issues, and confirmation that alternative means of addressing security have been implemented and failed, this does not give rise to a functional need for the proposed development.
11. The site operates strict rules in terms of its fishing, which requires monitoring of the net, hook and bait usage. As a significant part of the appellant's business is the offer of night fishing, monitoring is potentially a 24hr process. Similarly, caravans can arrive at any time during the day or night so a presence is required to book people into the site. Nonetheless, the caravan and camping

¹ Planning Reference: 07/01763/FM

areas form only a small part of the wider site and are situated close to the access into the site. With this in mind, it is likely that security measures similar to those outlined above could alert the appellant or other employees to any arrivals.

12. I appreciate that the appellant would not be able to complete all of the daily requirements of the business alone, so it would be reasonable to employ a larger workforce to enable a greater rotation of shifts and/or the overlap of shifts in busier periods; and to provide a facility for breaks. However, having regard to the evidence before me, it is unclear whether alternative facilities have previously been provided and found to be ineffective. This does not therefore add to the case for the proposed development.
13. Policy DM6 of the SADMPP and Policy CS06 of the CS require consideration of whether proposals for new rural housing could be met by existing dwellings within the locality and, for conversions, whether the building would be easily accessible to existing housing, employment and services. This policy approach aligns with that set out in the National Planning Policy Framework (the Framework). Moreover, whilst the appeal site is situated within an area of countryside, in the language of the Framework and the recent Court of Appeal judgement², it is important to have regard to the site's relationship to existing built development as well as accessibility to services and facilities, to establish whether the proposal will be 'isolated' or in a location where housing will enhance or maintain the vitality of rural communities.
14. Taking the physical dimension of isolation first, the proposal will be located fairly close to the existing dwelling, at the entrance to the fishery, and there are other dwellings interspersed between the settlements of Whittington and Brookville to either side of Methwold Road. Although the proposal could not be said to be isolated from other dwellings, there are a limited range of facilities and services available in the immediate vicinity and it will be some distance from the nearest Town of Downham Market and Key Rural Service Centre of Stoke Ferry. The reality is therefore that future residents will be obliged to travel further to access a greater range of facilities and services.
15. In terms of accessibility, the appeal site is poorly located. However, I appreciate that the Framework suggests that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, particularly in relation to businesses which may have to be found beyond existing settlements, and in locations that are not well served by public transport.
16. The appellant has indicated that more than one person could be required onsite at peak or critical times. The local road network lacks street lighting and pedestrian footways and it is suggested that there are limited bus services available. Accordingly, the opportunities to walk, cycle or utilise public transport to access the site for employment will not be convenient or realistic ones, particularly after dark or in bad weather.
17. In terms of the financial test required by parts (3c) and (3d) of Policy DM6 of the SADMPP, the appellant's business has been operating for more than three years, but no accounts or detailed financial projections have been provided in support of the appeal. It is therefore unclear whether the business has been

² *Braintree DC v SSCLG* [2018] EWCA Civ. 610

planned on a sound financial basis, so I cannot be reasonably assured that the costs of a second home in connection with the business will be adequately balanced through existing or future receipts. Similarly, I appreciate that the use of the mobile home for permanent residential accommodation could be a more effective use for the appellant but, in the context of Policy CS06 of the CS, it is unclear whether its use for holiday accommodation would be unviable.

18. I have had regard to the contribution that the appellant's business makes to the rural economy and the fact that a warden is already employed and housed on site. However, there is no substantive evidence before me that would suggest that, in the absence of the proposal, the current facilities would be under threat or the warden would be at risk of being made unemployed, or could not be housed elsewhere locally.
19. The appellant has suggested that the mobile home could be occupied for eleven months of the year to prevent permanent occupation. However, it will be the site warden's permanent address for the remainder of the year so the site warden will be required to travel on a frequent basis by private motorised transport to access shops, facilities and services, including healthcare. There is no substantive evidence before me that there is a shortage of alternative accommodation in nearby settlements with the facilities and services that will meet the needs of employees of the business. Therefore, I am not convinced that they could not fulfil the requirements of their employment whilst residing in permanent accommodation in a nearby settlement, travelling to the site for their particular hours of employment.
20. In light of the above, I conclude that there is not an essential functional need for the proposed development. Hence, the proposal will not accord with Policies CS02 and CS06 of the CS and Policies DM2 and DM6 of the SADMPP; and will fail to meet the policies of the Framework in respect of its location and accessibility.

Other Matters

21. I note that the Council has not raised any objections to the visual implications of the proposal. As it is an existing building, situated some distance from Methwold Road and screened by extensive landscaping and there are no proposals to alter its appearance, the proposal will be sensitive to its surroundings. Nonetheless, consideration of this matter does not lead me to a different conclusion on the main issue.

Conclusion

22. For the reasons given above, I conclude that the appeal should be dismissed.

Paul Thompson

INSPECTOR