



Appeal Decision

Hearing Held on 18 February 2020

Site visit made on 18 February 2020

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 07 April 2020

Appeal Ref: APP/V3120/C/19/3219969

Land at Foxcombe Hill Farm, Lincombe Lane, Boars Hill, Oxford, Oxfordshire OX1 5DZ

- 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 Ms Shadiya Kingerlee against an enforcement notice issued by Vale of White Horse District Council.
 - The enforcement notice was issued on 13 November 2018.
 - The breach of planning control alleged in the notice is failure to comply with condition No 1 of a planning permission Ref P07/V0863 granted on 5 July 2012.
 - The development to which the permission relates is one agricultural dwelling. The condition in question is No 1 which states that: *The building(s) hereby permitted and any ancillary works and structures shall be removed from the site [the Land] before 31 July 2014 and the land shall be reinstated to its condition prior to the erection of the building(s).* The notice alleges that the condition has not been complied with in that *the building the subject of Condition 1 was not removed from the Land on or before 31 July 2014 and still remains present on the Land. The approximate position is shown edged blue on the Plan attached to the notice.*
 - The requirements of the notice are to: Take down and remove from the Land the building referred to in paragraph 3 of the notice – the alleged breach of planning control.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (a) and the deemed planning application

Preliminary Matters

2. The appellant is seeking planning permission which would allow the agricultural dwelling to remain for a temporary period of 3 years from the date of this Decision.
3. Since the issue of the enforcement notice, the Vale of White Horse District Council Local Plan 2011 (the superseded LP) has been replaced by the Vale of White Horse District Council Local Plan 2031 (LP). At the Hearing, the Council said that the relevant policies of the LP in support of the reasons for

enforcement are now CP44 and DP6 in place of NE7 and CP4 respectively, while Policies CP13 and CP37 of the superseded LP have been reproduced with identical wording in the LP.

Main Issues

4. The main issues in this appeal are:

- whether the dwelling is inappropriate development in the Green Belt;
- the effect of the dwelling on the openness of the Green Belt;
- the effect of the dwelling on the character and appearance of the area;
- whether the dwelling is an isolated home in the countryside and, if so, whether there is an essential need for a dwelling to accommodate a rural worker;
- whether any harm by reason of any inappropriate development in the Green Belt, 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

Inappropriate development

5. CP 13 of the LP and paragraph 145 of the National Planning Policy Framework (the Framework) provide that, with some exceptions, the construction of new buildings is inappropriate in the Green Belt. While the Council's statement suggests that the dwelling might meet one of the exceptions as a building for agriculture or forestry, were it to serve a purpose in connection with a viable agricultural enterprise, it was agreed by the main parties at the Hearing that a dwelling would not meet that exception. I agree, as the building is a domestic residence within agricultural land rather than a building in use for agriculture. As the building would also not meet any of the other exceptions in the LP or Framework, it is inappropriate development in the Green Belt.

Openness

6. The dwelling essentially comprises 3 mobile home units connected together in a U-shape and clad in timber. Part of the cladding is incomplete or missing at the front of the dwelling, revealing part of a mobile home unit.
7. The dwelling is located towards one corner of Foxcombe Hill Farm, a largely open parcel of agricultural land comprising 3 fields within the open countryside for the purposes of the LP. Notwithstanding that there are structures on the site connected with its lawful agricultural use, including a cluster of buildings more centrally located within the same field, a comparison of aerial photographs taken in 1999 and 2015 shows that the dwelling occupies former grazing land that was devoid of development. In my view, the dwelling significantly harms the openness of the part of the site in which is located through the spatial filling by built form of a previously open and undeveloped part of land within the Oxford Green Belt.
8. It is agreed by the main parties that the dwelling cannot be seen from beyond the boundary treatments of the site or from public vantage points. I have taken

into account the case of *Turner*¹ raised by the appellant at the Hearing. The case confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect. This means that the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open (paragraph 133 of the Framework) and it is a matter of planning judgement in any particular circumstances whether that aim is achieved. In this case, notwithstanding the lack of visibility from beyond the site, I find that the urban sprawl represented by the dwelling on the land has an unacceptable effect on its openness.

Character and appearance

9. The appeal site is situated in open countryside within the North Corallian Ridge landscape character area (LCA). The LCA is characterised by a patchwork mix of agricultural lands, woodlands and scattered housing ranging in character and size from large detached dwellings on sizeable plots in Boars Hill, to semi-detached housing on modest plots and a mobile home park at Bayworth.
10. Notwithstanding that the boundary treatments and landscaping of the site means that the dwelling cannot be seen from external and public viewpoints, it is visible from a significant area of the field in which it is located. It has an impact, to that degree, on the character and appearance of the LCA of which it forms part. Even when taking into account its use as a temporary home, and noting that Policy DP6 refers to caravans and wooden structures, the dwelling's unusual design and appearance with its arrangement of incompletely-clad connected mobile home units presents it as rather utilitarian and ramshackle feature which does not sit comfortably within the pleasant rural setting of the site and LCA.
11. In reaching this finding, I have taken into account the officer report in respect of P07/V0863 which was favourable in its assessment of character and appearance. The officer considered visual impact was acceptable due to the dwelling's position on the site which was said to be less prominent than the more central positioning under a previous proposal dismissed on appeal². However, in my judgement the poor design and appearance of the dwelling and its visual impact on the site is not diminished by its location and the overall effect is significant harm to the character and appearance of the area.

Isolated home in the countryside; Essential need for rural worker's dwelling

12. Paragraph 79 of the Framework requires that the development of isolated homes in the countryside should be avoided, subject to exceptions. One the exceptions is that 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.
13. Notwithstanding the presence of dwellings locally, the appeal dwelling is situated in the open countryside for the purposes of the LP and not materially associated with any particular residential cluster or settlement. There is no local public transport service running close to the site, and no nearby shops. Therefore, I find as a matter of fact that the dwelling represents an isolated home in the countryside.

¹ *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466

² APP/V3120/A/01/1078934 Decision date 15 July 2002 (appeal against refusal of P01/V0083)

14. The need for an essential rural worker to live in the dwelling will primarily be determined on whether the business plan produced by the appellant is economically sustainable and viable for the foreseeable future. Were that found to be the case, the question of whether it was necessary for the appellant to reside on the site in relation to the implementation of that plan would arise.
15. In considering the viability of the proposed agricultural operation I have had regard to the case of *Petter*³ cited by the appellant. Accordingly I have reviewed the operation in its own terms and not against rigid or abstract financial criteria which might be not be suitable for what essentially amounts to a plan for the appellant and her sister to be subsistent on the land, assisted by other family members and by volunteers through the Workers On Organic Farms (WOOF) network. However, within this context, I must be satisfied on the evidence that the viability of the plan would ensure that any residential planning permission is both ancillary and proportionate to a true agricultural use.
16. In the business plan, the appellant states she is developing a producer-led Community Supported Agriculture (CSA) scheme selling raw cow's and goat's milk and processed dairy products such as halloumi cheese, paneer, soft goat's cheese, yoghurt and kefir to member families. She says that she also produces and supplies a range of other foods such as eggs, poultry, lamb, mutton, pork, beef, fruit and ferments. In addition to oral submissions made at the Hearing, I have reviewed all the papers submitted by the parties in relation to the financial viability of this plan including the supporting agricultural appraisal by Geo Ltd, the Council's agricultural viability appraisal conducted by Reading Agricultural Consultants (RAC) and the further document produced by Geo Ltd in response to the RAC appraisal and to the Council's statement.
17. There is a dispute between the parties as to the appellant's effectiveness in implementing the earlier business plan that led to the temporary permission for the dwelling in 2012 under P07/V0863. I note that the business was initially in profit under that plan before operations were affected by the tragic death of the appellant's partner in 2014. Submissions were made by the appellant at the Hearing that following a period of recovery, she is proposing to make a "fresh start" with the business plan of the appeal proposal. Taking all into account, the appellant has shown that she has been able to operate a profitable agricultural enterprise (albeit slightly, and for a short period) and I accept that there is a clear intention to do so again following her recovery from tragic circumstances.
18. However, notwithstanding this finding, the proposed operations are markedly different to that contained in the earlier business plan. That plan had significant organic orchard and chicken hatchery elements which were identified as major contributors to income. It did not involve the production of raw milk for retail sale or the on-farm processing of dairy products, the mainstay of produce in the new business plan, nor did it involve a CSA scheme for the sale of goods. I have heard that the appellant has very limited commercial experience of these particular production, processing and retail operations and there is, in my mind, considerable uncertainty as to whether the appellant will be able to implement elements of the plan referred to in the Geo Ltd appraisal as its key foundation.

³ Arthur Petter and Monica Harris v SSETR and Chichester District Council [1999] PLCR 322

19. While a portacabin is present on the farm with the intention of it being used as a micro dairy, I have seen no substantive evidence from the appellant that the structure and the food processing procedures proposed to take place within it will gain the necessary food authority approval(s). In this regard I note an email from the environmental health officer confirming that the proposed dairy operations are very high risk and complex and that there has been no discussion, application, registration or approval with regard to the processing of cheese. The appellant confirmed at the Hearing that no steps had been taken to apply to the food authority for registration or approval of dairy product manufacture and that, while she is carrying out raw milk testing, she had not yet had the necessary acceptable results confirmed by the Food Standards Agency which would secure its approval for the sale of raw milk.
20. Further, while the appellant has stated that viability would rely on at least 30 families signing-up to receive goods through the CSA scheme (were she to gain raw milk and dairy products approvals, and in addition to other income strands), she has submitted limited evidence to show that this is likely even were I to accept it would make the farm viable. Market research carried out in 2018 produced only 11 positive responses and while the business plan refers to the development of a list of potential customers, such a list or similar record of customer interest has not been submitted. I note evidence provided, including letters from existing producers of raw milk, suggesting an available and expanding market but this does not sufficiently mitigate against the uncertainty of a local demand which has not been adequately established.
21. Therefore, for all of the above reasons, I do not find the business plan economically sustainable or viable for the foreseeable future and accordingly there is no essential need for dwelling on the site to accommodate a rural worker.

Other considerations

22. Agricultural activities and land management practices on the site have been appraised as ecologically benign and utilise renewable energy sources including solar power. The proposed business would also make a contribution to the local economy by supplying products to local people and trading with local enterprises. However, these benefits are tempered by my finding that the business is not viable and I give them limited weight.
23. I have taken into account a letter received from the appellant's GP containing confidential information and I give this significant weight.

Planning balance

24. Paragraph 144 of the Framework indicates that in considering any planning application, substantial weight should be given to any harm to the Green Belt. Accordingly, as I have found harm to the Green Belt I apply substantial weight in respect to it. I have also found significant harm to the character and appearance of the area and also found that the development is an isolated home in the countryside without an essential need to accommodate a rural worker or meeting another relevant exception. In totality, the harm is of a magnitude which weighs very heavily against the proposal.
25. Having considered all matters raised in support of the proposal I conclude that, overall, they do not clearly outweigh the totality of the harm I have identified.

Accordingly, very special circumstances do not exist and the proposal is contrary to the guidance in the Framework, and Policies CP13, CP37, CP44 and DP6 of the LP which together seek to protect the Green Belt, the countryside and the character and appearance of places.

26. The appellant is currently living in the appeal dwelling. Article 8 of the First Protocol to the European Convention on Human Rights, as incorporated into the Human Rights Act 1998, is engaged due to loss of a home due to conflict with planning policy. Therefore, I have undertaken a proportionality assessment and considered whether the objectives of the planning policies could be met by a less intrusive action. However, Policies CP13, CP37, CP44 and DP6 of the LP seek to protect the Green Belt, the countryside and the character and appearance of places. Their objectives cannot otherwise be met without the refusal of the deemed planning application. I have considered the appellant's request for a 3-year temporary permission but the harm caused within this period would not be acceptable and would not meet the policy objectives.
27. The effect of the policies is to benefit the environment, amenity and the countryside and the implementation of their requirements in respect to the appeal dwelling would not be excessive or disproportionate taking all into account, including the circumstances of the appellant and the fact that the notice compliance period of 12 months provides a reasonable time to look for alternative suitable and available accommodation.

Conclusion

28. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Andrew Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Simon Ruston MRTPI	Planning Agent
Shadiya Kingerlee	Appellant
Bill Knight	Geo Ltd
James Shorten	Geo Ltd
Karima Giwa	Appellant's Sister

FOR THE LOCAL PLANNING AUTHORITY:

Robert Cramp	Planning Officer
Louise Morcom	Reading Agricultural Services
Alastair Field	Reading Agricultural Services

INTERESTED PERSONS:

Hugh Smith	Local resident
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DOCUMENTS submitted at the hearing

Statement of Common Ground