Appeal Decision

Hearing Held on 20 October 2020

Site visit made on 24 October 2020

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2020

Appeal Ref: APP/D3830/W/20/3250758
Barn at Truslers Hill Lane, Albourne, West Sussex, BN6 9DU

- 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 C Duggan against the decision of Mid Sussex District Council.
- The application Ref DM/19/4685 dated 5 November 2019, was refused by notice dated 20 January 2020.
- The development proposed is erection of additional stables, creation of foaling unit and erection of stud managers dwelling.

Decision

1. The appeal is allowed and planning permission is granted for erection of additional stables, creation of foaling unit and erection of stud managers dwelling at Barn at Truslers Hill Lane, Albourne, West Sussex, BN6 9DU in accordance with application Ref DM/19/4685 dated 5 November 2019, but subject to the attached schedule of conditions.

Procedural Matters

2. Amended plans were submitted with the appeal. This involves the resizing of the dwelling, to reduce its floor area. However, the appearance and siting of the building are otherwise very similar to what was originally submitted for consideration by the Council. As the building would be set back well away from public views and neighbouring properties, the changes would not have any planning related impacts beyond the scheme that was originally consulted on by the Council. In these circumstances, the plans were accepted at the hearing, and can be taken in to account without prejudicing the interests of any potential interested parties. It is these amended plans which have been approved in this decision.

3. Additional information was also submitted with the appeal regarding the personal circumstances of the appellants. This includes details of recent horse sales, and accounts relating to the 2019/2020 financial year which ended after the Council made its decision. This information was accepted on the basis that it does not fundamentally change the scheme and is material to the issue under dispute. It is reasonable to assume that new information such as this would come to light in the course of discussion in a hearing, the purpose of which is to understand whether or not a rural enterprise is viable. The local planning authority, a main party in the appeal, had the full opportunity to consider, respond to and rebut this information in the hearing. It can be taken in to account without prejudicing the interests of any parties.

4. The appellant argued that the Council cannot demonstrate a 5-year housing land supply. However, the main evidence submitted in support of this position is a report on the Council's Annual Position Statement which was recently rejected by the Planning Inspectorate on procedural grounds. This does not, on its own, demonstrate that the Council are unable to demonstrate a 5-year housing land supply. The Council maintain that it can, and in support of this provide a recent appeal decision where it was agreed this was the case[1]. In the absence of any convincing evidence of a shortfall or any other information that casts significant doubt on the Council's position, I have proceeded on the basis that a five-year housing land supply can be demonstrated.

5. The address has been taken from the decision notice as it is clearer than that provided on the original planning application form. This was also the address used on the appeal form. I have also corrected the postcode in accordance with the information provided on the appeal form. I have used the description of development from the original planning application form, as it accurately describes the proposal for the purposes of the decision.

Main Issues

6. The main issues in this appeal are as follows:

- Whether or not the rural enterprise on the site is economically viable and therefore justifies a permanent dwelling on the site; and
- Whether or not the size of the proposed residential unit is commensurate with the established functional requirement of the unit.

Reasons

Background

7. This relates to a stud farm operation which has been carried out by the appellant, Mr Duggan and his partner Ms Epsom for a period of around 10 years. Mr Duggan is an equine dentist which generates an ongoing income from attending to horses away from the site. Ms Epsom primarily works on the site attending to the horses. They operate as a family unit with children who currently live together away from the site. The stud farm can therefore reasonably be described as a family business.

8. The main economic output of the business is horses that are sold for the purposes of sport, having been bred on the site. The higher quality the horse the greater its sale value. As such, the welfare of the horses on the site, through the foaling process and in their early years of life is of critical importance to the success of the business.

9. The purpose of the dwelling is to enable both Mr Duggan and Ms Epsom to be on site continuously to supervise the foaling. This is a highly skilled operation often carried out at unsociable hours which requires careful judgement under significant pressure, and effectiveness in foaling is critical to the overall success of the business.

10. The construction of the dwelling on the site is to be undertaken along with an extension to the barn that provides a bespoke foaling unit as well as a mess

[1] Appeal Decision APP/D3830/W/19/3241644

room and welfare facilities for visiting vets and equine professionals. These works are uncontentious.

Planning Policies

11. Policy DP15 of the Mid Sussex District Plan 2018 ("District Plan") states that permanent agricultural dwellings will only be permitted where it can be proven that the farming enterprise is economically viable and it can be proven that the size of the dwelling is commensurate with the established functional requirement of the agricultural unit. This forms the basis of the Council's objection to the proposal. It confirmed that, whilst the policy refers to agriculture it considers that rural activities being carried out are similar and therefore fall within the remit of this policy.

12. This policy is consistent with paragraph 79 of the National Planning Policy Framework ("the Framework"), which states that isolated homes in the countryside will be allowed where there is an essential need for a rural worker to live permanently at or near their place of work in the countryside. Planning Practice Guidance[2] is also relevant here. This states, amongst other things, that one of the considerations that may be relevant where isolated dwellings in the Countryside are proposed is the degree to which there is confidence the enterprise will remain viable for the foreseeable future.

13. Having regard to the Framework and the relevant policy in the District Plan, the most relevant test is one of viability and whether the accommodation would fulfil a functional need. This is essentially a matter of judgement based on the individual circumstances of each case.

14. Policy ALC1 of the Albourne Parish Council Neighbourhood Plan 2016 ("Neighbourhood Plan") is also relevant. This requires, amongst other things, that development in the Countryside will only be permitted where it is necessary for a use which has to be located in the countryside.

First main issue - economic viability of existing enterprise

15. The main evidence of economic viability is the receipts associated with records of horse sales. I was able to cross check these against annual accounts of both Mr Duggan and Ms Epsom. Records of these have been provided going back to 2015. 4 invoices are provided for the 2019 calendar year totalling £38,250 in revenue. There is also further income associated with the stud farm operation, including what appears be rent associated with a teaser horse located on the farm and miscellaneous sales associated with the operations on the site.

16. Calculating the expenditure is difficult, as it needs to be separated from Mr Duggan's expenses incurred associated with his equine dentistry work. This is largely conducted off site and so is not directly relevant to the viability of the stud farm operation. In the absence of any detailed breakdown I carried out an analysis of both sets of 2019/2020 accounts in the hearing with input from both parties and estimated that the expenditure associated with the stud farm would sit within the broad region of £25000 per year. Even in a very worst case scenario, where all the expenditure was assigned to the stud farm, the total expenditure would amount to around £37000, which would be less than the income for the stud farm operation for the 2019/2020 financial year, which amounts to £51,110.

[2] Paragraph: 010 Reference ID: 67-010-20190722

17. These considerations lead me to the view that the operation being carried out by Mr Duggan and Ms Epsom over the past 10 years has got to the point where the income from sales is exceeding the expenditure on the site, to a significant degree. To my mind, this means that the enterprise can be reasonably described as viable. The permanent housing of the appellants on the site, together with the construction of a foaling unit and welfare facilities on the site, would facilitate the future growth of this rural enterprise, meaning that it is likely to continue to remain viable for the foreseeable future.

18. A further question arises as to whether the income that is generated by the stud farm is of a scale that would justify a building of the size proposed. On the basis of the discussion in the hearing, the likely annual financing costs would amount to between £7000 - £10000, which would be reflected in additional annual expenditure associated with the stud farm. On the basis of the 2019-2020 accounts, such housing costs could be reasonably borne by the business, alongside the provision of a basic income without resulting in a loss. Consequently, it does not require a subsidy to be viable.

19. Overall, the expense of building the house, particularly in the case of the smaller scheme, could reasonably be incurred by the business without having a disproportionate impact on its viability. In conclusion, the rural enterprise on the site is economically viable and is likely to remain so for the foreseeable future. The circumstances of this case justify a permanent dwelling on the site.

Second Main Issue - size of building

20. The originally submitted house amounts to around 170 sqm in gross internal floor area. The revised scheme is reduced to around 120 sqm.

21. As previously noted, the work involved in foaling is highly skilled and involves work at unsociable hours, at very short notice. In this respect it is different to other types of less skilled rural work necessitating a continuous presence on the site. In these circumstances it is reasonable that accommodation would be provided for dependents in any dwelling. In this case there are a number of children in the existing family unit who would need to be housed in the building. Both schemes have been designed to accommodate this need.

22. It is also argued that any building must provide space for meeting clients in connection with possible horse sales. Both schemes provide well sized living areas at ground floor level which could be used for this purpose. However, providing overnight accommodation for clients or relatives, whilst desirable from the perspective of the appellant, would go far beyond what would ordinarily be regarded as the function of this residential building. It has not been demonstrated that there are exceptional circumstances that would justify such provision, in the proposed building.

23. In this context the originally submitted scheme is very large. In terms of floor area, it considerably exceeds the relevant Nationally Described Space Standard (NDSS) for a 4 bedroomed, 5 person property. Whilst this is a minimum requirement and the rural nature of the site means that there is perhaps a greater need for storage and utility facilities, the scheme clearly exceeds what may be required as the functional purpose of the building, which is to provide residential accommodation for rural workers and dependents. This is mainly due to the very large areas of living space at ground floor level.

24. By contrast the revised scheme is much closer to the relevant NDSS. It would provide an appropriate and functional level of living space for sleeping and eating, with an additional room which could be used as an office for desk work associated with the business. As noted previously, the living areas at ground floor level would be of a size and layout which would be appropriate to receive clients and guests. Overall, it is of a size that meets the likely functional needs of its future residents, in connection with this rural enterprise.

25. I therefore conclude that the revised scheme is commensurate with the established functional requirement of the unit.

Conclusion against development plan

26. The proposal is economically viable and therefore justifies a permanent dwelling on the site; and the revised scheme is commensurate with the established functional requirement of the unit. The revised scheme therefore meets all the criteria set out in DP15 of the District Plan. It also complies with policy ALC1 of the Neighbourhood Plan which seeks to ensure development outside the built up area boundary is necessary for a use which has to be carried out in the Countryside.

Other Considerations

27. The Council suggested that a temporary building could be constructed as an alternative. However, I have to deal with the proposal in the form that is before me.

28. The appellant argues that the scheme would comprise a land use benefit through the provision of a good quality house, which would amount to a windfall. However, this does not justify granting permission for the larger scheme, given that it would conflict with the most relevant policies in the development plan.

29. The Council refer to another planning appeal decision[3] where a rural worker dwelling was dismissed. However, there are several differences. Firstly, this decision was in a different local authority, where there appears to have been a planning policy which set out more detailed viability tests. Second, the works involved a poultry farm rather than a stud farm so the need for workers to be on site permanently is of a different nature. Third, the Inspector commented that little evidence had been submitted to demonstrate the need for a large family dwelling, which in that appeal amounted to a gross floor area of around 202 sqm. These considerations all contributed to the failure of that appeal. The circumstances here are different.

30. A screening assessment was carried out by the Council considering the effect of the proposal on the Ashdown Forest Special Protection Area and Special Area of Conservation. It concluded that, having regard to the Habitats Regulations, there would be no likely significant effect on these sites. I agree with this assessment.

31. Objections to the scheme were raised by the Parish Council, which I have considered. In this case the use of the site as a stud farm is well established and was evidenced in the information originally submitted to the Council, particularly in the Design and Access Statement. The need for the dwelling has

[3] APP/M2270/W/18/3218791

been considered previously in this decision. The physical appearance of the building would be appropriate in relation to the prevailing character and appearance of the area, including other existing buildings in the surrounding area.

Conditions

32. The conditions were agreed between the parties in advance of the hearing and have been imposed accordingly. They are necessary in the interests of certainty for all parties and to comply with statutory time limits relating to the commencement of development; to ensure that appropriate arrangements are made for drainage in the interests of avoiding surface water flooding; to ensure the proposal has an appropriate appearance in relation to its surroundings, and to provide adequate parking and cycle parking in the interests of highway safety and the promotion of sustainable transport. The landscaping condition also requires further details to be provided of the residential curtilage; this is to ensure it is commensurate with the character, appearance and function of the approved dwelling as discussed in the hearing.

33. The proposal is justified on the basis that it is a rural worker dwelling so must be tied permanently to the stud farm and this is also reflected in a planning condition. It is also necessary to ensure that any development is limited to the functional need associated with the stud farm so it is exceptionally justified to remove permitted development rights that would potentially allow extensions and other alterations to take place to the building.

34. Following some drafting amendments, the conditions as imposed meet the policy set out in the National Planning Policy Framework and Planning Practice Guidance.

Conclusion

35. The proposal complies with the development plan and there are no other considerations that outweigh this finding. The appeal should succeed subject to the attached schedule of conditions.

Neil Holdsworth

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

2. The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan P01; Location and site Plan H12 dated April 2020; Scheme Dwelling Plans H10 dated April 2020; Elevations H13 dated April 2020, Proposed stable barn extension P05 dated September 2019.

3. No building works shall take place above the level of the adjacent ground unless and until details of the proposed foul and surface water drainage and means of disposal have been submitted to and approved in writing by the local planning authority. The dwelling shall not be occupied until all the approved drainage works have been carried out in accordance with the agreed details.

4. No building works shall take place above the level of the adjacent ground unless and until a schedule of materials and finishes to be used for the external walls and roof of the dwelling has been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

5. The development shall not be occupied unless and until there has been submitted to and approved in writing by the Local Planning Authority full details of a hard and soft landscaping scheme including detailed landscape drawings and details of boundary treatments. This scheme shall also denote the extent of residential curtilage associated with the dwelling. The works shall be carried out as approved prior to the occupation of any part of the development or in accordance with a programme agreed in writing with the Local Planning Authority. Any trees or plants which, within a period of five years from the completion of development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

6. The dwelling shall not be first occupied until the vehicle parking and turning spaces have been constructed in accordance with the approved plans. These spaces shall thereafter be retained for their designated use.

7. The dwelling shall not be occupied until provision has been made within the site in accordance with details to be submitted to and approved in writing by the Local Planning Authority for the parking of bicycles clear of the public highway. The cycle parking shall be implemented prior to first occupation of the development and such space shall not thereafter be used other than for the purposes for which it is provided.

8. The occupation of the dwelling hereby approved shall be limited to a person solely or mainly employed including any dependents of such a person residing with him or her, or a widow or widower of such a person of the business occupying the plot edged in blue as submitted in drawing H12 dated April 2020.

9. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 or as amended in the future, no

enlargement, improvement or other alteration of the dwelling house hereby approved, whether or not consisting of an addition or alteration to its roof, nor any other alteration to its roof, shall be carried out, nor shall any building or enclosure, swimming or other pool be provided within the curtilage of the dwelling house hereby approved without the specific grant of planning permission from the Local Planning Authority.

End of Schedule

APPEARANCES

For the Appellant

M Bonner	KWA Architects
C Duggan	Appellant
R Epsom	Appellant

For the Local Planning Authority

J Fisher	Planning Officer
D Hall	Consultant Rural Advisor

DOCUMENTS SUBMITTED AT THE HEARING

1. Appeal Decision APP/D3830/W/19/3241644