
Appeal Decisions

Hearing Held on 15 December 2020

Site visit made on 16 December 2020

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2021

Appeal A Ref: APP/G2815/W/20/3254860

Glebe Farm, Land located off Morehay Lane, King's Cliffe

- 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 M C and J Day against the decision of East Northants District Council.
 - The application Ref 19/01613/FUL, dated 29 October 2019, was refused by notice dated 1 May 2020.
 - The development proposed is demolition of redundant farm building and proposed creation of agricultural worker's dwelling.
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Appeal B Ref: APP/G2815/W/20/3258402

Glebe Farm, Land located off Morehay Lane, King's Cliffe

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by M C and J Day against East Northants District Council.
 - The application Ref 20/00762/FUL, is dated 25 June 2020.
 - The development proposed is demolition of redundant farm building and proposed creation of agricultural worker's dwelling.
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Decisions

1. Appeal A is dismissed, and Appeal B is dismissed.

Applications for costs

2. Applications for costs were made by M C and J Day against East Northamptonshire District Council and by East Northamptonshire District Council against M C and J Day. These applications are the subject of separate Decisions.

Preliminary Matters

3. It was confirmed to me at the Hearing that the original planning applications and subsequent appeals were/have been made in the business partnership's name. Nevertheless, whilst it is my understanding that Matthew Day is not yet a legal partner in the business, where I refer to the appellant in these decisions, I refer to Matthew Day. Indeed, each proposal is based on he and his immediate family taking occupancy of the proposed agricultural worker's dwelling.

4. The East Northamptonshire Local Plan Part 2 (the LPP2) is emerging. The main parties agree that the LPP2 is currently at a stage that attracts limited weight. I have no reason to consider otherwise and shall determine the appeals on this basis.
5. With respect to Appeal B, the Council has confirmed that it would have refused planning permission had it been in the position to do so. In fact, a Decision Notice was issued by the Council shortly after Appeal B was made (having not been in receipt of formal confirmation that an appeal had been lodged). That notice contains very similar refusal reasons to those imposed with respect to the scheme that is now the subject of Appeal A. I have formulated the main issues accordingly.

Main Issues

6. The main issues with respect to both appeals are:
 - Whether or not an essential need for a rural worker to live permanently at the site has been satisfactorily demonstrated;
 - Whether or not the proposed residential garden area would be excessively sized, including consideration of its effect upon the character and appearance of the rural area; and
 - Whether or not the size and scale of the proposed dwelling would exceed functional requirements, including consideration of its effect upon the character and appearance of the rural area.

Reasons

Essential need

Policy Context

7. As set out at paragraph 79 of the National Planning Policy Framework (February 2019) (the Framework), planning policies and decisions should avoid the development of isolated homes in the countryside unless, amongst other stated circumstances, there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.
8. Policy H1 of the King's Cliffe Neighbourhood Plan Development Plan (made October 2019) (the KCNP) states that housing development will not be supported outside or adjacent to King's Cliffe's defined settlement boundary unless, amongst other circumstances, it is a rural exception scheme as set out at Policy 13 of the North Northamptonshire Joint Core Strategy 2011-2031 (adopted July 2016) (the JCS).
9. The rural exceptions listed under Policy 13 include dwellings for rural workers at or near their place of work in the countryside provided the dwelling is required to enable someone who is in full time employment in agriculture (or other rural business) to meet the essential need of the enterprise concerned. Additionally, Policy 13 indicates that it will need to be demonstrated that functional, financial and viability tests (as set out in the policy's supporting text) are met.
10. The functional test indicates, amongst other provisions, that a clearly established functional need for the development must be demonstrated. The

financial test requires the enterprise concerned to have been established for at least three years, to have been profitable for at least one year and to currently be financially sound with a clear prospect of remaining so. The final/viability test requires the size and scale of the proposed dwelling to be commensurate with established functional requirements.

11. It was agreed by the main parties at the Hearing that Policy 13 is the most important policy for determining both appeals. I have no reason to disagree. Indeed, an agricultural worker's dwelling is under consideration and Policy 13 focuses purely upon rural exceptions and sets out specific provisions with respect to dwellings for rural workers. It is a policy that directly relates to the determining issues in dispute.
12. As set out at paragraph 213 of the Framework, due weight should be given to existing policies according to their degree of consistency with the Framework. It must be noted that the JCS was examined and adopted in the context of the original iteration of the Framework (March 2012), which, when compared to the current Framework's approach to the development of isolated homes in the countryside, contains a similar direct reference to an essential need for a rural worker to live permanently at or near their place of work in the countryside.
13. Policy 13, through its associated functional, financial and viability tests, builds upon the broad direction offered by the Framework. Whilst it was illustrated at the Hearing that Policy 13 (and its supporting text) strongly reflects the precise approach formerly set out in now withdrawn national policy¹, it is a self-sustaining adopted development plan policy and must be considered as such.
14. An update² (the update) to the Planning Practice Guidance (the PPG) was published in July 2019, which sets out considerations that may be relevant to take into account when applying paragraph 79a of the Framework. Whilst the PPG provides direction on how the Framework's provisions could be applied, it should not be read as an extension to it. Indeed, the PPG does not set out mandatory requirements and has not been subject to the rigours of external scrutiny or consultation.
15. In any event, whilst there are differences between the content of the update and Policy 13 (and its supporting text), these differences are often relatively subtle rather than radical or fundamental. Most notably, the update does not reference a financial test and is instead targeted in its approach to financial/viability considerations in so far as it confirms that it may be relevant to take into account the degree to which there is confidence that an enterprise will remain viable for the foreseeable future. Nevertheless, the update does not alter paragraph 79a as it appears within the Framework as published policy. I thus find that Policy 13 is not out-of-date and attracts considerable weight.
16. This is not to say that the update is of no relevance. Indeed, it provides important clarity as to how assessments of essential need could be formulated. The update crystalizes the point that the Framework contains no specific requirement for financial testing of a business's past performance. I shall consider the merits of the proposals in this context whilst still recognising that the PPG is merely guidance and that the development plan remains the starting point for decision making.

¹ Planning Policy Statement 7, withdrawn upon original publication of the Framework (March 2012)

² Paragraph 010; Reference ID: 67-0101-20190722; Revision date 22 07 2019

Analysis

17. The proposals relate to an existing and long-standing rural enterprise that specialises in livestock production and that is comprised of a total of approximately 209 acres of pasture (the holding). Apart from a 4.5-acre field owned by the appellant/Day family, the holding is farmed under a secure agricultural tenancy. The livestock enterprise has been scaled back in recent years. This is due to several physical and financial factors that include difficulties associated with monitoring periods of calving whilst residing approximately half a mile from the site, which is a constraint that similarly applies to both the appellant and his father. Whilst the holding contains an existing complex of agricultural buildings, I am content that none of these buildings would, in realistic terms, be both suitable and practical to convert for residential purposes.
18. It was confirmed at the Hearing that a herd of around 33 cattle is currently kept at the holding, of which approximately 20 are stores with the remainder being suckler cows and calves. No pigs are currently kept at the holding, although small numbers have, in recent times, occupied a part of the complex of agricultural buildings. It is common ground between the main parties that an essential need for a rural worker to live at the appeal site is not generated by the enterprise as it currently operates.
19. The rural worker's dwelling that is proposed is intended (in both appeals) to serve a diversified agricultural enterprise that would continue to specialise in the production of livestock. It is the appellant's intention to grow the organic suckler herd's size to 40. It is also planned for additional store cattle to be purchased and finished over summer months when excess grazing land would be anticipated to be available.
20. Also intended to form part of the diversified enterprise is a rearing unit for calves brought-in from dairy businesses elsewhere. This element of the enterprise would take place within a livestock polytunnel (the polytunnel) that already has planning permission³ upon the holding. This unit would cater for up to 60 calves of up to three months in age at any one time, and for four batches of calves per year. It is also intended to keep 10 breeding sows in outdoor pig arcs, with each sow expected to produce two litters per year, and for the appellant to ultimately develop his own brand of organic meats.
21. It is common ground between the main parties that the diversified enterprise would generate an essential need for a rural worker to live at the site/holding. Considering the stock numbers proposed and the labour-intensive nature of rearing calves, I have no reason to disagree. Indeed, not least in the interests of animal welfare, a constant presence would be necessary.
22. As indicated under Policy 13, a rural worker's dwelling can qualify for a rural exception if it is required to enable someone who is in full time employment to meet the essential need of the enterprise concerned. The appellant does not currently derive his main income from the farm. Whilst I am led to understand he has regular involvement in the enterprise's current day-to-day operation, it has not been clearly demonstrated that he is in full time employment in agriculture. This is notwithstanding any assertions made to the contrary at the Hearing. Although I do not doubt the appellant's intention to take on a full

³ 19/01612/FUL

time employed role, for the purposes of farm succession and supporting the enterprise once diversified, such a future intention would fail to meet the relevant test set out at Policy 13(2)(b)(i).

23. Moreover, Policy 13's functional test sets out that a clearly established functional need for the proposed development should be demonstrated. To my mind, a functional need cannot be clearly established based upon future plans to significantly diversify an existing enterprise that does not currently generate an essential need for a full-time residential presence.
24. Indeed, the diversified enterprise that is proposed would represent a noticeably more intensive way of farming the holding. Whilst it would continue to specialise in the production of livestock, a fundamentally different rural enterprise would ensue. This is highlighted through the pronounced differences in stock numbers that are anticipated, most particularly with respect to the size of the suckler herd. Furthermore, whilst it is my understanding that a small number of calves have in previous years been reared at the holding, the new calf rearing unit would represent an important and, as yet, unestablished element of the diversified enterprise.
25. I acknowledge that a live planning permission⁴ is in place for the polytunnel's erection and there is no clear reason to anticipate that this existing permission would not be implemented should either or both of the appeals that are before me be successful. Indeed, a planning condition could be imposed to ensure that the polytunnel is installed and made available for first use prior to the proposed dwelling advancing past initial construction stage. However, such a condition would not secure the polytunnel's active operation in a calf-rearing capacity.
26. As regards Policy 13's financial test, it is my understanding that the business has, in recent times, broken even on a cash-cost basis but failed to generate a profit. Indeed, no recent accounting records (or similar) have been submitted to clearly demonstrate otherwise and, on this basis, even though it is my understanding the business has been profitable in the past, it is very difficult to conclude that the enterprise is currently financially sound. Nevertheless, the PPG is an important material consideration that offers a clear indication that the testing of past business finances should not be a key determining factor when assessing matters of essential need.
27. The Council has accepted that the financial projections provided for the diversified enterprise are broadly accurate. These indicate that the diversified enterprise could realistically be anticipated to be profitable by its third year when factoring in forecast capital investment expenditures.
28. It is the case that relatively substantial investments (in the context of the enterprise concerned) would be required to establish both the diversified enterprise and the newly proposed dwelling. The dwelling's generous intended size/scale is a relevant factor to consider. Indeed, even based on build cost figures stated on behalf of the appellant at the Hearing (forecasted on a site-specific basis), a significant investment would be necessitated.
29. Nevertheless, the appellant has asserted that he would be able to raise funds from a variety of different sources, including from personal savings, the sale of

⁴ 19/01612/FUL

his current dwelling, retained business profits and a future loan or mortgage. I have no clear reason to doubt these assertions and thus have a reasonably strong degree of confidence that the diversified enterprise, even when factoring in the relatively substantial initial investments required, could remain viable for the foreseeable future. Thus, the proposals' shortcomings in a profitability and financial soundness sense (when assessed against Policy 13's financial test) are not decisive.

30. However, the key point is that the diversified enterprise has yet to be established. Notwithstanding the various projections and assertions that have been provided, there is no certainty that the diversified enterprise, including a new calf-rearing unit, would establish itself successfully. I have noted the appellant's argument that the enterprise cannot be diversified without a full-time residential presence at the site and I accept this to be the case. However, the logical solution in such circumstances would be to pursue a temporary dwelling in the first instance to allow the diversified enterprise to become established.
31. Whilst Policy 13 and its supporting text does not provide any specific direction with respect to temporary permissions, such an approach is a well-established way of implementing a trial period for a new or newly diversified rural enterprise where a functional need for living accommodation is generated. Indeed, the Council, at the Hearing, referred to instances elsewhere in the District where such an approach has been followed.
32. It is also set out in the PPG that, in the case of new enterprises, consideration should be given to whether it is appropriate to consider granting permission for a temporary dwelling for a trial period. I do not accept that this requirement is not relevant because an enterprise already exists. Indeed, I have found that, in the case of the proposals before me, a fundamentally different rural enterprise would ensue, which, to my mind, would be akin to a new enterprise. I also note that the update is flexibly worded and not intended to set out all possible relevant considerations in either specific or exhaustive terms.
33. It was suggested at the Hearing that a temporary dwelling would likely provide social and practical issues for the appellant and his young and expanding family. Nevertheless, I see no clear reason why a suitable temporary solution could not potentially be found. Indeed, accommodation of a temporary nature would not necessarily provide poor or unduly constrained living conditions and it has not been robustly substantiated otherwise.
34. I have had regard to paragraph 83 of the Framework and acknowledge that decisions should enable the development and diversification of agricultural businesses. However, the Council's spatial strategy for development must also be recognised in decision-making, whereby new development in rural areas should only be permitted in specified exceptional circumstances.
35. For the above reasons, in the case of both appeals, an essential need for a rural worker to live permanently at the site has not been satisfactorily demonstrated. The proposals conflict with Policy 13 of the JCS and Policy H1 of the KCNP in so far as these policies confirm that in open countryside, away from established settlements, permission will not normally be granted for new built residential development unless a specified exception is met.

Residential garden area

36. Notwithstanding my findings with respect to the first main issue above, I shall consider the merits of the proposals in the context of each having been put forward as a rural exception scheme. The size of the intended garden area/external amenity space varies between the scheme that is subject to Appeal A and that which is subject to Appeal B, with the former being more generous in expanse.
37. In the case of each appeal, the newly proposed garden space would result in the change of use of agricultural land and would realistically be anticipated to lead to a degree of domestication of the countryside. This is even when noting that, in the case of each appeal proposal, publicly available views of the new garden space would be limited and often well-filtered by existing and/or newly proposed planting.
38. Nevertheless, the garden area as proposed under Appeal A would be of significant depth relative to the dwelling it is intended to serve. To my mind, its extent would exceed functional requirements and appear as an unnecessary and excessive excursion into the open countryside. This is not withstanding the made-up nature of the land in question.
39. Nevertheless, in the case of the proposal that is the subject of Appeal B, the depth of garden space proposed is meaningfully reduced when compared to Appeal A. The garden's size would be far closer related to the dwelling's intended footprint coverage. Indeed, had I instead come to a positive conclusion upon the first main issue above, I would have been satisfied that functional requirements would not have been exceeded and that any undue detrimental visual impact would have been avoided.
40. A planning condition could have been applied in the case of Appeal A to restrict the spatial extent of the garden space to match that proposed under the terms of Appeal B. Thus, on this basis, the proposed garden area would not be excessively sized. The effect upon the character and appearance of the rural area, when considered in the context of each proposal being a rural exception scheme, would be acceptable. In the case of both appeals, there would be satisfactory compliance with Policies 8 and 13 of the JCS in so far as these policies reference a test related to the proposed dwelling's size and scale and require that development responds to the site's immediate and wider context.

Size and scale of the proposed dwelling

41. I shall again consider the merits of the proposals in the context of each having been put forward as a rural exception scheme. In the case of both appeals, a predominantly two-storey, 4-bedroom dwelling with an integral double garage is proposed. In comparison to the dwelling that is the subject of Appeal A, the dwelling that is the subject of Appeal B is very slightly smaller. Indeed, the difference is so minor that I am content to consider this main issue simultaneously as regards both appeals.
42. It is a matter of professional judgement as to whether the size and scale of the proposed rural worker's dwelling would be commensurate with its functional requirements. Indeed, no relevant numerical limit appears within or alongside Policy 13 of the JCS nor, to my knowledge, in any other published policy or guidance document. National minimum space standards have been submitted

in evidence, but I am unconvinced that these generalised minimum standards hold anything more than limited relevance to my consideration of the issue at hand.

43. The proposed floor plans indicate facilities such as a boot room and farm office that would be anticipated to have a direct functional relationship to the farm business. Furthermore, in recognition of the appellant's family situation, the Council has indicated that they have no objection to the property providing four bedrooms. These bedrooms and other habitable areas, in broad terms, appear sensibly/logically sized upon the proposed plans. When considered in overall terms, whilst at the upper limit of what could be supported, I do not find the proposed dwelling to be excessively sized nor to distinctly exceed functional requirements.
44. It is also relevant to note that the dwelling would replace the remnants of a redundant and dilapidated farm building in proximity to existing established field boundaries and to newly proposed boundary planting. These factors would limit the proposed dwelling's visual impact. Furthermore, when viewed from southwestern vantage points relative to the site (upon Morehay Lane), the dwelling would be experienced against or alongside the backdrop of King's Cliffe village. The proposals' effects do not raise undue concerns in either a landscape character or visual sense.
45. For the above reasons, the size and scale of the proposed dwelling would not exceed functional requirements and its effect upon the character and appearance of the rural area, when considered in the context of being a rural exception scheme, would be acceptable. In the case of both appeals, there would be satisfactory compliance with Policies 8 and 13 of the JCS and Policy BE1 of the KCNP in so far as these policies reference a test related to the proposed dwelling's size and scale and require that new development should, where appropriate, respect local character, streetscape and vernacular.

Other Matter

46. Being set a not insignificant distance away from the King's Cliffe Conservation Area (the CA), each proposal would not materially affect its setting and would thus preserve the CA's character and appearance.

Planning Balance

47. On the basis that I have found the most important policy for determining the appeals not to be out-of-date, I have not applied the presumption in favour of sustainable development as set out at paragraph 11 of the Framework.
48. Each proposal would introduce an additional unit of family-sized accommodation that would offer support to the intended diversification and succession of an existing agricultural business. Indeed, the Framework reaffirms the Government's objectives of significantly boosting the supply of homes and promoting the development and diversification of rural businesses. However, merely a single dwelling related to a single rural business is under consideration.
49. In the case of each of the appeal schemes that are before me, the benefits, when considered cumulatively, would be relatively modest and would not outweigh the significant harm and associated policy conflict associated with an essential need for a rural worker's dwelling not having been satisfactorily

demonstrated to justify an exception to the Council's spatial strategy for development. Each proposal conflicts with the development plan when read as a whole, and material considerations do not lead me to decisions otherwise.

Conclusion

50. For the reasons given above, both Appeal A and Appeal B are dismissed.

Andrew Smith

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Matthew Day	Appellant
Michael Day	Appellant's father
Mark Flood BA (Hons) DipTP MRTPI	Director, Insight Town Planning Limited
Alan Brown BA CIAT	Director, Alan Brown Development Services Limited
Tom Arthey BSc (Hons) MRICS FAAV	Director, Arthey Associates Property and Farm Business Consultants
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FOR THE COUNCIL

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