



Appeal Decisions

Hearing held on 13 January 2021

Site Visit on 14 January 2021

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 February 2021

Appeal A, APP/K2420/W/20/3261112

Gnarley Farm, Ashby Road, Osbaston CV13 0HP

- 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 Gavin Ingham against the decision of Hinckley and Bosworth Borough Council.
 - The application Ref 20/00240/FUL, dated 2 March 2020, was refused by notice dated 29 April 2020.
 - The development proposed is the temporary siting of a prefabricated mobile home.
-

Appeal B, APP/K2420/W/20/3261114

Gnarley Farm, Ashby Road, Osbaston CV13 0HP

- 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 Gavin Ingham against the decision of Hinckley and Bosworth Borough Council.
 - The application Ref 20/00552/FUL, dated 5 June 2020, was refused by notice dated 12 August 2020.
 - The development proposed is the change of use of land for the siting of two caravans for residential use.
-

Decision

Appeal A

1. The appeal is allowed and planning permission is granted for the temporary siting of a prefabricated mobile home at Gnarley Farm, Ashby Road, Osbaston CV13 0HP in accordance with the terms of the application, Ref 20/00240/FUL, dated 2 March 2020, subject to the conditions set out in the schedule at the end of this decision.

Appeal B

2. The appeal is allowed and planning permission is granted for the change of use of land for the siting of two caravans for residential use at Gnarley Farm, Ashby Road, Osbaston CV13 0HP in accordance with the terms of the application, Ref 20/00552/FUL, dated 5 June 2020, subject to the conditions set out in the schedule at the end of this decision.

Applications for costs

3. An application for costs was made by Mr Gavin Ingham against Hinckley and Bosworth Borough Council. This application is the subject of a separate Decision.

Procedural Matter

4. The development which is the subject of appeal B has already been undertaken, and two caravans are in situ. I determine the appeal on that basis. I have not included the full description of development from the appellant's planning application form as it makes reference to the proposal being retrospective and that is not in itself development.

Main Issue

5. The main issue is whether or not the developments subject to the two appeals comply with the provisions of local and national planning policies which permit rural workers dwellings in the countryside.
6. For appeal B there is a second main issue relating to the effect of the development upon the character and appearance of the area.

Reasons

Rural workers dwellings

7. The appeal site is located in the countryside and outside of the defined settlement boundary of Osbaston. It is however common ground between the parties that there is an essential need for a rural worker to live at Gnarley Farm and that the appellant presently meets that need. There is also no disagreement that the agricultural business is a viable enterprise and that it is expected to continue to be so in the future. On the basis of the information before me, I have no reason to disagree with these conclusions. The point of dispute between the parties lies in how the essential need for a rural worker to live on the farm can and should be met, primarily in relation to the availability or otherwise of the existing farmhouse.
8. The key development plan policy which is the focus of the disagreement between the parties is Policy DM5 of the Local Plan Site Allocations and Development Management Policies DPD 2016 (LP). At criterion c), Policy DM5 requires available existing dwellings or buildings to be used to provide on-site accommodation in preference to permitting the construction of new rural workers accommodation. There is no definition of the word 'available' in Policy DM5 or the accompanying text and the appellant and the Council take differing views on what this means in the context of the current circumstances relating to the farmhouse.
9. The farmhouse is currently occupied by the appellant's mother, who is not in a position to meet the farms essential needs relating to an on-site presence. This too is common ground between the parties. The submissions made by the appellant set out that his mother has no intention of leaving the farmhouse, which is her home and which has been for many years. She also does not wish, nor will allow, the appellant and his family, which consists of Mr Ingham, his wife and his two adult children to reside in the farmhouse with her. As the appellant does not have ownership of the farmhouse or any control over it, he can make no claim to reside there, either with his family alone or in conjunction with his family and his mother.
10. Furthermore, the existing farmhouse only has 3 bedrooms. Although the Council maintained its position at the hearing that because two families have previously shared the farmhouse it could be possible to do so again, the

appellant explained that this occurred for a limited time period when his children were toddlers. The possibility of extending the farmhouse was explored at the hearing but there is no evidence before me that this could be achieved in a way that would both meet with the approval of the local planning authority so that planning permission could be granted and meet the needs of the appellant and his mother. Irrespective of this however, there is no apparent wish on the appellant's mother's part for this to take place to her property and the appellant has set out that financially he could not commit to doing so as he does not own the farmhouse and is only anticipating to inherit a 1/5 share with his siblings.

11. Gnarley Farmhouse is at the present time occupied by the appellant's mother as her home and there are circumstances pertaining to this which mean that the appellant cannot, and has no right, to reside there. Whilst there is of course the possibility that the farmhouse may become vacant in the future and it may at that point be possible for the appellant and his family to reside in it, there is no certainty as to in what time period this may occur. There may also be further obstacles to overcome relating to the long-term future of the farmhouse once the appellant's mother ceases to occupy it, but again this is an unknown at the current time.
12. In the previous appeal¹, the Inspector concluded that at some unknown but not necessarily distant point in the future, the farmhouse could become available to meet the needs of the enterprise once more, whereas what was proposed at that time would have allowed for an additional home in the countryside which would be permanent. Furthermore, the Inspector was not persuaded that the granting of a temporary planning permission would be justified in the context of the National Planning Practice Guidance (NPPG) and that the fact that the dwelling proposed would be a permanent type of construction meant that it would be costly and more problematic to remove from the site.
13. The parties agreed at the hearing that there is additional information before me which was not before the previous Inspector. That Inspector made no reference to the legal cases or appeal decisions now provided by the appellant, there is no reference to the Human Rights Act nor does it appear that the appellant at that time advanced the argument regarding the granting of a temporary permission that they have put before me. I am satisfied that if this information was before the previous Inspector, it would have been addressed in their decision letter. Accordingly, whilst the previous Gnarley Farm appeal decision is material to my determination of the appeal and I have had regard to it, I must reach my own conclusions based on the information before me.
14. The appellant advances the case of *Keen*² which found that it was insufficient for accommodation merely to exist, rather it is necessary to determine whether or not it can reasonably be held to be available. They further refer to 4 appeal decisions³, each of which consisted of a circumstance where the Inspector considered that a farmhouse was not available because it was occupied by a person or persons who in the past worked at the farm but either no longer did so or were able to do so on a limited basis which would not meet the essential needs of the farm. Collectively, these present a persuasive argument that in the current circumstances, this being that the Gnarley Farm farmhouse already

¹ APP/K2420/W/18/3206304

² *Keen v Secretary of State for the Environment and Halesbury Vale District Council* 1995 WL 1082175

³ APP/Y2003/W/18/3216854, APP/H2733/W/17/3186812, APP/H0738/A/13/2193698 & APP/W9500/A/08/2087370

- has an occupant who cannot be reasonably expected to vacate the dwelling, nor is there any mechanism to require them to, it is not available.
15. Whilst the case of Ford⁴ is a more recent case than Keen, this does not nullify or supersede Keen as relevant case law. Furthermore, the circumstances of Ford have limited commonality with the appeal case, as it refers to a situation where planning permission had already been granted for a tied agricultural workers dwelling and one where there was a specific local plan policy which was relevant to the circumstances of the case.
 16. In conclusion on whether the existing farmhouse is available, the scenarios arising are many and they are complex, depending upon a number of unknown and unpredictable factors. What appears certain however, is that the appellant has no prospect of either moving into or extending Gnarley Farmhouse at the present time as he has no legal right to do so and his mother does not wish him to. The construction of a new temporary dwelling in which to live, or alternatively continuing to reside in the two caravans, are the only options open to the appellant whilst he meets the essential needs of the farm enterprise. It is also not unreasonable that he seeks to upgrade the accommodation, as the two existing caravans are somewhat dated and provide only very basic living accommodation.
 17. On the basis of the information I have before me and the discussions that took place at the hearing, I am satisfied that the farmhouse at Gnarley Farm is not, at the current time, available for the appellant or more specifically available to meet the essential needs of the farm enterprise. Furthermore, there is no certainty as to when it may be, or even if it ever will be, available to meet the essential needs of the farm. It is not available for the purposes of criterion c) of Policy DM5 of the LP but there remains an essential need for a rural worker to live on the farm, and this needs to be met in order that the enterprise can continue to function.
 18. That said, the possibility that the farmhouse may become available at some future point, and the fact that the farm enterprise requires only one dwelling, means that a temporary permission is necessary and justified. In addition, the proposal is for a prefabricated structure and caravans that would not be visually acceptable for retention on a permanent basis. It was agreed between the parties at the hearing that subject to a condition which required the removal of the accommodation either when the appellant or his family cease to be solely or mainly employed in the Gnarley Farm business or when the appellant's mother ceases to occupy the farmhouse, a temporary permission would address the need for a rural worker to be present on the site.
 19. I acknowledge the previous Inspector's conclusions as to whether a temporary permission could be granted, However, this is not a case where the farm business is yet to be established, and there is no need for a trial period to allow for its establishment. It is a functioning farm that is viable with the evidence available suggesting that it will continue to be so. The commonplace 3-year temporary permission granted in relation to rural workers dwellings is therefore not relevant to the current proposals.
 20. The permissions need to be temporary for the reasons I have outlined, but this temporary period does not need to be defined as a specific time period. It

⁴ *Ford & Another v Secretary of State for Communities and Local Government* [2007] EWHC 252 (Admin)

needs instead to allow for the essential need to be met until such time as the farmhouse becomes vacant and it becomes clear if the appellant can reside in it and more generally what the future holds for the farm enterprise.

21. This temporary period could be a period of many years, but the needs of the business outweigh any harm that arises from the presence of temporary buildings, which relate to their general appearance. Therefore, there should be no reason to need to grant a second temporary permission, which the NPPG advises is rarely justifiable.
22. The appellant has also provided information as to the construction of the proposed prefabricated dwelling and how it would be removed from the site. To some extent, that is a matter for the appellant, in the knowledge that what they have sought could only be retained on a temporary basis. But the information they have provided suggests it could be removed easily and that it would have resale value once removed. I consider that this adequately addresses the previous Inspectors concerns that the dwelling would be costly and problematic to remove from the site.
23. For these reasons I conclude that the developments subject to both appeals would accord with Policy DM5 of the LP which sets out the criteria for permitting rural workers dwellings in the countryside, and consequently with Policy DM4. It would also accord with the provisions set out in paragraph 79 of The Framework where it refers to rural workers dwellings.

Appeal B – character and appearance

24. The two caravans are relatively large static-caravan type structures. They sit immediately adjacent to a large agricultural building, which somewhat dominates them in terms of its height and massing. Due to the topography of the surrounding land and the presence of established vegetation, the caravans are well screened, and they do not impact upon the nearest dwellings which are located at a lower ground level on Ashby Road.
25. However, their visual appearance is not in keeping with the rural location in which they are found. This therefore causes a conflict with Policy DM10 of the LP where it seeks to protect character and appearance. There is also a conflict with The Framework where it seeks to achieve well-designed places.
26. The retention of the existing caravans would cause a moderate degree of harm to the character and appearance of the area, but this consideration is outweighed by the fact that they would not be retained permanently and because they meet the essential needs of the farm enterprise in the specific circumstances relating to Gnarley Farm. Accordingly, this outweighs the conflict with Policy DM10 of the LP and The Framework.

Other Matters

27. Representations were made to the effect that Mr Ingham and his family's rights under Articles 1 and 8 of the Human Rights Act 1998, and also those of his mother, would be infringed if the appeals were to be dismissed. However, as I have decided to allow the appeals and grant planning permission, my decision would not lead to any infringement.

Conditions

28. Conditions confirming the approved plans are necessary to provide certainty. It is also necessary to restrict the period for which the prefabricated mobile dwelling and the change of use to site the caravans can take place and their occupation, for the reasons which have been outlined above. This will set out the relevant triggers for the end of the temporary periods, specifically as 6 months from either of the two events occurring. A condition requiring the 2 caravans be removed if the permission for the prefabricated building is implemented is also necessary so they are not retained along with the approved building.
29. With respect to appeal A, a condition requiring details of the colour and finish of the approved prefabricated building is necessary to ensure that it has an appropriate visual appearance. For the same reason, with regard to appeal B a condition is required that any replacement caravans that are brought onto the site in the future are first approved by the Council. Permitted development rights for outbuildings and enclosures are removed in the interests of the character and appearance of the area.

Conclusion

30. For the reasons given I conclude that the appeals, subject to conditions, should be allowed.

Graham Wraight

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Paul Hunt, Howes Percival

Mr Gavin Ingham, Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Miss Jenny Brader, Senior Planning Officer

Miss Rhiannon Hill, Team Leader

SCHEDULE OF CONDITIONS

Appeal A

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and details:
 - Planning application form
 - Site location plan
 - Block plan
 - Proposed elevations and floor plan
 - Email from P Hunt dated 12 January 2021 confirming the height of the building
- 3) The dwelling hereby permitted shall only be occupied by the Appellant, Mr Gavin Ingham and his immediate family while he and/or any of them are solely or mainly employed in running the agricultural business (including the farm shop) at Gnarley Farm, Osbaston and such residential occupation shall cease and the dwelling permanently removed from the site within 6 calendar months of (i) agricultural employment of Mr Ingham and members of his immediate family as herein described ceasing or (ii) the existing dwelling, known as Gnarley Farm House, ceasing to be occupied by the current occupant, Mrs Marion Ingham.
- 4) Within 2 calendar months of the first occupation of the prefabricated dwelling hereby permitted, the two existing residential caravans located at Gnarley Farm, Osbaston, shall be permanently removed from the site.
- 5) Prior to the approved prefabricated mobile home being brought onto the site, details of the colours and finishes of the materials to be used on its external elevations shall be deposited with and approved in writing by the local planning authority, and the scheme shall be implemented in accordance with those approved materials.
- 6) Notwithstanding the provisions of Part 1 of Schedule 2 of the Town and Country (General Permitted Development)(England) Order 2015 (or any order revoking or re-enacting that order with or without modification) no outbuildings or other enclosure shall be erected within the curtilage of the dwellinghouse hereby approved without the grant of planning permission for such development by the local planning authority.

Appeal B

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans and details:
 - Planning application form
 - Site location plan

- 2) The use of the site for the stationing of the 2 caravans hereby permitted shall only be occupied by the Appellant, Mr Gavin Ingham and his immediate family while he and/or any of them are solely or mainly employed in running the agricultural business (including the farm shop) at Gnarley Farm, Osbaston and such residential occupation shall cease and the caravans shall be permanently removed from the site within 6 calendar months of (i) agricultural employment of Mr Ingham and members of his immediate family as herein described ceasing or (ii) the dwelling, known as Gnarley Farm House, ceasing to be occupied by the current occupant, Mrs Marion Ingham.
- 3) In the event that either or both of the two existing caravans are to be replaced, details of the proposed replacement caravan(s) shall be submitted to and approved in writing by the local planning authority prior to the caravan(s) being brought onto the site. The replacement of the caravan(s) shall thereafter be undertaken in accordance with the approved details.
- 4) Notwithstanding the provisions of Part 1 of Schedule 2 of the Town and Country (General Permitted Development)(England) Order 2015 (or any order revoking or re-enacting that order with or without modification) no outbuildings or other enclosure shall be erected within the curtilage shown on the approved plan without the grant of planning permission for such development by the local planning authority.