



Appeal Decision

Hearing Held on 14 January 2021

Site visit made on 18 January 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2021

Appeal Ref: APP/G2713/C/19/3243183

Land at Birkby Gate Farm, Birkby, North Yorkshire

- 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 Mr Stephen Tuer, Stephen Tuer Farms Ltd, against an enforcement notice issued by Hambleton District Council.
- The enforcement notice was issued on 18 November 2019.
- The breach of planning control as alleged in the notice is Without planning permission, the change of use of the land from use for agriculture to the siting of two mobile homes for residential use as indicated edged blue on the attached plan.
- The requirements of the notice are (i) Cease the use of the land for residential use; (ii) remove the mobile homes from the land.
- The period for compliance with the requirements is six 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Main Issues

1. The ground of appeal is that planning permission should be granted. The main issues are i) whether there is an essential need for the mobile homes on the site, in order to accommodate rural workers and ii) the effect of the development on the character and appearance of the area.

Background

2. The appeal site is part of Birkby Gate Farm, which operates as a large pig breeding enterprise. The appellant's statement sets out that there are some 1150 breeding sows on the site. However at the Hearing it was reported that the size of the farm has recently increased, such that the sows now number around 1400, producing in the region of 800 piglets per week. The Council do not seek to dispute that the operation generates a labour requirement of at least five full time equivalent workers.
3. At present there are three permanent dwellings on the farm, including a detached two-storey dwelling and the original farmhouse which has been divided into two units. These buildings normally accommodate three of the workers associated with the enterprise (it is understood that the detached dwelling was recently vacated following the retirement of an employee, a post that remains to be filled). One of the mobile homes, subject to this appeal, accommodates a fourth worker, with the second mobile home currently vacant.

Nevertheless, both mobile homes are said to be needed in order to help accommodate the full complement of staff required by the operation.

Reasons

Essential need

4. There is no dispute between the parties that the mobile homes constitute isolated dwellings beyond the development limits of a settlement. It is therefore appropriate that they are considered in the context of Policy CP4 of the Hambleton District Council Core Strategy 2007 (CS), Policy DP9 of the Hambleton District Council Development Policies Development Plan Document 2008 (DPD) and paragraph 79 of the National Planning Policy Framework (the Framework).
5. Policy CP4 states that development beyond development limits should only be permitted exceptionally, for example where there is an essential requirement such as the needs of farming. This is reflected in Policy DP9. Both policies are consistent with the Framework which states that the development of isolated homes in the countryside should be avoided unless certain circumstances apply, including that there is an essential need for a rural worker.
6. The nub of the appellant's case that there is such an essential need is the requirement to maintain the smooth running of a round-the-clock operation. The farm operates a shift system between the hours of 5am and midnight (during farrowing days). The appellant claims, however, that emergencies tend to arise frequently, potentially at any given time of the day or night, which trigger alarms that need to be addressed without delay. Furthermore on farrowing days, when sows are giving birth, it is necessary for these animals to be closely monitored at all times so that any complications arising may be quickly resolved. It is the potential for these issues to occur outside normal working hours that gives rise to the need for workers to reside on the site, within sight and sound of the operation.
7. In terms of emergencies, the appellant referred at the Hearing, to the occurrence of an electrical fire at the site, some four years ago. The presence of workers living on site meant that the incident was quickly dealt with, therefore avoiding any significant loss of stock. This type of incident would be very rare; however the appellant has referred to more frequent emergencies in relation to the feeding, ventilation and heating systems.
8. The farm apparently operates an automated feeding system, which according to the appellant regularly experiences minor problems, related to the feed, (some 4 to 5 times per week outside normal working hours, according to information provided at the Hearing), but which nevertheless causes the system to stop working, thus requiring urgent attention to avoid potential animal welfare issues. The ventilation system is also apparently prone to unpredictable minor weekly breakdowns, but which nevertheless need to be tended to immediately. Problems with the heating system are apparently less frequent, but nevertheless still erratic in their timing and potentially with serious animal welfare consequences.
9. The appellant reports in each case it is not that the equipment being used is unfit for purpose, or that it is not being sufficiently serviced, rather that it simply requires regular maintenance. The frequency and unpredictability of

- these alarm occurrences, combined with the periodic absence of staff due to sickness or holidays, explains, in the appellant's view, why additional staff need to reside on the site, and hence the need for the mobile homes subject to the notice. The appellant says that any of the four staff, normally residing on the site, would be capable of addressing the various emergencies that may arise.
10. I have no reason to doubt that the various automated equipment being used in the operation would be fit for purpose and regularly serviced. However it does seem to me, in the absence of further evidence, that the occurrence of so many emergencies would surely not be reasonably expected and would serve to strongly question the reliability of technology responsible for safeguarding such vital parts of the business operation. In addition, the number of alarm occurrences suggested above is not entirely consistent with information in the appellant's statement, which refers to alarm calls outside working hours averaging around 3 per week.
 11. I am not suggesting that the appellant has failed to provide a truthful account of the gravity of the situation. However, under these circumstances, I think it would be a step too far to simply accept this account at face value without further and firmer evidence, such as in the form of statutory declarations and diary entries, detailing the nature and timing of emergency events and what was required to rectify them.
 12. It would appear that two of the employees who reside on the site are also dedicated to monitoring the farrowing operation. The appellant states that the farrowing supervision requires a minimum of two people to split the duties. There is no suggestion in the appellant's representations, that there is an essential need for more than two workers within a given period of time to cover this element of the operation in itself. Therefore it seems to me that for the existing permanent residential arrangements on the site to be incapable of servicing the farrowing operation, in its own right, two of the residents would need to be 'out of action' for whatever reason.
 13. Whilst I acknowledge the appellant reported at the Hearing, that over the recent Christmas period the business came under pressure due to staff absence issues, I am not persuaded that in general the chances of two resident employees being on holiday and / or physically incapacitated by sickness at the same time would be so high as to justify an additional residential presence, in terms of farrowing supervision.
 14. Therefore for the reasons set out above, including the absence of verification of emergency incidents, and the shortage of details of how specific workers were put under unreasonable pressure, I do not consider that the essential need for further residential development on the site is demonstrated. Accordingly there is conflict with Policy CP4 of the CS; Policy DP9 of the DPD and with the Framework. Notwithstanding this, it is worth considering whether, if further verification could be provided, there could be a case for a larger residential presence on the site.
 15. The Council, whilst not disputing the overall employee requirement, says that whatever the situation with alarms and emergencies, given the existing presence of three on-site households, in its view there are already sufficient staff within sight and sound of the business at all times. It says that it should be possible for a rota system to be organised so as to respond effectively to the

aforementioned sorts of emergencies and the monitoring requirements of the animals.

16. As set out above, I am not persuaded that, in general, the likelihood of more than one employee, associated with stock management, being incapacitated at the same time due to sickness would be significant. Also holiday absence can be controlled to ensure that staff cover is in place.
17. Notwithstanding this, I accept the importance of ensuring that undue pressure and responsibility does not fall on a single employee. If further evidence of emergencies can be provided, as set out above, then it seems possible that more than three workers may reasonably be required to allow a manageable rota for monitoring and responding to alarms, whilst allowing for holiday and sickness absence.
18. In terms of whether additional workers responding to such incidents could be accommodated away from the site, within established settlements such as Northallerton to the south, I see no reason why this would not be possible, in principle, having regard to geographical proximity. Indeed it would appear that the business does have employees, not directly involved with pig breeding, who live away from the site.
19. The appellant, however, refers to the financial and practical constraints of living off-site as being unattractive to staff. The reasons being the significant variation between the cost of renting accommodation off-site, compared with the minimal 'token' rent associated with a mobile home on the farm; also the possibility of needing to travel back and forth to the site, on any given night, to tend to a recurring issue. He therefore considers that the absence of living accommodation on the site presents a significant hurdle to recruitment.
20. Whilst I agree that it would be unrealistic to expect employees to rely on the limitations of the local bus service, in terms of travel to and from the farm, there is a lack of evidence provided that renting property away from the site would not be possible because of financial reasons. It was accepted at the Hearing that living away from the site does not, in itself, present a biosecurity risk. In general terms attracting staff by offering more favourable rents would not provide a reasonable justification, in itself, for the proposed development.
21. However, I acknowledge the above representations that having to travel back and forth to the site, several times over a short period, could be off putting to a potential recruit. It is therefore conceivable, if further evidence of emergencies arising is provided, that an essential need could be demonstrated for further residential presence on the site. In the absence of such evidence, this however does not overcome the above findings.
22. The appellant referred to what he considered to be the small scale of development in this case, in the context of enterprises elsewhere being allowed to use multiple numbers of caravans to accommodate seasonal workers. However my decision must be based on the information and evidence before me and such considerations do not therefore weigh in favour of the development.

Character and Appearance

23. The appeal site is an irregularly shaped portion of land, located between the main complex of farm buildings and the A167 road. The two mobile homes

subject to the notice are located either side of a boundary hedge. The site is within relatively flat and low-lying open countryside, characterised by trees, hedges, agricultural fields, and dispersed farm buildings.

24. The mobile homes are static caravans of typical rectangular form. Finished with white external panels they are functional in appearance. The separating boundary hedge provides each with a degree of screening, depending on the angle of view. Notwithstanding this the northern-most caravan is prominent when viewed from the north along the A167, with the southern-most caravan highly visible in views from this road from the south. Though relatively small when viewed from distance, and set against tall boundary hedges, their simple, functional form and uncharacteristic white colouring, visible more than just fleetingly, draws the eye to these incongruous features in the landscape.
25. Whilst it was suggested that further planting could be undertaken with a view to screening the caravans, this would take considerable time to mature and become effective and so would not offer a realistic solution.
26. For the above reasons I find the development to result in harm to the character and appearance of the surrounding landscape. Accordingly there is conflict with Policies DP30 and DP32 of the DPD insofar as they seek to secure high quality design that respects the openness, quality and character of the surrounding landscape.

Conclusion

27. On the basis of the information and evidence before me I have found conflict with the relevant policies in the development plan and with the Framework. However because there is uncertainty regarding an essential need for additional full time residential presence on the site, and despite the absence of an appeal under ground (g), I consider that extending the time for compliance with the enforcement notice from 6 months to 9 months would be justified.
28. Without prejudice to the outcome, I consider that this would provide a reasonable opportunity for the appellant to make a further retrospective planning application to the Council, should it be possible to make a stronger case regarding essential need. In the alternative, I consider it would allow reasonable time for the appellant to find different living accommodation arrangements for staff.
29. I recognise that the loss of residential use of the mobile homes would interfere with rights under Article 8: The Right to Respect for Private and Family Life and for the Home of the Human Rights Act 1998. However these are qualified rights and Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country, which has been held to include the protection of the environment. In this case I have found the residential development to be in conflict with planning policies and would not outweigh the wider public interest. Accordingly, whilst taking into account a variation to the enforcement notice to allow for an extended compliance period, the degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 8 and would not be disproportionate.

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

Formal Decision

31. It is directed that the enforcement notice be varied by the deletion of the words "Six months" in paragraph 6, and their substitution with the words "Nine months" instead. Subject to this variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Merrett

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stephen Tuer – Appellant

Ian Pick – Agent

FOR THE LOCAL PLANNING AUTHORITY:

Craig Allison – Senior Enforcement Officer