
Appeal Decision

Hearing Held on 8 December 2020

Site visit made on 9 December 2020

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2021

Appeal Ref: APP/C1760/W/19/3242996

East End Farm, Church Lane, Tangley, Andover SP11 0SA

- 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 and Mrs S Miller against the decision of Test Valley Borough Council.
 - The application Ref 19/00996/FULLN, dated 17 April 2019, was refused by notice dated 12 June 2019.
 - The development proposed is described as the expansion of an existing farm enterprise to include a new tied farmhouse, package treatment plant and equine stud facilities inclusive of stables and horse walker.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Notwithstanding the description of development in the banner above, which is taken from the planning application form, the appellants agree that the appeal proposal includes modifications to two agricultural buildings at the appeal site. The Council made its decision on this basis and so have I.
3. Since the Council's decision Natural England has issued revised guidance on the effect of development on the water environment and wildlife of the Solent, including 'nutrient neutrality'. The appellants and the Council have been able to consider the revised guidance and, in this regard, during the appeal the appellants submitted a planning obligation in the form of an executed legal agreement.¹ I deal with nutrient neutrality in 'other matters' below.

Main Issues

4. The main issues are:
 - whether there is an essential functional need for permanent living accommodation for a rural worker, and if there is whether that need is met by an existing dwelling; and
 - the effect of the proposed development on biodiversity, having particular regard to a woodland and to bats.

¹ Section 106, Town and Country Planning Act 1990.

Reasons

Permanent living accommodation for a rural worker

5. Paragraph 170 of the National Planning Policy Framework (the Framework) includes that decisions should recognise the intrinsic character and beauty of the countryside, and Framework paragraph 79(a) includes that decisions should avoid the development of isolated homes in the countryside unless certain circumstances exist, such as that there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.
6. In this appeal there is an agricultural enterprise engaged in sheep, beef cattle and arable farming trading as 'WJ Miller and Sons Limited'. It is conducted within four main farm units — Roundaway Farm, East End and Tangleby Farms, Sopers Farm and Manor Farm and North Down — which are geographically located, broadly, in a row. There is also an equine enterprise (in two parts) trading as 'Jarosa Stud' and 'Woodland Grange Liveries' with associated buildings and paddocks. It is located at Woodlands Grange, which is also where the appellants, and their adult daughter, live in a house subject to a rural worker occupancy condition.
7. The Council assessed the appeal proposal on the basis that all of the above activities are an existing business, established for more than three years and, at the hearing, confirmed that it considers Policy COM10(b) of the Test Valley Borough Local Plan, January 2016 (the LP) to be the most relevant development plan policy in this regard. On the evidence before me, I have no reason to reach a different view in these respects.
8. The appeal proposal is for development at East End Farm including the construction of a horse stud yard to expand the equine enterprise for the breeding of thoroughbred race horses, improvements to existing farm buildings so ewes can lamb indoors and to enlarge the sheep flock, and to provide a house for the appellants to live in. The appellants would sell Woodlands Grange to finance the development and then relocate Jarosa Stud to East End Farm but the horse livery would cease. I note that the appellants contend that 'the essential need for someone to be living at East End Farm is the aggregate need derived from the equine **and** sheep elements'² (appellants' emphasis).
9. The agricultural enterprise is long established and financially viable and even if considered independently (on its separate accounts), as the Council suggests, the sheep farming is profitable, albeit marginally. While Jarosa Stud has operated more intensively in the past, in recent years it made only a modest profit and despite updated valuations for the current broodmare 'Fair's Fair' and the foal that she is carrying,³ if also considered independently (on its separate accounts) Jarosa Stud is not currently financially viable.
10. The appellants suggest that the sheep farming and Jarosa Stud are parts of a diversified overarching single mixed agricultural and equine 'rural business' entity that is owned and managed (including finance and labour) by the appellants and, that if regarded in this way, both are currently financially more robust and viable. I also note therefore that the current labour requirement of this rural business is for 'in excess of 6 full time workers',⁴ whereas less than

² 'Agricultural & Equine Appraisal' prepared by BCM, April 2019 - paragraph 6.20.

³ Richard Knight Bloodstock Agent Ltd, 27 July 2020; Whitsbury Manor Stud, 28 July 2020 and 12 November 2020.

⁴ BCM - paragraphs 6.35 to 6.37 and Appendix 13.

this complement (4 full time and 1 part time workers) are actually employed, and increases to almost 10 workers if this rural business develops as is envisaged by the appellants.

11. There is no dispute between the main parties that the sheep farming and Jarosa Stud are forecast to become more profitable if the scale and nature of these activities are developed as envisaged by the appellants. On the evidence before me, I have no reason to reach a different view in this regard.
12. The house at Woodlands Grange is located at one end of the agricultural enterprise land holdings and farm units. Nevertheless, judged by vehicle travel time (as clarified by the appellants at the hearing) or distance, I consider it to be 'within the area'⁵ or 'near'⁶ these land holdings and farm units, including East End Farm which is where the sheep farming is based. In addition, a full time farm employee resides in a house owned by the appellants at Sopers Farm. It is more centrally located to the majority of these land holdings and farm units and is a similar time and distance to East End Farm compared to the house at Woodlands Grange. Consequently, whilst daily 'attendance'⁷ year round of the enlarged sheep flock at East End Farm would be essential for some animal welfare and supervision reasons, it has not been justified why this routine need could not be met by the appellants, or by an existing or a new full or part time farm employee.
13. I appreciate that the appellants have experienced lamb losses at East End Farm in the past due to outside lambing, inclement weather and the absence of resident on-site supervision during the lambing period, and that outside lambing can result in higher losses than indoor lambing. I also acknowledge the animal welfare and financial consequences of this but nonetheless these losses have been below the national average mortality rate and in the future lambing would be indoors with a likely prospect of reduced losses as a consequence. There is also no evidence before me to suggest that lamb losses have materially affected the viability of the sheep farming or the overarching rural business nor why such losses, even if they did continue, would otherwise prevent the proposed enlargement of the sheep flock and improvements to the agricultural buildings at East End Farm.
14. Furthermore, an essential on-site presence at East End Farm for animal welfare reasons and supervision of the lambing of ewes would only be required at spring time (March/April) or, as the appellants propose, during an extended lambing period over five months (February, March/April and June). Even taking into account the provision of care before and after lambing, as the appellants also suggest, this on-site presence would be for eight months from the beginning of December to the end of July. It would not therefore be a permanent year round essential need.
15. The appellants have sited a caravan at East End Farm in the past for this purpose, albeit I acknowledge not without some safety and security related incidents or concerns. I also appreciate that for one of the appellants or their daughter to occupy a caravan for a period of time would mean living away from the family at Woodlands Grange.

⁵ LP Policy COM10(b)(iv).

⁶ Framework paragraph 79(a).

⁷ 'Report and commentary in respect of the existing and proposed expansion of the sheep enterprise at East End Farm' prepared by Baber Sheep Breeding & Consultancy – section 5.0.

16. Nonetheless, on the evidence that is before me in this appeal, it has not been justified why even an extended seasonal need to lamb ewes could not be met by temporary living accommodation, such as a caravan, or why the occupier of a caravan could not be an existing or new full or part time farm employee, nor why the absence of the proposed permanent living accommodation would be a barrier to the enlargement of the sheep flock and the associated improvements to the agricultural buildings at East End Farm. Accordingly, it has not been demonstrated that there is an essential functional need for the proposed permanent living accommodation at East End Farm with respect to sheep.
17. In relation to horses and Jarosa stud, the Council accepts that there is an essential functional need for an on-site presence at most times to ensure the safety and welfare of mares in foal and at the time of, and shortly after, foaling including regular inspections and observations during the day and night to detect illness or distress and to ensure the health of the mare and foal. The cycle of pre-foaling care, foaling and post foaling care runs from November through to the end of the following October so is therefore year round and permanent. These mares will be stabled for significant periods of time and for the most part will be completely reliant on regular supervision. On the evidence before me, I have no reason to reach a different view in this regard.
18. Furthermore, at the hearing the Council accepted that if Jarosa Stud relocated to East End Farm then "people would need to live there" to meet this essential functional need. However, this essential functional need in connection with Jarosa Stud is currently met by the appellants and their occupation of the existing house at Woodlands Grange.
19. I accept that the existing equine buildings at Woodlands Grange are of average quality and were designed for dairy cattle use. Furthermore, they are not physically suitable or conducive to the continued operation of Jarosa Stud and its proposed expansion, including for reasons of ingrained endemic biosecurity hazards to horses (eg pathogens). However, at the hearing the appellants agreed that "the inherent problems" of these buildings in these regards, including proximity to other unvaccinated horses using the nearby bridleway (another potential biosecurity hazard and also a potential visual and physical risk to broodmares and foals) could be "mostly resolved with a new set of buildings" at Woodlands Grange located towards the "centre of the site". Furthermore, the appellants accept that this would be 'better practically'⁸ compared to new buildings in the location of the existing buildings. On the face of it, there is therefore no apparent reason why a new set of buildings could not otherwise be to the high quality and standard expected by potential clients of Jarosa Stud.
20. In relation to the layout of the proposed equine buildings at East End Farm, I saw at my site visit that on the face of it there is sufficient space at Woodlands Grange for these new buildings to be sited significantly further away from the bridleway — especially the unsurfaced part on one side of the house which the appellants consider to be a particular concern because it is closer to some parts of more of the paddocks and less well screened by trees and hedgerow. Furthermore, I note that while at East End Farm the appellants suggested that two nearby public rights of way would be "well away" from the proposed horse paddocks by about "2-300 yards", nonetheless I note that the

⁸ 'Report into Equine Matters', Kilgour & Co. Limited – paragraph 3.2 (page 15).

appellants also agree that a stud yard 100m from, albeit a road not a bridleway, 'means that biosecurity is attainable'⁹ in relation to passing unvaccinated horses.

21. There is no indicative potential site layout plan before me in this appeal with respect to Woodlands Grange to allow for a clear comparative judgement, and I am therefore unable to come to a firm view on the above. Nonetheless the evidence that is before me suggests that a relatively limited incursion of new buildings towards the centre of the site might be possible at Woodlands Grange.
22. I appreciate that the appellants consider that redeveloping Woodlands Grange in this way would be "sub-optimal" including because the appellants consider that the house at Woodlands Grange is currently within "sight and sound" of the existing equine buildings. However, it has not been justified why the house must have the same, or a similar, sight and sound relationship to new equine buildings (considering also the use of some technology, such as CCTV or remote alarms) or, moreover, why new equine buildings further away (eg 100m) would not be within a reasonable understanding of sight and sound of the house, which would otherwise therefore remain 'on-site' to provide 'round the clock supervision'.¹⁰
23. Furthermore, at the hearing the appellants agreed that it would be possible to "reduce", albeit I note not "eliminate", bacteria in the otherwise 'well-managed' pasture at Woodlands Grange and I also note that the pasture used by the stud is already currently 'sheep grazed'.¹¹ It has not therefore been justified why a reduced level of bacteria would remain a barrier to Jarosa Stud and its envisaged expansion being able to take place at Woodlands Grange, nor why it would not be possible to achieve the same mutually conducive biosecurity benefits of sheep grazing (as are promoted in the appeal proposal for East End Farm) across all of the horse pasture at Woodlands Grange.
24. In addition, Jarosa Stud is currently operating at a low level of activity (pending resolving planning permission) and the appellants intend to cease the livery. It has not therefore been justified why redeveloping new buildings elsewhere at Woodlands Grange and re-seeding the paddocks, including additional landscaping to sub-divide paddocks and improve shelter (or what time period would be required to achieve this), would mean that Jarosa Stud would have to cease operation or that this would unduly hinder the operation of Jarosa Stud meantime, as the appellants otherwise suggest. Indeed, at the hearing the appellants indicated that it would be possible to move horses around, albeit at a cost of between £20 to £27 per day per horse.
25. Notwithstanding this, the appellants consider that "the total amount of grass" at Woodlands Grange is anyway "not enough" for the envisaged expansion of Jarosa Stud and that there is 'more grassland available'¹² at East End Farm. I note that there is a total of approximately 64 acres (26 hectares)¹³ of grass paddocks that could be available for stud use at Woodlands Grange (on the basis that the livery use would no longer continue). Whilst this pasture is currently arranged as larger more open paddocks it is nonetheless reasonably

⁹ 'Environmental and Biosecurity Assessment' prepared by the Irish Equine Centre, November 2019 – section 1.

¹⁰ BCM – paragraphs 6.11 and 6.15.

¹¹ Kilgour & Co. Limited – page 7.

¹² Kilgour & Co. Limited – page 15.

¹³ Kilgour & Co. Limited – section 2.3, page 6.

extensive in area, including the additional paddocks currently in livery use that could otherwise be available to Jarosa Stud. Some of these paddocks are reasonably distant from all parts of the bridleway (or nearby road) and already include some established tree and hedgerow field boundaries.

26. However, there is no evidence before me to confirm the total area of pasture that would be available to Jarosa Stud at East End Farm or what, if any, of the pasture at East End Farm would be required exclusively for sheep farming and would not therefore be available to Jarosa Stud. Moreover, it has not therefore been justified that the area of pasture at Woodlands Grange is not sufficient to support the proposed expansion of Jarosa Stud at Woodlands Grange.
27. The sale of Woodlands Grange would be anticipated to generate approximately £1,500,000. The proposed horse breeding stud development would have a build cost of £250,000 and there would be an additional demolition and site clearance cost at Woodlands Grange of approximately £115,000.¹⁴ At the Hearing the appellants also gave a cost of approximately £38,000 for re-seeding paddocks and for new fencing. There is nonetheless no evidence before me about the separate build costs of the new house or the other elements of the appeal proposal, including improvements to the buildings at East End Farm for sheep farming.
28. At the hearing the appellants agreed that it would be “possible” to borrow £1,250,000 from a suitable lender though consider that this would not be “preferred” or the most “expedient” way to achieve the appeal proposal, and that at a 5.25% interest rate this would result in an additional cost of £65,625.¹⁵ However, it has not been justified that the additional costs of constructing the proposed horse breeding stud yard at Woodlands Grange (or of improving the buildings for sheep farming at East End Farm) cannot be sustained by the overarching rural business, including a loan for some or all of the additional costs, nor what would be the implications of this over the term of any such loan including the return on such investment.
29. I acknowledge that the appellants understandably wish to avoid unnecessary financial costs to their rural business, including potentially some that I have referred to above, but also more efficiencies in time, travel and fuel. I also acknowledge intangible ‘costs’ such as the health and well-being of not only livestock but also the appellants and their daughter. In these respects, the appellants consider that it would be beneficial to consolidate a majority of their labour and equipment into a single more central location at East End Farm, including for security and operational reasons, to better serve the rural business now and into the future.
30. I recognise that this would be broadly aligned with Framework paragraphs 80 and 83 which include that planning decisions should help businesses to invest, expand and adapt, having regard to local business needs, and in rural areas to support sustainable growth and expansion of all types of businesses including the development and diversification of agricultural and other land-based rural businesses. I also accept that the appeal proposal would help the appellants to respond to the challenges of Brexit and changes to Common Agricultural Policy,

¹⁴ BCM – paragraph 4.22 and page 13. I note that the ‘Review and Supporting Information’ prepared by AKC – paragraph 6.6 - indicates an overall higher cost, but this was not discussed at the Hearing and is inconsistent with the costs shown in BCM – paragraph 4.22 and page 13 - which were discussed at the Hearing.

¹⁵ AKC Budget Update, 7 August 2020 – page 3.

including the Government's recent 'Agricultural Transition Plan'¹⁶ and provisions for basic payments, subsidies and grants. These are important considerations and accordingly I give these benefits appreciable weight.

31. Nonetheless, I have referred above to significant concerns regarding the appeal proposal which are not resolved by the evidence that is before me in this appeal. I have also borne in mind that the proposed development would remain long after the appellants' personal objectives in this appeal have ceased to be material. I give substantial weight to these concerns.
32. Considering the above, it has not been demonstrated that there is an essential functional need for permanent living accommodation for a rural worker in the countryside for sheep farming (and there is therefore no aggregate need combined with Jarosa Stud), nor why an essential functional need for Jarosa Stud is not met by an existing dwelling. It would not accord with LP Policy COM10(b)(i) and (iv) which include that development should have an essential functional need based on evidence of the relevant business and that there is no other suitable and available alternative existing accommodation within the area. It would also conflict with Framework paragraph 79(a).

Biodiversity – woodland and bats

33. Since the Council's decision the appellant has undertaken additional ecology survey and reporting work. The Council now agrees that a woodland on the appeal site proposed to be removed to establish the stud yard and house does not meet the relevant criteria for classification as a 'priority habitat'¹⁷ for the purpose of conserving biodiversity. On the evidence before me I have no reason to reach a different view in this respect. The appeal proposal would not therefore cause harm to a priority habitat as the Council had originally alleged in its reason for refusal No 2.
34. Nonetheless, the surveys indicate that there is a reasonable likelihood that bats are using this woodland for commuting and foraging. The loss of this habitat would therefore cause significant harm to bats, which are a European Protected Species (EPS) protected, inter alia, under the 'Habitat Regulations'.¹⁸ When effects on EPS are being considered, decision makers should have regard to the 3 tests that are used when EPS licences are being determined by Natural England (NE). These are (in summary): that the development is necessary for reasons of overriding public interest, that there is no satisfactory alternative and that it will not be detrimental to maintaining the population of the species at a favourable conservation status in their natural range.
35. In the first main issue above, I have found that there is no essential functional need for permanent living accommodation for a rural worker on the appeal site and accordingly the first test is unlikely to be met. Furthermore, that the essential functional need for permanent living accommodation for a rural worker is met by an alternative existing dwelling (and which would avoid the harm to bats from the loss of the woodland). Consequently, the second test is unlikely to be met.
36. The appeal proposal includes replacement foraging habitat including a pond, wildflower meadow and planting of larger sized hedgerow whips and trees to

¹⁶ 'The Path to Sustainable Farming: An Agricultural Transition Plan 2021 to 2024', DEFRA, November 2020.

¹⁷ Natural Environment and Rural Communities Act 2006.

¹⁸ Conservation of Habitats and Species Regulations 2017.

mitigate and compensate for the loss of the woodland and minimise the harm to bats. There is no evidence before me to suggest that these measures would not be effective and accordingly the appeal proposal would otherwise maintain the bat population at a favourable conservation status and the third test would likely be met. At the hearing the Council confirmed that it agrees that the appeal proposal would otherwise accord with LP Policy E5(c) and I have no reason to reach a different view on this matter. Notwithstanding this, NE can only issue a licence if all three tests are met.

37. Considering the above circumstances, the proposals would not, in the round, adequately address protected species matters. It would not accord with LP Policy E5(a) or (b) which include that the need for, and benefits of, the development outweigh the adverse effects on the bats and that there is no reasonable alternative site that would result in less or no harm to bats. It would also conflict with Framework paragraphs 170(d) and 175(a) which include that development should minimise impacts and avoid significant harm to biodiversity, including by locating development on an alternative site with less harmful impacts.

Other Matters

38. The water environment in the Solent is one of the most important for wildlife in the United Kingdom. It is also internationally important and protected, *inter alia*, under the Habitat Regulations. The main parties agree that the appeal proposal would likely have a significant adverse effect on the integrity of the Solent (due to increased levels of nutrients from wastewater eventually being discharged into it which would affect species and habitats). The main parties further agree that the obligations in the S106 legal agreement — to take a requisite area of agricultural land out of production (so reduce levels of nitrates from livestock and fertiliser) together with agreed details of a proposed sewage package treatment plant (to reduce nitrogen levels) — would render the development 'nutrient neutral' and consequently provide satisfactory mitigation. I also note that on this basis NE did not object. Nonetheless, as I intend to dismiss the appeal on other grounds there is no prospect of planning permission being granted in this case and it is not necessary for me to consider this matter or 'appropriate assessment' any further.
39. The appeal site is located in the North Wessex Downs Area of Outstanding Natural Beauty (the AONB). Framework paragraph 172 indicates that 'great weight should be given to conserving and enhancing landscape and scenic beauty' in AONBs 'which have the highest status of protection in relation to these issues and 'the conservation and enhancement of wildlife and cultural heritage' are also important considerations in AONBs. I saw that the woodland on the appeal site is in the form of a roughly circular spinney of a small number of tall trees which are visible from the surrounding area, including public footpaths. This feature is therefore locally distinctive in the landscape.
40. However, I note that the Council agrees that some of these trees are low quality or diseased with a life expectancy of less than 10 years. On the evidence before me I have no reason to disagree in this respect. In addition, the appellants' extensive landscaping proposals would result in a significantly greater extent of trees and hedgerow overall in the immediate area and the revitalisation of other trees to be retained through improved management. This would therefore provide longer term conservation and enhancement of this

wider landscape, as well as net gains overall to biodiversity. I also saw that the proposed stud yard buildings, house and outbuildings (which would be relatively low level structures) would be sited behind the large agricultural buildings to be retained and would not therefore be unduly conspicuous in public views.

41. Consequently, the appeal proposal would cause no material harm to the landscape or scenic beauty of the AONB, or to its wildlife or cultural heritage. I note that NE did not object to the appeal proposal for reasons of its impact on the ANOB and it was not a reason for refusal by the Council. However, the absence of such harm in this matter is a neutral factor in my decision.
42. Tangley Parish Council and some other interested parties also objected to the appeal proposal due to concerns about operational and construction traffic, noise and disturbance and lighting. I saw that the roads in the vicinity of the appeal site are reasonably narrow, mainly single track rural lanes with grass verges and pass by some residential properties. However, construction traffic is an unavoidable, though temporary, consequence of new development and there is no substantive evidence before me to suggest that construction or operational traffic could not safely access the site, or that it would cause unacceptable highway harm or noise and disturbance to living conditions or to the structure and fabric of nearby houses. Furthermore, were I minded to grant planning permission a condition could secure a suitable construction traffic access management plan. I note that the Council did not object to the appeal proposal for these reasons.
43. The appeal site is relatively isolated and nearby development is limited and sporadic in nature. There is therefore likely to be 'dark skies' at night-time. However, the proposed development is otherwise acceptable in principle in a rural area and there is no evidence before me that the carrying on of the development would result in undue noise disturbance to living conditions of occupiers of nearby houses. Furthermore, were I minded to grant planning permission a condition could secure satisfactory details of external lighting to restrict potential light pollution. I note that the Council did not object to the appeal proposal for these reasons.
44. At my site visit I saw that a traditional timber frame barn on the appeal site is likely to have had some heritage value and interest to wildlife as a habitat (eg owls). Nevertheless, the barn has collapsed and any such interest has been lost.

Conclusion

45. I sympathise with the aims of the appellants and have no reason to doubt their sincere and genuine intentions in seeking to develop their agricultural and equestrian enterprises, including to integrate their daughter into the ownership and management of their rural business. Nonetheless, for the reasons given, the appeal does not succeed.

Robin Buchanan

INSPECTOR

APPEARANCES

FOR THE APPELLANT

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INTERESTED PARTIES

Mr Robin Casson

Local Resident

Mr Gary Hudson

Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

Doc 1 AKC Budget Update, 7 August 2020

Doc 2 The Path to Sustainable Farming: An Agricultural Transition Plan 2021
to 2024, DEFRA, November 2020