The Planning Inspectorate

Appeal Decision

Hearing held on 4 May 2021

Site visit made on 5 May 2021

by Joanna Gilbert MA(Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2021

Appeal Ref: APP/W3520/W/20/3262603
Chalky Bottom Orchard, Circular Road, Baylham, Ipswich IP6 8LE.

- 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 & Mrs Fossey against the decision of Mid Suffolk District Council.
- The application Ref DC/20/00638, dated 12 February 2020, was refused by notice dated 28 May 2020.
- The development proposed is erection of a single storey agricultural worker's dwelling in association with Chalky Bottom Orchard.

Decision

1. The appeal is dismissed.

Procedural Matter

2. Following the hearing, the appellants made a financial contribution towards the Suffolk Coast Recreational disturbance Avoidance Mitigation Strategy in respect of the Stour and Orwell Estuaries Special Protection Area and Ramsar. Receipt of the payment was confirmed by the Council.

Main Issues

3. The main issues in this appeal are:

   a) Whether there is an essential functional need for the proposed development and whether this would accord with national and local planning policies for development in the countryside; and

   b) The effect of the proposed development on the character and appearance of the area.

Reasons

Essential functional need

4. Located adjacent to a single-track road, the site lies outside the village development limits of Baylham. A pitched roofed barn with steel cladding is under construction on land adjacent to the site. This was approved under planning permission DC/18/04402 in January 2019.

5. In association with Chalky Bottom Orchard, the proposed development would comprise a single-storey two-bedroom dwelling for agricultural workers, which

would use the same vehicular access as the barn. Both the barn and the proposed development would be sited close to the road, while the orchard stretches down the slope towards Baylham. The orchard has been in place since Winter 2017/2018, when the trees were two years old.

6. Paragraph 79 of the National Planning Policy Framework (the Framework) states that planning policies and decisions should avoid new isolated homes in the countryside unless there are specific circumstances which apply. One of these is the essential need for a rural worker to live permanently at or near their place of work in the countryside.

7. While the appellants consider that Policy CS 1 of the Mid Suffolk District Core Strategy 2008 (CS) is out of date in relation to the settlement hierarchy, there is no dispute between the parties that the land lies within the countryside. There is some difference between the parties regarding whether it would be isolated. The appellants referred to a number of dwellings nearby. During my site visit, I saw that the site lies close to other dwellings. However, these scattered dwellings are not part of a settlement and all lie outside Baylham. As such, paragraph 79 of the Framework is applicable in this instance and it is necessary to verify if the criterion on essential need is met.

8. Policy H10 of the Mid Suffolk Local Plan 1998 (LP) deals with dwellings for agricultural workers. Amongst other things, the policy confirms that in the countryside, dwellings for key agricultural personnel will be permitted only where it can be demonstrated that there is a proven essential and immediate agricultural need for a dwelling on that land holding. The policy also confirms that if considered essential, the dwelling should normally be sited with existing farm buildings and its impact on the landscape should be minimised.

9. In establishing whether there is an essential and immediate agricultural need for the proposed dwelling, it is necessary to consider the financial stance of the business, the cider-making process, the orchard's health, security, transport, and alternative accommodation.

10. The appellants have invested a considerable amount of money and time into the orchard over the last few years. This has included the planting of over 100 apple trees of a range of heritage and native varieties, various other fruit and nut trees, and woodland and hedge planting. The orchard has been planted and will be managed in a traditional pattern in accordance with Department for Environment, Food and Rural Affairs and Natural England's requirements. The presence of other fruit and nut species and a range of grasses and legume mixtures under the trees allows for intercropping.

11. The appellants have commenced production of organic cider and a range of fruit-based products. Due to the barn's partial construction, all production is presently taking place off site. Although production currently involves using fruit from other orchards, some fruit was harvested from the orchard last year. The trees are not expected to reach their full yield until they are 15 years old, but should be yielding more annually subject to their management. Once production commences on site in the barn, it is restricted by means of condition 13 of planning permission DC/18/04402 to use of produce from the orchard itself.

12. Given the relatively early stage of the orchard's development, the appellants have focussed their efforts on purchasing the site, providing a water supply

including a borehole, planting the orchard, installing fencing and electricity supply, providing safe and permanent access and servicing arrangements, waste transfer, and planning for, building and equipping a barn to house cider production and other associated products on site. The appellants' planning statement indicates that this equates to at least £75,812 spent by the appellants. This has not involved valuing the time expended by the appellants or a number of volunteers who have assisted in tree planting and other tasks.

13. These tasks have involved considerable cost with very limited return as yet. Although the appellants have sold some cider and related products in the early years of the orchard's development, the receipts provided are for very small amounts relative to the investment made. I understand that the business was forecast to make a net profit of £6,448 in 2020/21 with increasing profits as production was expected to increase up to 2022/23 when a profit of £43,736 was predicted. The appellants confirmed at the hearing that the scope to carry out processes on site was significantly affected by restrictions on movement due to the Covid-19 pandemic over the past year. As such, the business is understandably somewhat delayed in its trajectory towards profit. Given the level of information on sales, however, I consider that there is insufficient evidence at this time to indicate that the business is on a sufficiently sound financial footing to warrant the provision of a dwelling on site.

14. The cider-making process includes harvesting, sorting, washing, crushing, and pressing apples, and then fermenting, pasteurising, and bottling the product. With regard to harvesting, this takes place from August to December due to the range of apple varieties within the orchard. To ensure the best flavoured apples, harvesting involves collecting fallen apples from the ground. While this is certainly labour-intensive and should be done reasonably swiftly to avoid bruising and wasp infestation, it would not in itself indicate that the appellants would need to live on site as this could be undertaken during daily visits.

15. Following harvesting, a number of the other cider-making processes would also be able to take place during the barn's permitted hours of operation (0800 – 1800 Monday to Saturday under condition 10 of planning permission DC/18/04402). The fermentation process requires careful watching of the airlocks to ensure a high-quality cider product. The appellants confirmed that automated systems to manage this process are not available at reasonable cost for their scale of production. Notwithstanding this, the appellants have advised that the fermentation process slows at night when temperatures drop. As such, I find that the fermentation element of the cider-making process would not necessitate the appellants living on site.

16. With regard to the health of the trees and hedging within the orchard, the trees and hedging plants are presently young. Until they are more mature and established, they are likely to be more badly affected by damage from pests and more in need of regular watering and more intensive management than older trees. Damage to the trees could result in reduced crop yield or quality, or death of the tree. I understand that one tree was lost last year and that there was some damage from rabbits and/or Winter Moth caterpillars. Additional risks are presented by deer and squirrels.

17. Reference was made during the hearing to the damage caused by rabbits chewing bark and damaging cylinders used to protect the tree trunks and deer eating upper leaves and branches of trees. I recognise that the appellants' two

dogs act as a highly successful deterrent when they are on site, preventing rabbits and deer from entering the orchard.

18. As the appellants intend the cider and other products to be organic, the management of Winter Moth caterpillars would not involve chemicals within the orchard. Instead, the appellants have previously applied glue bands to the fruit trees to prevent Winter Moths laying eggs on the trees. Additionally, the appellants have confirmed that any discovery of Winter Moth caterpillars on the fruit trees would require application of nematodes, a parasite which kills the host caterpillar without harming the tree. Although I am sure that this is laborious work as it is necessary to directly spray the areas of the tree affected by caterpillars, this is a task which would be carried out within daytime hours.

19. With regard to security and risk of theft, it is intended that alcoholic products will be produced and stored at the barn prior to sale. Furthermore, the production of cider requires a range of expensive tools and equipment, some of which I saw on site and some of which has been itemised by the appellants. Much of this equipment could be stored in the barn on site.

20. Though the appellants consider that they are not overlooked, the site lies close to neighbouring Walnut Tree Farm, and houses at Fairview and Teapot Hall. Despite the distance from the village, there is also good intervisibility with properties in Baylham across the valley. It is therefore possible that any overnight criminal activity could be noted by occupiers of other properties.

21. There is presently no internet connection to the site to allow for provision of CCTV which could be monitored off-site to trigger a call to the Police. Although the appellants are understandably concerned about security, I have not been advised that any thefts have taken place from the site. Reference was made to break-ins on local sites where less valuable equipment was stored and to the excessive cost of insurance for goods and equipment. However, in the absence of more detailed information on those local thefts, other security issues, and confirmation that alternative means of addressing security such as CCTV have been implemented and failed, I consider that this does not give rise to essential need for the proposed development.

22. In terms of alternative accommodation, the appellants have confirmed that they rent a property some thirty minutes' drive away. They also assert that alternative rental accommodation is not likely to be suitable for them locally due to rent levels. Previously, the appellants had advised that house prices in the area were outside their financial scope and that they were unlikely to be able to obtain a mortgage due to their self-employed status and the emerging nature of their business.

23. Additionally, the dwelling would be self-build, with some benefit to the local construction industry. The Framework is supportive of self-build development and the Council is required to maintain a register of those seeking to acquire self-build plot. Although the LP is silent on this matter, the emerging Babergh and Mid Suffolk Joint Local Plan supports proposals for self-build housing. Though the emerging Joint Local Plan has been submitted for examination, it is not clear what the likely extent of modifications will be as yet. As such, I afford it limited weight. I also note the appeal decisions[1] provided to me in respect of self-build development in Derbyshire, but the circumstances of that site and

[1] APP/G2435/W/18/3214451 and APP/G2435/W/18/3214498, decisions issued 25 June 2019.

the appeal before me appear to be quite different. While I appreciate that the construction of a self-build dwelling on the site would be more cost-effective for the appellants than seeking alternative accommodation for rental or sale locally and would assist the Council in meeting its housing requirement, this does not in itself prove an essential need for the proposed dwelling.

24. In terms of access, the site is reached via a single-track road with passing places. On site, the appellants have laid out a vehicular access and hardstanding area to serve the barn and orchard. Furthermore, it appears that there would be scope for parking areas, electric vehicle charging, and cycle storage to be laid out specifically for the proposed dwelling.

25. Regarding transport movements, there does not appear to be any dispute about the transport movements necessary for the orchard. The provision of a dwelling could reduce the frequency of journeys by the appellants. Indeed, the appellants presently travel some 5,000 miles to and from the orchard annually. Although this is not ideal for sustainability, it is not dissimilar to a person commuting to a job. This would not indicate an essential need to live on site.

26. Although paragraph 83 of the Framework highlights the importance of enabling sustainable business growth in rural areas and Chapter 15 of the Framework addresses conserving and enhancing the natural environment, there is no evidence to indicate that these objectives would not be met without a dwelling on site.

27. Concluding on this main issue, an essential functional need for the proposed development has not been demonstrated, in conflict with LP policy H10 and paragraph 79 of the Framework, the requirements of which are set out above.

Character and appearance

28. The site lies in the countryside outside Baylham within the Rolling Valley Farmlands Special Landscape Area designated by the Council. The surrounding countryside gently rises and falls within a shallow valley, with narrow roads bounded by trees and hedgerows on the upper sides of the valley, and wooded areas and fields criss-crossing the valley. The valley also contains a number of equestrian pastures and stable buildings. The orchard is located in a linear field on an alignment north-west to south-east. The orchard slopes downwards from the south-east and from the lane towards the lowest part of the valley. The orchard changes in elevation by approximately 16 metres over its length.

29. The proposed development would involve the construction of a single-storey dwelling on the valley ridge adjacent to the partially constructed barn and the existing tree and hedgerow belt along the road, and above the associated orchard.

30. CS Policy CS 5 requires development to maintain and enhance the environment, including landscape qualities. Additionally, LP Policy CL2 confirms that within Special Landscape Areas, particular care will be taken to safeguard landscape quality, and where development does occur it should be sensitively designed, with high standards of layout, materials and landscaping.

31. The Council's Joint Babergh and Mid Suffolk District Council Landscape Guidance 2015 (the Guidance) sets out a range of landscape character areas at the local level, including Rolling Valley Farmlands. Such areas are characterised

by an organic field pattern, gentle valley sides with occasional steep slopes, an increasing trend towards horse pastures, and a network of lanes across the valley. The Guidance asserts that it is possible to obtain substantial views from elevated locations within this character area. However, it is unclear whether the site is part of the Baylham Common referred to in the Guidance.

32. While the Council has raised concerns about the appellants' Landscape and Visual Impact Assessment dated February 2020 (LVIA), the LVIA discusses the proposed dwelling and the barn at the outset. However, it remains unclear if the LVIA has considered the cumulative effect of the barn and the proposed dwelling. Notwithstanding this and the quality of the photographic evidence in the LVIA, I have visited the various LVIA viewpoints.

33. Having viewed the site from these viewpoints, I am in agreement with the LVIA that the proposed development would have only a negligible effect from the longer views in viewpoints 1 – 5 from St Peter's Church, north of White Wheat Farm, the B113, south-east of Walnut Tree Farm, and east of Hill Top Farm. However, the proposed development would be more visible and therefore have a greater effect on landscape character from viewpoints 6 – 8, east of Baylham Common, west of Devils Grove, and south-west of Yew Tree Farm. While these shorter views are seen in the context of trees and hedging along the adjoining lane, there are some gaps to be seen in tree cover which alter the effect of the proposed development on the ridge. Additionally, the proposed development would be closer to these viewpoints than the barn.

34. The valley ridge upon which the proposed development would lie appears particularly prominent from Baylham itself. Indeed, the partially constructed barn and the neighbouring stables are already prominent along the ridge. The proposed development is simple and low in design, seeks to replicate the agricultural appearance of the barn, and would be viewed with the barn and the stables. However, unlike neighbouring buildings, it would have windows and domestic paraphernalia surrounding the dwelling. As the Inspector in the appeal decision[2] at land south-west of Fairview found, a dwelling on this side of the valley would appear incongruous as it would not be seen in the context of other homes. This would be visually intrusive.

35. There is scope for trees and hedging to screen the proposed development from view to an extent. Although the trees in the orchard would reach some 9 – 12 metres in height over time, they are presently only small trees. The trees are sited on a slope to reduce frost damage, but this has the consequential effect that the trees are lower than the proposed dwelling's location. Given their age and location, it would be some years before any screening effect would be in place from the orchard's trees. Furthermore, if any of the screening trees and hedging were to fail once mature, the dwelling would be seen across the valley. Together, the aforementioned factors indicate to me that, despite proposed mitigation, there would be moderate harm to the Rolling Valley Farmlands Special Landscape Area.

36. In conclusion, the proposed development would have a harmful effect on the character and appearance of the area. This would conflict with CS Policy CS 5, LP Policy CL2, and the Guidance, as set out above.

[2] APP/W3520/W/19/3243146, decision issued 7 July 2020.

Other Matters

37. Natural England has identified that the proposed development would fall within the Zone of Influence for the Stour and Orwell Estuaries Special Protection Area and Ramsar. However, given my findings on the two main issues, it has not been necessary for me to carry out an appropriate assessment in this instance.

38. Natural England has noted that the proposed development would be within the Impact Risk Zone for Little Blakenham Pit Site of Special Scientific Interest in relation to bats. While the main parties consider that there would not be a negative effect, this does not alter my overall findings.

39. The appellants have raised concerns about the fairness of the Council's assessment with particular reference to bias towards objections. Any concerns about the processing of the planning application should be addressed to the Council in the first instance. I have dealt with this appeal on its own merits.

40. The appellants have also highlighted the ecological soundness of their business, the imperative to address climate change, and the challenges of developing a smallholding within the parameters of the planning system and without Government grants. While I appreciate the importance of biodiversity, tree planting, access to the natural environment, the day-to-day management of the orchard by hand and by electric utility vehicle, the need for a range of farming methods, and the appellants' wish to diversify their business further with other crops and livestock, these matters do not overcome my concerns about need and character and appearance.

41. Reference has been made by the appellants to a temporary residential building on site. As the proposal before me would be of permanent construction, the scope for temporary accommodation is not for me to consider. I also note that the site lies within an area of low flood risk, that there are no areas of potentially contaminated land on site, and that the site lies some distance from designated heritage assets in Baylham. The dwelling could also support local facilities and services. Although reference has been made to Policies FC01 and FC01_1 of the Mid Suffolk Core Strategy Focused Review 2012 and paragraph 8 of the Framework in terms of sustainable development, the appeal would not fully adhere to economic, social and environmental objectives given my other findings.

42. Local residents and the Parish Meeting have raised a range of matters about the proposed development. As I am dismissing this appeal for other reasons, I have not addressed these matters in any detail apart from where they are reflected in the main issues.

Conclusion

43. For the reasons set out above and having had regard to all other matters raised, the appeal is dismissed.

Joanna Gilbert

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Sara Fossey	Appellant
Keith Fossey	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Daniel Cameron	Mid Suffolk District Council

INTERESTED PERSONS:

Keven Thomas	Baylham Parish Meeting
Campbell Thompson	Local resident