



Appeal Decision

Hearing (Virtual) Held on 27 April 2021

Site Visit made on 28 April 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th July 2021

Appeal Ref: APP/N1730/W/20/3257541

Cherry Tree Farm, Chandlers Green, Mattingley, Hook RG27 8LH

- 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 Mr & Mrs Wright against Hart District Council.
 - The application Ref 20/01274/FUL, is dated 2 June 2020.
 - The development proposed is erection of an agricultural workers dwelling with associated landscaping and car parking.
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Decision

1. The appeal is dismissed and planning permission is refused.

Applications for costs

2. An application for costs was made by Mr and Mrs Wright against Hart District Council.
3. An application for costs was made by Hart District Council against Mr and Mrs Wright. These applications are the subject of separate Decisions.

Procedural Matters

4. During the course of the appeal the appellants submitted a signed Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 (as amended) dated 4 May 2021. This deals with contributions towards mitigation against the impact of development on the Thames Basin Heath Special Protection Area (TBHSPA).
5. Following the hearing, I wrote out to the parties seeking additional information in relation to the proposed mitigation set out in the submitted UU. Both parties were invited to comment.
6. I closed the hearing in writing on 9 July 2021.

Background and Main Issues

7. The appeal was submitted on the basis of the failure of the Council to determine the planning application within the prescribed period. The Council's appeal statement indicated that, had it been in a position to do so, it would have refused the application for the same reasons it refused a planning application¹ for an identical scheme. These related to the financial viability of the farming enterprise and the effect of the proposal on the TBHSPA.

¹ Council Ref: 20/01910/FUL

8. Notwithstanding this, the Council's statement went on to conclude that it now considered that the farming activities on the farm were financially sound, albeit marginally, but that the stock levels do not require a full-time agricultural worker's presence on the site.
9. On this basis, I have identified that the main issues are:
 - the effect of the proposal on the TBHSPA; and
 - whether or not it has been demonstrated that there is an essential need for a dwelling to accommodate a rural worker at the appeal site.

Reasons

Thames Basin Heaths Special Protection Area

10. The appeal site is located within 5 kilometres of the Hazeley Heath Site of Special Scientific Interest which forms part of the TBHSPA. This is protected as a European Site of Nature Conservation Importance and is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Regulations). Regulation 63 prevents the competent authority from granting permission unless the proposal would not adversely affect the integrity of the European site. I am the competent authority for the purposes of this appeal.
11. Natural England (NE) has indicated that additional residential development within 5 kilometres of the TBHSPA would, in combination with other plans and projects, have a significant effect on the protected sites through increased dog walking and additional recreational pressures. Accordingly, and when following a precautionary approach, the proposal for a new dwelling, in combination with other plans and projects, would be likely to have a significant adverse effect on the TBHSPA. As the competent authority, I am therefore required to carry out an appropriate assessment, in accordance with the Regulations, to consider the implications of the proposal on the TBHSPA in view of its conservation objectives.
12. The TBHSPA is a network of lowland heathland sites which provide a habitat for the internationally important breeding bird species of woodlark, European nightjar and Dartford warbler. These are ground-nesting species. The sites conservation objectives can be summarised as avoiding a deterioration of habitats and minimising bird disturbance, thereby ensuring the integrity of the sites is maintained. In order to avoid any such harms, suitable mitigation would be required for new housing development within 5 kilometres of the TBHSPA.
13. The Council has withdrawn its Interim Avoidance Strategy for the Thames Basin Heaths Special Protection Area. In the absence of its replacement, NE have advised that mitigation in line with Policy NRM6 of the South East Plan – Regional Spatial Strategy for the South East (the South East Plan), and the Hart Local Plan (Strategy and Sites) 2032, adopted 2020 (Local Plan), as well as the Thames Basin Heaths Delivery Framework (2009) is likely to avoid impacts upon the integrity of the TBHSPA. This includes mitigation in the form of Suitable Alternative Natural Greenspace (SANG) at a minimum rate of 8 hectares per 1,000 residents, and contributions to Strategic Access Management and Monitoring (SAMM).

14. The appellants have confirmed a willingness to provide a financial contribution to both SANG and SAMM. SANG capacity within Hart District has been strictly limited and access to it restricted by the Council to development that is policy compliant. The Council confirmed that the appeal proposal is not eligible for this. The appellants have therefore sought to secure suitable mitigation by way of a contribution to a third party SANG.
15. The submitted UU sets out that the appellants will submit to the Council a SANG Strategy for approval and for it to be approved prior to the commencement of the development. The SANG Strategy will demonstrate that SANG land has been secured for at least 80 years and will meet the requirements of the now withdrawn TBHSPA Interim Avoidance Strategy or its replacement. More specifically, the UU provides a financial contribution to secure 200 square metres of SANG Land at Frog Grove Lane, Wood Street Village, Guildford (the Guildford SANG) or any other land of the same area secured pursuant to the SANG Strategy.
16. The submitted UU seeks to restrict the commencement of the development until it can be demonstrated that SANG has been secured. This would be demonstrated by the submission and approval of the SANG Strategy to the Council and the payment of the SANG Contribution to the SANG Land Owners.
17. At the Hearing, I was told that the Guildford SANG is part of a phased development. It requires legal agreement between Guildford Borough Council and the SANG Land Owners to secure it as SANG. The appellants have indicated that an agreement in principle to access the SANG has been reached with the owners of the Guildford SANG.
18. Following the Hearing, the appellants provided evidence confirming that Phase 1 of the SANG has largely been completed and that Guildford Borough Council has confirmed that the vast majority of works to the site have been carried out in accordance with its planning permission². Whilst it would therefore appear that the site is of a satisfactory standard, it is not operational and there is no active management in place. The legal agreement securing the land as SANG is also not in place. Furthermore, I have not been provided with firm evidence that the appellants have secured an agreement with the SANG Land Owners for an allocation. In the absence of this, I cannot be certain that appropriate mitigation in the form of SANG can be secured.
19. The contribution to SAMM has been secured through the submitted UU. The Council has advised that the financial contribution will be transferred to Hampshire County Council who have been appointed to collect the contributions on their behalf.
20. I am satisfied that the planning obligation is necessary to make the development acceptable and the contribution would be fairly and reasonably related in scale and kind to the development. Moreover, there is no reason to doubt that the Council, as a responsible public body, will spend the money in the way it is intended.
21. I accept that the submitted UU would provide an effective mechanism to secure mitigation, however, there is uncertainty about what this mitigation would be. Furthermore, the effect of the UU would put the onus on deciding whether the

² Guildford Borough Council Ref: 16/P/02134

mitigation is adequate onto the Council. It seems to me that this would not fully accord with the requirements of Regulation 63 which requires that before consent or other authorisation is given by the competent authority there must be 'an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives'.

22. This leads me to conclude that it has not been demonstrated that the proposed development would not adversely affect the TBHSPA. As such, the proposal would conflict with Policy NBE3 of the Local Plan and Saved Policy NRM6 of the South East Plan. These policies together require new residential development within the zone of influence which is likely to have a significant effect on the integrity of the TBHSPA to mitigate any potential adverse effects and that mitigation measures must be based on a combination of SAMM and SANG.

Essential need

23. Cherry Tree Farm occupies an area of just over 17 hectares. It is located within the open countryside and outside any settlement boundary. The nearest settlements are Hound Green, Heckfield and Mattlingley, each around one kilometre away. The appeal site is therefore within the countryside. The proposed development for a permanent dwelling on the site would therefore lead to an isolated home in the countryside.
24. Policy NBE1 of the Local Plan sets out development proposals within the countryside will only be supported where they are meeting the proven essential need of a rural worker to live permanently at or near their place of work.
25. The National Planning Policy Framework (the Framework) sets out at paragraph 79 that planning decisions should avoid the development of isolated homes in the countryside unless a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside.
26. The Planning Practice Guidance sets out a number of considerations that may be relevant to take into account when applying paragraph 79 a) of the Framework. This includes evidence of the necessity for a rural worker to live at, or in close proximity to, their place of work to ensure the effective operation of an agricultural, forestry or similar land-based rural enterprise (for instance, where farm animals or agricultural processes require on-site attention 24-hours a day and where otherwise there would be a risk to human or animal health or from crime, or to deal quickly with emergencies that could cause serious loss of crops or products).
27. The farming enterprise has been in existence since 2008. During this period, the appellants have been residing in a caravan on the site. This was subject to an Enforcement Notice requiring the cessation of the use of the land for the siting of the caravan and for its permanent removal. This Enforcement Notice was subject to an appeal³ in 2018 whereby the period of compliance was extended for a 24 month period until 7 August 2020. This was to enable appropriate actions to be taken and for the appellants to gather together various evidence.
28. The appellants have invested approximately £275,000 in the farm over the course of its operation. This has resulted in an enterprise comprising a number

³ APP/N1730/C/17/3184456

- of substantial agricultural buildings used for the storage of machinery, feed and holding of livestock. The primary focus of the farm is as a calf-rearing unit although other livestock including poultry and sheep are kept on the farm.
29. Calves are brought to the farm at around two weeks until they are around three months and sold on. The calves, on first arriving, are kept in Barn 1 where they are fed a milk diet. They remain in this barn until they are weaned which occurs when they are around ten weeks old.
30. Barn 1 has been described as having capacity for anything from 60 calves to up to 85 calves, although with the need for an isolation pen this is reduced to 80 calves. The barn can be configured as separate pens. At my site visit, I observed that it was subdivided into ten smaller pens with two larger pens for the older calves. I was informed that there were 75 calves within Barn 1 of which 29 were on a milk diet and 46 were semi-weaned.
31. Once weaned, the calves are moved to Barn 2 where they are fed a hard food diet. They stay here until they are reared, after which they are sold on. The length of time the calves remain within Barn 2 varies from two weeks to six weeks depending upon the market and the requirements for calves from the unit. At the time of my site visit, I was told there were 38 calves within this barn.
32. I have not been provided with any movement records, although the appellants have provided various information about herd sizes. Whilst there are some inconsistencies in the submitted information, it suggests that on average each year, when the farm is functioning as expected and not affected by the global pandemic, around 240 calves will pass through the unit. I note that the Council, in its updated Agricultural Statement of Case (ASC)⁴, has utilised this annual figure. In addition, there are currently 37 breeding ewes on the farm and a flock of poultry, I am told number between 60 and 70.
33. Livestock is arriving at the farm throughout the year. I heard that they are generally taken in groups of five, bringing in two or three groups at a time. Calves remain on the unit from between ten weeks to seventeen weeks, with the length of time they stay affected by the differing rates at which the calves mature and gain weight. This results in a variation in herd size.
34. The use of Standard Man Days (SMD) as a calculation of the labour requirement for activities on a farm is used to provide an indication of an essential need. The figure of 275 SMD per worker per year is an accepted figure. However, the Agricultural Budgeting and Costing book (the ABC book) sets out that as part of the Farm Business Survey undertaken by Defra, a lower figure should be applied when an enterprise is assumed to occupy one full-time person. This figure equates to 237.5 SMD. This reflects differences in efficiencies across larger and smaller farms.
35. There is no agreement between the parties as to what an average herd size on the unit would be because the time the calves remain on the unit affects this. As such, the figures, when converted into Standard Man Days, range from the appellants' view that the requirement ranges from 299 SMDs to 378 SMDs based on current stock numbers, both which exceed the SMDs for a single full time worker to the Council's assessment that the farm enterprise requires total

⁴ Agricultural Statement of Case, Stuart Nicholls, Savills (UK) Ltd, March 2021

SMDs of 239 which is around 87 per cent of a full time worker. The Council's figures do not include the other livestock on the farm, however, with these added in the SMDs it is unlikely that the SMDs would add up to the equivalent of a full-time worker.

36. The evidence on the herd size is inconclusive. I was told at the time of my site visit, whilst only a snapshot in time, there were 113 calves on site. This is significantly larger than the average herd size upon which the Council made its assessment, however, I accept that at times it may be less. Nevertheless, it does lend weight to the requirement for a worker to be on site.
37. In terms of hours, I consider that the labour requirement will fluctuate based on the herd size and therefore may lie either slightly above or below a standard man year. However, in all scenarios put to me, the labour requirement would be above the SMD per worker per year for smaller enterprises, such as this farm. This gives weight to the essential need.
38. In coming to this view, I am mindful of the advice in the ABC Book that calculating labour requirements is not an exact science and that other factors, such as the scale and nature of the operation, may also be relevant.
39. The farm has a strong focus on young animals, which are brought to the farm from a range of sources. These young animals may be stressed and as agreed by all parties are susceptible to disease and illness which if not treated promptly can have serious implications for the well-being of the animal or indeed the herd. This is supported by written evidence from a veterinary surgeon who considers that in order to prevent mortalities and maximise welfare and growth, a high level of care and monitoring 24 hours a day is required.
40. In view of this, it seems to me that whilst the hours may hover around the level that does or does not require a full-time presence on site, there is nevertheless a need for the farmer to be in close proximity to the livestock. This would enable the farmer to address issues promptly should they arise during the late evening or overnight, whether these be calves breaking out of their pens or a more serious ailment.
41. Whilst I accept a certain amount of planning may be able to alleviate some of the issues that may arise on the farm. This may include bringing new calves to the unit earlier on in the day in order to settle stressed calves into their new surroundings, although it appears this would need to coincide with the supplier's own work arrangements. However, I am not satisfied that this or any form of remote monitoring would sufficiently address the concerns outlined above.
42. I also heard of security risks at the appeal site, with the appellants referring to some incidents of break-ins locally. The evidence presented on this matter was not substantive and although I recognise the concerns, this matter attracts little weight.
43. Two previous appeals, the 2018 appeal and one in 2015⁵, were both dismissed on viability grounds but in both cases it was agreed by the Council that there was a clear functional need for a rural worker to live on the site for the purposes of the agricultural activity undertaken. I do not have the full details of

⁵ APP/N1730/W/15/3053073

the numbers of livestock in the earlier appeal and the livestock types and numbers were different in the 2018 appeal and not therefore comparable.

44. I conclude that it has been demonstrated that there is an essential need for a dwelling to accommodate a rural worker at the appeal site. On this basis, I find that the proposed development would comply with Policy NBE1 of the Local Plan as referred to above. It would also accord with paragraph 79 of the Framework.

Other Matter

45. The Council in its statement of case states that the scale of the proposed dwelling is excessive in terms of the employment need of the holding, even if it were considered that a permanent residential presence was essential. This conflicts with the conclusions in its ASC which states the dwelling is an appropriate size for the holding.
46. The proposed house would be a modest single-storey dwelling that would provide three bedrooms for the appellants and their family. It would be of a modest scale and design and would not therefore be excessive.

Planning Balance and Conclusion

47. I have found that an essential need for a dwelling to accommodate a rural worker has been demonstrated. However, the proposal, in combination with other projects and plans, in the absence of satisfactory mitigation, would adversely affect the TBHSPA.
48. For this reason, I conclude the appeal should be dismissed and planning permission be refused.

Rachael Pipkin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Wright	Appellant
Mr Fred Quartermain	Thrings
Richard Greenwood	Benchmark Development
Mr Philip Pollard	Symonds and Sampson
Mr Simon Taplin	

FOR THE LOCAL PLANNING AUTHORITY:

Mr Peter J Lee	Planning Team Leader
Ms Maxine Lewis	Planning & Enforcement Team Leader
Mr Stuart Nicholls	Associate, Savills

INTERESTED PARTIES:

Ms Susan Turner	Heckfield Parish Council
Mr Stephen Hamett	Neighbour

Post-Hearing Documents

Document 1	Copy of Email between appellants and Council dated 31/3/21 regarding UU
Document 2	Official Copy (Title Plan) – appeal site
Document 3	Official Copy (Register) – appeal site
Document 4	SAMM Tariff Document
Document 5	Email correspondence sent between 27/4/21 and 30/4/21 between the appellants and Council concerning revisions to UU
Document 6	Email dated 11/5/21 enclosing replacement UU and costs response
Document 7	Cherry Tree Farm replacement UU
Document 8	Cherry Tree Farm – Appellants’ Response to Inspectors Questions forwarded 03.06.21
Document 9	Email dated 27/5/21 Councils’ response to Inspectors Questions regarding SANG provision
Document 10	Email dated 24/6/21 enclosing Appellants’ final comments on SANG in response to Council’s response of 27/5/21