



Appeal Decision

Site Visit made on 25 May 2021

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2021

Appeal Ref: APP/M1005/W/21/3266211

Agricultural land off A610, Woodlinkin, Derbyshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Denley Allen against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2019/0280, dated 20 March 2019, was refused by notice dated 2 July 2020.
 - The development proposed is Agricultural Dwelling, Cattle Housing and Access Tracks.
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Decision

1. The appeal is allowed and outline planning permission is granted for an Agricultural Dwelling, Cattle Housing and Access Tracks, at Agricultural land off A610, Woodlinkin, Derbyshire, in accordance with the terms of the application, Ref AVA/2019/0280, dated 20 March 2019 and subject to the conditions set out in the attached Schedule.

Application for costs

2. An application for an award of costs has been made by Mr Denley Allen against Amber Valley Borough Council. This application is subject to a separate decision.

Preliminary Matter

3. The application has been made in outline with all matters reserved. Therefore, I have treated the submitted plans and details of the proposed buildings as being for illustrative purposes only.

Main Issues

4. The appeal site lies within an area of Green Belt. Therefore, the main issues are:
 - Whether the proposal would constitute inappropriate development in the Green Belt;
 - The effect on the openness of the Green Belt;
 - If the development is inappropriate, whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it, and if so;
 - Whether a planning obligation is necessary in order for the proposal to accord with relevant planning policies relating to the Green Belt and provision of dwellings in the countryside.

Reasons

5. The appeal relates to agricultural land to the south of Cromford Road (A610), between the settlements of Woodlinkin and Aldercar. The land falls away from the roadside boundary towards wooded land surrounding Bailey Brook, with expansive views possible to the south and the built-up area of Heanor across the valley. A small terrace of dwellings and a detached house line the road close to the site on the Woodlinkin side. Expansive agricultural land extends to the south-west, west and north on the opposite side of the main road.
6. The application sought outline permission for construction of a portal frame cattle shed, along with a dwelling to house an agricultural worker and access tracks from the site entrance to both buildings.

Whether inappropriate development in the Green Belt

7. Paragraph 145 of the National Planning Policy Framework (the Framework) states that the construction of new buildings within the Green Belt is inappropriate development but lists certain forms of development which are not regarded as inappropriate. This includes, at criterion a) buildings for agriculture and forestry. Policy EN2 of the Amber Valley Borough Local Plan (2006) (the Local Plan) is consistent with the Framework in respect of this particular criterion. However, the Council concedes that the policy is not wholly consistent with the Framework approach to development in the Green Belt, and that it should therefore be afforded only limited weight. Consequently, I have considered the appeal primarily against the approach of the Framework.
8. There is no dispute that the proposed cattle shed is a building for the purposes of agriculture and is not inappropriate development in the Green Belt.
9. The appellant argues that the proposed dwelling would not be inappropriate, having demonstrated an essential need for a rural worker to live on the site. However, the use of a dwelling by a rural worker does not make it a building for the purposes of agriculture or forestry. Its primary purpose is still residential. As such, the proposed dwelling would not meet any of the exceptions under Paragraphs 145 or 146 of the Framework and would be inappropriate development in the Green Belt. Whether there is a need for the dwelling to house a rural worker is a consideration to be weighed up in determining whether very special circumstances exist to justify inappropriate development in the Green Belt.
10. Therefore, I find that the proposed cattle shed would constitute a building for agriculture or forestry within the meaning of criterion a) of Paragraph 145 of the Framework, and in accordance with Policy EN2 of the Local Plan. Consequently, this part of the proposal would not constitute inappropriate development within the Green Belt.
11. However, for the reasons set out, the proposed dwelling would amount to inappropriate development, which is by definition, harmful to the Green Belt. This would conflict with Policy EN2 and the aims of the Framework.

Openness of the Green Belt

12. Openness and permanence are the essential characteristics of Green Belts. Openness in terms of the Green Belt has a spatial aspect as well as a visual aspect. I note the Council's conclusions that a dwelling could be designed to

ensure that it does not adversely affect the openness of the Green Belt or the visual amenity of the area. However, setting aside matters of visual amenity, it is a simple fact that there is no existing development of any discernible scale on the site of the proposed dwelling which forms part of a large, open field. The site is open to views from the nearest dwelling to the west of the site, and would be seen above the line of the hedgerow from the main road. It follows, therefore, that the proposed development would have an inevitable and demonstrable loss of openness, in both visual and spatial terms.

13. With respect to the purposes of the Green Belt, given my findings above, the proposed dwelling would lead to encroachment of development into the countryside and would impact on the related Green Belt purpose.
14. With respect to the cattle shed, given my findings that it would not be inappropriate development, it would, by definition, not have an adverse impact on the openness of the Green Belt or the purposes of including land within it.

Other Considerations

Need for a Rural Worker

15. The appellant has submitted evidence of his farming operations in support of the case for an agricultural worker's dwelling on the site. I note the farm's transition from a dairy farm to a suckler herd since 2016, with the size of the herd now larger than can be accommodated at the appellant's main holding, Barden Farm, which is some five miles away. The land at Woodlinkin extends to some 150 acres, 20 of which is woodland and the rest permanent pasture. It is indicated that this land would effectively house a standalone herd. The proposed dwelling would be within sight of the cattle shed at around 200 metres distance. The appellant's evidence points to the need for a permanent on-site worker due to the particular needs of cattle in the weeks before, during and after giving birth and to provide security for the site which it does not have at present, leading to it being an underutilised part of the appellant's holding.
16. The Council's agricultural consultant accepted that the land is suited to cattle grazing and that a herd of 100 or more suckler cows would justify the full-time presence of an agricultural worker on site. Despite raising concerns in respect of the financial viability of the enterprise, the agricultural consultant conceded that a temporary dwelling would not be appropriate, as the business is neither new or developing further, and a profit could be attained if costs are kept to a minimum. Ultimately no objection was raised to the principle of an agricultural worker's dwelling on the site.
17. The evidence before me is limited in terms of the overall financial viability of the operation, but I note that whilst the wider enterprise was indicated to have operated recently at a loss, this was in part due to implementing the change from dairy to the suckler herd, and that the financial situation has since improved with the expansion of the herd. Ultimately, this is a matter of common ground between the main parties, and I have no compelling evidence before me which leads me to a different view.
18. Overall, the evidence indicates that there is a functional need for an agricultural worker's dwelling to be located on the site to enable the land to be used for a suckler herd as part of the wider farming enterprise. This accords

with Policy EN1 of the Local Plan and is a very significant material consideration weighing in favour of the proposal.

Need for a Planning Obligation

19. Having accepted the need for a dwelling on the site, the Council's position is that a planning obligation is necessary in order to tie the proposed agricultural worker's dwelling to the specific parcel of land surrounding the appeal site. It argues that without such an obligation, the appellant could dispose of the land and the justification for an agricultural worker's dwelling would no longer exist. As a result, the dwelling would be inappropriate development in the Green Belt.
20. The appellant argues that the use of a planning obligation to tie the use of the dwelling to a specific parcel of land would unnecessarily restrict its operation, including not being able to let the dwelling to a rural worker on normal terms, nor deal with the woodland within the site which is unrelated to the farming operations.
21. The appellant refers to now superseded guidance contained in PPG7 which advocated the type of restriction sought by the Council, pointing out that it was counter-productive in that it restricted the availability of housing for rural workers within an area, and that subsequent guidance on the use of conditions in Circular 11/95 stated that it should not be necessary to tie occupation of the dwelling to workers engaged in one specific farm or forestry business even though the needs of that business justified the provision of the dwelling. The appellant points out that the PPG7 approach has not been carried through to subsequent planning guidance documents or the Framework.
22. The Framework at Paragraph 54 states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. It adds that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.
23. It is a well-established planning approach to impose a condition restricting the occupancy of an agricultural worker's dwelling where the need for one has been justified, but where its location would otherwise be unacceptable in planning policy terms. In this case, the Council accepts that a need exists for an agricultural worker's dwelling in this location.
24. The Framework makes exception for dwellings in the countryside where there is an essential need for a rural worker to live permanently at or near their place of work in the countryside. This is not subject to a requirement that the dwelling remains linked to specific farms or parcels of land. Nor do I see a requirement for such a restriction in any development plan policy put to me. Ultimately, the acceptability of a dwelling in this location is dependent on it being necessary to house a rural worker. A condition restricting occupancy to those involved in agriculture or forestry generally would ensure this remained the case. Even if the initial occupant was to vacate the dwelling, it could only be subsequently occupied by someone similarly working in agriculture or forestry. This would also retain the dwelling as part of the stock of rural housing for farm workers in the area, and potentially avoid the need to construct another dwelling in the countryside.

25. This would also be the case were the land surrounding the dwelling to be sold by the appellant, though no evidence has been adduced by the Council to suggest this is a likely course of action. A condition would still restrict the occupancy of the dwelling to a rural worker and so would continue to justify the dwelling's location in the Green Belt. The Council would also retain control as a planning application would have to be made to remove the condition with justification provided for why the occupancy restriction should no longer apply.
26. Conversely, a Section 106 agreement as sought by the Council would tie the use of the land and the occupancy of the dwelling together. Whilst this may align with the proposal as set out in the application, it would restrict the appellant in terms of how the land is used and in terms of letting the dwelling to another rural worker should the needs of the farm change in respect of the use of the land at Woodlinkin. Also, should the situation arise, a variation to the terms of a Section 106 agreement would be a more complex and expensive process than variation to a condition. Consequently, I find the restrictions sought by the Council would be unnecessary and onerous on the appellant, particularly given the availability of a simpler form of control in a condition.
27. Therefore, I find that a condition would be appropriate in this case, and a planning obligation as sought by the Council is not necessary to make the development acceptable in planning terms.
28. I also note reference to the Council seeking to include within the planning obligation restrictions on the size of the dwelling on the site. However, the application has been made in outline with all matters reserved. Any details provided as to the potential size or form of the dwelling are solely for illustrative purposes and do not bind the appellant in making a subsequent application for the approval of reserved matters. Equally, the Council would be able to consider such an application on its own merits. Therefore, I find there is no basis for restricting the size of the building through a planning obligation.

Other Issues

29. The matters of access, layout, landscaping, appearance and scale are reserved for future consideration. As such, they are not relevant to my considerations, beyond that I note the Council has not raised objection in principle on any of these matters, and on the evidence before me, I have no reason to doubt that an acceptable scheme could be advanced at reserved matters stage.
30. Similarly, I note that the Council did not refuse the application in respect of neighbours' living conditions, highway safety, land stability or ecology, and nothing in evidence leads me to conclude otherwise in these matters, which are ultimately neutral considerations in the planning balance.

Green Belt Balance

31. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In addition, in relation to the proposed dwelling, there are adverse impacts on openness and the Green Belt purpose of safeguarding the countryside from encroachment. Substantial weight should be given to the harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.

32. However, the demonstrated need to house an agricultural worker on the site is a consideration to which I give very significant weight. Moreover, I find that this other consideration is of sufficient weight to clearly outweigh the substantial harm to the Green Belt by reason of inappropriateness and the effect on openness. Consequently, very special circumstances exist to justify inappropriate development in the Green Belt.
33. Although there would be conflict with the development plan, for the reasons set out I afford limited weight to this conflict and the balance of planning considerations in this case, including the Framework, leads me to the view that the appeal should succeed.

Conditions

34. The Council has suggested conditions in the event the appeal is allowed, which I have considered in light of the tests of conditions within the Framework and guidance of the Planning Practice Guidance (PPG) and amended where necessary to meet those tests.
35. Conditions relating to the submission and timing of reserved matters applications, and the commencement of development, are necessary in the interests of certainty. The Council also seeks a drawing requiring the proposal to be carried out in accordance with the submitted block plan. However, this plan is indicated by the appellant to be solely illustrative and, as all matters have been reserved, requiring it to be adhered to would limit a subsequent application in terms of the siting and footprint of the dwelling and cattle shed. Consequently, I have not imposed the condition.
36. A condition requiring the provision of space within the site for parking and manoeuvring of vehicles is necessary in the interests of highway safety.
37. In the interests of preventing unacceptable harm to the Green Belt, conditions are necessary to ensure that the dwelling cannot be occupied other than for the provision of accommodation for a rural worker, and that the dwelling is not first occupied until after the cattle shed has been brought into use. Without these conditions, the dwelling could be occupied on the open market which would be contrary to established planning policy.
38. Finally, the Council seeks a restriction on permitted development (PD) rights for extensions to the building falling under Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. The PPG states that conditions restricting the future use of PD rights may not pass the test of reasonableness or necessity and should be precisely defined. In this case, extensions permissible under Class A could go beyond those which are considered not inappropriate in the Green Belt and would be capable of having a material effect on the openness of the Green Belt. Therefore, I find the removal of Class A rights to be justified in this instance.

Conclusion

39. For the foregoing reasons and taking all other matters into consideration, I conclude that the appeal should be allowed.

K. Savage INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall not be brought into use until space has been provided within the site curtilage for the parking and manoeuvring of residents', service and delivery vehicles, located, designed, laid out and constructed all as agreed in writing with the Local Planning Authority and maintained throughout the life of the development free from any impediment to its designated use.
- 5) The dwelling hereby approved shall not be first occupied until the cattle housing shed forming part of this permission has been erected and brought into use.
- 6) The occupation of the dwelling hereby permitted shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.
- 7) Notwithstanding the provisions Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) no extensions shall be undertaken to the dwelling hereby approved without the prior written approval of the Local Planning Authority.

END OF SCHEDULE