Appeal Decision

Hearing held on 17 and 23 March 2021

Site visit made on 26 March 2021

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2021

Appeal Ref: APP/C1435/W/20/3252657
Land at St Ives Farm, Off Butcherfield Lane, Hartfield TN7 4JX

- 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 Brian Howard against Wealden District Council.
- The application Ref WD/2017/0152, is dated 20 January 2017.
- The development proposed is a temporary agricultural worker's dwelling.

Decision

1. The appeal is dismissed and planning permission for a temporary agricultural worker's dwelling is refused.

Applications for costs

2. An application for costs was made by Mr Brian Howard against Wealden District Council ahead of the Hearing. An application for costs was subsequently made by Wealden District Council against Mr Brian Howard at the Hearing. These applications are the subject of separate Decisions.

Procedural and Preliminary Matters

3. The appeal site comprises land at St Ives Farm, farmed by the appellant and his wife as part of a combined operation focused primarily on cattle and sheep and based at Hethe Place Farm near Cowden some 3 miles or so to the north east. When originally submitted in 2017, the planning application to which this appeal relates sought permission for a development described as:

   "A new agricultural dwelling located adjacent to new cattle yard and buildings. To be used in conjunction with the main home farm Hethe Place – see location plan. A two-storey building including the roof space on the first floor made up of two reception rooms, kitchen and office on the ground floor. First floor three bed and family bathroom. External walls constructed in West Hoathly multi bricks facing bricks and timber windows and internal lightweight blocks together with cavity foam insulation pitched roof with Redland tiles and Velux roof windows together with vapour barrier and foam insulation. Plastic gutter and down pipes. Access from existing track. Small garden area fenced off with post and rail fencing. Site approached from Butcherfield Lane and a private lane around 500m."

4. Following a series of e-mails between the appellant and the Council in August 2018 and January 2019, the proposal was amended to seek permission for a

temporary agricultural worker's dwelling. The parties agreed a revised description of the proposed development as:

"A new temporary agricultural worker's dwelling located adjacent to new cattle yard and buildings."

5. Planning permission had been granted in 2016 for the erection of two agricultural buildings for cattle and storage at the St Ives site, together with a concrete yard (LPA ref WD/2016/1005 – "the 2016 planning permission"). These would form the "new cattle yard and buildings" referred to in both of these descriptions of development. I return to this matter in my reasons below, but it is sufficient to say at this point that the agricultural buildings allowed by the 2016 planning permission have not been built and that planning permission has lapsed. I have therefore adapted the agreed revised description for the banner heading above so that it accurately reflects the proposed development.

6. The appeal stems from the Council's failure to determine the planning application within the prescribed statutory period. The Council's evidence confirmed that, had it issued a decision, it would have refused the application on the grounds that there was no justification for a temporary dwelling in the countryside having regard to local and national planning policies. It also expressed concern, though less strongly, about the effect of an isolated caravan on the character and appearance of the area. The main issues identified below reflect this.

7. The Government published a revised National Planning Policy Framework ("the Framework") on 20 July 2021, replacing the version published in February 2019. In this case, the amendments to the Framework have not had a significant bearing on the most relevant issues in this appeal. I am therefore satisfied that there is no requirement for me to seek further submissions on the revised Framework, and that no party's interests have been prejudiced by my taking this approach. Where I have referred in my decision to specific paragraphs of the Framework, the numbering used is that of the July 2021 version.

Main Issue

8. The main issues are:

- Whether or not, having regard to local and national planning policies that seek to avoid isolated homes in the countryside, there is an essential need for a temporary dwelling to accommodate a rural worker; and

- The effect of the proposal on the character and

Reasons

The appeal site and the proposed development

9. The appellant's land holdings at St Ives are predominantly pasture on a site sloping steeply southwards towards the Medway valley. The appeal site itself is at the northern edge of the appellant's land and comprises a corner of the field separated from a private lane by a hedgerow boundary. There is an area of woodland and a large pond immediately to the east of the appeal site, and the private lane connects the site to Butcherfield Lane a short distance to the north east. The proposed temporary dwelling would be a mobile home of around

136m^2, which would be sited towards the edge of the appeal site close to the area of woodland.

Relevant local and national planning policy

10. Policy GD2 of the 1998 Wealden Local Plan ("the WLP") and Policy WCS6 of the 2013 Wealden Core Strategy Local Plan ("the WCSLP") set out the Council's rural areas strategy and its approach to the protection and enhancement of the countryside. This is to be achieved in part by setting out a hierarchy of four categories of settlements, with defined development boundaries for the largest two classes of settlements.

11. Policy DC17 of the WLP provides further clarification in respect of housing development and indicates that it will not be allowed outside defined development boundaries other than in circumstances where it conforms with other development plan policies. One such exception is set out in WLP Policy DC2, which allows for new permanent dwellings for agricultural workers where proposals comply with five criteria:

    (1) there is a clearly established existing functional need;

    (2) no other suitable accommodation is available on the unit or elsewhere in the location;

    (3) the enterprise has been established for at least three years, has been profitable for at least one of them, is currently financially sound and has a clear prospect of remaining so;

    (4) the dwelling is of a size commensurate with the established functional requirement;

    (5) the dwelling is suitably located to meet the identified functional need of the enterprise, integrates well with existing buildings wherever possible, is not intrusive in the landscape, and its general design is appropriate to the character of the area.

    DC2 also allows for temporary permission for a caravan or mobile home where the functional requirement of criterion (1) is met but criterion (3) is not.

12. Paragraph 80 of the Framework[1] states that planning decisions should avoid the development of isolated homes in the countryside other than in certain exceptional circumstances, one of which is where 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. It is not disputed that the appeal site lies in open countryside outside any settlement boundary, and both main parties agreed at the Hearing that, in the Framework's terms, the proposal would lead to the development of an isolated home in the countryside.

13. The policies of the WLP pre-date the introduction of the Framework in 2012 by some years, and the requirements of DC2 reflect the functional and financial tests set out in Annex A of the now-cancelled [national] Planning Policy Statement 7 ("PPS7"). Paragraph 219 of the Framework states that existing development plan policies should not be considered out-of-date simply because

[1] At the time the Hearing was held, this was Paragraph 79 in the 2019 version of the Framework. Although the numbering has changed in the latest version of the Framework the relevant parts of the paragraph are unaltered.

of their age. The appellant's written statement suggested that the planning application should be determined *only* with reference to the Framework, although during the discussion at the Hearing it appeared that this was based on a misunderstanding of a letter sent by the Council in January 2020 relating to the withdrawal of the Submission Wealden Local Plan 2019[2]. The appellant acknowledged at the Hearing that there were "no major differences" between the approach of Policy DC2 and that of the Framework.

14. The Council referred to appeal decisions relating to other sites within Wealden where Inspectors considered whether or not policies of the WLP are consistent with the Framework. These included a decision in respect of "Forest Springs" in nearby Hartfield, where the Inspector found Policy DC2 (and also GD2) to have a high degree of consistency with the Framework[3]. Inspectors reached the same conclusions in decisions at "Paygate Farm"[4] and "Land at Minepit Wood"[5] elsewhere in the district. The Inspector in the Forest Springs decision also commented that although a financial test as set out in DC2 no longer appears in the Framework it remains a useful tool in seeking to establish whether or not a permanent dwelling is justified. The Council also drew my attention to another recent decision in East Northamptonshire[6] where the Inspector considered a policy which set out similar functional, financial and viability tests to those in the withdrawn PPS7, was nevertheless "a self-sustaining adopted development plan policy and must be considered as such".

15. All these other appeals related to proposals for permanent dwellings, rather than the temporary dwelling proposed in this case. Nevertheless, I concur with the findings the Inspectors in the earlier Wealden cases reached in respect of WLP Policy DC2, and with the Inspector in East Northamptonshire in respect of assessing matters of "essential need". Having regard to the advice in Paragraph 219 of the Framework that due weight should be given to existing policies according to their degree of consistency with the Framework, I find that DC2 is not out of date and attracts considerable weight.

Agricultural operations and essential need

<u>Existing operations</u>

16. The farm's combined land holdings amount to approximately 78 hectares, of which around 26 hectares is owned at the St Ives site. The farm has around 38 hectares at or adjacent to Hethe Place, of which approximately 19 hectares is owned and the remainder rented. Around 15 hectares of other land is also rented. This is based on figures taken from the Present System Budget document ("the PSB") submitted by the appellant at the Hearing. There has been some variation in the precise figures over the period since the planning application was submitted, which the appellant explained at the Hearing was because he was able to rent or otherwise use additional sites. This was sometimes with quite informal arrangements if, say, a particular seasonal need arose. I found at the site visit that it is approximately a 7- or 8-minute drive between the two sites, although of course agricultural vehicles would be likely to take a little longer to make the journey.

[2] Letter from Mr Chris Bending, Wealden DC to Mr Brian Howard, 7 January 2020 (appellant's evidence reference 211)
[3] PINS ref: APP/C1435/A/12/2170504
[4] PINS ref: APP/C1435/A/12/2188756
[5] PINS ref: APP/C1435/C/10/3243252
[6] PINS ref: APP/G2815/W/20/3254860

17. At present, beef calves are produced from a herd of around 55 suckler cows and a bull. Calves are born at Hethe Place, wintered there along with the cows, and sold as yearlings the following spring. The St Ives site provides summer and autumn grazing for most of the herd. There is also a flock of around 80 to 100 breeding ewes, plus rams and lambs; the sheep remain at Hethe Place all year round. The enterprise also produces turkeys for the Christmas market. The appellant's evidence, based on the John Nix Farm Management Pocketbook, indicates an existing need of around 1.8 full-time equivalent employees. At present this is met by the appellant's wife Mrs Linda Howard who carries out the day-to-day running of the farm, the appellant himself (who also carries out other work not related to the farm), with further assistance provided by daughters, usually at weekends.

18. Financial information submitted with the planning application showed that, for the five years to April 2020, gross margins for the business had averaged around £20,000 per annum, with an average net profit of £2,639 per annum. Information within the PSB, although prepared some way ahead of the year end, anticipated a gross margin of £28,574 and a net profit of £11,164, for the year to April 2021.

<u>Proposed expansion – buildings at St Ives</u>

19. The appellant wishes to expand the operation, increasing the numbers of cattle and sheep, and finishing some of the yearlings which at the moment are sold to other farmers for finishing. There are at present around 3,000m^2 of buildings and hardstanding at Hethe Place, and to support the intended expansion the appellant has sought to develop around 420m^2 of additional hardstanding and covered space at St Ives. This scheme was approved by the 2016 planning permission, which was issued on 22 September 2016. As is standard, a condition attached to that permission required that the development should commence not later than three years from the decision date.

20. On the day the 2016 planning permission expired the appellant wrote to ask that the Council "extend the approval if this is necessary"[7] but, while that letter could not have had the effect of extending, renewing or otherwise prolonging the life of the 2016 planning permission, it appears that the Council did not reply to the appellant to explain this. The same letter also stated that some preliminary work had been carried out, and the appellant indicated at the Hearing that a trial hole had been dug on the site. However, I also heard from the Council at the Hearing that during March 2020 and January 2021 Council officers had visited the appeal site and seen no evidence of any work having been undertaken.

21. I saw on my site visit the steel framework which had been purchased for the proposed agricultural buildings, and which was being stored on part of the St Ives holding. Beyond this there was no sign of any work having been carried out and, in my view, it is clear that the 2016 planning permission has expired without being implemented. Nevertheless, Mr Howard's plans for expanding the operation remain in place, and at the Hearing I was told that a new planning application for the same scheme as the 2016 planning permission had been submitted but not yet been determined. However, although the proposed physical works would remain the same as in the 2016 scheme the appellant's

[7] Letter to Wealden DC from Mr Brian Howard, 22 September 2019 (Council's evidence Appendix A)

business proposal has evolved, and the number of livestock proposed to be kept has grown since the appeal scheme was originally submitted.

Proposed expansion – operations

22. Taking figures from the PSB, which replaced earlier information submitted with the planning application, the cattle herd would be enlarged to number around 167 suckler cows with 5 bulls. The expectation is that they would produce around 155 calves per year, of which around 24 would be retained as replacements for the sucklers, 76 sold as yearlings, and 52 would be taken through to finished weight[8]. 50 or so store cattle would be housed at St Ives over the winter and turned out in the spring to be finished on the grass. The remainder of the herd would remain at Hethe Place over the winter as at present. In total, around 40% of the herd would be outdoors at St Ives over the summer. It was suggested at the Hearing that some additional cattle from Hethe Place could be accommodated in the buildings at St Ives and finished over the summer rather than being sold as store cattle, although this was not included in the prepared budgets. The sheep flock would be expanded to around 120 breeding ewes, which would remain at Hethe Place as at present.

23. The proposal to expand the operation is not solely predicated on increasing livestock numbers, but on keeping more animals until they are older, when they would fetch higher prices. It also assumes that other savings would be made, for example by home-rearing rather than buying in replacement breeding cows. On this basis, the PSB indicated an anticipated annual gross margin of £69,862 per annum with a net profit, after deducting the costs of an additional worker, of £16,354. The main parties agreed at the Hearing that the proposed expansion would result in the enterprise having an overall labour requirement of something more than 2 full time equivalent staff; the appellant therefore proposes that the existing arrangement I have already described would be augmented by taking on an additional worker approximately 18 months into the proposed expansion period. However, the additional labour need does not in itself demonstrate an essential need for this worker to be located at St Ives.

24. Much of the care of livestock, including calving and lambing, would continue to take place at Hethe Place. The appellant explained at the Hearing that the additional employee would be expected to spend more than half of every day at St Ives during the summer months, with the rest of the time being at Hethe Place. During the winter there would be a need for 2-3 hours in the morning for feeding at St Ives, and then the employee would be at Hethe Place for the remainder of the day.

25. At the Hearing I heard from the appellant that expanding operations at St Ives would reduce the need for livestock movements, which would be beneficial to animal welfare and wellbeing. The appellant suggested that there would also be less need for various other journeys between the two sites, for example moving muck between the two sites, or transporting silage produced close to St Ives. The appellant also explained the advantages of having somebody at St Ives to deal with various health and illness issues affecting cattle, including conditions such as bloat and pneumonia, and welfare matters such as dealing with cattle fighting among themselves, or being able to bring animals inside at short notice in the event of foul weather. I also heard about the potential

[8] The difference of 3 cattle is accounted for by assumed mortality.

security benefits of having an on-site employee, including providing a watching eye over the public footpath which crosses the site, and connects a popular nearby campsite with Hartfield village. The appellant suggested that the proposal would help to address problems resulting from dogs being walked across the site, vandalism, gates being left open and suchlike, as well as the potential for more serious crime such as cattle theft and arson.

26. For its part, the Council explained that St Ives would not be established as a holding in its own right, and the bulk of the operation would remain at Hethe Place. For a great deal of the day, and for much of the year, there would be no-one at Hethe Place to address the matters which may arise there.

Findings in respect of essential need main issue

27. The appellant has indicated that the proposed expansion of the farming operation would be funded from existing resources and savings, including the sale of other assets. I note in this respect the Council's acceptance that the figures in the PSB would be achievable, although it also commented that there is no expectation of, or calculation of, any return on capital and therefore it did not accept that the proposal was a sustainable proposition. The appellant suggested at the Hearing that operational efficiencies would, in themselves, amount to a substantial return on capital. It was also put to me during the Hearing that there would be other avenues open such as stewardship schemes, the environmental land management scheme, and other capital grants which would allow help to support the business, although these are outside the scope of the appeal proposal and do not add weight in support of the scheme.

28. Setting aside the Council's concerns about the return on capital, it seems to me that the appellant has the means and intention to grow his business. However, the fact remains that, at present, there is no permission for farm buildings at St Ives, so much of the proposed expansion of the business remains uncertain. In any event, even if the development of sheds at St Ives had gone, or were to go, ahead, the farm as a whole would continue to be a fragmented operation between St Ives and Hethe Place. There was no evidence put to me to indicate that St Ives would be, or would be able to be, a viable enterprise when considered in isolation. There would still be a need for a considerable number of journeys between the two sites, both for moving livestock and for other purposes. It also appears that an employee based at St Ives would be likely to need to travel to Hethe Place at least daily, and at busier times of the year perhaps more frequently. I therefore consider that the suggested benefits, either in terms of sustainability or reduced travel time, would be very limited, and again would not amount to an essential need.

29. I have had regard to the benefits of having an employee resident at St Ives which the appellant has put forward. I acknowledge in particular the appellant's concerns in respect of the security of the site which would be kept at St Ives. I heard of specific incidences of vandalism, for example, which would have been frustrating, distressing and potentially costly for the appellant. However, they nevertheless appear to be isolated rather than commonplace, and given the large area of fields and the relative lack of visibility which the proposed accommodation would have over some parts of the site, notably the lake towards the southern edge of the land, it seems likely to me that any security benefits arising from the proposal would be marginal. It is not at all unusual for fields with livestock to be crossed by public footpaths, and on the basis of all

the evidence put to me I cannot conclude that there would be significant specific security benefits which would arise from the scheme. While I sympathise with the appellant's desire to improve security in general terms, this does not in my view amount to an essential justification for the proposal.

30. It was put to me at the Hearing that is not at all unusual for either beef cattle or sheep to be kept at some distance from the main farm on outlying land. I acknowledge that there would be some potential welfare benefits from having an employee at St Ives who would be in closer contact with the animals there for some of the time. However, that employee would spend a large proportion of their time at Hethe Place, and there would be long periods when no-one would be on site. It is also apparent that Hethe Place would in any case continue to be where calving takes place and would be where any animals needing more intensive looking after would be likely to be treated. Except in relatively rare cases, illness or health conditions within the livestock at St Ives would be likely to be picked up during routine checks and supervision, rather than being a matter which would be dependent on having someone permanently living on the site.

31. Taking all of this together, I conclude that the essential need for a dwelling to accommodate a rural worker has not been demonstrated. The proposal therefore conflicts with Saved Policies DC2, DC17 and GD2 of the WLP, and with Policy WCS6 of the WCSLP, which together set the development strategy for rural areas, and seek to protect the countryside by preventing the development of housing except where a clearly demonstrated functional need exists. The proposal also conflicts with the requirements of Paragraph 80 of the Framework which seek to prevent the development of isolated dwellings in the countryside.

Character and appearance

32. The appeal site is within the High Weald Area of Outstanding Natural Beauty ("the AONB"), close to a ridge top which runs approximately along the line of the lane to Butcherfield Lane overlooking the Medway valley to the south. It is worth reiterating here that the proposed agricultural sheds which the development was originally intended to accompany have not been built.

33. The proposed caravan would be close to the field hedge forming the southern boundary of the private lane to Butcherfield Lane and an area of woodland to the east. These would provide some screening but I saw on my site visit, which was carried out at a time of year when the trees and hedgerows had limited leaf cover, that this would be inadequate to prevent the caravan being easily visible from the lane. The more exposed outlook to the west and south would make the caravan a more prominent and striking feature when seen in close views from the public footpath crossing the site, and in some longer views from the valley to the south. In isolation, without any adjoining farm buildings to offer either cover or context, I consider that it would be an intrusive and alien feature, which would be harmful to the character and appearance of the AONB.

34. I therefore conclude that the proposal would conflict with Saved Policies DC2 and EN6 of the WLP, which together seek to conserve or enhance the AONB, and to ensure that rural workers' dwellings (whether temporary or permanent) are sited where they are not intrusive in the landscape. The proposal also conflicts with the requirements of Paragraph 176 of the Framework, which

states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs.

Other Matters

35. The site is within 7km of the Ashdown Forest, which is a designated Special Area of Conservation ("SAC") and a Special Protection Area ("SPA"). The Council indicated that it was satisfied that the proposed development would not have, either on its own or in combination, have an adverse impact on the integrity of the SAC. It also stated that any effect on the SPA arising from additional recreational use could be addressed by contributions towards Strategic Access Management and Mitigation Measures and Suitable Alternative Natural Greenspaces, secured by an appropriately worded condition. On the basis of the evidence before me, I have no reason to disagree. However, as I am dismissing the appeal for other reasons it has not been necessary for me to consider this in detail as it could not change the overall decision.

36. The Council also raised concern about how the proposed caravan would be accessed, as the submitted plans were dependent on access as part of the now-lapsed 2016 permission. Again, as I am dismissing the appeal on other substantive grounds, I have not considered this matter in detail.

Conclusion

37. The Council acknowledges that it cannot demonstrate a 5-year supply of deliverable housing sites, and that at 65% its most recent Housing Delivery Test figures were substantially below its requirement. However, Paragraph 11 and Footnote 7 of the Framework are clear that the "tilted balance" in favour of "sustainable development" is not engaged if the application of policies in the Framework to protect areas of particular importance provides a clear reason for refusing the development proposed. These areas include AONBs, and in this case the harm to the AONB which I have identified provides a clear reason for refusing the proposal. Furthermore, the adverse impacts of developing an isolated dwelling in the countryside would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. The "tilted balance" is therefore not engaged.

38. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. The other material considerations identified in this case, including the Framework, do not justify a decision other than in accordance with the adopted development plan.

39. For the reasons given above, the appeal should therefore be dismissed.

M Cryan

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr B Howard	
Mr B Skinner	Wilson Wraight – Agricultural Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Ms S Scannell	Wealden District Council
Mr D Moss	Wealden District Council
Mr R Lloyd-Hughes MRICS	Rural Planning Ltd – Agricultural Consultant

DOCUMENTS SUBMITTED AT THE HEARING

Present System Budget (year ending 5 April 2021), submitted by the appellant.

Additional response to new Business Plan (19 March 2021), submitted by the Council.