Appeal Decision

Site visit made on 16 November 2021

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2022

Appeal Ref: APP/Y2430/W/21/3271021
Field Farm, Kirby Road, Great Dalby LE14 2HD

- 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 D Smith against the decision of Melton Borough Council.
- The application Ref 20/00539/FUL, dated 14 May 2020, was refused by notice dated 18 December 2020.
- The development proposed is the stationing of a mobile home for an agricultural worker for a 3-year limited period.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the planning decision notice and the appeal form. I have used it in preference to the wording on the original planning application form, which had not described the proposal as being for a mobile home.

3. The Government published a revised National Planning Policy Framework ("the Framework") on 20 July 2021, replacing the version published in February 2019. Because of the timing of this, both main parties were able to refer to the revised Framework in their appeal representations. Where I have referred to specific paragraphs of the Framework, the numbering is that of the July 2021 version.

4. The single reason for refusal on the decision notice referred to conflict with Policies SS2 and D3 of the 2018 Melton Local Plan ("the MLP"), and highlighted in particular criteria b) and c) of D3, the requirements of which are set out in paragraph 12 below. The Council's appeal statement also referred to criterion a) of D3, which requires that a proposal for an agricultural worker's dwelling is economically viable; the Council's agricultural consultant's report was summarised as, among other things, concluding that "there was limited evidence of financial viability arising from the agricultural use of the site". The appellants drew my attention to this matter in their "final comments" submission, noting that the consultant's comment that "the proposed business has the prospect to be viable" is directly contradicted by the Council's appeal statement.

5. As I explain further in my reasons below, the Council's comment on financial viability and its agricultural consultant's advice are not in fact at odds with one another. While the reason for refusal did not explicitly refer to the viability of the enterprise, it is nevertheless an essential element of considering whether or not an agricultural worker's dwelling is justified. The matter is a clear point of disagreement between the main parties, which it falls to me to address in determining this appeal. As the appellants have had the opportunity both to consider and respond to the Council's comments in this respect, I am satisfied that no party's interests have been prejudiced by my taking this approach.

Main Issue

6. There is no dispute that the proposed development would result in the development of an isolated home in the countryside, albeit that permission is sought for a temporary period. The main issue is therefore whether or not the need for an agricultural worker's dwelling has been demonstrated, having regard to the policies of the development plan and the Framework.

Reasons

The appeal site and the proposal

7. Field Farm is a holding of a little under 6 hectares, a short way north west of the village of Great Dalby to which it is connected by Kirby Road. A track entering the site from Kirby Road gives access to an area of hardstanding. Alongside the hardstanding is a five-bay agricultural barn (one bay of which is an enclosed storeroom and workshop with a roller shutter door) which forms the operational base for the appellants' business, Kirkland Contracting and Shotblasting Ltd ("KCSL"). The remainder of the holding is arable land, used for silage, wheat and grazing crops.

8. KCSL carries out work for other local agricultural holdings, across several areas of activity described in the appellants' statement as "…assistance with the care of livestock, birthing of calves, slurry and muck spreading, harvesting of crops, transportation of agricultural goods and produce between sites (e.g. hay bales, animal feed) and repair and maintenance work to farm vehicles, including shotblasting". The existing barn on the site can accommodate around 40 beef calves aged between 12 and 24 months, held under what the appellants describe as a "bed and breakfast" arrangement for other farms. The calves are kept for four or five months at Field Farm, where they are fattened before being returned to their home farm.

9. Prior approval has been granted for a second smaller three-bay barn[1] on the site, although this had not been developed at the time of my site visit. The second barn would allow the number of calves being brought to Field Farm for fattening to be doubled to around 80. Alternatively, the two barns together could be used to accommodate 50 to 60 calving heifers; the appellants consider that this would be a more labour-intensive, but more profitable, undertaking for the business.

10. In order to support this expansion in operations, the appellants wish to station a static caravan on the site, alongside the access track from Kirby Road, to be used as living accommodation and an office. Permission is sought for a temporary period of up to three years, and the appellants have expressed the

[1] LPA ref: 20/01476/GDOAGR

hope “that a permanent agricultural tied dwelling can then be submitted in the future once there is confirmed evidence of the business’s profitability”.

Planning policy background

11. Policy SS2 of the MLP sets out the development strategy for the borough, and states that in the open countryside, outside identified settlements, new development will be restricted to that which is necessary and appropriate in the open countryside. The development plan recognises that in some circumstances it will be necessary to provide new agricultural dwellings in the countryside. Policy D3 sets out 10 criteria with which proposals should comply.

12. Planning permission was refused on the basis that “a convincing case to demonstrate a functional requirement for the agricultural workers dwelling has not been made”. The reason for refusal highlighted non-compliance with criteria b) and c) of Policy D3; these are that the need for labour is essential, permanent and full time, and that the necessity for workers to live on or in close proximity to the premises can be adequately demonstrated. For the reasons I have set out in paragraphs 4 and 5 above, it is also necessary for me to consider whether or not the proposal complies with criterion a), which is that a proposal for an agricultural worker’s dwelling is economically viable.

13. The relevant development plan policies are compatible with the requirements of Paragraph 80 of the Framework. This seeks to avoid the development of isolated homes in the countryside except in certain circumstances, one of which is that there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.

Labour requirement

14. The appellants have provided an approximate breakdown in the time allocated to different elements of KCSL’s activities. Given the variability in the nature of the appellants’ work, responding as it does to changes in seasons and weather, as well as the needs of clients, I accept that it is not – and perhaps could not easily be – a precise analysis of the workload. Nevertheless, between them Mr and Mrs Smith estimate that over the course of the year they on average carry out between 60 and 80 hours of work per week. Although both appellants contribute, at present the majority of the hours worked are put in by Mr Smith.

15. The appellants’ submissions show that the beef enterprise occupies between one and a half and two days of working time, spread across all seven days of the week. The arable enterprise requires short intensive periods of work to prepare the soil, sow the seed and harvest, although over the course of a year this averages out at a negligible time commitment per week. Both of these activities are carried out entirely at Field Farm.

16. Agricultural contracting, carried out off-site at clients’ farms, averages out at around a day and a half of labour per week, although it has seasonal peaks and troughs, rising to around four days per week in summer and correspondingly much lower at other times of the year. Maintenance work, in the form of repairing and constructing equipment and vehicles used either by KCSL or owned by clients, needs around a further two days of work, the scheduling of which is arranged around the other activities; by the appellants’ estimate 95% of this work takes place at Field Farm.

17. The appellants contend that the two days per week currently worked on the beef cattle, plus the two days on maintenance work, already amounts to a labour requirement at Field Farm of 42.51 hours per week, exceeding that of a full-time worker. However, the definition of agriculture (and agricultural) in section 336 of the Town and Country Planning Act 1990 does not include the maintenance or construction of machinery, and the submitted evidence indicates that much of the maintenance work supports KCSL's contracting activity. In this light, while the operations on the site at present may use the equivalent of a full-time worker or more, in my view not all of the activities being carried out would meet the definition of agricultural labour.

18. In respect of the proposal to use the additional barn to expand the on-site beef enterprise, the appellants anticipate that "double the cattle will […] roughly double the time needing to be spent on this activity alone" to around four days per week. The Council's agricultural consultant acknowledged that the submitted evidence "would indicate that there is a requirement for a full-time worker (albeit not solely on the holding)". I note also, however, the Council's consultant's note of caution that "the extent of the contacting and maintenance & repairs activity is unclear, so it difficult to assess the labour requirement for the overall business activity". As I have already explained above, notwithstanding the variability of some aspects of the appellants' work, with the exception of the 42.51 hours quoted above their evidence in this respect consists of broad and generalised estimates; I have not, for example, been provided with any detail which would allow the anticipated labour requirement to be benchmarked against widely-accepted industry references[2].

19. Taking all of this together, there is not at present a need for a full-time agricultural worker on the site, although other activities carried out on the site bring the total labour requirement above that of a full-tome worker. However, and notwithstanding the lack of detail provided, following the anticipated expansion phase, the enterprise would appear to be one where there would, potentially and approximately, be a requirement for a full-time agricultural worker on site. The question of whether this worker would need to *live* on or close to the site is a matter which must be considered separately.

Necessity to live on or close to the premises

20. The appellants have put forward four reasons which they consider demonstrate a need to live on or close to the site; these are caring for the existing livestock on the site, growing the livestock operation, security, and a reduction in travelling time and expense.

21. There is, of course, no dispute that there is a need for the animals on the site to be well looked-after. I also accept that (as the Planning, Design and Access Statement explains) not every farmer is willing to have their livestock at a site without 24-hour supervision. However, KCSL has been able to attract clients happy to entrust their livestock to the care of the appellants without there being 24-hour on-site supervision; to my mind this demonstrates that this is a matter of individual preference rather than necessity. It is not unusual for livestock to be kept some distance from direct and continuous supervision, and except in relatively rare instances, illness or health conditions within the livestock at Field Farm would be likely to be picked up during routine checks and supervision. I have also not been provided with evidence suggesting that

[2] Such as the Agricultural Budgeting and Costing Book (ABC) or the John Nix Pocketbook.

remote monitoring, which could improve responsiveness to any emergency incidents, has been tried or considered instead. The welfare of the livestock is not therefore a matter which is dependent on having someone permanently living on the site.

22. In respect of the expansion of the beef enterprise, the appellants state that there is scope for calving heifers to be cared for at Field Farm if a dwelling is allowed on the site; I note also the letter of support from a partner at Sludge Hill Farm, one of the appellants' clients, indicating that he would be willing to put in-calf heifers with Field Farm if someone can be on-site 24 hours a day. As calving may take place at any time of the day or night, taking on this line of work would make some out-of-hours working inevitable. However, as this proposed element of the enterprise would depend on batches of heifers being brought into Field Farm from outside it seems likely that such demand would be for predictable, and relatively short periods of time.

23. As KCSL would be responding to client demand, it is also likely that there would be periods when the barns (both existing and proposed) would either be used for 12- to 24-month-old calves as at present, or would be empty. In these situations, the requirement for on-site attendance to livestock around the clock would be limited or non-existent.

24. Turning to security, there is a public footpath which crosses part of the site; however this is not in itself an unusual situation, nor does it appear to represent a significant threat to security or animal welfare. The appellants explained that a break-in at the site in 2019 resulted in the theft or damage of more than £100,000 of equipment and machinery. Although this would obviously have been frustrating, distressing and potentially costly for them – and I note that it was not prevented by the presence of CCTV on the site – it appears to have been an isolated incident. Nevertheless, the presence of someone living on the site would be likely to be deter some of the crime and antisocial which might otherwise occasionally happen.

25. The appellants currently live in Melton Mowbray, approximately 5km from Field Farm, and travelling between the two locations takes around 10 minutes by car. Based on my experience elsewhere, this does not in itself represent an unusual situation – there are numerous multi-site or very large farms where it might take something close to that time to get from one part to another. However, Mrs Smith does not, or cannot, drive, and given the nature of the surrounding rural area, I accept that such a journey is one which it is unlikely to be practical to make as a matter of course other than by car. For example, the final bus connection is before 3pm, which is clearly unsuited to the needs of attending to livestock. Contracting work elsewhere, or the need to attend to broken machinery at short notice, mean that Mr Smith is often away from Field Farm. As Mrs Smith is dependent on Mr Smith for travel, this sometimes leaves her unable to get to or from Field Farm.

26. Given the nature of the appellants' business operation, I am not satisfied that the need to attend to livestock justifies having a worker permanently resident on the site. The reasons why Mrs Smith does not or cannot drive, or could not learn to drive, have not been fully explained; as such, this is a personal circumstance to which I can only attach limited weight in my assessment of the appeal proposal. It is possible that any short-term seasonal need for round-the-clock livestock care could be met by accommodation brought onto the site

under the provisions of the General Permitted Development Order, although there is nothing before me to suggest that this option has been explored and discounted.

27. I sympathise with the appellants' desire to improve security in general terms, and acknowledge that having an on-site resident would be likely to improve this situation. However, the site does not appear to face any exceptional or unusual security concerns, and this small benefit would not, either on its own or in combination with the other factors put forward, amount to an essential justification for the proposal.

28. Finally, and as I explain more fully below, the farming activities carried out at Field Farm appear to be, financially at least, a relatively minor part of the appellants' business. Taking all of these considerations together, the appellants' desire to reside on the site seems to me to be at least as much (and possibly more) an expression of personal preference than something rooted in a solid business or operational necessity.

Financial viability

29. The appellants provided a cashflow forecast for the calendar year 2020[3] which anticipated income of £133,176 and expenditure of £63,135.84, showing a "balance for reinvestment" of £70,040.16. It stated that income from the cattle enterprise was £14,040, and from land £840.00 (which I understand from other evidence to be a fee charged to March House Farm for cropping barley); income from contracting was £106,296, and from contracting equipment maintenance £12,000.

30. In an accompanying letter to the Council[4], the appellants explained that they considered that providing on-site accommodation would allow an increase in on-site activity, as a result of Mrs Smith taking a greater role in the enterprise, notably having increased numbers of cattle at Field Farm, and rearing cattle year-round rather than for nine months as at present. It was also explained that this would allow Mr Smith to undertake contracting work for an additional, sixth, farm.

31. A summary financial forecast looking at the next three years was submitted as part of the planning application. It assumed that the residential accommodation would be provided before the beginning of 2021, and the second barn would be constructed by the beginning of 2022. Notwithstanding the slippages in timing, the tables provide an approximate guide as to how the appellants expect their enterprise to develop. For simplicity's sake, other than in respect of "growth" areas and one-off items, the tables reapply the base income and expenditure figures for 2020; in my view this has not undermined the usefulness of the tables as a broad summary of the appellants' ambitions.

32. The summary tables show that in the first year of expansion (originally anticipated to be 2021) there would be an additional £1,560 of income from beef rearing (this assumes the same numbers of livestock as at present, but for the full year) and additional contracting income of £21,259.60 from a sixth client farm, making total income of £155,995.20. There would be additional expenditure to install the static caravan of £20,000, and the "balance for reinvestment" in "Year 1" would therefore be £62,859.36.

[3] "Annual cashflow forecast 2020 Field Farm, Great Dalby (updated Sept 2020)"
[4] Letter from Aitchison Raffety dated 10 September 2020

33. In "Year 2" (2022), there would be an additional £20,280 of income from rearing 80 beef calves for the full year, and the additional contracting income of £21,259.60 from the sixth farm. Offset against this would be additional expenditure of £20,000 on the second barn. The "balance for reinvestment" in Year 2 would be £91,579.36.

34. From "Year 3" (2023), the living accommodation and second barn would be in place. It is assumed that from that year on, the additional £20,280 of beef income and the additional £21,259.60 of contracting income would occur annually. Total income would therefore be £174,715.20, while expenditure would return to the "pre-development" 2020 figure of £63,135.84; this would give a "balance for reinvestment" of £111,579.36 each year from Year 3 onwards.

35. On the basis of this additional information, the Council's agricultural consultant concluded that "from the updated cashflow forecast provided, it would appear that the proposed business has the prospect to be viable". Among other comments however, the agricultural consultant noted that on the basis of the other financial information which had been provided[5], "which detail limited assets and a negative balance in 2019", it is "unclear what assets are held by the company" and that machinery and equipment do not appear to be reflected in the accounts. The agricultural consultant also noted that the current and forecast labour costs do not equate to the living wage for a full-time worker, although they acknowledged that the forecasts indicated that the business would be likely to be able to sustain additional drawings and reinvestment.

36. The Council's agricultural consultant also highlighted the fact that at present only around 11% of KCSL income is derived from the beef and arable enterprises. By the appellants' submitted figures, the growth which they hope to achieve would approximately double the income of the beef enterprise. At the end of the three year "expansion period", annual income from the beef and arable enterprise – in other words, the agricultural side of the business – would therefore amount to £35,160. However, the freeing up of additional time for Mr Smith would allow him to increase the contracting income; along with the income from maintenance activity this would amount to £139,555.20 annually. Of a total business income of £174,715.20, only around 20% would be derived from agricultural activity.

37. The submitted evidence therefore shows that farming activity makes up a relatively small part of the business's current and anticipated income. There are missing items of financial information which one might normally expect to see for a proposal such as this, and consequently there is a lack of clarity over whether or not the farming element of the business – as opposed to the business as a whole – has a sustained prospect of profitability. In this light, I consider that the Council's comment that "there was limited evidence of financial viability arising from the agricultural use of the site" to be both accurate, and a fair summary of its agricultural consultant's conclusions.

Findings on the main issue

38. While there is not at present a full-time need for an agricultural worker at Field Farm, the appellants intended to expand their business over a three-year

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[5] Companies House "Abbreviated Balance Sheets" for the years ending June 2015 and 2016, and "Micro-entity Accounts" for the years ending June 2017, 2018 and 2019.

period. I accept that, if successful, at the end of that time there would be likely to be a need for a (more or less) full-time agricultural worker on the site. In such circumstances, it is sometimes appropriate to grant planning permission for a dwelling for a temporary period, and it is this which the appellants are seeking now.

39. However, I do not consider that this would be the appropriate course of action in this case for two reasons. Firstly, as I have explained in above, I do not consider that the enterprise is, or would become, one for which it would be essential to have a worker resident and available on site at all hours of the day and night. Secondly, while the future viability of the appellants' business as a whole may not be in dispute, it is not clear that the farming activity at Field Farm is or would become a profitable and sustainable enterprise in and of itself. All of the submitted evidence indicates to me that KCSL is primarily a contracting business which incidentally carries out some farming activity, rather than the other way round.

40. On the basis of all the evidence put to me, I therefore conclude that the essential need for a dwelling to accommodate a rural worker has not been demonstrated, and a temporary planning permission would not be justified. For the reasons I have set out above, the proposal does not comply with Policy SS2 of the MLP, nor with criteria a) and c) of Policy D3. Together these policies set the development strategy for the borough, and seek to protect the countryside by preventing the development of housing in rural areas except where a clearly demonstrated functional need exists. The proposal also conflicts with the requirements of Paragraph 80 of the Framework, which seeks to prevent the development of isolated dwellings in the countryside.

41. I have found that the proposal would comply with criterion b) of Policy D3. The Council did not consider that there was conflict in respect of any of the other criteria of D3, including criterion d) which requires it to be shown that there are no existing dwellings that could meet the requirements of the enterprise near to the premises which would be available and suitable. However, to be acceptable a proposal needs to comply with the requirements of the policy in full.

Other matters

42. Great Dalby Parish Council commented, both when consulted on the planning application and in response to the appeal notification, on the use of the appeal site for arable purposes rather than the keeping of livestock. I note also the appellants' robust response to those comments in their final appeal submission. At the time of my site visit I saw the barn at Field Farm being used for keeping livestock, as well as the maintenance and storage of equipment I have described. I have, of course, reached my conclusion in this appeal based on all of the written evidence before me and my own observations on site, based on which I have found that a justified essential need for the scheme has not been demonstrated.

43. Other matters raised by interested parties have, to the extent that they are material, been addressed in my consideration of the main issues above.

Conclusion

44. The essential need for a temporary dwelling for an agricultural worker has not been demonstrated. As a result, the proposal conflicts with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan.

45. For the reasons given above, the appeal is therefore dismissed.

M Cryan

Inspector